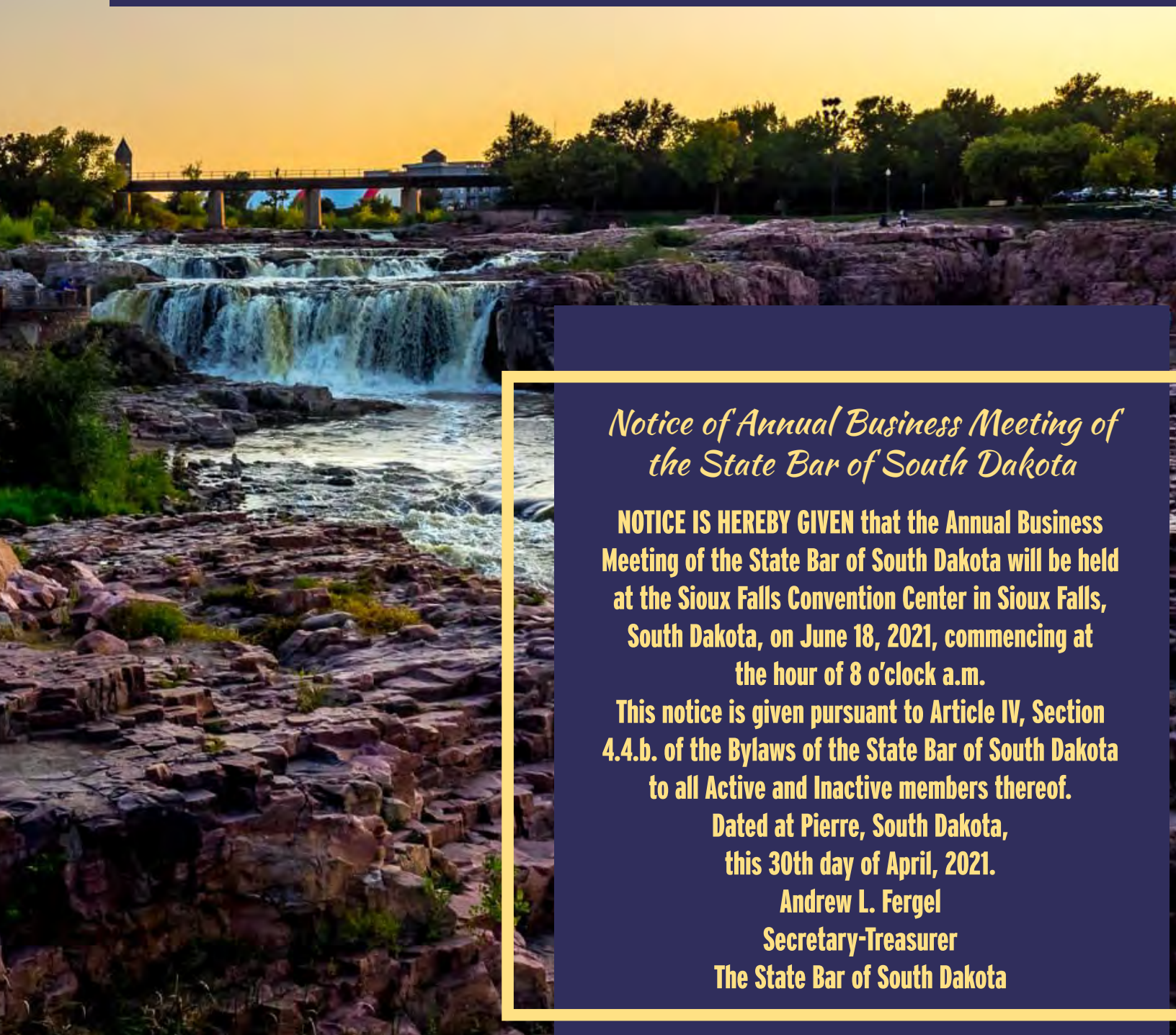


# State Bar of South Dakota

# 2021 ANNUAL MEETING

Sioux Falls Convention Center  
June 16-18 2021

May 2021 Newsletter



## *Notice of Annual Business Meeting of the State Bar of South Dakota*

**NOTICE IS HEREBY GIVEN** that the Annual Business Meeting of the State Bar of South Dakota will be held at the Sioux Falls Convention Center in Sioux Falls, South Dakota, on June 18, 2021, commencing at the hour of 8 o'clock a.m.

This notice is given pursuant to Article IV, Section 4.4.b. of the Bylaws of the State Bar of South Dakota to all Active and Inactive members thereof.

Dated at Pierre, South Dakota,  
this 30th day of April, 2021.

Andrew L. Fergel  
Secretary-Treasurer  
The State Bar of South Dakota

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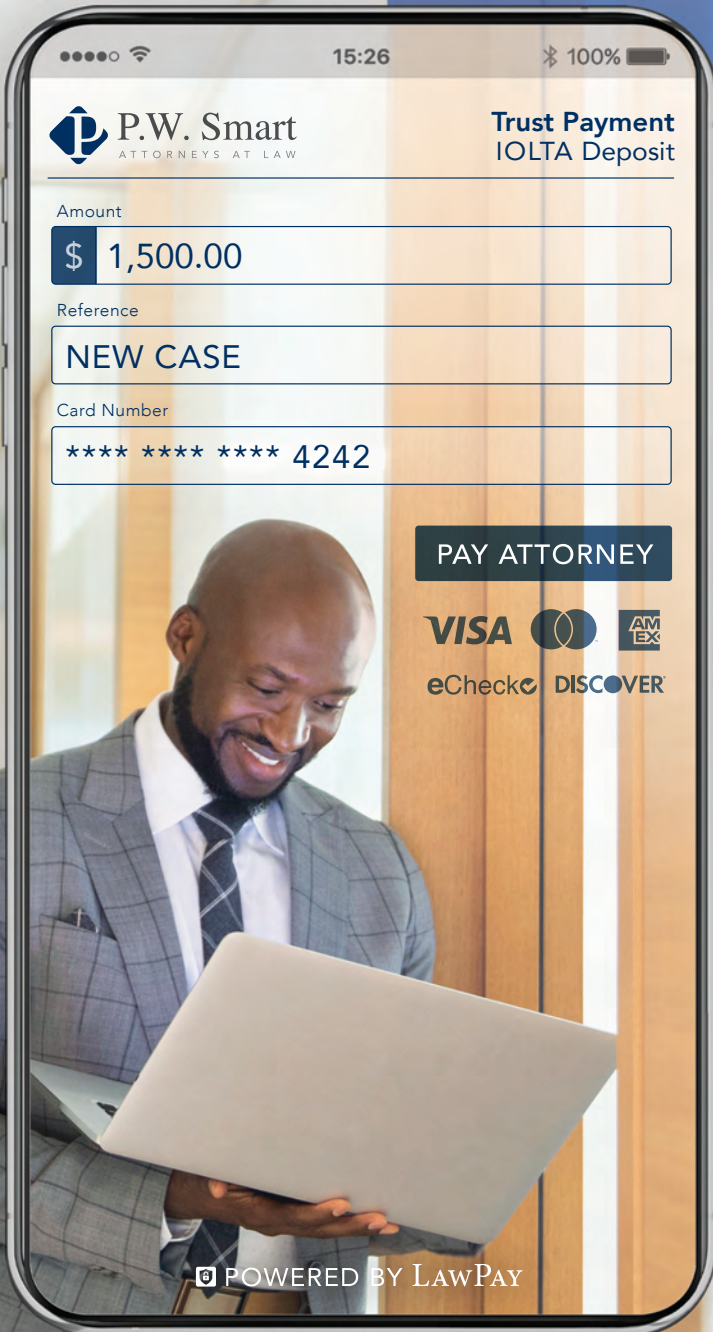
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State Bar of South Dakota



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# State Bar of South Dakota

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## PRESIDENT'S CORNER

*Terry G. Westergaard*

This month, I continue to feature the individuals behind the scenes that do the work of the State Bar. Many of you already know Becky Porter. She has been involved with Lawyers Concerned for Lawyers (LCL) for decades.

In June 2020, Becky became the first Lawyers Assistance Director in the history of the State Bar of South Dakota. This position began part-time as a pilot program in June 2019. That pilot program confirmed the need for the full-time position in South Dakota. This position allows more direct contact with lawyers/employers, local Bar associations, other state assistance Directors, and the law school. It also affords more time for collaboration with already existing State Bar Committees (e.g., Lawyers Assistance and others) to provide more education, legislative and rule amendment proposals, and resource referrals and support to already available but underutilized programs.

Outside and separate from her new Lawyers Assistance position and duties, and with help from others who have “been there”, Becky still provides a confidential, privileged, and independent resource for South Dakota lawyers, law students, and their families who are struggling with depression, anxiety or have a drug

or alcohol issue. This past year, those concerns have skyrocketed because of COVID. Help is available. If you or someone you know is struggling, please contact Becky.

I hope this conversation allows you to get to know Becky a little better.



TERRY: First, why did you apply for a position with the State Bar and what keeps you here?

**Becky: I remain passionate about my need to pay back the help, assistance, and support I received from LCL after I had no choice years ago but to acknowledge, face, and accept treatment for my own substance use disorder or die. In my situation, legal, employment, and licensing problems had already occurred, with more ongoing conditions required before I could practice law again.**

**I have always known that Bar service is important. I have experienced the benefits of networking, practice assistance/referrals, and friendships with other lawyers throughout the state that I would have missed without my involvement. I applied for this position while in the process of slowing down, then retiring. This was my chance to continue the independent LCL confidential work that I planned to keep up anyway, with even more opportunities to make a real difference.**

TERRY: What did you do before you became the Lawyers Assistance Director for the State Bar?

**Becky: I primarily practiced law and was involved with LCL. I had the great fortune and opportunity to be employed by a great law firm and had mentors there before completion of my undergraduate degree, then during summers as a legal intern, and later as a lawyer/partner. That same firm tried so very hard to help me during and after my addiction issues became apparent, then impossible. I had caused problems for the firm and other lawyers, but they let me resign when I didn't accept the help offered. Now, after my recovery they have continued to support me in my**

solo practice and other endeavors with such grace I really don't feel I deserve. The continued learning, friendship, and support they have given me has been an unbelievable blessing and I feel there's still a chance to do more in other indirect ways.

TERRY: Can you describe a typical day for you?

Becky: It's hard to describe a "typical day" because it varies from day to day. I am involved in presentation preparation for Bar-related activities, educational ideas and other scheduling. I have daily contact with the Lawyers Assistance Committee or its Chair to address ongoing projects. I also work with local Bar Associations and Young Lawyers, and coordinate with Strategic Planning on our mission/goals. I prepare weekly for a speaker or topic for our Lawyers Assistance Virtual Coffee Break. I collaborate with other state Directors frequently. I tend to have some kind of daily contact or work with the Law School re: upcoming presentations, involvement in student support assistance groups. I mentor conditional admittees by providing help (with Bar Examiner Commission approval) with required answers/disclosures on impairment questions for the Bar Application. I help organize training for LCL volunteers and appropriate support from professionals in mental health/substance use disorder areas. I am always working to recruit more LCL volunteers. Most importantly I do follow-up calls with individuals we help and take independent daily calls and referrals for those needing assistance!

TERRY: What do you enjoy doing when you are not working?



Becky: Walks, exercise, time with my husband and our "kid" animals (unfortunately, down to a cat who acts like a dog, with hope for a new puppy soon), old TV shows if possible, AA meetings I still attend, and rest and sleep, plus lots of good food and sweets.

TERRY: Where do you live?

Becky: In the Black Hills!

TERRY: Would you say you are more of an introvert or extrovert, and why?

Becky: Probably mostly an extrovert at work and related-events, because I like the socialization part, enjoy the contact with others, and it helps me. More introverted at home and with family. I like to relax and spend quality time with my husband, and catch up with sisters.



TERRY: What is your favorite holiday?

Becky: Thanksgiving.

TERRY: What are some of your favorite things?

MOVIES: When I go, I like the fast action or Sci-Fi.

BAND/MUSICIAN: Old classic rock and roll.

VACATION SPOT: A warm or tropical place or home with my husband. Or anywhere with my sisters.





**COLOR:** Blue

**ICE CREAM FLAVOR:** Most everything but preferably one involving chocolate.

**MEAL TO EAT:** Turkey with all traditional side dishes or steak.

**RESTAURANT:** The Colonial here; LaMinestra in Pierre, and maybe Minervas in Sioux Falls.

**SEASON OF YEAR:** Spring or summer.

**TERRY:** One final question for me to keep in mind when I stop in to visit you. How do you take your coffee/favorite beverage?

**Becky:** Dark and strong with no extras.

---

**Join Julie Johnson**  
Thursday | May 20th | 12p - 1p CST

**REGISTER HERE**

**2021 LEGISLATIVE SESSION RECAP**  
Catch-up on what happened during the 2021 South Dakota Legislative Session and find out how new bills could impact you or the businesses you represent.

STATE BAR OF SOUTH DAKOTA  
YOUNG LAWYER SECTION



by: *Caroline A. Srska*  
YLS President

Last week, the Young Lawyers Board hosted two Bootcamp CLEs, one in Sioux Falls and one in Rapid City. We provided opportunities to attend both in person and over zoom, and the bootcamps were very well attended.

I would like to thank all the speakers again for investing their time in promoting the advancement of young lawyers. All gave extremely valuable advice and we are fortunate to have a bar that is willing to help others.

One big takeaway I had from advice given by almost all the speakers and panelists is to ask for help when needed. Personally, as a young lawyer, I had (and still do have) an internal struggle with myself feeling that I need to know all the answers right away. With the practice of law being so vast, however, it's impossible for any of us, young lawyers or experienced, to know every single answer.

Asking for help is vital. We have all been young attorneys in our career, and asking for help from another attorney will save one from potentially making errors, or correcting an error early on. I also appreciate that when I ask for help from a more experienced attorney, I also benefit by seeing how they strategize through an issue. More often times than not, attorneys in our bar are willing and able to help, and, see it as a compliment. And another huge piece of advice I received is not to forget that you were once a young lawyer. As you become more experienced, and a young lawyer approaches you seeking advice, pay it forward and assist in whatever capacity you are able.

And lastly, if you are a young lawyer seeking mentorship, please contact me or any of the Young Lawyers Board of Directors to find you a mentor.

Your 2020-2021 Board of Directors are:

President – Carrie Srska (Sioux Falls)

Vice-President – Ole Oleson (Rapid City)

Secretary/Treasurer – Anthony Sutton (Sioux Falls)

1st Circuit Representative – Rachel Mairose (Plankinton)

2nd Circuit Representative – Tyler Coverdale (Sioux Falls)

3rd Circuit Representative – Tony Teesdale (Brookings)

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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 endeavors and charities the Foundation supports.

---

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

(cumulative, including pledges & testamentary gifts)

- \* Fred & Luella Cozad

## Life Fellow - \$25,000 plus

(cumulative, including pledges & testamentary gifts)

- \* Frank L. Farrar

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## Diamond Fellows - \$10,000 plus

(cumulative, including pledges & testamentary gifts)

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

## Platinum Fellows - \$10,000

(cumulative, including pledges & testamentary gifts)

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

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## Gold Fellows - \$5,000

(cumulative, including pledge)

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

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

- \* William C. Garry
- \* Timothy J. Rensch
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# Fellows of the South Dakota Bar Foundation

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- \* Charles M. Thompson
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- \* Thomas J. Welk
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- \* Mary Jane Cleary
- \* Andrew L. Fergel
- \* Craig A. Kennedy
- \* Hon. Judith K. Meierhenry
- \* Hon. Bobbi Rank
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- \* Laura Clark Rowe
- \* Thomas Eugene Simmons
- \* Jason R.F. Sutton
- \* Barry R. Vickrey



Our Profession. Our Responsibility.

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



by: Neil Fulton  
Dean  
USD  
Knudson School of Law

The beginning of May brings the end of the academic year. With the end of the academic year comes the end of law school for another graduating class. Shocking as the racing of time is to them and to many of us at the Law School, the Class of 2021 joins the list of alumni this month. As they do, I wanted to share a bit about them with all of you.

The Class of 2021 came from eight states and thirty South Dakota communities. As they graduate, there are 65 members of the class, five of whom graduated in December after completing their degrees in two and a half years.

Currently, more than forty members of the Class of 2021 have employment secured after graduation. This is higher than in recent years and many graduates do not start looking in earnest until after the bar exam. That is a testament to the initiative of those students and the commitment of South Dakota employers. It is exciting news to report, particularly with all the challenges COVID-19 presented for recruiting and placement. Those jobs are in South Dakota, Nebraska, and Iowa and twelve South Dakota communities including Sioux Falls, Rapid City, Pierre, Mitchell, Aberdeen, Highmore, Tyndall, and Madison.

While in law school the Class of 2021 accomplished a lot. They published articles in the South Dakota Law Review; competed on an equal footing with larger schools across the country in trial team, ADR, and moot court; and provided volunteer legal services to veterans, low-income citizens with tax disputes, Native Americans who need wills, and in a variety of pro bono settings. They excelled academically despite half of their legal education being disrupted by COVID-19.

As much as I can say about the Class of 2021, what they have to say about themselves, their time in law school,

and their future is more interesting. Here's the Class of 2022 in some of their own words.

"I'm nervous about what's next, but I know I'm ready."  
"It was really tiring."

"After graduation I'm returning home to create positive change."

"I'm going to miss the grind—late nights writing papers, early morning prep for class, war stories from professors, hatching plans for the future with friends."

"The pandemic forced our class to be creative in making events like ADR competitions, Sam Masten, the Law Review symposium, and speakers happen to provide opportunities for learning and growth. I am thankful and proud to be one of the graduates from the Class of 2021 at USD Law."

"Over three years I learned, '(Yes/No), you (should/shouldn't) do that. I think that is a (good/bad) idea.'"

"The last three years have been really hard but really rewarding. I'll miss my friends and teachers."

"I hate transitions, but I'm really sentimental right now. It is hard to leave."

"I appreciate how much time our professors would give us. They've been great mentors for me. I know I'll call them for advice even after I'm working."

"I hope the bar exam isn't as hard as one of Professor Simmons's finals. It can't be."

"I told one of my friends, 'we've only known college; can we do adult?'"

"Law school was challenging, at times isolating. That made the friendships I made close and more meaningful. It had the strange effect of making you feel part of something larger than yourself."

"I'm not sure me three years ago really believed I'd make it, but here I am. Some days were really hard, but it was worth it. I'm excited to move on."

"COVID was the worst, but we made it through. It was good to have friends to help."

“I’ll miss Carey’s and Leo’s more than the library.”

