



State Bar of *South Dakota*

November

NEWSLETTER





LAWPAY IS FIVE STAR!



In our firm, it's actually fun to do our billings and get paid. I send our bills out first thing in the morning and more than half are paid by lunchtime.

LawPay makes my day!

– Cheryl Ischy, Legal Administrator
Austin, Texas

Trusted by more than **35,000 firms** and
Rated '**5-Star**' on Trustpilot



LAWPAY[®]

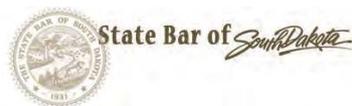
AN AFFINIPAY SOLUTION

THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay's flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/unearned fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

866-251-9220 or visit lawpay.com/sbsd

LawPay is proud to be a vetted and approved Member Benefit of the State Bar of South Dakota.



Special offer for bar members.
Call for details

State Bar of South Dakota

November 2018 *Newsletter* Issue - 11

4 PRESIDENT'S CORNER

Reed A. Rasmussen

6 YOUNG LAWYERS SECTION

Tamara Nash

10 BAR COMMISSIONERS SPOTLIGHT

Dusty Ginsbach

12 The Devil Is In The Details

Mike McKnight

8 Fellows of the South Dakota Bar Foundation

14 Application For Pro Bono Emeritus Status

16 Announcements

21 A2J Super Hero's

27 Secretary of State Economic Report Q3, 2018

29 In Memoriam

32 USD Law Fund Raising Update

35 Board of Bar Examiners 2018 Annual Report

47 Career Center

President's Corner

Reed A. Rasmussen



I recently had the privilege of speaking at the statewide swearing in ceremony in Pierre. This is an annual event organized by the Young Lawyers section, which always does a good job. It's great to see a number

of new admittees and their families. If you ever have a chance to do so, you should attend the ceremony.

The Bar Commission met in Pierre the same day as the swearing in ceremony. One of the topics we discussed was the deadline for the payment of Bar dues. Under Section 21 of the current State Bar Bylaws, the annual membership fee is due by January 1. Under Section 23, any failure to pay the fee by January 1 results in automatic suspension of membership in the State Bar. At last year's Bar Convention, the membership approved some revised Bylaws which made some changes regarding this issue. Those Bylaws will not, however, become effective unless they are approved by the Supreme Court at its Rules hearing in February. For now, the automatic suspension language remains.

The dues notice is going to be sent out earlier this year. They should be going out around the first of November. The notice will advise you that if your membership fee is not paid by January 1, a ten percent penalty will be assessed. The State Bar always starts running short of money toward the end of the year. Therefore, please get your dues paid before the first of the year.

Efforts are ongoing to get attorneys signed up for the lawyer referral service. As of mid-October, 62 lawyers

have signed up. Most of these lawyers are located in the eastern part of the state. We need more attorneys from the central and western parts of the state to get involved. There are various panels for which an attorney can indicate a desire to accept cases. As of mid-October, no one had signed up under the house and apartment or Indian law panels. We need to get people willing to take referrals for those areas of law. The Lawyer Referral Committee plans to do some advertising to promote this service once enough lawyers have signed up and all the panels have been filled. Please sign up for the referral service and encourage others in your firm to do likewise.

During her presidency, Pamela Reiter appointed a Website Committee. That committee has been working hard, in conjunction with the State Bar office, to upgrade the website. A number of changes have been made. I have been told members are pleased with those changes and find the website much easier to use. I encourage you to check out the new website and make use of it.

This month's picture was taken while I was in college. In looking back, I have to wonder what I was thinking. Because I have the top buttons of my shirt unbuttoned, I assume I was trying to look sexy. The problem with that is that I gave the picture to my parents as a Christmas present. I can't image what they were thinking when they received it.

Hope everyone has a good Thanksgiving. Take some time to enjoy family and friends.

Reed Rasmussen
rrasmussen@sbslaw.net
605-225-5420

**PLEASE RETURN THE DUES INVOICE
WITH YOUR PAYMENT!**

**IF YOUR CONTACT INFORMATION IS INCORRECT, PLEASE
UPDATE THAT ON YOUR INVOICE!**



IMPORTANT REMINDER!!

ATTENTION

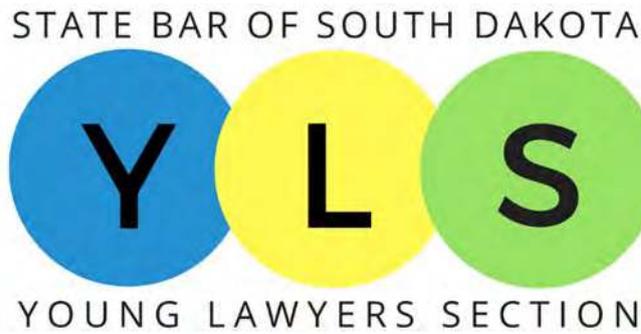
**DUES NOTICES WILL BE MAILED AT
THE BEGINNING OF NOVEMBER**

**MEMBER FEES ARE DUE BY
DECEMBER 31, 2018**

**NEW THIS YEAR!
STARTING NOVEMBER 1ST,
YOU CAN**

PAY YOUR BAR DUES ONLINE AT

WWW.STATEBAROFSOUTHDAKOTA.COM



by: Tamara Nash, YLS President

November Greetings!

One of the priorities of the #SDYLS is that we try and reflect on and improve upon professional well-being and work/life balance. Work/life balance is taking time for your mental and emotional health, but not losing sight of work obligations. The key to work/life balance is that it is highly individualized. In other words, what works for me may not work for you.

I have yet to find an attorney who has mastered the concept of work/life balance. So perhaps the bigger message is reminding ourselves to take a step back every so often and examine our own lives. It is easy to get bogged down our daily practice and commitments, one can quickly forget about self-care and mindfulness.

I challenge each of you to think about how work/life

balance looks in your life. Have you defined your values and priorities? Have you set boundaries? Have you communicated these things with others in your life? Are you encouraging the lawyers around you to do the same?

It is important that we continue to have this conversation. As a profession, we excel at taking care of others, but sometimes we need a reminder to take care of ourselves. Lawyer well-being contributes to organizational success and it elevates ethics and professionalism. I will admit, it is a constant struggle trying to find the balance, but it is worth working towards.

Changing gears, as you know, the #SDYLS champions the Hagemann-Morris Young Lawyer Mentorship Coin Program. It is our hope and desire that the Mentor Coin ultimately becomes a much-desired symbol of



affiliation among members of the State Bar. If you never received a mentorship coin, please contact your circuit representative. Further, if you are in need of a mentor, please reach out to your circuit representative, we would be happy to assist you.

I would also like to thank everyone who planned and participated in the 2018 Annual State-Wide Swearing-

In Ceremony! Eighteen new admits took the Oath of Attorney administered by Chief Justice Gilbertson on October 19, 2018 in the Capitol Rotunda. We had a lovely time welcoming our newest colleagues.