“It was all encompassing. I had anxiety when I started—none of us knew what to expect as 1Ls, but by second year we really had a system and community. COVID interrupted that, but we stayed connected as a class.”

“I’m proud to be part of the Class of 2021 and USD Law.”

The variety of thoughts tells you a lot about the variety within the Class of 2021. They come from a variety of backgrounds, had a variety of experiences in law school, and are headed to a variety of places to work. But they are united in being interesting people, passionate about the areas of law they enjoy, and possessed of amazing potential. I really look forward to all of you getting know them better as they enter practice.

On a personal note, I will miss the Class of 2021 a lot. They were 1Ls when I interviewed to be dean, so they have been a part of my entire time at the Law School. It will be a little weird not to see them in the halls this fall. I’m excited to see them out in the world and to welcome them home to hear about all they are doing.

Congratulations and thank you USD Knudson School of Law Class of 2021.

Join us for a legislative review through the public sector lens! The panelists for the 2021 legislative review will be Bob Wilcox from the SD Association of County Commissioners, Dave Pfeifle from the SD Public Assurance Alliance, and Yvonne Taylor from the SD Municipal League.

REGISTER  
Here!

Legislative Review

When: May 4, 2021 12:00 PM – 1:00 PM CST



## YOUNG LAWYERS SECTION STATE BAR OF SOUTH DAKOTA

### **PRESIDENT**

CAROLINE SRSTKA  
2000 52nd Street North  
Sioux Falls, SD, 57104  
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Caroline.Srstka@state.sd.us

### **PRESIDENT-ELECT**

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Ole.Olesen@pennco.org

### **SECRETARY/TREASURER**

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ARMAN ZELJKOVIC  
Sioux Falls

Law Student  
LEXI BACA  
Vermillion

April 30, 2021

Dear South Dakota Young Lawyer:

The South Dakota Young Lawyers Section is accepting nominations for President-Elect, Secretary-Treasurer, and all odd-numbered circuits to the SD YLS Board of Directors. Elections will be held during the State Bar Convention in Sioux Falls, June 16-18, 2021, and elected officers will be announced during the Annual meeting of the State Bar on June 18, 2021. Interested candidates should submit their name along with a letter of interest to Caroline Srstka, SD YLS Board President, by June 1, 2021.

Please send your letter of interest to: [Caroline.Srstka@state.sd.us](mailto:Caroline.Srstka@state.sd.us).

Look forward to details regarding YLS events during the Bar Convention in the June State Bar newsletter and the State Bar Meeting program.

If you have any questions regarding the election process or positions on the SD YLS Board of Directors, feel free to contact any member of the Board of Directors.

Thank you!

The South Dakota Young Lawyers Section Board of Directors:

President- Carrie Srstka (Sioux Falls)  
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Law Student Representative – Lexi Baca (Vermillion)



# **JUSTICE SQUAD**

Thank you to the following attorneys for accepting a pro bono or reduced rate case from Access to Justice, Inc., this month! You are now a member of the the A2J Justice Squad - an elite group of South Dakota lawyers who accept the responsibility to defend justice, uphold their oath and provide legal representation to those who need it.

**BILL GARRY**

**NATHAN CHICOINE**

**MARY BURD**

**NICHOLE CARPER**

**ERIN MELLING**

**TIFFANI LANDEEN**

**GAVIN POCHOP**

**AND MUCH THANKS TO:**

**KYLE KRAUSE**

**STEVE HUFF**

**ALEX HALBACH**

**BETH BALOUN**

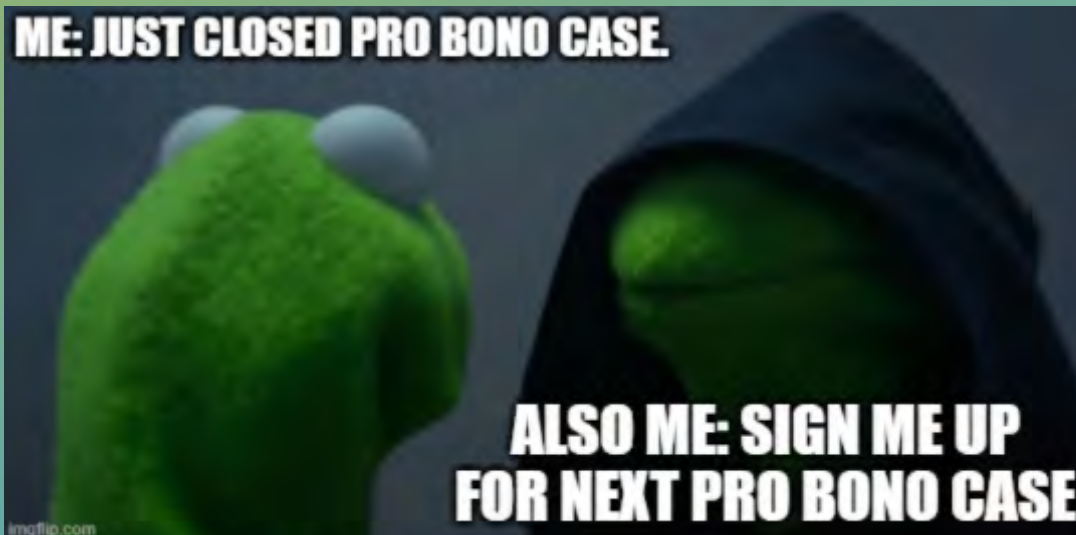
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# BARCON

89th Annual



*Browse agendas on the following pages for*

- Keynote: Rashmi Airan
- ALPS/Ethics
- General Counsel 101
- Early Bird
- Up in Smoke! Changes to SD Marijuana Laws
- Transactional Work
- Ethical Leadership

June 16 - 18, 2021  
Sioux Falls Convention Center  
& Sheraton Hotel

# ANNOUNCEMENTS

May & Johnson, P.C.  
is pleased to announce that

*Paul W. Coppock*

has joined the firm as an Associate.

May & Johnson, P.C.  
6805 S Minnesota Ave. #100  
PO Box 88738  
Sioux Falls SD 57109-8738

Telephone: (605) 336-2565  
Facsimile: (605) 336-2604

[pcoppock@mayjohnson.com](mailto:pcoppock@mayjohnson.com)

Boyce Law Firm, L.L.P.  
is pleased to announce that

*Nicholas M. Ramos*  
*and*  
*Alexander H. Savage*

became associates in the firm effective in  
September 2020.

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](http://www.boycelaw.com)

Richardson, Wyly, Wise, Sauck & Hieb, LLP  
is pleased to announce that

*Ryan Vogel*

became a partner in the firm effective  
January 1, 2021.

Richardson, Wyly, Wise, Sauck & Hieb, LLP  
One Court Street  
Post Office Box 1030  
Aberdeen, South Dakota 57401-1030

Telephone: (605) 225-6310

Roy A. Wise  
Zachary W. Peterson  
William K. Sauck, Jr.  
Jack H. Hieb

Kimberly A. Dorsett  
Stacy M. Johnson  
Joshua K. Finer

Dailey Law, Prof LLC  
is pleased to announce that

*Cole R. Morgan*

has joined the firm.

Dailey Law, Prof LLC  
1408 N. Sanborn Blvd.  
Mitchell, SD 57301

Telephone: (605) 990-3700

[cole@dailey-law.com](mailto:cole@dailey-law.com)



The law firm of Hall Griffin LLP is pleased to announce that

**Damian P. Richard, USD-Law (2005)**

has joined the firm as Of Counsel in the Santa Ana, California office.



Damian brings over 15 years of combined government and defense experience representing both federal agencies and financial institutions in trials and arbitrations throughout the United States. Damian has also defended numerous trial court judgments before federal and state courts of appeal. In addition to **South Dakota**, Damian is licensed in **Alaska, Arizona, California, Oregon, and Washington**. Hall Griffin maintains offices in **California, Arizona, Washington, and Texas**.



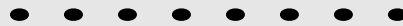
1851 East First Street, 10th Floor  
Santa Ana, CA 92705  
(714) 727-1143  
drichard@hallgriffin.com



# *A Black-Tie Affair*

Wednesday June 16th

6:30pm



Heavy Hors d'oeuvres

Casual Attire

Cocktails

Conversation

89TH ANNUAL BAR CONVENTION

SIOUX FALLS CONVENTION CENTER



# CAN'T MAKE IT TO THE CONVENTION IN SIOUX FALLS THIS YEAR?

THE STATE BAR WILL BE LIVE STREAMING

# YES

THE OPENING KEYNOTE, WEDNESDAY CLES, AND THE THURSDAY 8 AM

# YOU

CLES YOU SEE ADVERTISED IN THIS NEWSLETTER!

# CAN

GET THE LINKS DELIVERED DIRECTLY TO YOUR EMAIL!



RSVP

# STUDENT BAR ASSOCIATION

University of South Dakota Knudson School of Law  
414 East Clark Street  
Vermillion, SD 57069



---

Members of the State Bar of South Dakota,

Marshall M. McKusick, who served the legal profession and the University of South Dakota Knudson School of Law for nearly six decades, truly made a lasting impact. The resources he has provided have been of great benefit and value to law students, past and present, and will continue to have a positive impact on those entering into the legal profession for generations to come.

Each year, in honor and celebration of Marshall McKusick's dedication and service to the legal community in South Dakota, the Student Bar Association recognizes an outstanding member of the South Dakota Bar for their contribution to the profession.

The 2021 McKusick Award nominations are now open. Please consider submitting a nomination.

The award will be presented at the State Bar Convention this June.

Nominations can be submitted via e-mail to [marieclaire.christen@coyotes.usd.edu](mailto:marieclaire.christen@coyotes.usd.edu), or addressed to MarieClaire Christenson c/o Student Bar Association, University of South Dakota Knudson School of Law, 414 East Clark Street, Vermillion, South Dakota 57069.

We look forward to receiving your nominations prior to the due date of May 15, 2021.

Respectfully,

*Marie Claire Christenson*

MarieClaire Christenson  
*SBA President 2021-2022*  
*USD Knudson School of Law*

Sioux  
Falls  
Convention  
Center

Wednesday, June 16th



1  
PM

with Mark  
Bassingthwaight

## **Cybersecurity - How to Protect Yourself and Keep the Hackers at Bay**

An attorney's decision to use a computer tablet, a cloud-based service, a smart phone, a public Wi-Fi network, or a free email account in the furtherance of delivering legal services is not, in and of itself, unethical or necessarily a poor business decision. The real concern is with what the attorneys who use such tools do or don't do with them. For example, portable devices, which includes backup drives, can be lost or stolen; rogue programs that capture banking passwords, encrypt your data, or steal your data can be unintentionally downloaded; and this list goes on and on. These kinds of breaches are often the result of common missteps such as lax security procedures, falling victim to a social engineering attack, and even simple ignorance about how a given device works or what a computer app or program really does. This ethics program will discuss various cyberattack vectors and share practical advice on how to manage the risk of a breach.

## **Malpractice Missteps - Exploring Common Mistakes Lawyers Make**

This program will identify common malpractice missteps lawyers make and discuss practical ways each misstep can be avoided. Participants will learn how problems can arise from a variety of file documentation missteps, where conflict of interest traps lie, and why redundant calendaring systems can lead to a false sense of security just for starters.

Brought to you by The State Bar of South Dakota,  
The Committee on Continuing Legal Education and





VOTE  
*Lisa Marso*

2021-2022  
South Dakota State Bar  
President-Elect

*"As a dedicated member of the South Dakota State Bar for more than 25 years, I would be honored to serve as your 2021-22 President-Elect and thereafter 2022-23 President."*

– Lisa Marso

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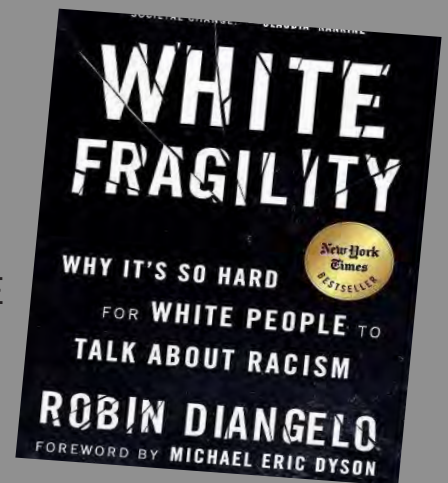


Wednesday  
June 16th  
4:15pm

ADDITIONAL DETAILS  
FORTHCOMING

"Exploring 'White Fragility' and Racism: Moving Beyond Lip Service and Improving our Bar, *Together*"

JOIN US FOR A  
GUIDED DISCUSSION  
INFORMED BY THE  
BEST-SELLER, "WHITE  
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Hosted by  
Diversity & Inclusion Committee



## You are invited!

You are cordially invited to the unveiling ceremony for the bronze statues of  
Governor Charles Sheldon,  
Governor Coe Crawford, and  
Governor Carl Gunderson

at ten o'clock in the morning on Friday, June 11, 2021, at the Capitol Rotunda,  
500 East Capitol Avenue, Pierre, South Dakota.

The Trail of Governors Foundation wishes to thank the members, their law firms and friends of the Bar who have generously donated to the funding of the statue of former Governor and noted lawyer Coe I. Crawford which will be installed in front of the State Bar headquarters at the intersection of upper Pierre Street and Capitol Avenue.

All donors will be recognized on a plaque to be installed in the State Bar offices as well as the Trail website. There is still time to be included in this effort. All donations are fully tax deductible and may be sent to Trail of Governors, % South Dakota Community Foundation, 2310 Patron Parkway, Pierre, SD 57501. Please note "TOG/Crawford" on your contribution. Further information on the Trail is available on the web at: [www.TrailofGovernors.com](http://www.TrailofGovernors.com) or call Chuck Schroyer at (605) 280-2623.



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### THE YOUNG LAWYERS SECTION SEEKS NOMINATIONS FOR THE YOUNG LAWYER OF THE YEAR AWARD

Members of the South Dakota Bar Association are invited to submit nominations for the 2021 South Dakota Young Lawyer of the Year. The Young Lawyer of the Year Award will be presented at the State Bar Convention. Please consider nominating a South Dakota Young Lawyer for this award.

In order to be considered for the award, the nominee must be a member of the State Bar of South Dakota in good standing and must not have (1) reached the age of 36 years by June 16, 2021, or (2) been admitted to practice in SD or any other state(s) for more than 10 years. Past recipients of the award and lawyers currently serving on the Young Lawyers Board are ineligible 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 Ole Olesen at [Ole.Olesen@pennco.org](mailto:Ole.Olesen@pennco.org) by Friday, May 28, 2021. The letter should detail the reason(s) for the nomination and how the nominee meets the above-mentioned characteristics. We sincerely look forward to receiving your submissions. Thank you in advance.



***A Community of Lawyers Engage in the  
Defense of Civil Actions***

SDDL A is seeking nominations for their 2021 Awards Program. Below are the three Awards that will be considered by the Board and awarded at the Annual Meeting in November 2021. If you have a colleague that is a current\* or past member of SDDL A and fits this criterion, please consider nominating him or her.

**The Robert C. Riter Distinguished Service Award**

The Robert C. Riter Distinguished Service Award is granted to the SDDL A member for his or her exceptional service to the SDDL A on a continuing and sustained basis.

**Collegiality Award**

The SDDL A Collegiality Award is given annually to recognize one of its members for uncompromising client advocacy while unflinchingly demonstrating utmost respect for the justice system, judges, opposing counsel, and other parties.

**SDDL A Associate Lawyer Award (Rising Star)**

The SDDL A Associate Lawyer Award is given annually to recognize one of the Association's associate lawyers who has consistently demonstrated growing professional excellence and service to his or her community.

Please submit the nominee's name, CV and a short paragraph outlining reasons for the nomination by emailing Kris Rahm at [krisrahm@me.com](mailto:krisrahm@me.com) no later than August 2, 2021.

\*nominations cannot include current SDDL A Board Members.



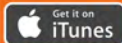
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**Save  
the Date!**

**South Dakota  
Paralegal Association**



***Seminar & Annual Meeting***

in conjunction with the State Bar Convention  
*Sheraton Sioux Falls Convention Center*

**SOCIAL:** Thursday, June 17  
*6-8pm @ Crooked Pint Ale House*

**SEMINAR:** Friday, June 18  
*7:30am-5pm @ Sheraton Convention Center*

- Continental Breakfast @ 7:30-8am
- Annual Meeting @ 11:20am-12pm
- Lunch Served @ 12-12:30pm

**Watch for registration info  
in the next newsletter!**

Seminar will provide 6 CLE Credits  
(1 Ethics • 4 Substantive • 1 Non-Substantive)

**AFFILIATED  
ASSOCIATION**



# Rashmi Airan

State Bar

Opening Keynote



Join Rashmi as she shares her life-changing story to illustrate the multitude of factors that influence our choices both in business and at home. She will set forth the business discipline necessary for decision-making and uncover the mental process of problem solving that leads to organizational cultures with integrity.



*Sioux Falls  
Convention Center*

**Rashmi Airan** is an internationally recognized corporate and motivational speaker, a “recovering lawyer and investment banker,” a woman leader and an entrepreneur. Due to a life-changing and humbling experience that resulted in a six-month sentence to Federal prison for conspiracy, Rashmi now shares her story to create a culture of conversation around ethics, diversity and inclusion, and resilience in all aspects of our lives. Her clients include Coca-Cola (India), Hershey’s, SHRM, the FBI, Sotheby’s Int’l, MGM Resorts, Georgia Institute of Technology, and Columbia Law School.

Rashmi Airan, a first-generation immigrant of Indian parents and the oldest of three daughters, was raised with high expectations to achieve. Rashmi was previously a very successful lawyer who graduated with honors from Columbia Law School. She lives in Miami with her two teenage kids.

# General Counsel 101

June | 16 | 2021

1pm-4pm

Sioux Falls  
Convention Center

*John Richter,  
Nicole Tupman,  
Matt Roby  
Co-Chairs*

A primer on the role of General Counsel, and a discussion on the tools and skills necessary to succeed and excel!

**1:00-1:50pm** **Observations From the State's Perspective**

*Mark Miller*, General Counsel to Governor Kristi Noem

*Jeff Hallem*, Investment Counsel Staff, formerly of the Attorney General's Office

*Karla Engle*, Department of Transportation General Counsel

Moderators: Katie Hruska, Deputy General Counsel to Governor Kristi Noem, and Renee Gallagher, USD Law Student

**2:00-2:50pm** **The View From City Hall**

*Justin Johnson*, City Attorney for the City of Mitchell

*Joel Landeen*, City Attorney for the City of Rapid City

*Stacy Kooistra*, City Attorney for the City of Sioux Falls

Moderators: TBD

**3:00-4:00pm** **The Life of Private In-House Counsel**

*Amy Koenig*, VP of Governance, Deputy General Counsel, Corporate Secretary at Black Hills Corp.

*Kristina Schaefer*, General Counsel and Chief Risk Officer at First Bank & Trust

*David Stoo*s, Associate Corporate Counsel at Sanford Health

Moderators: Nicole Tupman, Assistant General Counsel at Midco, and Josey Blare, USD Law Student

**Brought to you by The State Bar of South Dakota and The Committee on Continuing Legal Education**

# 2021 Award Recipient



Tamara P. Nash, (University of South Dakota School of Law, J.D. 2013), is the recipient of the 2021 Rosner & Rosner Young Professionals Award from the American Bar Association Center for Professional Responsibility and ABA Young Lawyers Division.

Tamara currently serves as a Special Assistant United States Attorney in the South Dakota Attorney General's Office and United States Attorney's Office in Sioux Falls, South Dakota.

Tamara is deeply involved in the ABA's Young Lawyers Division and Center for Professional Responsibility, having served on several Committees and entities in each Section; as well as the Bar Association in her home state of South Dakota.

In parallel to lawyer professionalism and development, Tamara has been directly involved with sustained efforts towards legal ethics and professional regulation. In her home state, she is a member of the Lawyers' Assistance

Committee, which helps lawyers who have experienced personal issues which have adversely affected their professional careers, as well as the South Dakota Supreme Court Commission on Sexual Harassment, which aims to study and make recommendations on how to address issues of sexual harassment in the legal profession. She has served on the US Attorney's Office Diversity and Inclusion Committee for four years and has worked on the US Attorney's Office Annual Conference Planning Committee in partnership with Avera Hospital for five years, which identifies a community issue and works with Avera Hospital to present programming that addresses the issue with a specific focus on medical professionals and the law (such as opioids, sex trafficking, and mental health in K-12 schools).

In recommending Tamara for this Award, Dean Neil Fulton of the University of South Dakota School of Law stated "Tamara is a lawyer whose decisions consistently make the world a bit better. She is a model young lawyer and a model of professionalism."

The ABA is proud to announce Tamara P. Nash as this year's winner of the Rosner & Rosner Award for Young Lawyer Professionalism. Ms. Nash will be presented virtually with the Award during the 2021 National Conference on Professional Responsibility on June 3, 2021.



The practice of issuing awards to those members of the State Bar who have reached the fifty-year milestone since admission to practice law in the State of South Dakota, inaugurated in 1971, is being continued in 2021. The ceremony has become one of the highlights of our Annual Meeting.

The following State Bar members are eligible to receive the award at the annual meeting in June:

*Jan S. Amundson, David M. Axtmann, Lee R. Burd, Thomas V. Conway, James R. Davies, Thomas A. DiGrazia, Greg A. Eiesland, Wally Eklund, Thomas G. Fritz, Roger R. Gerlach, Kenneth L. Gosch, Wynn A. Gunderson, Robert A. Moore, Stephen L. Pevar, Arthur L. Rusch, Randolph F. Stiles, John A. Storsteen, William G. Taylor, John S. Theeler, and Thomas L. Trimble*

# Up In Smoke: Changes to South Dakota Marijuana Laws

Alecia Fuller & Jeffery Tronvold, Co-Chairs

 Sheraton Hotel

 June 17, 2021

 8 AM - NOON

8:00 a.m. – **The story behind Amendment A**  
Brendan Johnson, Robins Kaplan, Sioux Falls

9:00 a.m. – **Can I Bank Marijuana?**  
Bret Afdahl, South Dakota Division of Banking,  
Pierre

10:00 a.m. – **How Legalized Marijuana will Affect  
Public Safety**  
Tony Harrison, Captain; Pennington County  
Sheriff, Rapid City

10:30 a.m. – **Ethics**  
Professor Mike McKey, University of South Dakota,  
Vermillion





11:30 a.m. – **Lawyers Concerned for Lawyers**  
Rebecca Porter, Lawyer Assistance Director,  
Lawyers Concerned for Lawyers, Rapid City

# **Bankruptcy Law and the COVID-19 Pandemic: a Feast of Changes, a Famine of Filings**

**with Judge  
Charles Nail**

**Stanton Anker,  
Eric Hanson,  
Sarah R. Larson,  
Co-Chairs**

## **TOPICS INCLUDE:**

-  Recent changes to the Bankruptcy Code, including those adopted during the pandemic, and their impact on South Dakota.
-  Presentation of case filing trends in the district and nationwide.
-  Ethics discussion focusing on the need for regular specialized continuing education.
-  Judge Nail will close with a discussion regarding changes coming to the South Dakota bankruptcy world and the opportunities it will present for attorneys.

**8:00  
am**

**June**

**17th**

**2021**

**Sioux Falls  
Convention  
Center**

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# Early Bird

*Stanton Anker, Chair*

6:30 - PRESENT AND FUTURE OF THE BAR EXAM,  
\_\_\_\_\_ DEAN NEIL FULTON

6:40 - POWER ACT, HON. ROBERTO LANGE

6:50 - LEGISLATIVE UPDATE, ANDREW FERGEL

7:00 - LAW PRACTICE MANAGEMENT, SPEAKER TBD

7:10 - LAWYER'S ASSISTANCE, REBECCA PORTER

7:20 - SUPREME COURT UPDATE, MEGHANN JOYCE

*Brought to you by the CLE Committee and The State Bar*

6:30 AM  
THURSDAY  
JUNE  
17TH

SIoux FALLS  
CONVENTION  
CENTER



# Ethical Leadership

with Rashmi Airan

Jennifer Williams - Chair



Learn the principles of ethical leadership



Create a culture of integrity and courage



Plan for reputational risk and implement accountability and authenticity



Create an active commitment to ethical decision-making



Create the safe space for vulnerable conversations at home and work

## Thursday, June 17th - 1pm to 4pm



**Rashmi Airan**

Rashmi will explore how organizational culture is directly connected to reputational risk and brand. The session will uncover the human performance principles and adversity management tools necessary to help any executive when the inevitable crisis presents itself. The session will also provide real value and challenge existing norms. The issues of ethics is constantly evolving and ever changing, thus requiring constant recalibration.

Rashmi believes her vulnerability will inspire her leaders to let down their guard in a confidential environment to explore issues of ethics and integrity. Energized by her openness, we will be able to discuss real-life challenges that are faced daily.

## How to Deliver Bad News



Difficult conversations can be, well difficult; particularly if the purpose of the conversation is to pass along bad news. After all, who looks forward to hearing bad news or having to be the one responsible for delivering it? I suspect this is why some lawyers will reach out to me looking for help when they suddenly find themselves in a situation where they must become the bearer of bad news. Their concerns run the gamut. It might be anything from not knowing what to say when firing a client, an employee, or forcing out a partner to how to talk with clients about an adverse ruling or verdict.

Now, I'll be the first to admit that I'm not an authority on this topic. I have no "Professional Expert Bearer of Bad News" certification; and while I've honestly never looked into it, I seriously doubt such a certification exists. Regardless, I have learned a few things over the course of my life that may help make difficult conversations easier. Note that I didn't say I can make them easy, they never will be. All anyone can do is share a few things to think about in advance of the conversation. So, when asked, this is what I will share.

Perhaps something here will prove useful to you the next time you find yourself having to be the bearer of bad news.

1. Try to put yourself in the shoes of the person you need to share the bad news with and speak with them as you would hope to be spoken to if your roles were reversed. In short, be empathetic and always treat the person with dignity and respect.
2. Bad news doesn't get better over time so don't put off having the conversation. Delay can also create a risk that the person will first hear the bad news from a second-hand source.
3. Always try to have the conversation in person. If time constraints are such that having an in-person conversation wouldn't be judicious, a phone conversation is the next best option. Never share any bad news by way of text or email unless time is of the essence and the situation is such that a direct conversation simply isn't possible.



Authored by: Mark Bassingthwaighte, Risk Manager

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Since 1998, Mark Bassingthwaighte, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1200 law firm risk management assessment visits, presented over 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Mr. Bassingthwaighte is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School.

4. Be direct and honest; and while you don't want to sugarcoat anything, hide anything, or minimize anything, go ahead and point out any positives if a silver lining truly exists.
5. If relevant to the situation, share any potential yet realistic options or solutions.
6. Confirm that the person understands all you have shared. Give them time to process the information and allow them to respond and/or ask any questions.
7. And finally, if the bad news happens to be in regard to a potential or actual malpractice mistake you made, always discuss the situation with your professional liability insurer prior to discussing the matter with your client because you never want to admit to any liability absent your insurer's consent.

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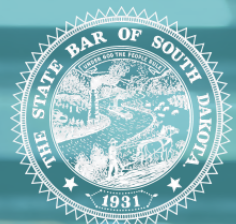
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- Gold Fellow – \$5,000, cumulative.
- Silver Fellow – \$1,000 per year.
- Fellow – \$500 per year.

### In Memoriam

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

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

Mail payment to:

State Bar of South Dakota

111 W Capitol Ave. #1

Pierre, SD 57501

Or you can email this form to:

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

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



# State of South Dakota Unified Judicial System



## Office of the State Court Administrator

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

500 East Capitol Avenue  
Pierre, SD 57501-5070

May 1, 2021

Re: Supreme Court Commission on Sexual Harassment in the Legal Profession Final Report

Dear Members of the Bar:

Please find enclosed a copy of the Commission on Sexual Harassment in the Legal Profession's Final Report. The Commission was appointed in May 2020 and tasked with studying the issue of sexual harassment in the legal profession and making recommendations to address this important topic. The Report includes an overview of the Commission's work and several findings related to sexual harassment in the legal profession as well as recommendations to promote a legal culture free from sexual harassment. Please take the time to review this important information and the proposed recommendations.

Sincerely,

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

Greg Sattizahn  
State Court Administrator

Enc.

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

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# Supreme Court Commission on Sexual Harassment in the Legal Profession

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March 18, 2021

## **INTRODUCTION**

On March 9, 2020, Chief Justice David Gilbertson sent a letter to all members of the South Dakota State Bar concerning the subject of sexual harassment in the legal profession. Appendix A. That letter detailed the background related to a proposal submitted to the South Dakota Supreme Court concerning modifications to the Rules of Professional Conduct for lawyers. While that rule proposal was not ultimately adopted by the Supreme Court, one of the submissions provided to the Supreme Court during that process included a survey of the State Bar membership from 2018. Appendix B. That survey showed that 23% of the respondents indicated they had experienced some form of sexual harassment in the legal profession.

This information raised a significant concern with the Supreme Court relating to the prevalence of sexual harassment in the legal profession. As such, the Supreme Court appointed a Commission of justices, judges, lawyers, and others working in the justice system to study the issue and make recommendations to the Supreme Court concerning how best to prevent and address sexual harassment within the South Dakota legal profession. This report and these recommendations are the product of the Commission's work.

## **MEMBERSHIP**

Honorable Patricia DeVaney, Justice, Pierre (Co-Chair)  
Honorable Mark Salter, Justice, Sioux Falls (Co-Chair)  
Honorable Cheryl Gering, Circuit Judge, Yankton  
Honorable Jon Sogn, Circuit Judge, Sioux Falls  
Andrew Fergel, State Bar of South Dakota, Executive Director, Pierre  
Reed Rasmussen, Attorney, Aberdeen  
Bill Garry, Attorney, Sioux Falls  
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Alecia Fuller, Attorney, Rapid City  
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Diana Ryan, Attorney, Sioux Falls  
Tamara Nash, Attorney, Sioux Falls  
Carla Bachand, Court Reporter, Pierre  
Jennifer Pravecek, Paralegal, Sioux Falls  
Jenny Hammrich, Third Circuit Court Administrator, Brookings  
Barbara McKean, Davison County Clerk of Courts, Mitchell  
Charles Frieberg, Director of Court Services, Pierre

## BACKGROUND

In February 2020, the State Bar submitted a proposed amendment to Rule 8.4 of the South Dakota Rules of Professional Conduct for lawyers. The proposed amendment sought to add a section to Rule 8.4 prohibiting certain harassing or discriminatory conduct. The proposal generated significant input from State Bar members who submitted comments as part of the rule-making process. Following the hearing on the proposed rule, the State Bar provided the Supreme Court, pursuant to its request, the membership survey from 2018 that was part of the background leading to the proposed amendment. There were 413 members responding to the survey, and the responses to questions relating to sexual harassment showed the following:

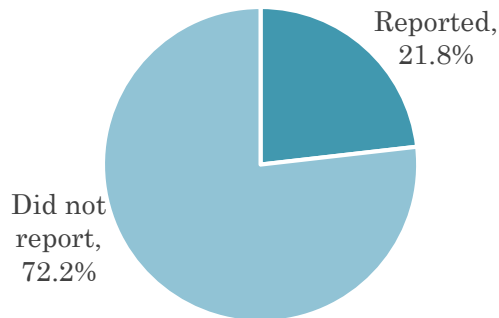
23% of respondents have experienced either sexual harassment or assault while working in the profession



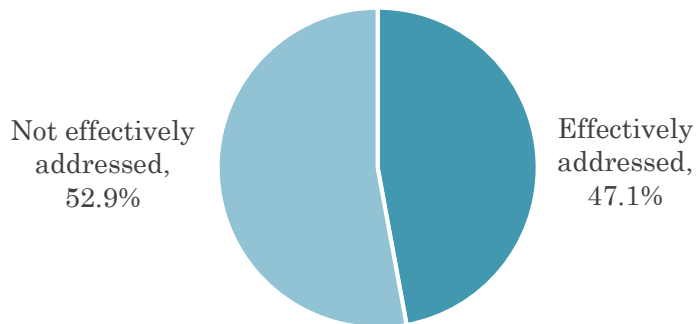
- I have experienced sexual harassment while working in the profession
- I have experienced sexual assault while working in the profession
- I have not experienced sexual assault or harassment while working in the profession



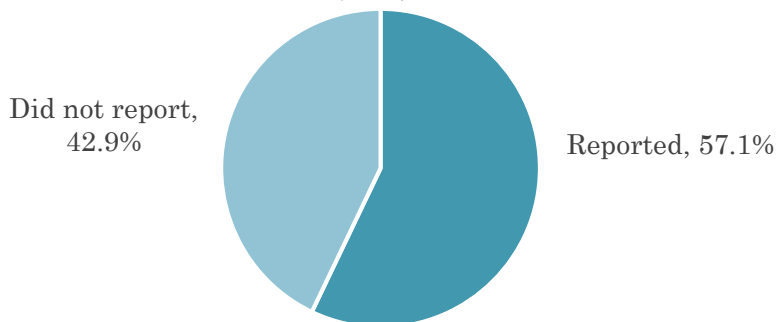
Only 21.8% of those who responded “yes” to experiencing sexual harassment reported it to someone they believed could effectively address the issue  
(N=78)



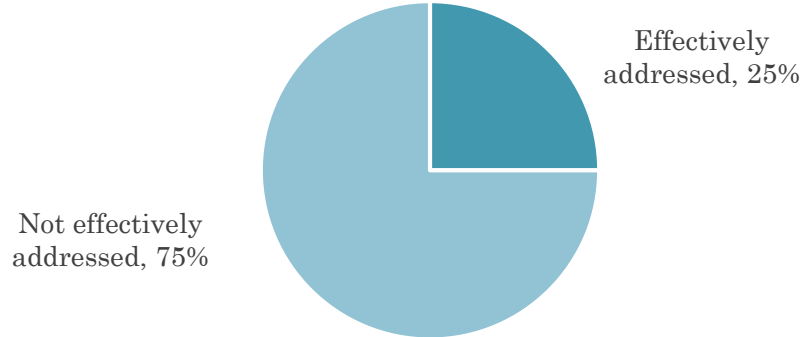
52.9% of those who reported their harassment felt that the issue was not effectively addressed  
(N=17)



57.1% of those who responded “yes” to experiencing sexual assault reported it to someone they believed could effectively address the issue  
(N=7)



Only 25% of those who indicated "yes" to reporting the sexual assault felt that the issue was effectively addressed  
(N=4)



These survey results, in part, prompted the Supreme Court to appoint this Commission to study the topic of sexual harassment and submit recommendations to promote a culture within the South Dakota legal profession free from this type of conduct.

### *Commission Goals*

During its initial meetings, the Commission discussed the scope of its work. Although the Commission recognized that identifying and preventing other types of workplace harassment is important, sexual harassment was viewed as a distinct type of conduct directly implicated by the recent survey results and not expressly addressed within the Rules of Professional Conduct. Given the specific charge from the Supreme Court, the Commission limited its work to assessing the topic of sexual harassment in the legal profession and making appropriate recommendations. The Commission contemplated recommendations that could include the development of rules, standards, or procedures for education, training, and addressing reports of sexual harassment in a manner that encourages those who may be otherwise reluctant to report their concerns.

### *Commission Findings*

As the Commission reviewed the literature and information available concerning sexual harassment in the workplace, it became evident that in most respects, the legal profession shares many characteristics with other professions that have also grappled with this important topic. However, the Commission's work also reinforced the notion that in order to achieve justice for all, the legal profession must hold itself to the highest standards of professionalism and conduct.

The Commission's research revealed that South Dakota is not unique in perceiving the need to address sexual harassment in the legal profession. See *Report of the*

Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States (2018); Wisconsin Workgroup on Sexual Harassment (2018); Breaking the Silence: Holding Texas Lawyers Accountable for Sexual Harassment, St. Mary's University Journal on Legal Malpractice & Ethics (2018); Sexual Harassment in the Victorian Legal Sector (2019); Us Too? Bullying and Sexual Harassment in the Legal Profession, International Bar Association (2019); Still Broken, Sexual Harassment and Misconduct in the Legal Profession, Women Lawyers on Guard (2020). For example, similar to the incidence of sexual harassment indicated by South Dakota's membership survey, the Wisconsin Bar's Workgroup on Sexual Harassment discovered that "21.56% of respondents said they had experienced or witnessed unwelcome physical contact at work." Wisconsin Workgroup on Sexual Harassment, page 31 (2018).

Other groups have reported an even higher incidence of sexual harassment. The Report of the Federal Judiciary Workplace Conduct Working Group indicated "that between 25 percent and 85 percent of women in the private sector and federal sector workplace experienced sexual harassment, depending on how that term is defined." See Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States, page 6 (citing the US Equal Emp. Opportunity Comm'n Select Task Force on the Study of Harassment in the Workplace, Report of Co-chairs Chai R. Feldblum and Victoria A. Lipnic, 2016. "Around one in three (36%) legal professionals said they had personally experienced sexual harassment while working in the legal sector." Sexual Harassment in the Victorian Legal Sector, page vii (2018). "Today some 40% of women (and 16% of men) say they've been sexually harassed at work—a number that, remarkably, has not changed since the 1980s." Why Sexual Harassment Programs Backfire, Frank Dobbin and Alexandra Kalev, Harvard Business Review (May-June 2020).