In closing, I encourage you to reach out to any of our Board members to voice your concerns and ideas. Your 2018-2019 Board of Directors are:

- President- Tamara Nash (Sioux Falls)
- Vice-President – Nathan Chicoine (Rapid City)
- Secretary/Treasurer – Carrie Srstka (Pierre)
- 1st Circuit Representative – Justin Johnson (Mitchell)
- 2nd Circuit Representative – Anthony Sutton (Sioux Falls)
- 3rd Circuit Representative – Brittany McKnight (Brookings)
- 4th Circuit Representative – Nicholas Peterson (Spearfish)
- 5th Circuit Representative – Ryan Dell (Aberdeen)
- 6th Circuit Representative – Holly Farris (Pierre)
- 7th Circuit Representative – Kassie Shiffermiller (Rapid City)
- At Large Representative – Kelsey Knoer (Sioux Falls)
- Law Student Representative – Jenna Schweiss (Vermillion)

Kindest regards,
Tamara P. Nash



NORTHERN PLAINS WEATHER SERVICES

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

Fellows of the South Dakota Bar Foundation

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

RAISING THE BAR: OUR PROFESSION. OUR RESPONSIBILITY.

LIFE PATRON FELLOW: \$100,000 plus -
Cumulative, including Pledges & Testamentary Gifts

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

DIAMOND FELLOWS: \$10,000 plus -
Cumulative, including Pledge & Testamentary Gifts
Thomas C. Barnett Jr. Robert E. Hayes

PLATINUM FELLOWS: \$10,000 -
Cumulative, including Pledge & Testamentary Gifts
Hon. Richard H. Battey William Spiry
Hon. John B. Jones Hon. Jack R. Von Wald
Charles L. Riter

SILVER FELLOWS: \$1,000 per year

Kimberly A. Mortenson, Scott C. Moses (In memory of William J. Janklow), Timothy J. Rensch, Brandon M. Taliaferro, Herb C. Sundall, John Von Wald, Gregory A. Yates

FELLOWS: \$500 per year **Hon. John Bastian, Hon. John L. Brown, Mary Jane Cleary Craig A. Kennedy, Richard Kolker, Hon. Judith Meierhenry, Hon. Bobbi Rank, Robert C. Riter, Thomas E. Simmons, Mrg Simon, Jason Robert-Feil Sutton, Barry Vickrey**

\$10,000 PRESIDENTIAL FELLOWS

| | |
|---------------------------------|----------------------------|
| John P. Blackburn | Bob Morris |
| Richard D. Casey | Thomas J. Nicholson |
| Hon. Michael Day | Gary J. Pashby |
| Robert B. Frieberg | Stephanie E. Pochop |
| Thomas H. Frieberg | Reed A. Rasmussen |
| David A. Gerdes | Pamela R. Reiter |
| Hon. David R. Gienapp | Robert C. Riter |
| Patrick G. Goetzinger | Eric C. Schulte |
| G. Verne Goodsell | Jeffrey T. Sveen |
| Robert E. Hayes | Charles M. Thompson |
| Terry L. Hofer | Richard L. Travis |
| Steven K. Huff | Thomas J. Welk |
| Hon. Charles B. Kornmann | |

GOLD FELLOWS: \$5,000 -

Cumulative, including Pledge
Richard A. Cutler Dana J. Frohling
William F. Day, Jr. Richard L. Kolker
P. Daniel Donohue Scott C. Moses

YOU ARE INVITED TO JOIN!

Fellows of the South Dakota Bar Foundation

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

Full Name _____

Address _____

City _____ State _____ Zip Code _____

I would like to contribute:

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

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.

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

Credit/Debit Card Payments:

Name on Card (if different than above) _____

Address Tied to Card (if different than above):

Card Number: _____

Expiration Date: _____ CVV: _____

*Alternatively, you can call The State Bar (605-224-7554) to setup your payment(s).
Donations to the endowment are tax deductible and a perpetual gift to our profession and the education and charities the Foundation supports.

Dusty Ginsbach
Bar Commissioner

Please, allow me the opportunity to introduce myself. I am Dusty Ginsbach, at-large commissioner from the Fourth Circuit. I am the State's Attorney for Harding County, Operations Law NCO for the South Dakota National Guard, and the sole practitioner at Ginsbach Law, PC, among so many other things. I also happen to be one of the "Sweet Sixteen," as referred to by Past-President Pat Goetzinger, that is, among the first participants the Rural Attorney Recruitment Program, which was approved by the state legislature in the 2013 session as the Recruitment Assistance Pilot Program. Like many of you, I suspect, the bulk of my practice stems from my geographic location. I am not about to admit to you or myself that I have benefitted from being the only game in town. Even though I may be the only attorney within an hour's drive of my office, I am positive that is merely a coincidence. I like to believe that the success I have seen stems from putting myself out there, being an engaged member of many social circles.

As I have found in my community, opportunities abound for participation in service-based institutions. Boards, councils, nonprofit organizations...all are all-to-willing to extend invitations to get involved. Blessed with the inability to say the word "no," I years ago found myself swimming in community involvement. I would like to say that I have always had a soft spot for making communities stronger through volunteerism.

Taking a seat on the Bar Commission was no different. Prior to becoming a Commissioner, I had served on the Veterans Committee and the Natural Resources and Environmental Law Committee. Running for Commissioner was, perhaps a tad more intimidating than some other opportunities I have pursued, but after just a few months it has proven to be as painless, as challenging, and as rewarding as I

should have expected. I can say with confidence that your bar commissioners are the utmost professionals and truly have the well-being of our organization at the foremost of their hearts.

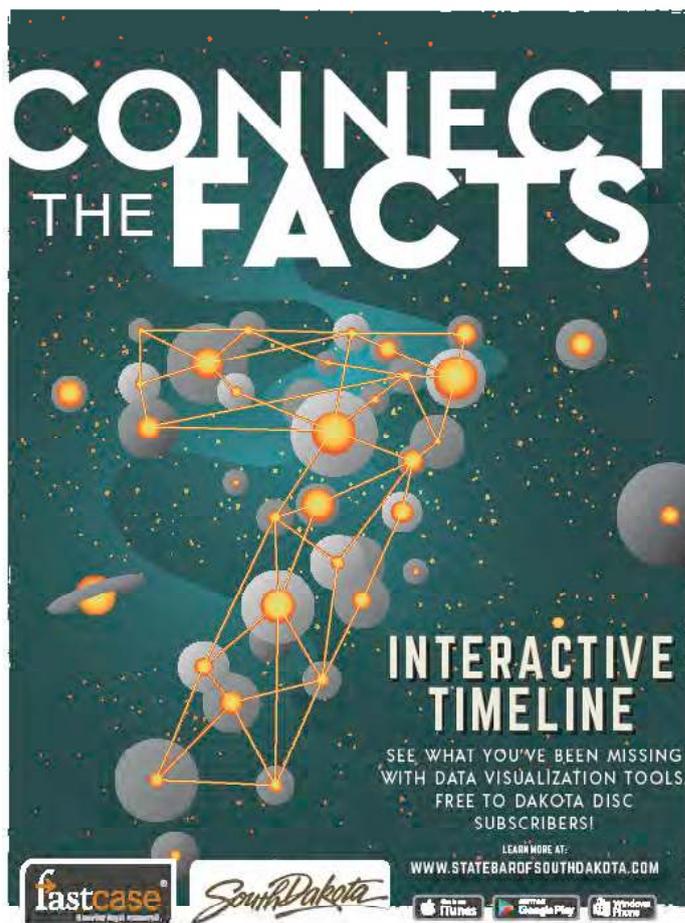
It is the spirit of involvement evident in the Bar Commission that is evocative of the great majority of our bar. This spirit is one of the things that makes me proud to be a member of the State Bar of South Dakota. However, involvement in the State Bar is only one measure of involvement. We are leaders at home and abroad and, like it or not, what we do as individuals reflects on our profession as a whole. Previous newsletters have focused on you, dear reader. They have been meant to inform you of the many things that our bar does for us and to remind each of us that we—you and I—are the bar. We—you and I-- are going to get out of this what we put into this. I am not going to do this. (Read: "I'm not going to do this...yet.")