Sexual harassment is the most common type of workplace harassment. While it typically occurs in the employment relationship, similar conduct may occur outside the employment relationship, but within the legal profession among lawyers, judges, legal professionals, and court personnel. Sexual harassment within the legal profession creates adverse effects both for those individuals directly impacted and for the profession more broadly. Tolerating sexual harassment within the legal profession can lead to diminished productivity, poor morale, and a negative professional culture. Sexual harassment within the legal profession can also impact the public's perception of the profession and the effectiveness of its efforts to regulate itself.

Further, sexual harassment may not be restricted to isolated incidents. Therefore, a wholesale cultural shift where inclusion, diversity, and equality are valued and respected is paramount. Absent such a culture shift, sexual harassment in the legal profession will persist, negatively impacting not only individual lives, but also the profession and the way the public perceives it. It is also important to recognize that

the methods entities have historically used for sexual harassment prevention training have been called into question.

A recent article in the *Harvard Business Review* summarizes the results of a study of more than 800 domestic companies to assess the effectiveness of the programs and procedures commonly employed to combat sexual harassment between the 1970s and the early 2000s. See *Why Sexual Harassment Programs Backfire*, Frank Dobbin and Alexandra Kalev, *Harvard Business Review* (May-June 2020). After concluding that many of the common training programs and grievance procedures have not effectively solved the problem, those undertaking this study offered a number of alternatives that are consistent with our Commission's recommendations. These include the implementation of bystander intervention training; the use of an ombuds office or position outside the organizational chain of command to independently resolve complaints; and the open publication of the number of complaints reported so that solving the problem will become part of the organizational culture.

With respect to training, simply offering or even mandating more training is not enough to achieve better results. In light of the current research, entities must be willing to refocus not only sexual harassment prevention training, but also the methods utilized for complaint resolution. In this regard, the research shows that shifting the focus toward a different type of conflict resolution outside the traditional formal complaint and disciplinary process may produce more effective outcomes.

One such informal process used by other organizations includes creating an ombuds position.<sup>1</sup> An ombuds can provide a confidential, off-the-record resource to address concerns involving sexual harassment. The ombuds position is intended to provide a forum to voice concerns and allow for candid conversations about sensitive issues outside the formal disciplinary structure. Ideally, providing a mechanism to address issues early and prevent them from escalating promotes the goals of the legal profession to ensure the core values of professionalism, respect, human dignity, and civility.

### *Commission Workplan*

After reviewing the literature, drawing on the experience of Commission members, and reviewing the results of the 2018 survey of State Bar members and similar studies from other groups showing the continued prevalence of sexual harassment

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<sup>1</sup> Further information on the role and standards of an ombuds or ombudsman can be obtained at [www.ombudsassociation.org](http://www.ombudsassociation.org). While many corporate organizations use an ombuds to address issues of sexual harassment in the employment context, the use of an ombuds by a bar association as a method of curbing sexual harassment in the legal profession as a whole appears to be a new concept.

in professional settings, the Commission determined as part of its workplan that it was not necessary to gather further information from the bar membership at large. The Commission decided to break into two working groups, each with a different focus. The first group focused on education, training, and resources to address sexual harassment in the legal profession; and the second group focused on policies and procedures for reporting sexual harassment and potential levels of intervention to address the conduct. The working groups met several times to discuss and develop proposals to share with the full Commission. The full Commission then reviewed, discussed, and made modifications to the two groups' proposals to form the following set of findings and recommendations to be submitted to the Supreme Court in the form of policy changes, educational plans, resource recommendations, and rule proposals.

## RECOMMENDATIONS

### **Recommendation One: Sexual Harassment Training Should be Required for Judges, Lawyers, and Unified Judicial System Employees.**

The first essential step toward preventing and eliminating sexual harassment in all professional settings within the legal profession involves education.<sup>2</sup> The Commission recommends mandatory training for all attorneys, judges, and UJS employees within two years of the enactment of a rule adopting this recommendation. For newly admitted attorneys and newly hired UJS employees, the training should be required within two years after admission to the State Bar or within two years after being hired. After this initial training, all members of the Bar and employees of UJS should receive additional training once every three years.

The Commission does not make this recommendation lightly. South Dakota has traditionally not required mandatory training for members of the State Bar,<sup>3</sup> and it is one of only a handful of jurisdictions or states that do not have mandatory continuing legal education training. The others are the District of Columbia, Massachusetts, Maryland, and Michigan. *See* [https://www.aclea.org/page/mcle\\_rules](https://www.aclea.org/page/mcle_rules). South Dakota does, however, require certain targeted training for lawyers engaged in specific practice areas. *See* SDCL 23-3-39.6 (requiring evidence-based practice, mental health, and domestic abuse training for state's attorneys and deputy state's attorneys); SDCL 23A-40-21 (mandating that each court-appointed defense attorney receive training on

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<sup>2</sup> For further discussion on sexual harassment training generally, see the 2016 Equal Employment Opportunity Commission's (EEOC) Study of Harassment in the Workplace Report. <https://www.eeoc.gov/select-task-force-study-harassment-workplace>.

<sup>3</sup> The last time the State Bar held training related to sexual harassment was an elective session conducted in February 2018. *See* (Steve Bogue) <https://www.youtube.com/watch?v=1KSdF8BEIDY>.

representing clients with a potential mental illness); 1 Presiding Judge Policy 19 (requiring an attorney representing abused or neglected children or appointed as guardian ad litem to complete the abuse and neglect attorney training developed by the Unified Judicial System). Given the importance of preventing sexual harassment in the legal profession, the Commission strongly feels that without mandating training, individuals who need it the most will not complete the training. Requiring sexual harassment prevention training also makes it clear that the South Dakota legal profession considers the issue a priority and an important topic for the entire State Bar. Ideally, this training will become the foundation for a culture shift in the legal profession concerning sexual harassment.

**Recommendation Two: Sexual Harassment Prevention Training Should be Targeted to Produce the Greatest Possible Impact.**

The Commission recommends that the State Bar engage regional or national experts to provide training consisting of both a summary of the current legal landscape and compliance training. The training should address issues within both the employment setting (law firms, in-house, public sector, etc.) and the legal profession as a whole (interactions between and among attorneys, paralegals, court reporters, judges, and court personnel).

Training should be offered by the State Bar on at least an annual basis in several different formats. These can include the traditional in-person presentation, virtual platforms, or web-based courses. The Commission specifically recommends training modules that engage the attendee with questions related to the information presented so that the attendee cannot advance through the training without active engagement. Virtual training can be offered on-demand and will minimize the time commitment associated with in-person training. The State Bar should identify when any such training is offered that meets the requirements of the proposed rule discussed in Recommendation Three and then track the training and participation by members of the State Bar. The State Bar could adopt rules and practices for determining whether sexual harassment training offered by another organization would satisfy the recommended training requirement.

In more recent years, the focus of training has shifted away from targeting the harassers, which research has shown to be an ineffective approach. Therefore, the training offered by the State Bar should include bystander intervention training, which is now widely used in the business sector, colleges, universities, and by the military. This type of training emphasizes that sexual harassment is not just a problem for the individuals being targeted, but rather a problem we must all work collectively to solve. It is designed to give individuals the necessary tools to

intervene if they witness harassment against another individual.<sup>4</sup> Generally, bystander intervention training includes four goals:

- Create awareness—enable bystanders to recognize potentially problematic behaviors;
- Create a sense of collective responsibility—motivate bystanders to step in and act when they observe problematic behaviors;
- Create a sense of empowerment—conduct skills-building exercises to provide bystanders with the skills and confidence to intervene as appropriate; and
- Provide resources—provide bystanders with resources they can call upon to support their intervention.

Bystander intervention training equips *everyone* in the legal profession with the strategies and methods to stop harassment.<sup>5</sup> These tools are necessary. When bystanders are silent, victims are expected to self-advocate and reject offensive behavior themselves. As a result, victims can become isolated and the behavior may become perceived as accepted or normal, which allows sexual harassment to gain a foothold within the profession.

### **Recommendation Three: The Commission Recommends Court Rules Mandating Sexual Harassment Prevention Training for Lawyers and Judges.**

To adopt the mandatory training requirement, the Commission recommends that a new section be added to SDCL chapter 16-18 to require training, as follows:

Each active member of the State Bar of South Dakota shall complete sexual harassment prevention training offered or approved by the State Bar of South Dakota within two years following admission to the Bar or within two years after the enactment of this rule, and once every three years thereafter. Failure to complete such required training will result in the member being placed on inactive status and may be grounds for disciplinary action.

The Commission likewise recommends that a new section be added to SDCL chapter 16-14 to require training for the judiciary, as follows:

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<sup>4</sup> See Harvard Business Review, Why Sexual Harassment Programs Backfire, (May-June 2020) (discussing why traditional sexual harassment training has been largely unsuccessful).

<sup>5</sup> The case for bystander intervention training has been furthered by the EEOC's 2016 Study of Harassment in the workplace, in which the EEOC recommends this new model (among others), which has demonstrated success in other settings (i.e. college campuses). See <https://www.eeoc.gov/select-task-force-study-harassment-workplace>. To explore a further discussion on the history of and current use of bystander intervention training, visit: <https://hbr.org/2018/10/to-combat-harassment-more-companies-should-try-bystander-training>.

Every judge shall complete sexual harassment prevention training offered by the Unified Judicial System or approved by the Chief Justice within two years after the enactment of this rule or after beginning judicial service and at least once every three years thereafter. Failure to complete such required training may be grounds for disciplinary action.

**Recommendation Four: Unified Judicial System Employees Should Receive Sexual Harassment Prevention Training.**

The Commission recommends the Supreme Court amend Internal Procedure Rule 2019-04 (Standards for the Education and Professional Development of Judicial and Non-Judicial Personnel) to require sexual harassment prevention training for all non-judicial or non-lawyer UJS employees within two years of enactment of the changes to the Internal Procedural Rule. Any non-judicial or non-lawyer newly hired UJS employee shall also complete this training within two years after their initial hire date. After this initial training, all non-judicial or non-lawyer employees of UJS shall complete sexual harassment prevention training once every three years.

**Recommendation Five: Compile a Sexual Harassment Prevention Guide that Contains Training Models, Resources, and Checklists.**

The State Bar should develop easy-to-understand, written resources and other messaging materials (such as videos, posters, info graphics, etc.) that will help employers and employees and those in the legal profession understand their rights and responsibilities related to sexual harassment. The State Bar website should be the central repository for information related to the prevention of sexual harassment in the legal profession.

**Recommendation Six: Actively Promote and Assess the Current Culture of the State Bar to Identify Areas Needing Improvement.**

The State Bar should foster and actively pursue a culture in which sexual harassment is not tolerated. This should include top-down buy-in and support from the judiciary, State Bar leaders, and employers of those engaged in the legal profession. The State Bar should conduct targeted outreach to employers explaining the “business case” for mandated harassment prevention, policies, and procedures by educating employers on the importance of creating a culture free from sexual harassment.<sup>6</sup>

**Recommendation Seven: Create an Ombuds Position Within the State Bar to Receive Complaints Alleging Sexual Harassment.**

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<sup>6</sup> The South Dakota State Bar does have an Anti-Harassment/Discrimination Policy, but that policy is only applicable to employees of the State Bar.



An ombuds position created by the State Bar would further the Commission's goals of creating an informal avenue to address sexual harassment within the legal profession and would provide a process for early intervention to assist, where possible, with quicker, more effective resolution of complaints. The ombuds would not be an advocate for any individual or the organization and would not be an investigator on behalf of the State Bar, Disciplinary Board, or Judicial Qualifications Commission. As such, an ombuds would not make binding decisions, mandate actions, or adjudicate claims. Instead, an ombuds could provide an informal, limited, and neutral process that may be in addition to, or in lieu of, more formal processes that a person subject to sexual harassment may pursue.

Creating an ombuds position does not replace or eliminate the ability of a complainant to utilize the formal complaint process that currently exists for reporting violations of professional standards of conduct by members of the State Bar or judiciary, nor would it preclude a complainant from seeking redress through the Equal Employment Opportunity Commission or Department of Labor. The ombuds should be structured as an independent position within the State Bar that is free from the control or influence, both real or perceived, of the organizational hierarchy.

An ombuds position in the State Bar could be established several ways. The available options would include a paid employee position; a contract position; a volunteer position; or a pool of volunteers that could fill such a role. Given the uncertainties associated with the creation of a new position, it may be advisable to conduct a pilot program to gauge the workload demands and to assist in establishing the needs and scope associated with the position. If funding is needed for the pilot program, the Commission recommends pursuing any available grant opportunities. Regardless of structure, once the position is created it will be important to ensure that the ombuds receives appropriate, suitable, and continued training to be effective.

**Recommendation Eight: The Commission Recommends that Information Reported to the Ombuds Remains Confidential.**

Any information identifying complainants or alleged offending parties, including information that could lead to identification of the individuals involved, should be kept confidential. The ombuds should be required to obtain permission from a complainant before contacting an accused or any other person or entity concerning a complaint. The ombuds should also keep a record of the number of complaints and the general nature of the conduct reported to identify trends, issues, and concerns. This information can be used to provide recommendations to the State Bar to address conduct within the profession.

To support these objectives, the Commission recommends the following proposed rule relating to confidentiality.

### Rule 8.3. Reporting Professional Misconduct

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) Paragraphs (a) and (b) shall not apply to information obtained by a lawyer or judge as a member of a committee, organization or related group established or approved by the State Bar or the Supreme Court to assist lawyers, judges or law students with a medical condition as defined in § 16-19-29(1), including the name of any individual in contact with the member and sources of information or information obtained therefrom. Any such information shall be deemed privileged on the same basis as provided by law between attorney and client.

(d) Paragraph (a) and (b) shall not apply to information obtained by an ombuds or member of a committee or related group established or approved by the State Bar or the Supreme Court to receive complaints related to sexual harassment or sexual misconduct in the legal profession, including the name of any individual in contact with the member and sources of information or information obtained therefrom. Any such information shall be deemed privileged on the same basis as provided by law between attorney and client.

(de) A member of an entity described in paragraph (c) or (d) shall not be required to treat as confidential, communications that cause him or her to believe a person intends or contemplates causing harm to himself, herself or a reasonably identifiable person and that disclosure of the communications to the potential victim or individuals or entities reasonably believed to be able to assist in preventing the harm is necessary.

### **Recommendation Nine: The Ombuds Position Should be a Resource to Resolve Complaints but Cannot Replace the Formal Disciplinary Process.**

The ombuds should have no formal disciplinary authority. The ombuds should operate informally by listening to complaints and developing a range of possible options in response to a complaint. The ombuds may also engage in third-party intervention or identify other ways to address a problem without resorting to the formal disciplinary process for lawyers and judges. The ombuds duties may include:

- Listening and asking questions to gain an understanding of the issues presented while remaining neutral with respect to the facts.
- Conducting a limited factual investigation to obtain the perspective and objectives of the person or persons involved for the purpose of ascertaining what, if any, type of resolution is requested and warranted.
- Developing a range of potential options to address the alleged conduct and helping the complainant evaluate each option so that he or she can determine whether or how to proceed.
- Guiding or coaching a complainant on how to address the conduct directly with the party or parties involved.
- Arranging an informal mediation with the ombuds acting as an intermediary or, with the agreement of the parties, referring the matter to one or more third-party mediators for an alternative dispute resolution.
- Discussing with the complainant the process for a referral to the State Bar's Disciplinary Board or the Judicial Qualifications Commission or for filing a complaint with the Equal Employment Opportunity Commission, Department of Labor, or appropriate federal Equal Employment Opportunity Office.
- Maintaining a record of the number of complaints and the general nature of the conduct reported.

**Recommendation Ten: Utilize an Ombuds Position to Identify Trainings and Presentations Concerning the Prevention of Sexual Harassment.**

In carrying out the duties outlined in Recommendation Ten, the ombuds will be uniquely situated to identify broader systemic issues based on aggregate reporting of the complaints received. The ombuds should then be able to identify targeted training to address commonly heard complaints. The ombuds will also “market” the functions of the position and raise awareness of the issue of sexual harassment within the legal profession. This would include the promotion of additional training opportunities.

## **Recommendation Eleven: The Commission Recommends the Following Changes and Additions to the Commentary to the Rules of Professional Conduct to Clarify the Responsibilities and Expectations for Members of the State Bar.<sup>7</sup>**

The Rules of Professional Conduct represent the expectations concerning the conduct of members of the profession. It is important that the Rules and any related Commentary also reflect the importance of addressing the issue of sexual harassment. The Commission noted that the existing commentary to Rule 8.4 (comment 3) addresses bias and prejudice “in the course of representing a client,” but does not mention harassment per se, which often occurs in various professional settings. Because sexual harassment is not so clearly captured by this comment, the Commission proposes the following additions to the Rule 8.4 commentary:

### Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

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<sup>7</sup> With regard to the proposed changes to the Commentary to the Rules of Professional Conduct, the Commission acknowledges that traditionally the Supreme Court has not adopted Commentary or modified Commentary pursuant to its rule-making authority. This concept is embedded in the Code Commission’s note appearing in the Appendix to Chapter 16-18:

The Supreme Court Rules that adopted and amended the South Dakota Rules of Professional Conduct did not include the Preamble, Scope, and Comments included with these rules. The Preamble, Scope, and comments were adapted by the Ethics Committee of the State Bar of South Dakota from the *American Bar Association Model Rules of Professional Conduct*. Reprinted with permission of the American Bar Association.

Regardless of whether it is adopted by the Supreme Court or included via a recommendation from the Ethics Committee, the Commission recommends the proposed additions be incorporated into the Commentary to the Rules of Professional Conduct. The Commentary should also be made available to members of the State Bar through that organization’s website.

COMMENT:

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

[4] Sexual harassment or sexual misconduct by a lawyer, while engaging in the practice of law or any law-related functions, undermines the confidence in the legal profession and the legal system and, as a result, is prejudicial to the administration of justice. Sexual harassment or sexual misconduct includes unwelcomed sexual advances, requests for sexual favors, and other objectively offensive verbal or physical conduct or communications of a sexual nature.

[4] [5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or

application of the law apply to challenges of legal regulation of the practice of law.