I am going to ask you to do one thing. Rather, I am going to ask you to do one more thing. And that thing is...something. Do something that does not benefit you. Do something this week. Then, do something again next week and the week after. Lastly, don't go back and count the number of things I have just asked you to do. "Life can only be understood backwards; but it must be lived forwards." Thank Søren Kierkegaard for that obligatory quote that foreshadows the end of this article. Do whatever that something is to make the world a better place. Feed a stray cat. Tell the



woman who can't afford your retainer that they just became your newest pro bono case. Donate your time, effort, or money to a good cause.

Let these small steps towards living a life for others be the proverbial acorn that grows to be the tall oak of your legacy. I am not going to beg and plead with you to seek a leadership position in the State Bar. However, if you are the type of person willing to grit your teeth and bare through an article written by me, you may just be the type of person who would give in if asked enough. I am only going to ask that you continue to make our world a better place to live. If you should decide that you want to become more active in our bar. We are out there. We are looking for you. The names are on the website. They are in the directory. Reach out and we will find you. Especially if you are the kind of person who cannot say "no".



2018 John R. Justice Student Loan Repayment Program

Applications are being accepted until December 31st, 2018. All applications must be received or postmarked on or before this day.

Full time state prosecutors and public defenders as well as federal public defenders may qualify for John R. Justice funds. Elected officials and federal prosecutors are not eligible. Be sure to submit a copy of a recent statement for the loan you would like the award to be applied to. You may access the application form and service agreement options at the following website:

<https://atg.sd.gov/OurOffice/JohnJusticeProgram.aspx>

The Devil Is In The Details

By Michael S. McKnight

Anyone that has ever negotiated anything knows the oft repeated phrase “the devil is in the details”. In my experience as a mediator, I have found that often the parties or their lawyers leave until the very end what are often times significant and important terms of the settlement. I am not suggesting that this is intentional. In fact most times I believe the terms left until the end are terms that the proposing party is so familiar with that it actually is just an afterthought to bring them up. They assume that these terms are understood because they are so familiar to them - and you know that maxim about what happens when you assume something.

What are these devilish details? The most common one that I encounter is a confidentiality/non-disclosure provision. Such clauses are common place with many corporations but not always viewed as implicit (or with favor) by the plaintiff’s bar. I have seen tempers flare when the parties believe a settlement has been reached but then learn that the defense wants confidentiality which has not been mentioned all day. If confidentiality/non-disclosure is going to be a required term of any agreement my advice is to bring it up at the start. Better yet, if you are representing the party that is insisting on

confidentiality bring a draft of the provision you are going to propose with you to the mediation so the other side can have a chance to review it during the mediation.

Another common detail in the employment context are non-disparagement clauses, no re-hire provisions and the details of any reference letter. All of these are important to the overall settlement of an employment claim and deserve serious discussion at the start of the mediation and throughout the mediation session rather than at the end.

What are some others? If the paying party wants to discuss payment terms or payment over time obviously that is something that should be discussed from the beginning. Likewise indemnity and hold harmless clauses as well as liquidated damages provisions should not be left until the end of the day.

While the parties may not want to discuss the terms of settlement until a dollar value settlement has been reached the mediator should make sure these provisions are on the table right off the bat. It is very easy for the mediator to inquire of the parties, either in joint session or in the initial private caucus, whether there are other terms of settlement such as the above that need to be discussed.



details

BOARD OF BAR COMMISSIONERS
Minutes, August 23, 2018
Meeting Held by Teleconference

President Reed Rasmussen called the meeting to order at 9:00 a.m. on Thursday, August 23, 2018. Present by telephone were Rasmussen, President Elect Huff, Commissioners Ginsbach, Hopper, Hruska, Pilcher, Sutton, Thompson Kerver, Tobin, Willert, Williams (Jennifer), Williams (Rich), Wurgler, Zea, and Secretary-Treasurer Andrew Fergel.

After calling the meeting to order, President Rasmussen gave a short report about the interviews that were conducted for a State Bar contract lobbyist on August 21, 2018, in Pierre, South Dakota. President Rasmussen stated that all the firms offering proposals were strong candidates and that the proposals were all within the dollar amount budgeted for by the Commission. President Rasmussen then gave the Bar Commission the subcommittee's recommendation regarding which firm to offer the contract to and under what terms. After a short discussion, a motion was made by Commissioner Tobin, seconded by Commissioner Wurgler, to approve the subcommittee's recommendations and to have the Executive Director extend said contract to the recommended firm and enter into a contract with said firm if the offer is accepted. Motion passed.

The Board next took up the issue of where to hold the annual meeting in the year 2023. Executive Director Fergel informed the Board that the information provided during the July 2018 board meeting concerning the locations of and venues contracted with from 2020 through 2022 was incorrect. After being provided correct information about which cities and in what venues the annual meeting is scheduled to be held in the years 2019 through 2022, a motion was made by Commissioner Sutton, seconded by Commissioner Willert, to hold the 2023 annual meeting in Sioux Falls, South Dakota, instead of Pierre, South Dakota, as was previously approved at the Board's July 2018 meeting. Motion passed.

Next, Executive Director Fergel reported that the Bar had completed the purchase of a new vehicle for use by the Strategic Plan Coordinator under the terms previously approved by the Board and that a proposed vehicle use and procurement policy for the Board's review and potential adoption would be presented at its next monthly teleconference meeting.

President Rasmussen and the Board then held a brief discussion about requests for the State Bar's email list and when it is appropriate for the State Bar to provide the list for a fee. No action was taken after the discussion.

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

Respectfully submitted,



Andrew L. Fergel
Secretary-Treasurer

Application for Pro Bono Emeritus Status

I, _____, an active member of the State Bar of South Dakota, do hereby apply for Pro Bono Emeritus Status, for the year 2019.

I understand that if approved, rather than pay regular dues for the year 2019, I will only be required to tender the sum of \$100 (same as inactive dues) but I will be entitled to all the rights and privileges of an active member of the State Bar.

Further, I recognize that this status means that I will be requested to take a referral from East River Legal Services, Dakota Plains Legal Services, or Access to Justice, and I am willing to accept at least one referral in the year 2019.

Finally, I acknowledge that pursuant to the Pro Bono Emeritus Status, I have retired from the active practice of law and I cannot accept private clients, cases for friends or relatives (even if no fee is charged) and that my practice is limited to such referral cases as I accept from the Legal Services Programs, Access to Justice or a non-profit specifically approved by the State Bar. In the event that I decide to accept cases other than those referred to me and which I accept, that I will tender regular active dues and withdraw from the Pro Bono Emeritus Status Program.

I understand that the Pro Bono Emeritus Status Program will provide me with professional negligence insurance limited to those referral cases of which I accept.