~~[5]~~ [6] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

**Recommendation Twelve: The Commission Recommends the Following Addition to the Commentary to the Code of Judicial Conduct to Clarify the Responsibilities and Expectations for Members of the Judiciary.**

While the Code of Judicial Conduct already contains commentary regarding sexual harassment, the Commission recommends adding the following language to the Canon 3(B) commentary to further define the conduct consistent with the proposed commentary recommended above for Rule 8.4.

Canon 3(B)(5) and (6)

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require\* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability or age, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability or age, or other similar factors, are issues in the proceeding.

B(5) and (6) COMMENTARY

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment or sexual misconduct and must require the same standard of conduct of others subject to the judge's direction and control. Sexual harassment or sexual misconduct by a judge while engaging in judicial or administrative responsibilities or any law-related functions undermines the confidence in the legal profession and the legal system and, as a result, is prejudicial to the administration of justice. Sexual harassment or sexual misconduct includes unwelcomed sexual

advances, requests for sexual favors, and other objectively offensive verbal or physical conduct or communications sexual in nature.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

## **CONCLUDING REMARKS**

The Commission believes its recommendations create a solid foundation to begin addressing the important topic of preventing sexual harassment in the legal profession. While some of these recommendations may be met with resistance by members of the judiciary or the State Bar, it is important that the legal profession as a whole and the leaders of the judiciary and the State Bar take ownership over this issue to effect real change. Turning a blind eye to the occurrence of sexual harassment within the legal profession not only harms individuals, but also undermines the integrity of our system and the public's perception of the important work that we do every day. The South Dakota legal profession can and should be a leader in addressing this nationwide issue.

## **APPENDIX**

- Letter to the State Bar Membership Concerning Sexual Harassment
- 2018 State Bar Membership Survey



*Supreme Court*  
STATE OF SOUTH DAKOTA

*David Gilbertson*  
CHIEF JUSTICE

March 9, 2020

South Dakota State Bar  
111 West Capitol #1  
Pierre, SD 57501

To All Members of the State Bar:

At the February rules hearing, the Court considered a proposed amendment to Rule 8.4 of the South Dakota Rules of Professional Conduct submitted by the State Bar. The proposed amendment would add the following paragraph to the definition of professional misconduct:

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

As related to the Court, the history behind the proposed amendment to Rule 8.4 began with the American Bar Association's adoption of a number of changes to the model Rules of Professional Conduct in 2016. The State Bar Commission declined to submit the ABA's amended model Rule 8.4 to the membership for consideration. However, the State Bar Ethics Committee and Bar Commission examined whether an alternative form of the rule should be proposed. After the Ethics Committee suggested three variations of the rule, the Commission, in a closely divided vote, ultimately agreed upon a different version proposed by a commissioner. This version was submitted to the membership at the June 2019 Annual Business Meeting. The membership, after a sharply divided vote, passed the currently proposed rule for submission to this Court at the February 2020 Rules Hearing.

As part of the hearing process, the Court considered a number of written and oral responses to the proposed amendment. The proponents argue the amendment is necessary to address the issue of



discrimination and harassment in the legal profession. Proponents acknowledge that the Rules may already prohibit discriminatory and harassing treatment by members of the profession in South Dakota, but urge that a specific rule is necessary to establish a clear expectation that such behavior is unacceptable within the profession.

The opponents argue that the language of the proposed amendment is too broad in its scope, and is vague in describing the words and conduct that could subject a lawyer to discipline. Opponents laud the effort to address discriminatory and harassing behavior within the profession, but assert the language of the proposed amendment will result in unintended consequences by infringing upon lawyers' constitutional rights of free speech and free exercise of religion.

Following the hearing, the State Bar presented the Court with a membership survey from 2018 that was part of the backdrop leading to the proposed amendment. The survey shows that 20% of the respondents indicated they had experienced some form of sexual harassment in the legal profession. Sexual harassment was not the focus of the survey, but a majority of those respondents who reported having experienced such harassment indicated that they were reluctant to report the incident. Half of those who did report indicated that the incident was not adequately addressed.

After carefully considering the submissions received from those on both sides of this issue, the Court has unanimously decided to deny the proposed amendment to Rule 8.4. The Court is not convinced that proposed Rule 8.4(g) is necessary or remedies an identified problem.

However, the State Bar survey does raise significant concern about the issue of sexual harassment in the profession. As such, the Court will appoint a Commission of justices, judges, lawyers, and others in the justice system to study and make recommendations to the Court regarding how best to prevent and redress sexual harassment within the legal profession in South Dakota. The Court will direct the Commission to study whether the current Rules provide the necessary framework to address any issues identified, including the underreporting of complaints. The Commission may recommend procedures to ensure that appropriate investigations are undertaken and responses are made to complaints, and may propose rules as needed. The Court expects to have a Commission in place by April 15, 2020 and a report from the Commission before the end of the calendar year.

The Court is grateful to the State Bar and the Ethics Committee for its work in drafting and presenting the proposed amendment to Rule 8.4, and the willingness of individual members to present their perspectives on the amendment.

Sincerely,



David Gilbertson  
Chief Justice

cc: Supreme Court Justices

# State Bar of South Dakota 2018 Membership Survey

Survey and report produced by the ABA Division for Bar Services, March 2018

**Confidential**

For use by the State Bar of South Dakota Strategic Planning Committee,  
Board of Bar Commissioners and Staff



# 2018 Member Survey Report

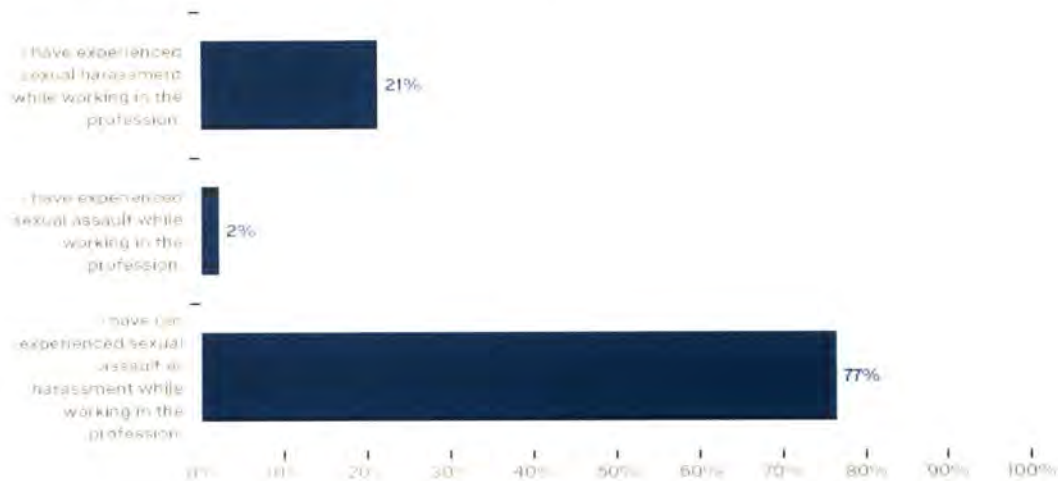
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# 2018 Member Survey Report

## SEXUAL HARASSMENT AND ASSAULT

30. Please indicate whether you have experienced sexual harassment or sexual assault while working in the profession.



If respondent indicated “yes” to experiencing sexual harassment:

30a. Did you report the sexual harassment to someone you believed could effectively address the issue?

Response	Percentage
Yes	21.8%
No	78.2%
Total	78

If respondent indicated “no” to reporting the sexual harassment:

30b. Why did you not report the sexual harassment you experienced?

**MOST FREQUENTLY CITED RESPONSES:** (see p. 82 of Appendix for all responses):

**AFRAID OF BACKLASH/JOB SECURITY** – Concerned reporting incident would jeopardize job and future career opportunities.

**TOLERATED/“PART OF CULTURE”** – Seemed easier to move on and not deal with it. Put up with it.

**FELT OFFENSE WAS MINOR OR NOT WORTH REPORTING** – Felt offense was minor and not worth trouble of reporting.

**NO ONE TO REPORT TO/WOULD NOT BE ADDRESSED EFFECTIVELY** – Did not feel change would result or unsure who to report incident to, if anyone. Felt would not be taken seriously.

**PERCEIVED POWER OF HARASSER** – Harasser was in a position of power.

## 2018 Member Survey Report

If respondent indicated “yes” to reporting harassment:

**30c. Do you feel the issue was effectively addressed?**

Response	Percentage
Yes	47.1%
No	52.9%
Total	17

**30d. Please explain why you feel the sexual harassment you reported was or was not effectively addressed.**

Supervisor outed me and then did nothing.

It was long ago and taken care of.

I never had any re-occurrence once reported.

I believe the Executive Manager who was a neutral party may have been romantically involved or a victim of harassment herself and brushed the harassment off as my paranoia.

It took place at a law firm partnership meeting where every partner witnessed it. Nothing happened.

Discounted as “boys will be boys”

I reported to supervisor and it was A) low balled and B) I experienced retaliation from that person.

My team is amazing and dealt with it.

Appropriate action taken by disciplinary board.

I do not believe it was addressed at all and I never received any communication that it had been addressed.

Male dominated organization with no skills to handle, and zero interest to resolve the issue.

I was listened to, apologized to by the person taking the report, and then nothing happened to the harasser.

If respondent indicated they have experienced sexual assault:

**30e. Did you report the sexual assault to someone you believed could effectively address the issue?**

Response	Percentage
Yes	57.1%
No	42.9%
Total	7

If respondent indicated “no” to reporting in the incident:

**30f. Why did you not report the sexual assault you experienced?**

Get more harassment if reported it.

Because no one will give a damn about a man being groped or fondled. This is South Dakota.

Embarrassing.

## 2018 Member Survey Report

If respondent indicated "yes" to reporting the incident:

**30g. Do you feel the issue was effectively addressed?**

Response	Percentage
Yes	25.0%
No	75.0%
Total	4

**30h. Please explain why you feel the sexual assault you reported was or was not effectively addressed.**

It was the same person. On the same evening. Although I never had to deal with that person again. It was never really brought up after I made it clear I was offended and the behavior was inappropriate. There were comments made, like "he's just drunk." or "that is how he acts when he's drunk." I still have questions regarding his behavior, but he is a prominent member of the bar and a very well-respected attorney. I had to make the decision to move forward without any real sense of closure.

I was slapped on the butt very openly by the most senior partner in front of every partner in the firm. Nothing happened as a result except some of the younger partners expressed mortification over the event.

I feel the matter was effectively addressed only because I addressed the matter myself and the conduct ended, although there were long term consequences for me. The perpetrator was a "grabby" person and would give "hugs" to women that were not mutual or invited. We all just tried to ignore or avoid being close to him rather than be confrontational. He had been hugging me more and more and eventually ended with him hugging me forcibly without letting me go and kissing my cheek. It was completely humiliating as it was in a group of attorneys. I handled the issue essentially myself by bluntly telling perpetrator to let me go and never touch me again. Nothing happened to perpetrator as it was deemed "only a kiss on the cheek". It never happened again but I was told by the other attorneys that I was now considered a b\*tch.

Because of who it was.

## 2018 Member Survey Report

### 30b. Why did you not report the sexual harassment you experienced?

#### **AFRAID OF BACKLASH/JOB SECURITY**

Harasser would not have been disciplined and I would have been labeled a troublemaker and denied career opportunities and advancement

Didn't want to be labeled.

It would have cost me my employment at the time.

It would have cost me my job.

I was an intern while in law school with a firm. The partner (who was married) was touchy feely in the copy room and kept trying to take me out on after hour dates. I left the job as soon as I could, but if I had reported him I would have lost my job and gotten a poor letter of recommendation. In 1992, no one reported those things.

When I started as a brand-new lawyer, the oldest partner in the firm gave me a secretary dictation machine and told me that I would do secretary work for him and introduced me to a client as a secretary. I did not report him, but I did politely refuse to take dictation and told him I felt my law degree entitled me to practice law. He came around.

I needed my job and was fearful that my reputation in the bar would not recover.

Fear of retribution

#### **TOLERATED IT/"PART OF CULTURE"**

I dealt with it.

I disclosed the situation to my senior partner - who informed me to just simply overlook my feelings/thoughts of the situation because it was likely just "him being him" with no harm intended. I figured that if I said something, I would be labeled as difficult to work with and "weak" - so you just put up with it.

I can handle it myself.

This is male dominated field. You have to toe the line

It seemed easier to move on and not dwell on the issue at the time.

Because it happens all the time.

At the time reporting just was not done - was more tolerated.

In the 1980s female lawyers did not report male judges because they knew better.

It was in the form of disparaging sexual comments, which I find too common to report

Because I am the person in charge, and because unfortunately, it is a normal occurrence for women, especially in rural South Dakota.

It was part of the culture of the workplace and not uncommon. There would have been nothing done about it.

#### **FELT OFFENSE WAS MINOR OR NOT WORTH REPORTING**

Not severe enough to be a problem--did not adversely affect my job

Wasn't worth reporting, as it was relatively minor.

My bosses are old men and have no idea that calling me "hon" or the like is not appropriate. They don't really mean anything by it. I'm not a fan, but it's not a huge deal.

Was very young, context did not warrant reporting, and since it involved opposing counsel, not sure to whom it would have been reported in any event

Most often, it was just comments by other lawyers—often about my looks and I didn't think it rose to the level of reporting it. But my male colleagues didn't have to deal with similar comments.

It was with a client rather than an employer, and I did not feel it rose to a level where a complaint to the proper authorities would be productive.

## 2018 Member Survey Report

I repeated the incident to law school classmates, but did not think it was worth the conflict to report it to someone officially.

It was the statements from fellow lawyers as to different sexes making me uncomfortable, but not an intent to harass me. Some of the flirtation by opposite sex. Again not offensive to the point where I felt a need to report. It was annoying, but not something that was worth the storm reporting it would have created. Also, many people witnessed it. Par for the course for a female attorney.

### **NO ONE TO REPORT TO WOULD NOT BE ADDRESSED EFFECTIVELY**

Change would not result

I did not believe there was anyone interested or able to resolve it effectively

I did not believe any action would be taken and I would likely experience some sort of backlash.

I was not aware of anyone with authority to whom it could be reported.

It was a current client and my only option for reporting was law enforcement and I knew they would not be able to assist.

1. I worked for a solo practitioner so there wasn't anyone in the firm that could help. 2. I didn't report to the disciplinary board for fear I wouldn't be able to find other employment in the legal profession because I would be labeled a problem.

As a young, female lawyer, it was very clear to me that all the males I worked with at the time did not care.

There have been multiple incidents and each one was not reported for different reasons. One reason was there was no one to report it to who would have done anything. Another reason was because I didn't want to face the backlash of reporting it. I would then become known as the person who "couldn't take a joke" or "doesn't understand a compliment"

It was embarrassing. It was a colleague, not someone I was working with on a particular case and certainly not from my firm. So who exactly should I report that to? That's the problem, it doesn't have to be a superior, or even someone within your organization.

Perceived lack of concern.

It would not have changed the situation.

What's the point? It's never taken seriously.

Because it is the culture of our state bar, displayed by countless older, male attorneys, and I'm simply not convinced it would make a shred of difference.

### **PERCEIVED POWER OF HARASSER**

Because the other attorney was not in my office and was more powerful, older

I was a second-year law clerk, and he was a senior partner in a large firm. No power v. total power did not seem like good odds.

Because it was a Judge and male prosecutors and a boss.

It was made clear to me by senior partners, and even a judge, that I would not be taken seriously and, if necessary, they would spread the word that I was either a trouble maker or an overly sensitive feminist. In addition to experiences in my early career, even as an experienced expert in my field, clients and male colleagues will ignore my advice but when the same idea is later suggested by a male lawyer, then it's brilliant. Speaking up about it did once cause a client to fire me.

The sexual harassment was from my boss.

It was a judge and I was a young attorney



## 2018 Member Survey Report

### OTHER

I did not feel comfortable reporting it at the time - I was only a year out of law school and young.

I knew I would be quitting anyways.

I am not sure that I immediately recognized it.

Young

I was a 29 year old male at the time (and also 6'2") and pretty much nobody would believe a female attorney would say those sorts of things to me at the Minnehaha courthouse.

# ALPS/LAW SCHOOL GOLF TOURNAMENT

**8 am**     **Prairie Green**

**Noon**     **Elmwood**

**FORMAT:** Four-person scramble. Golfers will be handicapped by tee placement as has been done in the past.

**Participants need not have established handicap and all are welcome to play.**

This tournament is open to all members (which includes the judiciary), spouses/partners, court reporters and law students. This tournament is a charitable fundraiser for the Law School.

Winners receive shirts and bragging rights. **Entry is \$125.00 per person (\$500.00 for the team).** This entry fee includes (per team) green fees, golf cart, range balls, two mulligans (per person), and entry into a skins game. The tournament will have two shotgun starts—8:00 am at Prairie Green and noon at Elmwood. Teams may select which time they tee off. Participants who are not attending Thursday morning meetings are urged to reserve the 8am start time. Checks should be made payable to the ALPS/USD Foundation Golf Tournament, or you can click *reserve your spot* below to pay online. **Please submit your tournament registration form and entry fee by June 3, 2021.** After June 3, late entries will be accepted on an “as available” basis. Mulligans and a skins game will be offered onsite. This tournament is once again made possible by the generous donation of \$1,000 from ALPS.

 **Reserve  
Your Spot**  
and pay online

**OR EMAIL**

Kylee, Nicole or Tracie  
at the State Bar

**OR CALL**

**605-224-7554**

Be sure to have your team members names when you sign up.

Thursday, June 17<sup>th</sup>, 2021

# In Memoriam



Arnold C. Jones

Arnold C. Jones, 87, husband of Connie Jones, passed away on Monday, March 22, 2021. He was born in Rapid City, South Dakota on Sept. 2, 1933 to the late Herbert Jones and Dorothy Robbins.

He retired from the Kentucky Revenue Department as a lawyer. He was a veteran of the U.S. Navy serving on the aircraft carriers Yorktown and Oriskany. He was a buckskinner and member of Craigs Creek Muzzleloaders and American Mountain Men. Arnold was a founding partner of Taco Johns of Frankfort, Ky. He attended Rapid City (SD) High School and Spearfish (SD) High School; Black Hills State University, Spearfish; and the University of South Dakota School of Law, Vermillion, SD.

In addition to his wife, he is survived by his sons, Evan (Molly) Jones, Lexington, and Derek Jones, Enterprise, Alabama; his stepson, Jeremy (Shari) Quinn, Bowling Green; his sister, Gloria Davis, California; and his grandchildren, Hayden Jones, and Ted McCombs-Ungricht.

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*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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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

APR 19 2021

*Sheif A. Johnson Legal*  
Clerk

\* \* \* \*

IN THE MATTER OF THE PROPOSED )  
AMENDMENT TO SECTION 4 of THE )  
APPENDIX TO CHAPTER 16-16, ENTITLED )  
"PASSING SCORE" )

ORDER DENYING  
PROPOSED AMENDMENT

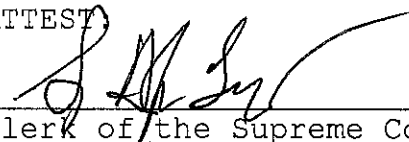
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A hearing was held on February 17, 2021, at Pierre, South Dakota, relating to the amendment to Section 4 of the Appendix to Chapter 16-16, entitled "Passing Score," and the Court having considered the proposed amendment, written and oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the proposed amendment is denied.

DATED at Pierre, South Dakota, this 19th day of April, 2021.

BY THE COURT:

  
\_\_\_\_\_  
Steven R. Jensen, Chief Justice

ATTEST  
  
\_\_\_\_\_  
Clerk of the Supreme Court  
(SEAL)

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Janine M. Kern, Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.



# EMPLOYEE ASSISTANCE PROGRAM

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***This includes solutions such as:***

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## PERSONAL ASSISTANT

Our Personal Assistant helps individuals with their "to do" list. It can be difficult to find extra time in the day to manage everyday tasks. We help lighten the load through researching the best options to benefit you and your loved ones.

**SERVICES INCLUDE: Entertainment & Dining, Travel & Tourism, Household Errands, Service Professionals**

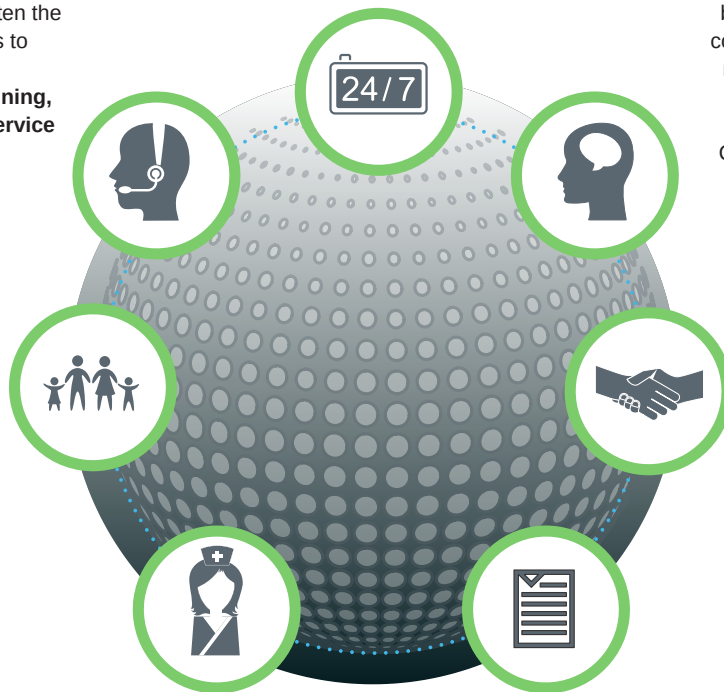
## MENTAL HEALTH COUNSELING

When overwhelmed with personal, work or life stressors, mental health counseling can be a lifesaver. Our licensed master's level counselors support you and your household members through difficult times providing confidential assistance 24/7.

**WE HELP WITH:** Family Conflict, Couples/Relationships, Substance Abuse, Anxiety, Depression

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## WORK/LIFE RESOURCES

Navigating the practical challenges of life, while handling the demands of your job can be stressful. Work/Life resources and referral services are designed to provide knowledgeable consultation and customized guidance to assist with gaining resolution to everyday hurdles.

**RESOURCES INCLUDE:** Adoption, Elder/Adult Care, Parenting, Child Care, Special Needs Support, Wellness

## MEDICAL ADVOCACY

Medical Advocacy is a new approach to maneuvering through the healthcare system. It offers strategies to promote employee health, productivity, and well-being by serving patient populations throughout the entire lifespan and by addressing health problems in every category of disease classification and in all disease stages.

**WE HELP WITH:** Insurance Navigation, Doctor Referrals, Specialist Referrals, Care Transition, Discharge Planning, Adult Care Coach

## LEGAL/FINANCIAL RESOURCES

Legal and Financial resources and referrals are available to connect employees with experienced, vetted professionals in their topical area of legal and financial needs.

**RESOURCES INCLUDE:** Divorce/Custody, Bankruptcy, Budgeting, Estate Planning/Wills, Personal Injury/Malpractice, Major Life Event Planning

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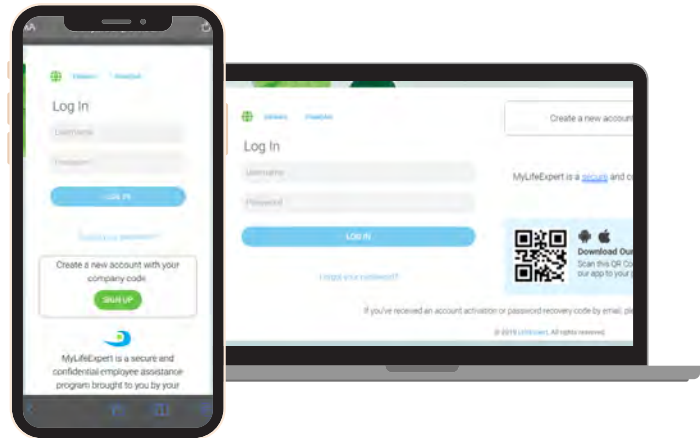
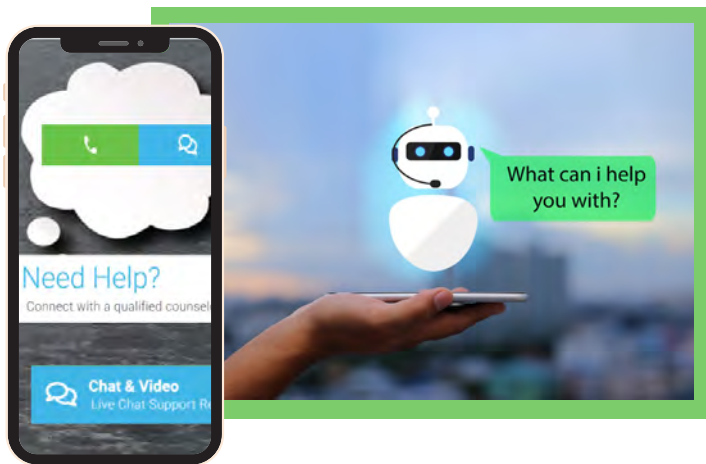
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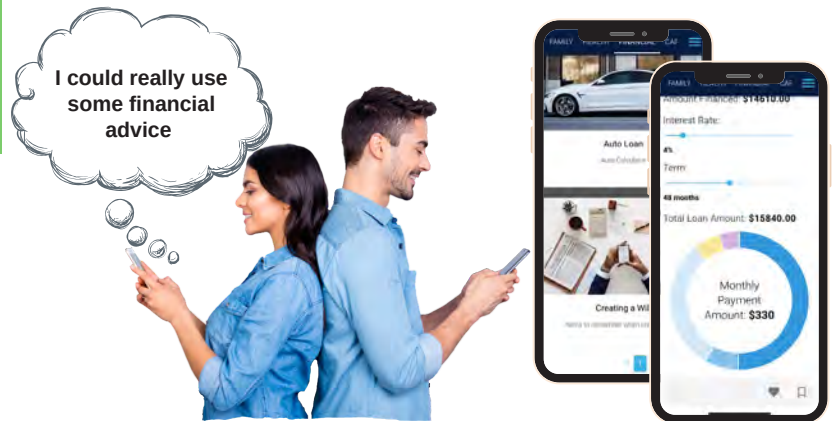
### TELEPHONE, CHAT, & VIDEO ACCESS

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### WORK & LIFE RESOURCES:

Life Expert provides access to thousands of up-to-date topic-related articles, videos and worksheets. Some topics include: Financial & Legal, Family, Education, Health, Wellness, Career, Military, everyday living and much more.



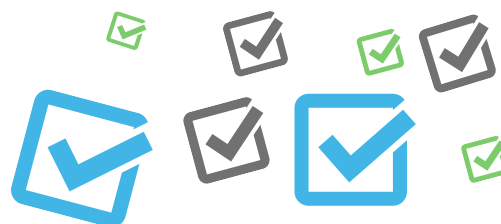
### HEALTH & LIFESTYLE ASSESSMENTS:

Surveys are provided to you with a quick assessment on financial, health and addiction issues. These surveys are designed to deliver targeted resources and information to meet your needs. You can save these assessments and recommendations to your profile for future use.



### INTERACTIVE CHECKLISTS:

Life Expert provides you with interactive tools to help with issues such as family, health, and other life situations. You can save these checklists to your personal profile for future use.



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**Bill Watch**

**House Bills**

*HB 1014	*HB 1102
*HB 1022	*HB 1132
<del>HB 1045</del>	<del>HB 1150</del>
*HB 1046	*HB 1154
<del>HB 1050</del>	*HB 1155
<del>HB 1052</del>	<del>HB 1160</del>
*HB 1061	<del>HB 1178</del>
<del>HB 1062</del>	<del>HB 1181</del>
*HB 1068	<del>HB 1184</del>
*HB 1069	<del>HB 1185</del>
*HB 1070	<del>HB 1186</del>
<del>HB 1075</del>	*HB 1197
*HB 1079	*HB 1203
*HB 1081	*HB 1204
*HB 1084	<del>HB 1236</del>
<del>HB 1086</del>	<del>HB 1241</del>
<del>HB 1088</del>	<del>HB 1255</del>
*HB 1090	*HB 1261
<del>HB 1091</del>	*HB 1262

HJR 5003

**Senate Bills**

*SB 2	<del>SB 141</del>
*SB 5	<del>SB 143</del>
*SB 7	<del>SB 146</del>
*SB 14	*SB 148
*SB 20	<del>SB 163</del>
*SB 34	<del>SB 169</del>
*SB 62	*SB 173
*SB 75	*SB 174
*SB 78	<del>SB 189</del>
*SB 95	<del>SB 190</del>
<del>SB 98</del>	*SB 193
*SB 103	
<del>SB 125</del>	
*SB 126	
*SB 139	

*Bills that are Struck Through have been killed in some manner and are not included in this report.*

*\* Signed by Governor*

**HOUSE BILLS**

**HB 1014 An Act to establish uniform complaint and declaratory ruling procedures for agencies regulating certain professions and occupations.**

**Sponsor:** The Committee on Commerce and Energy at the request of the Department of Labor and Regulation

**Summary:** This bill establishes a uniform procedure for the handling of disciplinary matters for those professions and occupations under Title 36, which includes a procedure for the filing of a complaint, response to the same, investigations, informal disposition, formal complaint, and notice of hearing.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 22.

**HB 1022 An Act to repeal certain obsolete state estate and inheritance tax provisions**

**Sponsor:** The Committee on Taxation at the request of the Department of Revenue

**Summary:** This bill repeals references to state estate and inheritance tax provisions due to South Dakota no longer having estate and inheritance taxes.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 12.

**HB 1045 An Act to revise certain tenant and landlord rights**

**Sponsor:** Representative Mulally and Howard

**Summary:** This bill adds another maintainable action of forcible entry and detainer if the lessee violates a material term of the written lease agreement between the lessor and lessee; this bill also amends the tenant's small amount property statute to no longer calculate if the property is less than \$500 and eliminates the opportunity for the tenant to get the small amount of property within ten days after quitting the premises; this bill also amends the tenant's valuable property statute to state that the lien the landlord has for storing the property does not have priority over a prior perfected security interest and that the landlord may retain and dispose of the property without legal process if the tenant fails to recover the property within twenty-eight days as opposed to the current thirty days.

**State Bar Position:** Monitor



**Status:** Deferred to 41<sup>st</sup> Legislative day by House Local Government Committee (10-3) on January 26.

**HB 1046 An Act to limit liability for certain exposures to COVID-19**

**Sponsor:** Representatives Anderson, Bartels, Barthel, Blare, Chase, Deutsch, Finck, Gosch, Greenfield (Lana), Gross, Hoffman, Koth, Ladner, Mortenson, Odenbach, Olson, Otten (Ernie), Perry, Peterson (Kent), Reed, Rehfeldt, Tidemann, Vasgaard, Weisgram, and Willadsen and Senators Diedrich, Crabtree, Duvall, Greenfield (Brock), Hunhoff, Otten (Herman), Steinhauer, Tobin, Wiik, and Zikmund

**Summary:** This bill limits the liability of an owner of a premise for damages for any injuries sustained from an invitee's exposure to COVID-19, unless the owner intentionally exposed the individual to COVID-19 with the intent to transmit COVID-19. It also provides that a person may not bring an action alleging exposure unless the exposure results in a COVID-19 diagnosis. The limitation of liability is also provided to health care providers. Amendments to the bill include a sunset provision that repeals the protections on December 31, 2022.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 17.

**HB 1050 An Act to modify certain publishing requirements in official newspapers**

**Sponsor:** Representatives Reed, Anderson, Barthel, Blare, Hoffman, Keintz, Perry, and Tidemann and Senators Otten (Herman) and Zikmund

**Summary:** This bill amends numerous statutes pertaining to publishing requirements including requiring all legal and official notices be published on a statewide public notice website maintained by the statewide newspaper organization in addition to the legal newspaper; the bill establishes a default legal publication fee not otherwise stated at three dollars and fifteen cents per column inch for smaller newspapers and six dollars per column inch for larger newspapers; allowing printing in electronic format or both print and electronic, no longer making the county commissioners pay for publishing the proceedings.

**State Bar Position:** Monitor

**Status:** Passed House Local Government Committee (8-5) as amended on January 21; House floor deferred to another day on January 25th, 2021; failed House of Representatives (29-41) on February 3.

**HB 1052 An Act to provide a rebuttable presumption in favor of joint physical custody of a minor child**

**Sponsor:** Representatives St. John and Pischke

**Summary:** This bill modifies existing custody law to state that upon the petition of either parent for the initial determination regarding physical custody of a minor child, there is a rebuttable presumption that equal or approximately equal time spent between the child and each parent is in the best interest of the child.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day (8-5) in House Judiciary Committee on February 3.

**HB 1061 An Act to prohibit smoking marijuana and its derivatives in a motor vehicle and create a penalty therefor**

**Sponsor:** Representatives Fitzgerald, Chaffee, Gosch, Greenfield (Lana), Hoffman, Howard, Jensen (Phil), Otten (Ernie), and Perry and Senators Wiik, Frye-Mueller, Greenfield (Brock), and Stalzer

**Summary:** This bill creates law to state that while a motor vehicle is located upon a public highway or the right-of-way of a public highway, it is a Class 2 misdemeanor if any person occupying, operating, or in actual physical control of a motor vehicle smokes marijuana or marijuana concentrate while the vehicle is being operated.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**HB 1062 An Act to authorize the recovery of costs for defending certain initiated amendments in court**

**Sponsor:** Representatives Deutsch, Finck, Gosch, Greenfield (Lana), Gross, Hoffman, Jensen (Phil), Koth, May, Mills, Otten (Ernie), and Perry and Senators Bolin, Stalzer, Wiik, and Zikmund

**Summary:** This bill requires the sponsor of an initiated amendment to be responsible for reimbursing the office of the AG for the cost of defending any lawsuit challenging the constitutionality of the initiated amendment if 1) the AG officially notified the sponsor prior that its final form may be unconstitutional; 2) the voters approve the amendment; 3) a court of competent jurisdiction, after appeals, rules the amendment is substantially or wholly constitutional; and 4) a court rules the other criteria of this section has been met.

**State Bar Position:** Monitor

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

**HB 1068 An Act to revise the requirement for written findings of fact and conclusions in certain judicial proceedings involving a child**

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

**Summary:** This bill adds language to state that the adjudicatory and dispositional findings of fact and conclusions of law are not required to be in writing except in cases concerning an alleged child in need of supervision or an alleged delinquent child when either a contested evidentiary hearing occurs or the order of adjudication is a commitment to the Department of Corrections.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 25.

**HB 1069 An Act to modify the expenditures that are recoverable as disbursements by a prevailing party in a civil action or a special proceeding**

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

**Summary:** This bill eliminates interpreters from the prevailing party's recovery costs, as well as "other similar expenses and charges" as it relates to court appointed experts.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 3.

**HB 1070 An Act to revise certain provisions regarding the Unified Judicial System**

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

**Summary:** This bill is a “clean up” bill as it deletes references to repealed statutes. This bill changes some “shalls” to “must.”

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 12.

**HB 1075 An Act to limit directives and incentives for extreme risk protection orders and to provide a penalty**

**Sponsor:** Representatives Aylward, Dennert, Finck, Gosch, Greenfield (Lana), Hoffman, Howard, Jensen (Kevin), Mulally, Overweg, and Pischke and Senators Symens, Frye-Mueller, and Greenfield (Brock)

**Summary:** This bill creates new law to state that any federal statute, federal regulation, or executive order of the President of the United States, and any order of a federal or state court is unenforceable in this state if the purpose or intent is to enforce, against a resident of this state, an extreme risk protection order, including such an ex parte order, under which the resident is: (1) Required to surrender any firearms in his or her possession; or (2) Prohibited from owning or possessing a firearm.

**Status:** Passed House Judiciary Committee (10-3) on February 24; passed House of Representatives as amended (59-7) on February 25; deferred to the 41<sup>st</sup> legislative day (8-1) by Senate State Affairs Committee on March 3; recalled from committee (Rule 7-7) (12-22) on March 4; report out of committee without recommendation; failed Senate (12-23) on March 8.

**HB 1079 An Act to limit certain actions that may be taken by the executive branch relative to charitable organizations or charitable trusts**

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

**Summary:** This bill creates new law to state that an executive branch agency, bureau, department, division, board, commission, officer, or official may not make any annual filing or reporting that is required of a charitable organization or charitable trust under state statute or federal law more stringent, restrictive, or expansive except to the extent the organization or trust has received a state grant or contract, or if the organization or trust is the subject of a state fraud investigation or an enforcement action by the state.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 3.