Dated this _____ day of _____, 20__

Signature _____

Printed Name _____

Address _____

City, State, Zip Code _____

Phone _____ Email _____



Supreme Court of South Dakota

OFFICE OF THE CLERK
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
(605) 773-3511

Shirley A. Jameson-Fergel
Clerk

Laura J. Graves
Chief Deputy

Amy Hudson
Deputy Clerk

Sarah L. Gallagher
Deputy Clerk

October 4, 2018

Mr. Andrew Fergel
Executive Director
State Bar of South Dakota
222 E Capitol Ave
Pierre SD 57501-2596

Re: February 2019 Rules Hearing

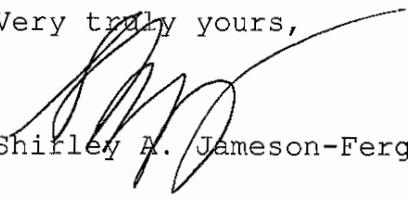
Dear Mr. Fergel:

The 2019 annual Supreme Court Rules Hearing will be held at 11:00 a.m. on Wednesday, February 20, 2019, in the Courtroom of the Supreme Court, Capitol Building, Pierre, South Dakota.

An original and ten copies of proposals for amendment or adoption of rules should be filed with the Clerk of the Court no later than November 26, 2018. Please comply with SDCL 16-3-5.1 when submitting proposals.

Please publish this letter in the November 2018 edition of the State Bar Newsletter.

Very truly yours,


Shirley A. Jameson-Fergel

ANNOUNCEMENTS

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

Tanner J. Jackson
became an associate attorney in the firm effective
September 2018.

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

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

www.boycelaw.com

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

Kelsey E. Knoer
became an associate attorney in the firm effective
September 2018.

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

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

www.boycelaw.com

Gunvordahl & Gunvordahl Law Office
is pleased to announce that

Rachelle M. Norberg
has joined the firm.

PO Box 352
742 Main Street
Burke, SD 57523

Telephone: (605) 775-2531
Facsimile: (605) 775-2531

rachelle@ggnlawfirm.com

Johnson, Janklow, Abdallah & Reiter, LLP
is pleased to announce that

Anthony P. Sutton
has joined the firm as an Associate Attorney.

101 South Main Avenue, Suite 100
Sioux Falls, SD 57104

Telephone: (605) 338-4304
Facsimile: (605) 338-4162

anthony@janklowabdallah.com

Goosmann Law Firm
is pleased to announce that

Anna Limoges
has joined the firm as an attorney.

5010 S. Minnesota Ave.
Sioux Falls, SD 57108

Telephone: (605) 371-2000

LimogesA@GoosmannLaw.com
www.goosmannlaw.com

Fuller & Williamson, LLP
is pleased to announce that

Andy T. Fick
former Law Clerk to the
Honorable Karen E. Schreier
and to the
Honorable Roger L. Wollman
has joined our firm.

7521 South Louise Avenue
Sioux Falls, SD 57108

Telephone: (605) 333-0003

afick@fullerandwilliamson.com
www.fullerandwilliamson.com

Fredericks Peebles & Morgan

has relocated their office to

830 W. Fulton Street, Ste. 102
Rapid City, SD 57702

Telephone: (605) 791-1515
Facsimile: (605) 791-1915

rkidder@ndnlaw.com
bbousch@ndnlaw.com

Hall Law Firm

has relocated their office to

405 Eighth Avenue Northwest, Suite 327
Aberdeen, SD 57401-2715

Telephone: (605) 225-1652
Facsimile: (605) 225-0761

ron@rhalllaw.com
www.halllaw.com

2nd CIRCUIT

*Young Lawyers Hagemann-Morris
Mentorship Mixer*

*Come join the Young Lawyers Section of The
South Dakota Bar for Drinks, Food, and TRIVIA!!!!*

**THURSDAY,
November 15, 2018**

@

5:30 pm

**REMEDY BREWING
COMPANY**

**401 E 8th St., #120
Sioux Falls, SD**

Sponsored by:





Briefly

legal research and writing service

“I need a motion for partial summary judgement on Plaintiff’s nuisance cause of action...”

“I need someone to go through all this discovery looking for...”

“I need a three-page memo on inverse condemnation...”

“My supreme court brief is done; I just need someone to spend two hours proofreading and cite checking it with fresh eyes, maybe rewriting the conclusion?...”

For more information visit

brieflysd.com

on-point. on time. on-demand.

Briefly, LLC - 1209 Junction Ave. Ste. 1 Sturgis, SD 57785 - insured and licensed to practice law in South Dakota



HERO

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



THE 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.

OUR LEGAL SUPERHEROES

- MICHAEL PAULSON
- MARILYN TREFZ*
- JERRY RACHETTO
- THOMAS E. BRADY
- ANONYMOUS
- PENNINGTON COUNTY ATTORNEY
- MIKE WHEELER
- LINDSAY HOVDEN
- JERAD TOMAC
- EMILY SWANSON
- JUSTIN BELL
- BRYAN HEDMAN

*Accepted multiple cases this year

And **THANK YOU** to
Scott Moses
Beth Baloun
Tom Simmons and
Mrg Simon
for answering questions on SD Free
Legal Answers!

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

LAWYERS CONCERNED FOR LAWYERS LAWYERS ASSISTANCE COMMITTEE

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

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

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

Caribou Coffee Club

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

Attendance is limited to lawyers.

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

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



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

Sand Creek

WORKPLACE WELLNESS

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

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

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

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

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

The Sand Creek website, www.sandcreekeap.com,

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

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

We encourage you to use this valuable benefit.

Sand Creek is a HIPPA compliant service.

Go to www.sandcreekeap.com
Click the Work Life Wellness Login Link

Our Company ID is sbsd1

Or call 800-632-7643

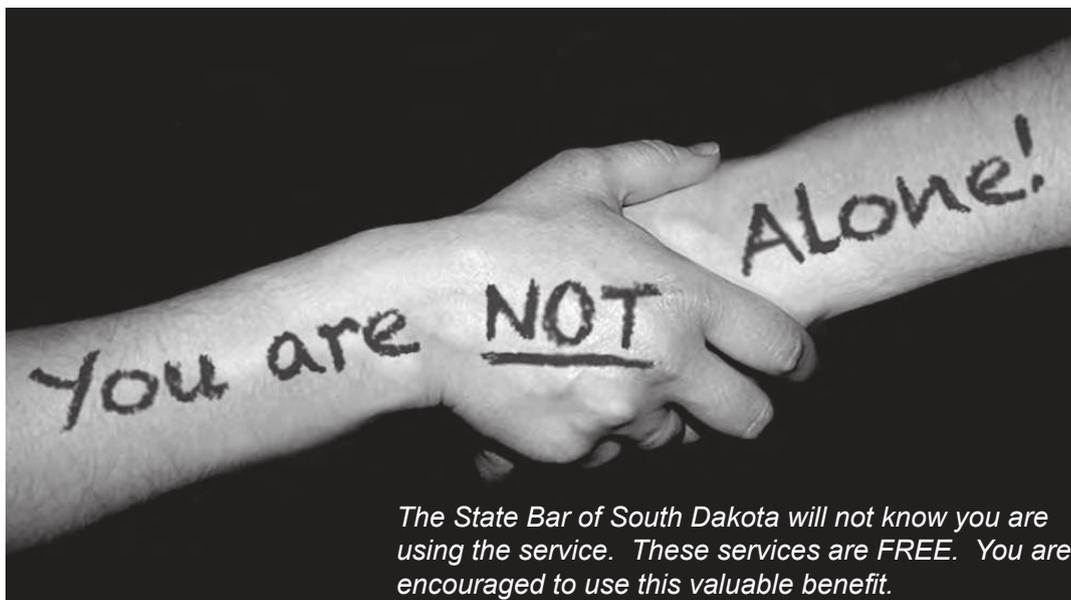
Monday-Friday, 7:30am-5pm CT

Immediate, Confidential Support

24 hours a day/7 days a week:

888-243-5744

All discussions and services are kept strictly confidential.



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

Full Plates: Prioritizing Our Time

By: Daniel J. Enga

In psychology, the Zeigarnik effect states that people remember uncompleted or interrupted tasks better than completed tasks. This can cause unnecessary stress and shame when we're focused on all that needs to get done, but can't seem to find the time.

Don't fret! This is a problem that nearly everyone faces at one time or another. Time is a valuable commodity, as there is only so much of it to work with each day. As such, shaping the manner of our daily life can become overwhelming when trying to juggle work, family and other obligations that tend to leave our own personal self care; or even our goals by the wayside.

Here are some ideas to consider when managing your own full plate.

Having a Me-First Mentality

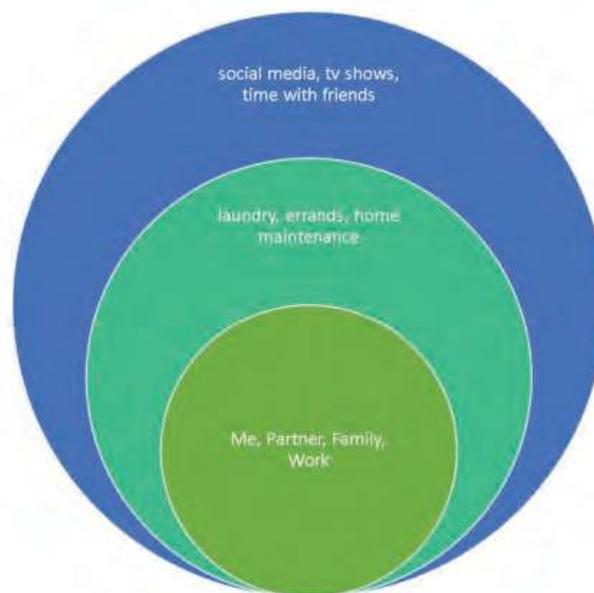
This may seem selfish or self-serving, but if you think about it, if you're not taking care of yourself then it's difficult to manage the competing obligations or priorities that require your attention. If that happens, other areas of your life, or sometimes even people in your life, end up suffering the impact. Putting yourself first is a good foundation to ensure consistency and overall mental and physical well-being. This means creating solid rules around sleep, exercise, hobbies and the attainment of personal goals. Sometimes this means creating a new habit of getting up a bit earlier in the morning, or on the flip side, staying up a bit later in the evening to ensure that you make yourself and your needs a priority. This helps build confidence, is renewing and builds resiliency when other areas of your life seem to be off the rails.

Radial Thinking

Sit down with a piece of paper and draw a circle. Inside that circle you will list three things that are pivotal in regard to daily priorities (don't forget to add you first!). These are the areas by which you will have the most energy and impact, and they are usually areas that require our immediate attention: ourselves, work, kids, or even crisis situations, etc.

Then, outside that circle draw another circle around the first, inside that you will list other things that are considered next-level-importance. These are things that are considered important, but non-urgent: laundry, errands, home maintenance, etc., whatever you feel is next in line in relation to the first circle. You will no doubt see some connectivity here.

Then again, another circle around the second for things such as time with friends, social media, or perhaps following up on a trivial activity that keeps getting put off. One thing that most people value is being able to visually see where they are at in terms of how priorities lay out, not unlike list making.



However, radial thinking goes a step further by asking you to choose what's most important and therefore assign a level of value as well as confirmation as to its need. Awareness of why you do something feeds its purpose and therefore helps with motivation and understanding. Also, having a radial mentality helps you see that as the ripples of your circles expand, so does the energy required to meet those demands. It's ok to recognize that once you expand out to the third and maybe even fourth circles that the time and energy for that particular day may have already been expended, and as such, that priority might not be all that important, after all, you put it there.

Do Just One Thing

You may look at the circles and see that there are a lot of different tasks that need to be done: oil changes, kid's haircuts, take the dog to the vet, clean the gutters, or possibly go visit the elderly neighbor. You may notice that you continually see there is no time or energy left available to you! This is where you simply choose to do just one thing for that day. Move one thing deeper to your core circle. Accomplish it. Remove it. Rinse and repeat. Not only does this help you feel like you accomplished something, it will leave you feeling more peaceful and less stressed out. Sometimes when we have so many different items that are far out of the periphery, it helps to isolate just one or two and then before we know it, they're done!

Delegate

Sometimes it helps to ask others to help with things that need doing. Whether in the workplace, or at home, having another person involved in accomplishing a task or a priority can save time and headaches. Teaching a child to unload the dishwasher; or to fold the laundry

FULL PLATES, CONTINUED...

can provide quality time not only for the child, but also for the parent when working to establish long-term self-sustaining habits. At work, sometimes it's a good idea to identify individuals with skill sets outside your own to help get projects completed and provides the potential for collaboration and fulfillment.

Finding the time to get everything done in our busy lives is always going to require a consistent effort. By putting yourself first, making things visual, and looking for opportunities to engage the assistance of others in your day to day schedule, we can lighten the load and feel empowered to lead more rich and productive lives.



You Get to Say Yes, When You Say No

By: Erica Kanewischer, Ph.D., LMFT

It seems for many people that when autumn arrives, life suddenly zooms into high speed. People are so busy, yet no one seems to want to be busy. Opportunities pop up everywhere. Friends call, fliers for activities for the kids come home from school, events pop up on your Facebook feed, projects at work pile up, holidays loom...the list goes on and on.

And the opportunities are all (mostly) wonderful. We know being in community, learning new things, and feeling productive are great. Until they are not.

Until we feel rushed, overwhelmed, and disconnected from the people that matter the most.

At that point, we can feel stuck and wish we'd remember to say no to some opportunities. In her book, "The Gifts of Imperfection," Dr. Brené Brown discusses ten guideposts for whole hearted living.

Number seven is letting go of exhaustion as a status symbol and productivity as self-worth. I see us clinging to these all around. Dr. Brown encourages us to try letting go of these in order to cultivate rest and play (Brown, 2010).

I wonder, how do we make room for rest and play in our lives in order to nourish our bodies, families and relationships? To me, part of this process is remembering that when we say **no** to one opportunity, we are saying **yes** to another.

Revisit Your Priorities

We all have priorities, but sometimes our time and what we hope to prioritize aren't matching up. Revisiting what these priorities are helps us to re-center. This could be a conversation with a partner, close friend, relative, EAP counselor, or self-reflection.

With the resources you currently have (time, money, energy) what do you most want to allot them to? It

could be a time in your life where you are focusing on your physical health, your family, a child's new sport they are pursuing, a new career or your marriage. It could be a time where you are putting in extra hours at the office for advancement, or pursuing a graduate degree. Do you feel strongly about a local cause, or are you re-doing your basement? We all have our own priorities in different times of life, but we can't make everything a priority all the time.