**HB 1081 An Act to increase the penalty for protection order violations**

**Sponsor:** Representatives Reed, Bartels, Barthel, Deutsch, Duba, Tidemann, and Willadsen and Senators Smith (VJ), Castleberry, and Otten (Herman)

**Summary:** This adds language to existing law to state that a violation of a protection order would be a Class 5 felony for a fourth offense and a Class 4 felony for a fifth or subsequent offense.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**HB 1084 An Act to revise provisions regarding the duration of restrictive contracts or declarations**

**Sponsor:** Representatives Tidemann, Anderson, Blare, Chaffee, Chase, Gross, Hoffman, Keintz, Koth, Reed, Stevens, Weisgram, and Willadsen and Senators Duvall, Rusch, Smith (VJ), Stalzer, Wiik, and Zikmund

**Summary:** This bill would extend the provisions regarding the duration of restrictive contracts or declarations under SDCL 11-5-1 and 11-5-2 from 25 years to “in perpetuity” if a period is not prescribed in the declaration or contract.

**State Bar Position:** Monitor

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

**HB 1086 An Act to allow succession to real property by an affidavit**

**Sponsor:** Representative Cwach and Senator Johns

**Summary:** This bill creates new law to state that thirty days after the death of a decedent, any person claiming to be a successor to the decedent's interest in real property with a value not exceeding fifty thousand dollars in this state may file, or cause to be filed on their behalf, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day (9-4) in House Judiciary Committee on February 17.

**HB 1088 An Act to revise certain provisions regarding disclosures for newly constructed properties**

**Sponsor:** Representatives Howard, Deutsch, Fitzgerald, Greenfield (Lana), Hoffman, Jensen (Kevin), Jensen (Phil), Keintz, Marty, Milstead, Perry, and Wiese and Senators Johnson (David), Frye-Mueller, Stalzer, Symens, and Zikmund

**Summary:** This bill modifies existing law to state that transfers of newly constructed residential real property which has never been occupied must still be disclosed on the standard disclosure form by the seller if the seller knows or has reason to know of a condition.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day (10-3) in House Commerce and Energy Committee on February 17.

**HB 1090 An Act to modify certain requirements for domestic not-for-profit corporations**

**Sponsor:** Representatives Weisgram, Bartels, Barthel, Blare, Deutsch, Hoffman, and Reed and Senators Tobin, Duvall, Heinert, Stalzer, Steinhauer, Wiik, and Zikmund

**Summary:** This bill amends existing law to allow electronic meetings for non-profit corporations.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 3.

**HB 1091 An Act to provide provisions for virtual currency in this state**

**Sponsor:** Representative Pischke

**Summary:** This bill creates new sections of law to provide provisions for virtual currency.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day (9-2) in House Commerce and Energy Committee on February 17.

**HB 1102 An Act to revise certain definitions for sex offender registry**

**Sponsor:** Representatives Barthel, Bartels, Chase, Greenfield (Lana), Hoffman, Koth, Peterson (Kent), Reed, Weisgram, and Willadsen and Senators Kolbeck, Curd, Greenfield (Brock), Rusch, Smith (VJ), Stalzer, Steinhauer, and Zikmund

**Summary:** Under the definition of “school” in the sex offender statutes, this bill adds language to state that this term does not apply to any facility where the education of students might occur incidentally to the primary purpose of the facility.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**HB 1132 An Act to add dental hygienists to the list of mandatory reporters of child abuse or neglect**

**Sponsor:** Representatives Healy, Davis, Duba, Greenfield (Lana), Keintz, Miskimins, Perry, Pourier, Reed, Rehfeldt, and Smith (Jamie) and Senators Nesiba, Diedrich, Heinert, Rusch, Smith (VJ), Steinhauer, and Zikmund

**Summary:** See title.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 3.

**HB 1150 An Act to provide definitions regarding the crime of rape**

**Sponsor:** Representative Reed and Senator Diedrich

**Summary:** This bill removes any language stating the victim cannot give consent due to intoxicating, narcotic, or anesthetic agent and instead replaces it with “the victim is incapacitated.” This bill also adds various definitions as it relates to rape.

**State Bar Position:** Monitor

**Status:** Passed House Judiciary Committee (11-0) on February 8; passed House of Representatives (70-0) on February 9; deferred to 41<sup>st</sup> legislative day (5-2) Senate Judiciary Committee on March 2.

**HB 1154 An Act to prohibit employment contracts restricting competitive health care practices**

**Sponsor:** Representatives Deutsch, Aylward, and Hoffman and Senators Curd, Greenfield (Brock), and Zikmund

**Summary:** This bill creates law to state that a contract that creates or establishes the terms of employment, a partnership, or any other form of professional relationship, with a health care provider, is void and unenforceable if the contract restricts the right of the healthcare provider to (1) Practice or provide services for which the provider is licensed, in any geographic area and for any period of time, after the termination of the employment,(2) Treat, advise, consult with, or establish a provider-patient relationship with any current patient of the employer, or with a patient affiliated with a partnership or (3) Solicit or seek to establish a provider-patient relationship with any current patient of the employer, or with a patient affiliated with a partnership or other form of professional relationship. The prohibition of this section does not

apply to a contract in connection with the sale and purchase of a practice, if the restriction does not extend for more than two years.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**HB 1155 An Act to remove certain restrictions on gifts of agricultural land**

**Sponsor:** Representatives Mortenson, Chaffee, Hoffman, Koth, Odenbach, Peterson (Kent), and Weisgram and Senator Wheeler

**Summary:** This bill repeals the prohibition of farms being granted or devised to corporations.

**State Bar Position:** Monitor

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

**HB 1160 An Act to prohibit driving a motor vehicle while exceeding the legal limit of delta 9-tetrahydrocannabinol**

**Sponsor:** Representatives Fitzgerald, Deutsch, Gosch, Greenfield (Lana), Hoffman, Howard, Milstead, and Mulally and Senators Stalzer, Frye-Mueller, Greenfield (Brock), Symens, Wiik, and Zikmund

**Summary:** This bill prohibits driving a motor vehicle while two nanograms or more of delta 9-tetrahydrocannabinol per milliliter is in that person's blood as shown by chemical analysis of that person's blood.

**State Bar Position:** Monitor

**Status:** Deferred to 41st legislative day (11-1) in House Judiciary Committee on February 22.

**HB 1178 An Act to rescind the statute of limitations for any civil cause of action arising out of childhood sexual abuse**

**Sponsor:** Representative Pourier

**Summary:** This bill amends the current statutory limit with language stating that no statute of limitations or statute of repose applies to a civil cause of action brought by any person for recovery of damages for an injury suffered by the person from any act of childhood sexual abuse.

**State Bar Position:** Monitor

**Status:** Deferred to 41st legislative day (10-2) in House Judiciary Committee on February 22.

**HB 1181 An Act to authorize the revival of certain civil claims**

**Sponsor:** Representative Pourier

**Summary:** This bill creates a new section of law to state that in the case of alleged sexual abuse of a person under the age of eighteen, as defined in § 26-10-29, if the civil action would otherwise be time-barred under § 26-10-25 or other time limit, an action for damages against a person, as defined in § 2-14-2, may be commenced no later than July 1, 2023. This section applies only to actions pending on or commenced on or after the effective date of this Act.

**State Bar Position:** Monitor

**Status:** Deferred to 41st legislative day (9-2) in House Judiciary Committee on February 22.

**HB 1184 An Act to revise provisions on aiding, abetting, or advising**

**Sponsor:** Representative Pischke

**Summary:** This bill amends law to state that no person who aids, abets, or advises a crime may receive a longer sentence, whether through a conviction or through a plea agreement, than the principal receives for the crime or related crimes derived from the same set of circumstances.

**State Bar Position:** Monitor

**Status:** Deferred to 41st legislative day (10-2) in House Judiciary Committee on February 10.

**HB 1185 An Act to reduce the penalty for manslaughter**

**Sponsor:** Representative Pischke

**Summary:** This bill reduces the penalty for manslaughter from a Class C felony to a Class 2 felony.

**State Bar Position:** Monitor

**Status:** Deferred to 41st legislative day (9-3) in House Judiciary Committee on February 10.

**HB 1186 An Act to revise certain provisions regarding sentencing**

**Sponsor:** Representative Pischke

**Summary:** Placeholder bill.

**State Bar Position:** Monitor

**Status:** Tabled in House Judiciary Committee (9-2) on February 22.

**HB 1197 An Act require the attorney general be licensed to practice law in the state**

**Sponsor:** Representatives Soye, Aylward, Deutsch, Finck, Hoffman, Milstead, Mulally, Peterson (Sue), and Stevens and Senators Castleberry, Greenfield (Brock), Steinhauer, and Symens

**Summary:** See title.

**State Bar Position:** Monitor

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

**HB 1203 An Act to authorize banks to engage in business with industrial hemp or marijuana licensees and associated persons**

**Sponsor:** Representatives Bartels, Koth, Perry, Reed, and Weisgram and Senators Diedrich and Zikmund

**Summary:** This bill creates new law which states that a bank may, directly or through subsidiaries, carry on the business of banking, pursuant to § 51A-4-1, with any person licensed in this state to engage in the business of industrial hemp or marijuana, or with any person engaging in business dealings with such licensee.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**HB 1204 An Act to revise criminal provisions regarding certain visual recordings or photographic devices**

**Sponsor:** Representatives Olson, Barthel, Drury, Duba, Hoffman, Keintz, and Willadsen and Senator Symens

**Summary:** This bill would make it a class 1 misdemeanor to use an explicit photo or recording against someone with intent to abuse or embarrass them.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**HB 1236 An Act to remove irreconcilable differences as a cause for divorce**

**Sponsor:** Representatives Randolph, Aylward, Gosch, Mulally, and Perry

**Summary:** This bill removes “irreconcilable differences” as a cause for divorce and changes conviction of “felony” to conviction of a crime, resulting in incarceration.

**State Bar Position:** Oppose

**Status:** Deferred to 41<sup>st</sup> legislative day (9-3) in House Judiciary Committee on February 17.

**HB 1241 An Act to provide for participation in a parent education program upon filing for divorce**

**Sponsor:** Representative Haugaard

**Summary:** This bill creates new law to state that beginning January 1, 2022, the court shall require parents who have petitioned for divorce, and parents who have petitioned for child custody or visitation, to participate in a parent education program, having a duration of at least four hours, for the purpose of developing the parents' understanding of: (1) The impact that divorce, the restructuring of the family, and judicial proceedings have upon children and the family; (2) Methods for preventing parenting time conflicts; and (3) Dispute resolution options.

**State Bar Position:** Monitor

**Status:** Passed House Education Committee as amended (12-2) on February 17; failed House of Representatives (35-33) on February 22.

**HB 1255 An Act to create the South Dakota forever trust fund, to provide for the transfer of certain unobligated cash balances, to transfer moneys thereto, and to declare an emergency**

**Sponsor:** Representative Karr

**Summary:** This bill states that the state treasurer shall transfer the sum of \$200,000,000 from the general fund to the South Dakota forever trust fund as created by this bill.

**State Bar Position:** Monitor

**Status:** Passed House Appropriations Committee as amended (7-1) on February 23; failed House of Representatives (33-35) on February 25; House reconsidered failed (31-35) on February 25.

**HB 1261 An Act to revise certain provisions related to the training curricula required of a person appointed as a guardian or a conservator**

**Sponsor:** Representatives Jamison and Thomason

**Summary:** This bill amends law to make it clear that a guardian or conservator cannot be appointed until they have completed the training curricula.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**HB 1262 An Act to regulate ~~kratom for those under the age of twenty-one~~ certain substances**

**Sponsor:** Representative Perry

**Summary:** This bill would make it a Class 2 misdemeanor to knowingly sell or distribute kratom to a person under the age of twenty-one or purchase or attempt to purchase it by a person under the age of twenty-one.



**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 3.

**HJR 5003 A Joint Resolution Proposing and submitting to the voters at the 2022 primary election a new section to Article XI of the Constitution of the State of South Dakota, relating to a three-fifths requirement for certain initiated constitutional amendments or measures**

**Sponsor:** Representatives Hansen, Deutsch, Finck, Hoffman, Mortenson, Otten (Ernie), Perry, Weis, Wiese, and Willadsen and Senators Schoenbeck, Novstrup, Rusch, Wiik, and Zikmund

**Summary:** This House Joint Resolution proposes and submits to the voters at the next general election an amendment which states any initiated constitutional amendment or measure that imposes or increases taxes or fees, and any initiated constitutional amendment or measure that obligates the state to appropriate funds of ten million dollars or more in any of the first five fiscal years after enactment, to be annually adjusted for inflation as determined by the Legislature, shall become part of the Constitution or statute, respectively, only if approved by three-fifths of the votes cast thereon.

**State Bar Position:** Monitor

**Status:** Passed both chambers; delivered to the Secretary of State.

## SENATE BILLS

**SB 2 An Act to modify the duties of the Code Commission**

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

**Summary:** This bill provides that Code Commission is no longer required to determine the contents of the code supplements and reprinted volumes which shall include case annotation of the reported decision of South Dakota, the federal courts, and other state courts construing and interpreting the South Dakota Constitution and statutes.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 10.

**SB 5 An Act to include a child's legal parents and custodians in the list of parties who may receive information related to reports of the child's abuse or neglect.**

**Sponsor:** The Committee on Judiciary at the request of the Department of Social Services

**Summary:** This bill amends law to allow a legal parent, guardian or custodian of a child to receive information related to reports of the child's abuse or neglect.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 22.

**SB 7 An Act to permit Medicaid agency to qualify as a victim for purposes of restitution in criminal cases.**

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

**Summary:** As the title suggests, this bill amends SDCL 23A-28-2 and the definition of "Victim" to include a joint state-federal funding program for medical assistance.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 8.

**SB 14 An Act to limit the time children in need of supervision are held in detention under certain circumstances**

**Sponsor:** The Committee on Judiciary at the request of the Department of Corrections

**Summary:** This bill amends existing law to require a written order to be issued that identifies the violated court order, determines detention is the best available placement, specifies the length of time the child is to be held in detention, and outlines the plan for release of the child from detention.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 8.

**SB 20 An Act to place certain substances on the controlled substances schedule and to declare an emergency**

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

**Summary:** This bill adds further substances to the controlled substances schedule.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 17.

**SB 34 An Act to make an appropriation to expand rural access to broadband services and to declare an emergency**

**Sponsor:** The Committee on Appropriations at the request of the Governor's Office of Economic Development

**Summary:** This bill appropriates from the general fund the sum of \$75,000,000 to the Governor's Office of Economic Development, for purposes of expanding broadband throughout the state of South Dakota.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**SB 62 An Act to revise certain provisions regarding appeals by the prosecution**

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

**Summary:** This bill amends two existing statutes. First, it amends the statute pertaining to appeal by prosecution from judgment setting aside verdict, dismissal, arrest of judgment, new trial, or deviation from mandatory sentence by replacing language to make the statute clearer. Second, this bill amends the appeal from prosecution and double jeopardy statute to add "risk of double" in front of jeopardy to make the statute clearer.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 22.

**SB 75 An Act to correct an error in a statutory cross-reference within the Uniform Limited Liability Company Act**

**Sponsor:** Senators Diedrich and Rusch and Representatives Stevens and Hoffman

**Summary:** This is a "clean up" bill to fix an error in a statutory cross-reference.

**State Bar Position:** Support

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

### **SB 78 An Act to modify certain provisions related to trusts**

**Sponsor:** Senators Johns, Curd, Duvall, Rusch, Schoenfish, Stalzer, Wiik, and Zikmund and Representatives Bartels, Barthel, Chase, Deutsch, Goodwin, Hoffman, Keintz, Koth, Mortenson, Odenbach, Otten (Ernie), Perry, Peterson (Kent), Pischke, Reimer, Schneider, Tidemann, and Willadsen

**Summary:** This bill amends multiple statutes pertaining to trust law. **Section 1:** This amendment changes the phrase “consent of all of the beneficiaries” to “written agreement entered into by all the beneficiaries” because most other states’ laws use similar language. **Section 5:** Ensures that notice of a petition for privacy is served on all the interested parties. **Sections 6-7:** These sections provide that a trust governed by South Dakota laws cannot be undone by the laws of another state, adding emphasis to the recently issued South Dakota Supreme Court decision, *Matter of Cleopatra Cameron Gift Trust* (SD 2019), which applied the same principles. **Section 8:** Provides that a trust which permits a trust protector or trust director with the power to remove and place a trustee may also appoint a co-trustee. **Sections 13-14:** These sections provide a way in which a trustee of a trust can achieve certainty in regard to various proposals regarding trust administration by seeking the approval of interested parties. The amendment ensures that if a trust protector is acting, that the trust protector is also involved. **Section 16.** This section confirms that an “asset protection trust” (described in SDCL ch. 15-16) may include a provision which allows the settlor to exchange property of her own with property of the trust with an equivalent value.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 17.

### **SB 95 An Act to provide **immunity** protection for actions assisting an impaired lawyer or judge**

**Sponsor:** Senators Johns and Schoenbeck and Representatives Stevens and Hoffman

**Summary:** This bill creates new sections of law as it relates to assisting an impaired lawyer or judge. One of the sections created states that a person is immune from liability for any damages to any person or property caused by the person's acts or omissions in assisting or offering to assist a lawyer or judge who is impaired or suspected of being impaired in obtaining medical or therapeutic treatment for the impairment or other related support services. Another section states that a person is immune from liability for any damages to any person or property caused by the person's acts or omissions in reporting a lawyer or judge who is impaired or suspected of being impaired to the State Bar, the Supreme Court, any associated assistance committee or entity established or approved by the State Bar or the Supreme Court, or the Unified Judicial System.

**State Bar Position:** Support

**Status:** Signed by the Governor on March 25.

### **SB 98 An Act to limit the application of the death penalty**

**Sponsor:** Senators Rusch, Schoenbeck, Smith (VJ), and Steinhauer and Representatives Aylward, Deutsch, Hoffman, Keintz, Pischke, Reed, and Weisgram

**Summary:** This bill amends existing law to state that in all cases for which the death penalty may be authorized, the judge shall consider evidence supporting any mitigating circumstances. The bill then goes on to repeal points in law for the judge to consider in mitigating circumstances.

**State Bar Position:** Monitor

**Status:** Passed Senate Judiciary Committee (5-1) on February 4; failed Senate (13-20) on February 8.

**SB 103 provide for the confidentiality of personal information of persons affiliated with nonprofit corporations and to provide a penalty therefor**

**Sponsor:** Senators Crabtree and Bolin and Representatives Chaffee, Goodwin, and Reed

**Summary:** This bill creates new sections of law to state that any person who supports a nonprofit corporation has a right to personal privacy and confidentiality regarding the release of personal affiliation information by a public agency.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 21.

**SB 125 require the wearing of face coverings in the state under certain conditions and to declare an emergency**

**Sponsor:** Senators Nesiba and Heinert and Representatives Healy, Bordeaux, Cwach, Duba, Keintz, and Smith (Jamie)

**Summary:** This bill creates new sections of law to state that within the state, all persons shall wear a face covering in an indoor retail business and city-owned facility where six-foot social distancing cannot be achieved or maintained. A face covering shall be worn to cover the nose and mouth completely, and can be a paper or disposable mask, a cloth mask, a scarf, a bandana, or a neck gaiter.

**State Bar Position:** Monitor

**Status:** Passed Senate Health and Human Services Committee as amended without recommendation (5-2) on February 3; motion to calendar on Senate floor failed (7-25) on February 4.

**SB 126 An Act to establish the crime of possession, manufacturing, or distribution of obscene dolls**

**Sponsor:** Senator Castleberry and Representative Reed

**Summary:** This bill makes it a class 4 felony to manufacture or purchase or possess obscene dolls.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**SB 139 An Act to increase the base salary for certain judges**

**Sponsor:** Senator Schoenbeck and Representative Haugaard

**Summary:** This bill increases judges salary with language which states the base annual salary of each justice of the Supreme Court and each circuit judge shall be adjusted upward six percent on July 1, 2021, and the subsequent base annual salary shall be adjusted upward an additional six percent on July 1, 2022.

**State Bar Position:** Support

**Status:** Signed by the Governor on March 21.

**SB 141 An Act to provide for the automatic removal of certain marijuana convictions from a background check record**

**Sponsor:** Senators Rohl, Heinert, Johns, Nesiba, and Rusch and Representative Pourier

**Summary:** See title.

**State Bar Position:** Monitor

**Status:** Passed Senate Judiciary Committee as amended (5-1) on February 11; passed Senate (24-11) on February 22; passed House Judiciary Committee (7-4) on March 1; failed House of Representatives (26-42) on March 3.

**SB 143 An Act to revise the penalty for the ingestion of certain controlled substances**

**Sponsor:** Senators Rohl, Heinert, and Rusch and Representatives Aylward and Hoffman

**Summary:** This bill reduces the penalty of controlled substances in Schedules I and II from a Class 5 and 6 felony to a Class 1 misdemeanor.

**State Bar Position:** Monitor

**Status:** Passed Senate Judiciary Committee (5-2) on February 23; failed Senate (8-25) on February 25.

**SB 146 An Act to revise certain provisions regarding eligibility for parole for certain persons sentenced to life imprisonment**

**Sponsor:** Senators Rusch and Johns and Representative Healy

**Summary:** This bill allows a person who was sentenced to life imprisonment to be eligible for parole if that person who was sentenced to life imprisonment for an offense that was committed when the person was twenty-five years of age or younger is thereby eligible for parole consideration when the person reaches fifty years of age.

**State Bar Position:** Monitor

**Status:** Passed Senate Judiciary Committee (6-0) on February 9; passed Senate as amended (18-17) on February 10; deferred to 41st legislative day (9-2) in House Judiciary Committee on March 1.

**SB 148 An Act to establish the crime of torture of a human trafficking victim and provide a penalty therefor**

**Sponsor:** Senators Diedrich and Castleberry and Representatives Barthel, Drury, and Reed

**Summary:** This bill creates new law to state that a person who, with the intent to cause cruel physical or mental pain, inflicts serious bodily injury or serious mental injury upon a human trafficking victim while the victim is the subject of human trafficking is guilty of a Class 2 felony.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 10.

**SB 163 An Act to revise the eligibility requirements for compassionate parole under certain circumstances**

**Sponsor:** Senator Foster

**Summary:** This bill adds which to existing law which states during a global pandemic as declared by the World Health Organization, eligibility for compassionate parole consideration is extended to all inmates whose current sentences are for convictions of a Class 3 felony or lower for crimes that are not violent as provided in § 24-15A-32.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day (5-1) in Senate Judiciary Committee on February 18.

**SB 169 An Act to revise the time requirement for the automatic removal of speeding violations from a background check record**

**Sponsor:** Senator Novstrup

**Summary:** This bill adds language to existing law which states that if the highest charged offense in a case was a Class 2 misdemeanor charged under chapter 32-25 or a violation of a municipal ordinance regulating speed, the charge or conviction shall be automatically removed from a defendant's public record after two years if all court-ordered conditions on the case have been satisfied.

**State Bar Position:** Monitor

**Status:** Passed Senate Transportation Committee as amended (7-0) on February 10; tabled in Senate (35-0) on February 22.

**SB 173 An Act to revise certain provisions related to competency hearings**

**Sponsor:** Senator Wheeler and Representative Stevens

**Summary:** This bill amends language to state that the new evaluation will be based on whether the defendant will become competent to proceed and whether there is a substantial probability that it will occur.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**SB 174 An Act to revise provisions related to the automatic removal of certain charges or convictions from a defendant's public record**

**Sponsor:** Senator Wheeler and Representative Reed

**Summary:** This bill adds language to existing law to state that any charge or conviction resulting from a case where a Class 1 misdemeanor was the highest charged offense shall be automatically removed from a defendant's public record after ten years if all court-ordered conditions on the case have been satisfied.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

**SB 189 An Act to revise and establish certain provisions related to drug crimes and enforcement and create a penalty therefor**

**Sponsor:** Senator Rohl and Representatives Keintz and Perry

**Summary:** This bill makes various changes to drug related statutes.

**State Bar Position:** Monitor

**Status:** Passed Senate Judiciary Committee as amended (5-1) on February 23; failed Senate as amended (15-18) on February 25.

**SB 190 An Act to revise provisions regarding unfair or discriminatory practices**

**Sponsor:** Senators Foster, Heinert, and Nesiba and Representative Keintz

**Summary:** This bill includes sexual orientation, gender identity, or identification as a Native American Two-Spirit as discrimination.

**State Bar Position:** Monitor

**Status:** Tabled in Senate Judiciary Committee (6-0) on February 23.

**SB 193 An Act to revise certain provisions regarding remote notarization**

**Sponsor:** Senator Wheeler

**Summary:** This bill amends law to clarify requirements for remote notarization including a form that must be executed if a document was executed by remote notarization.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 25.

## **PUBLIC NOTICE**

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

The current appointment of Magistrate Judge Patrick McCann is due to expire on October 5, 2021. Magistrate Judge McCann serves in the Third Judicial Circuit.

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

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

Chief Justice Steven R. Jensen  
Supreme Court  
500 East Capitol  
Pierre, SD 57501

**Comments must be received by July 7, 2021.**



## **PUBLIC NOTICE**

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

The current appointment of Magistrate Judge Donna Bucher is due to expire on September 18, 2021. Magistrate Judge Bucher serves in the First Judicial Circuit.

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

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

Chief Justice Steven R. Jensen  
Supreme Court  
500 East Capitol  
Pierre, SD 57501

**Comments must be received by June 20, 2021.**

# Career Center

## STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

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

### Trust & Estate Lateral Attorney - Sioux Falls

BOYCE LAW FIRM, LLP, in Sioux Falls, South Dakota has an opening in its TRUSTS & ESTATES practice area for a lateral attorney with 3-10 years of experience in private practice or relevant experience in the trust industry. Qualified candidates will have a background in advanced estate planning and/or trust administration, superior communication skills, and be highly self-motivated. Ideal candidates will have an existing book of transferable business and LLM in Taxation. Boyce Law Firm LLP is a top-rated, multi-specialty law firm. Compensation will be commensurate with education and experience. Benefits include generous 401K, health insurance, annual CLE tuition, professional dues and memberships and numerous incidentals. Confidential inquiries, including resume and cover letter should be directed to Jennifer Bunkers, Boyce Law Firm, LLP, PO Box 5015, Sioux Falls, SD 57117-5015 or to [jebunkers@boycelaw.com](mailto:jebunkers@boycelaw.com). For more information about Boyce Law Firm, please visit [www.boycelaw.com](http://www.boycelaw.com).

### Associate Attorney - Rapid City

Associate attorney position available for the right candidate to join a small practice in the Rapid City and Black Hills region. Experience or interest in primary practice areas of estate planning, elder law and asset-protection planning, as well as secondary service offerings in business and corporate, family, civil litigation, and more. We are looking for a self-starter, ambitious young professional who works well with others and will be ready to assume responsibility as the firm grows and expands. Equity potential for

the right candidate over time. Compensation is a combination of base salary and origination bonuses, starting immediately. Health insurance, paid personal leave, 401(k), and other benefits with investment in your success, are a part of our package. Send resumes to [stephen@aspenslegacyplanning.com](mailto:stephen@aspenslegacyplanning.com). All inquiries will remain confidential.

### Staff Attorney - Mission

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Mission, South Dakota, office. The Mission office serves the Rosebud Sioux Indian Reservation and Gregory, Jones, Mellette, Todd and Tripp counties in South Dakota.

**QUALIFICATIONS/RESPONSIBILITIES:** Applicants must have a JD degree and be licensed to practice, or by reciprocity be able to obtain a license to practice, in South Dakota, or be qualified to take the next South Dakota Bar Exam; must be a bright, motivated, self-starter; must have the tenacity to assume immediate practice responsibilities, including handling a significant caseload touching on many different areas of law with regular appearances in court; and must demonstrate an interest in poverty law and working with Native American and low income clients.

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

**CLOSING DATE:** Open until filled.

APPLICATION INFORMATION: Please submit a letter of interest and resume to: Thomas S. Mortland, Executive Director, Dakota Plains Legal Services, PO Box 727, Mission, SD 57555, (605) 856-4444, tmortland@dpls.org.

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

### **Assistant United States Attorney - Sioux Falls**

The U.S. Attorney's Office for the District of South Dakota is seeking an experienced attorney to fill one Assistant United States Attorney (AUSA) position in the Civil Division of its Sioux Falls office. This attorney primarily will be responsible for the Affirmative Civil Enforcement (ACE) program, which pursues civil actions against corporations and individuals that engage in fraud, violate federal laws, and divert controlled substances. The selected attorney will have responsibility for litigating matters under the False Claims Act, including civil health care fraud, procurement fraud, and other frauds against the government, as well as pursuing civil actions under the Controlled Substances Act and other affirmative civil enforcement statutes. The ACE program also includes civil rights matters, including enforcement of the Americans with Disabilities Act and the Fair Housing Act. The selected attorney will handle all aspects of investigations and cases, including gathering evidence, taking testimony, writing briefs, and appearing in court at hearings and trials. The attorney may also handle other types of cases as needed. Responsibilities will increase and assignments will become more complex as your training and experience progress.

This full vacancy announcement and other attorney vacancy announcements can be found at: <https://www.justice.gov/legal-careers>.

More information about the U.S. Attorney's Office, South Dakota can be found at: <http://www.justice.gov/usao/sd/>.

Applicants must possess a J.D. degree, be an active member of the bar (any U.S. jurisdiction) and have at least one year of post-JD legal or other relevant experience. Be a U.S. citizen or National. In addition, applicant must also be a member, or be eligible to

become a member, of the federal district court bar. If the successful candidate is not a member of the South Dakota Bar, he or she must become a member of the South Dakota Bar within twelve months.

Applicants must demonstrate superior analytical ability; strong research, writing and courtroom skills; exercise fair and sound judgment; follow all Department of Justice and United States Attorney's Office policies; exhibit the ability to work collaboratively in a supportive and professional manner with other attorneys, support staff, and law enforcement agencies; superior analytical and communications skills; handle matters in court persuasively and justly on behalf of the United States of America; and be devoted to excellence.

Assistant United States Attorneys pay is administratively determined based, in part, on the number of years of professional experience. The range of basic pay is \$55,756 to \$145,836, plus a locality payment of 15.95%. Relocation expenses will not be authorized. All initial attorney appointments to the Department of Justice are made on a 14-month (temporary) basis pending favorable adjudication of a background investigation.

Provide cover letter, resume, writing sample (not to exceed 20 pages), and list of three professional references with contact information. All documents should be submitted electronically in one continuous .pdf attachment and include the announcement number (21-SD-CIVIL-003) in the subject line of your email. Email address for application package: [USASD.applications@usdoj.gov](mailto:USASD.applications@usdoj.gov).

Applications must be received by Friday, May 14, 2021.

### **Family Law Attorney – Rapid City**

Riggins Family Law, Prof. L.L.C., a small firm with a focus on Family Law, has an excellent opportunity for an associate looking to develop or grow a Family Law Practice.

Requirements:

- \*Licensed in South Dakota
- \*Ability to manage work flow independently to meet deadlines.
- \*Strong work ethic and reliability a must.
- \*Exemplary client service skills with prompt response

levels at all times.

\*Desire to make court appearances, argue motions and to participate in hearings.

\*Detail oriented with strong drafting and negotiating skills.

\*Excellent academic credentials.

\*Courtroom experience preferred but not a prerequisite.

\*Excellent analytical and problem-solving skills.

If you are authentic about your desire to practice family law, and have the ability to connect with clients in a meaningful, respectful and efficient manner, then apply to join our team today! Interested applicants please submit a one-page cover letter outlining what motivates you as a family law attorney and your salary expectations with your resume to [Kylie@rigginsfamilylaw.com](mailto:Kylie@rigginsfamilylaw.com).

### **Deputy County Attorney - Campbell County, WY**

Position Title: Deputy County Attorney

Department: County Attorney's Office

Contact person: Kelly Wallem, Office Manager

Phone: (307) 682-4310

Status: Full Time with Excellent County

#### Benefits

Beginning Salary: \$75,600.81 – \$85,181.60

Closing Date: Open until filled

Position Summary: Campbell County seeks a Deputy County Attorney to perform a variety of professional duties involved in providing legal services related to County government operations; to prosecute criminal offenses, misdemeanors and felonies, and help with the prosecution of Juvenile cases and civil work on behalf of the County and other duties as assigned.

Qualifications Required: Requires a Juris Doctorate from an accredited law school and admission into the Wyoming State Bar, in good standing.

One to six years legal experience in government, criminal and/or civil law. Prior courtroom experience preferred.

Must be a self-starter and be able to work with other Deputy Attorneys, staff and allied agencies. Ability to be "on call" approximately every 8 weeks. Complete background check, if requested.

If Interested: Cover letter, resume and application may be e-mailed to [kjw06@ccgov.net](mailto:kjw06@ccgov.net)

Or mailed to:

Kelly Wallem, Office Manager

500 S. Gillette Avenue, Suite B200

Gillette, WY 82716

Campbell County is an Equal Opportunity Employer

### **Felony Assistant State's Attorney – Peoria, Illinois**

The Peoria County State's Attorney's Office is seeking an energetic attorney for the position of Assistant State's Attorney for our Felony Division. This office wants a lawyer with a passion to prosecute in the courtroom and the desire to make a meaningful difference in the lives of those in their community. This person will gain strong courtroom experience. Duties include meeting with law enforcement, witnesses, negotiating and prosecuting all types of felony cases from initial filing to jury trials. Salary commensurate with experience. Benefits include health, dental and life insurance, IMRF retirement, Deferred Compensation program, paid holidays, vacation and sick leave, and paid ARDC dues. Please send cover letter and resume to Linda Hood, Office Administrator, at [lhood@peoriacounty.org](mailto:lhood@peoriacounty.org).

### **Assistant Federal Public Defender -**

Districts of South Dakota and North Dakota

101 South Main Avenue, Suite 400

Sioux Falls, SD 5710

Jason J. Tupman, Federal Public Defender

Telephone: (605) 330-4489

Fax: (605) 330-4499

The Federal Public Defender for the Districts of South Dakota and North Dakota seeks an attorney to join our branch office in Bismarck, North Dakota. Our office provides high-quality representation to people charged with federal crimes who cannot afford to hire an attorney. We operate under the authority of the Criminal Justice Act.

Position Description: Assistant Federal Public Defenders zealously and professionally represent clients in a fast-paced, challenging, diverse, and rewarding work environment. Responsibilities

include managing a caseload; working with clients; interviewing witnesses and family members; developing release plans; reviewing discovery; preparing pleadings, motions, and briefs; developing litigation strategies; working with experts; advising CJA panel attorneys; and in-court litigation through all stages of a criminal case. Some travel is necessary. Attorneys in our office may not engage in the private practice of law.

Qualifications: Required: (1) graduation from an accredited law school; (2) admission to practice in good standing before the highest court of a state or the District of Columbia; (3) admission to practice in the US District Court for the District of North Dakota by the time of entrance on duty; (4) willingness to become admitted to the North Dakota Bar within a year of beginning employment; and (5) US citizenship or work authorization.

Above all we are looking for applicants with a demonstrated commitment to indigent defense, and an ability to work well in a team environment. We value court experience, creativity, and superior research and writing skills.

Salary and Benefits: The salary range is commensurate with experience within a range of \$70,821-166,173. The position is full-time with federal benefits, including health and life insurance, retirement, and the Thrift Savings Plan. Salary is paid bi-weekly and only by direct deposit. A final offer of employment is subject to funding and a background check.

How to Apply: Apply by emailing a letter of interest, resume, three references, and a recent writing sample in a single pdf document to [NDX\\_JOBS@fd.org](mailto:NDX_JOBS@fd.org). Position is open until filled.

The Federal Public Defender for the Districts of South Dakota and North Dakota is an Equal Opportunity Employer. Women and minorities encouraged to apply.

Email: [NDX\\_JOBS@fd.org](mailto:NDX_JOBS@fd.org)

## **Administrator - Mission**

Dakota Plains Legal Services is seeking an Administrator to oversee the management of DPLS income, expenditures and financial record keeping. The Administrator will maintain an accounting system which assures accurate allocations to the appropriate funding sources and departments. He or she must ensure that all expenses are consistent with the Legal Services Corporation Act and Regulations, as well as ensure compliance with other grantor requirements and Dakota Plains Legal Services policies. The Administrator will perform other administrative duties as assigned.

### Job Requirements

- a. Minimum of a Bachelor of Science degree in business administration, accounting, management or a related social science field preferred, OR
- b. Minimum of three years' experience in administrative or program management or related job experience, preferably in a law firm with experience in fund balance accounting.
- c. Must be bondable.

### Salary

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

Position open until filled.

Please submit a letter of interest and resume to:  
Thomas S. Mortland, Executive Director  
Dakota Plains Legal Services  
P.O. Box 727  
Mission, SD 57555  
(605) 856-4444  
[tmortland@dpls.org](mailto:tmortland@dpls.org)



# May 2021

May 4 | SBSD Public Sector Section Legislative Review CLE | Zoom

June 14-15 | Disciplinary Board Meeting | Club House, Sioux Falls

June 16-18 | Annual Meeting | Sioux Falls Convention Center & Sheraton Hotel

September 17 | Estate Planning CLE | Location TBA, Sioux Falls

October 22 | Statewide Swearing In Ceremony | Capitol Rotunda, Pierre