What are your top three to five priorities? Does the way you are spending your time match with your priorities? Does the opportunity that is presenting itself help you attend to one of your priorities in this season of life? This may also include doing an honest analysis of how you spend your time. Looking at the breakdown of how time is being spent can help you plan and organize in order to truly try to put your priorities first.

Get Comfortable with Not Pleasing Everyone

It feels good to say "yes" and give to others. It can be affirming to be helpful and offer resources. It feels nice to be involved, in the know and part of a team.

And yet sometimes, when our plates become full, it is too much, especially when the tasks add up and we feel pressure to say "yes." Many of us are natural people pleasers and would readily sacrifice our own comfort to make others happy and be helpful. Notice this about yourself. And make yourself a priority, too. Sometimes saying "no" may be disappointing to others. This is okay. People can feel disappointed, and you can continue to be in relationship with them. You can share with them that your decision is about changes you're making and how you are choosing to spend your time. There is usually a way to maintain connection despite setting a boundary with your time and involvement in activities.

Difficulty disappointing others may also be an indicator to do some self-reflection or work with a counselor regarding this pattern in life, or feelings of self-worth

MENTAL HEALTH BENEFITS OF SPENDING TIME IN NATURE, CONTINUED...

that are tied to others being happy with you. It can be tough stuff, but also meaningful and important to learn about yourself as you work on setting boundaries.

Buy Yourself Some Time

Pause. Don't answer right away. Let others know that you'll get back to them with your decision. Use that time to consult with someone you trust, look at your schedule, revisit your priorities, and imagine what saying yes and no would look like to your daily life. A few night's sleep on an issue can make a big difference in the way you see it. A rushed decision can feel pressured and may be more regrettable. Take time to think the options through. It may also help to rehearse how you want to respond. Practice can help boost your own confidence in your decision.

More Opportunities Are Not Always Better

It sometimes seems like we are bombarded with opportunities to add to our schedule. However, is more X, Y or Z necessarily better for our happiness, children's development, family connectedness or mental health? There are many myths regarding family life. Three myths are that if we manage our time correctly everything will fit, that the quality of family time can make up for low quantity, and that all together time needs to be planned into fun activities. These can be harmful and create undue pressure. We know that setting aside family time in larger chunks is important to developing rituals, closeness and attachment (Fraenkel & Capstick, 2015). Looking again at the priorities you've laid out, and what is possible with your finite resources can help you to choose what indeed will be good opportunities, and what will create un-needed stress.

Remember, You are Actually Saying "YES"

Visualize. What would you like to see happen with your time, schedule, or family life? Talk to others in your family about it. What does this look like? This vision is what you're saying "yes" to when you say "no" to something else.

When you decide not to run the local charity fundraiser this year, you are saying "yes" to nightly walks around the track with your best friend.

When you don't let your son join the traveling hockey team, you're saying "yes" to family dinners more often.

When you say "no" to the optional extra project at work, you're saying "yes" to more time to devote to supervising the new staff assigned to you.

Or when you limit babysitting the grandkids to once a week, you're saying "yes" to the new art class you wanted to take.

Remember, the "no" comes with a "yes" for something else, and this can make all the difference.

Dr. Brené Brown's Ten Guideposts for Wholehearted Living *From The Gifts of Imperfection (2010)*

Cultivating authenticity
Letting go of what people think.

Cultivating self-compassion
Letting go of perfectionism.

Cultivating a resilient spirit
Letting go of numbing and powerlessness.

Cultivating gratitude and joy
Letting go of scarcity and fear of the dark.

Cultivating intuition and trusting faith
Letting go of the need for certainty.

Cultivating creativity
Letting go of comparison

Cultivating play and rest
Letting go of exhaustion as a status symbol and
productivity as self-worth

Cultivating calm and stillness
Letting go of anxiety as a lifestyle.

Cultivating meaningful work
Letting go of self-doubt and "supposed to."

Cultivating laughter, song and dance
Letting go of being cool and "always in control."

References

Brown, Brené. (2010). *The Gifts of Imperfection*. Hazelden: Center City, MN.

Fraenkel, P. & Capstick, C. (2015). *Contemporary Two-Parent Families: Navigating Work and Family Challenges*. In Froma Walsh (Ed.), *Normal Family Processes (4th ed., pp. 78-101)*. New York, NY: The Guilford Press.



Q3 BUSINESS & ECONOMIC DATA ANALYSIS SUMMARY

**SOUTH DAKOTA
SECRETARY OF STATE
SHANTEL KREBS**

In partnership with



Third Quarter 2018

Secretary's Minute: When I took the oath of office in January 2015, I was taking on an office that was a failing bureaucracy with no accountability. Business filings were over 6 weeks behind and UCC filings were over 80 days behind, among other areas in disarray. I had to put an action plan together quickly to turn the office around and regain the trust that the Secretary of State's office demands.

As my term ends this year, I wanted to share with you the long list of projects that were completed and how we turned the office around in the short time I was here. I think the best way to recap is to highlight just a few areas:

- My priority was to upgrade the business and Uniform Commercial Code online filing systems so that customers can file documents instantaneously. We have filed over 79,000 active businesses in FY2018, which is an all-time high, compared to FY2012 in which the office filed 49,660 active businesses. The ease of our new online business filing system hit another filing record in new businesses formed in FY2018, totaling 8,864, compared to 6,415 new businesses formed in FY2012. UCC filings totaled 55,646 for FY18 in the new system.
- I have made a concerted effort to make sure that more information is easily accessible on the website. For example, Executive Proclamations are now available to the public dating back to 1903. For those of you utilizing the new online business filing system, you may have noticed that there are more documents readily available going back over 25 years. Over 5.3 million documents have been uploaded and are now available on the business/UCC filing sites.
- I upgraded the concealed carry permit that our office issues to a more official looking permit. South Dakota now has over 100,000 active concealed carry permit holders in the state compared to 87,655 active permit holders in 2016.
- I focused on registering more voters. My Value the Vote tour has led me to high schools, universities and service organizations across the state. Since taking office, voter registration numbers have grown by almost 20,000 new registered voters to a total of nearly 540,000 registered voters in the state of South Dakota.
- I implemented a Zero-Based budgeting operation to run at the speed of business, not at the speed of government. This format allowed me to revert (money not spent) \$69,000 back to the state general fund. In the last two fiscal years, I have requested budget cuts of over \$174,000. All while growing revenue by nearly \$2 million more to the state's general fund to the tune of \$7.5 million in FY2017.

I have always said that a good leader surrounds herself with even better people and that is what I have in my team. Thank you for giving me this opportunity to serve you.

Third Quarter 2018 Economic Highlights

- SD's unemployment rate is 3.0% at the end of the 3rd quarter.
- Taxable sales increased by 2.1% in Q3.
- Total new entities were up by 13.3% over the prior year.
- Personal income increased by 2.2% over the prior quarter..
- Employment was up by 1.4% over the prior year.
- Most national indicators improved in Q3.

| SOUTH DAKOTA | Current Period | 3 Months Prior | Percent Change over Prior Period | Annual Percent Change | 5 Year CAGR* |
|--|----------------|----------------|----------------------------------|-----------------------|--------------|
| Wealth | | | | | |
| Personal Income (millions of dollars) | 43,511 | 42,595 | 2.2% | 2.7% | 2.7% |
| Total Sales, 12 mo. trailing (millions of dollars) | 75,447 | 72,474 | 4.1% | 14.0% | 2.6% |
| Taxable Sales, 12 mo. trailing (millions of dollars) | 22,159 | 21,702 | 2.1% | 6.1% | 2.9% |
| Business Outlays | | | | | |
| Average Weekly Wage per Employee | 842 | 856 | -1.6% | 2.8% | 3.5% |
| Retail Gasoline Price (dollars per gallon) | 2.84 | 2.77 | 2.5% | 13.6% | -3.5% |
| Economic Overview | | | | | |
| Employment | 441,400 | 440,700 | 0.2% | 1.4% | 1.1% |
| Unemployment Rate | 3.0% | 3.2% | -6.3% | -11.8% | -4.1% |
| Initial Jobless Claims | 144 | 158 | -8.9% | -22.2% | -9.3% |
| Continuing Jobless Claims | 772 | 1,132 | -31.8% | -15.2% | -10.2% |
| Building Permits, Number of Units, 12 mo. trailing | 5,364 | 5,369 | -0.1% | 9.4% | 0.2% |
| Valuation (thousands of dollars), 12 mo. trailing | 872,158 | 870,783 | 0.2% | 9.6% | 4.0% |
| FHFA Purchase-Only Home Price Index | 293 | 286 | 2.4% | 4.6% | 5.0% |
| Total Business Bankruptcy Filings | 10 | 15 | -33.3% | -23.1% | -5.1% |
| Chapter 7 | 4 | 6 | -33.3% | -50.0% | -12.9% |
| Chapter 11 | 1 | 1 | 0.0% | - | - |
| Chapter 13 | 3 | 4 | -25.0% | -25.0% | 8.4% |

Sources: Bureau of Economic Analysis, Quarterly Personal Income (SA) (Q2/18); South Dakota Department of Revenue (NSA) (9/18); South Dakota Department of Labor and Regulation (SA) (Q1/18); US Energy Information Administration, Weekly Retail Gasoline and Diesel Prices, Midwest (10/1/18); Bureau of Labor Statistics, CES (SA) (9/18); US Department of Labor, Employment and Training Administration (NSA) (9/29/18); Census Bureau, New Privately Owned Housing Units Authorized (NSA) (8/18); FHFA Purchase-Only Home Price Index (SA) (Q2/18); Administrative Office of the US Courts (Q2/18). *Compound Annual Growth Rate.

For full report, please visit <https://sdsos.gov/general-information/publications/default.aspx>

Offering More

Meet the KTLLP Business Valuation Team

Certified Business Appraisals

A QUESTION OF VALUE:

What should I know about valuations for the purpose of marital dissolution?

Your client has come to you with the decision to sell his/her business. What now? From a valuation perspective, he/she should consider the following:

- Clean Financials - Ensure no personal expenses or assets used for personal use are on the books.
- Real Estate - Decide whether real estate will be included in the business. If so, obtain value. If not, estimate a fair market rent.
- Contracts - Determine if contracts can be transferred to a buyer.
- Buyers - Make a list of possible buyers. Visit with employees to see if one or a group is interesting in buying.
- Selling price - Contact your certified business appraiser to assist in determining a reasonable sales price. It's important not to set the price too low and leave money on the table. Conversely, setting the price too high may disgruntle potential buyers.

Working towards selling should begin three to five years prior to the desired sale date.

Call us to assist with a successful sale!



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

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

Ketel Thorstenson, LLP

Certified Public Accountants/Business & Personal Consultants

ktllp.com

810 Quincy Street | Rapid City | 342-5630  609 Mount Rushmore Road | Custer | 673-3220
123 East Jackson Boulevard, Suite 2 | Spearfish | 642-7676  305 S. Garner Lake Rd., Ste. A | Gillette | 307-685-4433

In Memoriam



Albert B. Kerkhove
Aug 20, 1950 - Sep 1, 2018

Preceded in death by parents, Albert B. and Eunice Kerkhove. Survived by wife, Kathy; sons, Eric (Connie) and Thomas; granddaughter, Emmaline; brothers, David (Karen) and Dennis; sisters-in-law and brothers-in-law: Ann Baker (Gary), Larry Kyte (Linda), Frank Kyte (Janet), Bob Kyte, Ray Kyte (Margereta), Don Kyte (Tammy), and Ben Kyte (Chris); nieces and nephews.

Memorials to Augustana University, West Hills Church, or American Cancer Society.
HEAFEY-HOFFMANN-DWORAK- CUTLER,
WEST CENTER CHAPEL
7805 W. Center Rd.
Omaha, NE
402-391-3900

Supreme Court Justice Steven L. Zinter

For Immediate Release
October 30, 2018
Pierre

Supreme Court Justice Steven L. Zinter has passed away from complications related to surgery. The Supreme Court and Unified Judicial System staff are heartbroken at the loss of such a fine person. The Supreme Court extends its sympathies to Justice Zinter's family and friends and especially to his wife Sandy and daughters Sarah and Kelly.

"He was a giant in South Dakota's legal community and judiciary and possessed a positive personality the likes of which I have never seen. We are all better for knowing him." Chief Justice David Gilbertson.

Funeral arrangements are pending and will be announced at a later date. Please contact Greg Sattizahn at 605-773-3474 for further information.

Professional Liability Insurance for Attorneys

RhodesAnderson Insurance proudly offers the Attorney Protective program:

- \$25,000 of claims expenses paid in every covered claim before the deductible applies
- Disciplinary proceedings coverage of up to \$100,000 in aggregate
- Four ways to reduce your deductible by 50%, up to a total reduction of no more than \$25,000
- Underwritten by National Liability & Fire Insurance Company, which has an A++ A.M. Best rating

For more information, visit www.attpromote.com/243/SD or call RhodesAnderson Insurance at (605) 225-3172 or (800) 658-3362.



The products and coverages advertised herein are not currently available in all states; future availability may be subject to regulatory approval. A.M. Best rating as of 7/21/16. Product availability varies based upon business and regulatory approval and differs between companies. All products administered by Attorney Protective and underwritten by National Liability & Fire Insurance Company or its affiliates. Visit attorneyprotective.com/affiliates for more information. © 2017 Attorney Protective. All Rights Reserved.

AMERICAN BAR ASSOCIATION

STATE DELEGATE REPORT

SOUTH DAKOTA

Dick Travis

dtravis@mayjohnson.com

2018 Annual Meeting in Chicago

The American Bar Association convened for its 140th Annual Meeting in **Chicago, IL**, August 2 – 7, 2018. Chicago is a great place for the thousands of Association members from across the country to meet, share ideas, learn from leading colleagues, and to network and promote issues of importance to the legal profession. Highlights of the Annual Meeting included:

- *The ABA General Assembly:* The processional of ABA State Delegates with state/territorial flag continued to be a great opening for this renowned event, and ABA President Hilarie Bass introduced [Bryan Stevenson](#), acclaimed lawyer, social justice activist, founder and executive director of the Equal Justice Initiative, and ABA Medal Awardee as the keynote speaker. He encouraged lawyers to “create justice by opening doors and getting closer to the poor and neglected”.
- *Honors and Awards:* In addition to Bryan Stevenson being awarded the 2018 ABA Medal, throughout the week many of the profession’s top lawyers were also honored and awarded at special events including the Annual Dinner which gave honor to the Judiciary, the Thurgood Marshall Award Dinner honored [Former Attorney General Eric J. Holder](#), and many others were honored and awarded at events like the Pro Bono Publico Awards Luncheon, and the Margaret Brent Women Lawyers Achievement Awards Luncheon.
- *Great Programming:* Building on the success of last year’s series, round #2 of “CLE in the City” was outstanding. Chicago law firms and top area law schools opened their doors for CLE in the “Second” City! The eight substantive tracks offered included Cybersecurity Law; Ethics; Family Law; Gaming, Sweepstakes & Franchise Law; Legal Writing, Ethics & Persuasion; Litigation; Mergers & Acquisitions; and Privacy & Security.

In addition, new this year were the following two ABA Forums developed with a focus on current news events:

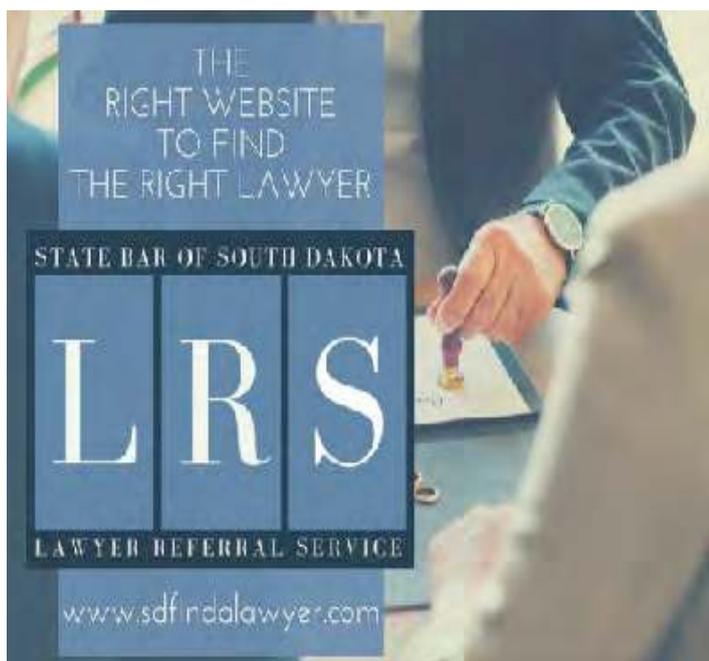
- [#MeToo, Times Up – Sexual Harassment in the Workplace](#) (moderated by President Hilarie Bass)
- [The Deputy Attorney General of the United States, Rod Rosenstein](#)
- *The New and Never Old:* New was the ABA Sidebar and Bookstore which was a refreshing concept that served as the main meeting place for members to make meaningful connections with select vendors, ABA services, and fellow attendees. There was the wonderful return of Defense Attorney & CNN/HLN Legal Analyst Joey Jackson as Master of Ceremonies for the It’s Only Fair 2! - Legal Services Corporation Concert and Rally which featured Chicago stage and cabaret performers. Also, attendees, guests, ABA and hotel staff volunteered their time again to help assemble 500 hygiene kits for the 2018 Community Service Project - *The Night Ministry*, a Chicago-based organization that works to provide housing, health care and human connection to youth and Young adults experiencing homelessness.
- *The Membership Meeting:* Candidates seeking officer positions answered questions of the membership; and the Nominating Committee voted on a proposal to present to the House to amend the current Principles and Guidelines on the Election of Officers.
- *The House of Delegates:* The House met for 1½ days. The [Daily Journal](#) of the actions of the House and the [Select Committee Report](#), which is a more comprehensive summary, can be found on the [House of Delegates Webpage](#). The current edition of the [ABA Washington Letter](#) also provides a detailed report. The House gavel was passed to President, Robert M. Carlson of Montana, election results for members of

the Board of Governors was announced, and the House welcomed its newly elected officer: President-Elect, Judy Perry Martinez of Louisiana. The House also voted on amendments to the Association's Constitution, Bylaws and House Rules of Procedures, approved amendment of the Association's dues structure, and considered many resolutions on an array of topics and issues including, administrative law judiciary, archiving, business law, civil rights and social justice, courts, criminal justice, disability rights, dispute resolution, domestic and sexual violence, ethics and professional responsibility, family law, general practice, gun violence, immigration, intellectual property law, international law, law and aging, legal education, legal services, membership dues, paralegals, sexual orientation and gender identity, specialization, taxation, and well-being in the legal profession. Rahm Emmanuel, Mayor of Chicago gave remarks and the House presented the [2018 Resolution and Impact Video – Ending Indiscriminate Shackling of Juveniles](#), and provided a presentation on [How a Changing Privacy Landscape Affects Your Life Practice](#).

Please visit the [ABA Home page](#) for upcoming registration information for the 2019 Midyear Meeting in Las Vegas, Nevada, January 23-28, and to access the most [current news for the legal profession](#). There are many new and innovative and evolving happenings at the ABA and your commitment to the ABA makes a difference. I ask that you encourage other lawyers, especially those recently admitted to the bar, to join the ABA. The ABA works hard to benefit the legal profession and there are many member benefits. Just check out [ABA Member Advantage](#).

As always, if you have any questions or comments, or if Sarah Theophilus, Beth Overmoe or I can be of assistance helping you navigate the many programs and benefits of our Association, please email me.

Regards,
Dick Travis
ABA South Dakota State Delegate



Helping Grow & Protect
Client Business

Data Privacy
Licensing
Copyrights
Trademarks

SUSAN JENNEN
SD, MN & NY Licensed
Certified Information Privacy Professional (CIPP/US)
Clark, SD 605-532-3300
www.JENNENLAW.com

Working With Firms & Clients
For Over 20 Years



UNIVERSITY OF
SOUTH DAKOTA
SCHOOL OF LAW

USD Law Fundraising Update

By Sara Hughes, Director of Development – USD School of Law, USD Foundation



In the January 2018 President's Corner, former State Bar of South Dakota President Pamela Reiter issued a challenge to each of USD Law's graduating classes to band together this year and contribute financially to provide one full-tuition scholarship for a law student. As Pamela explained in her letter, USD Law and the USD Foundation, under then-President Abbott's leadership, started a new scholarship fundraising campaign in late 2017 called the "15 x 15" Scholarship Campaign. The goal of the campaign is to provide full-tuition, three-year scholarships to 15 highly-qualified students in each of USD Law's incoming classes. At the beginning of the campaign, tuition was approximately \$15,000; therefore, each scholarship cost \$45,000.

That scholarship campaign, now called the "Top 15" Scholarship Campaign due to rising tuition costs (currently \$16,144 per year, or \$48,432 for three years), is still very much underway, and all of us at the USD Foundation and the law school have been so touched by the generosity of our alumni and friends. The following is a list of donors who have pledged to fund a full scholarship for this campaign:

- President James W. Abbott
- Great Plains Education Foundation (9 total scholarships over 3 years)
- Harvey ('73) and Cynthia Jewett
- James ('77) and Kathy McMahon
- Mark ('70) and Justice Judith ('77) Meierhenry
- Mark and Cynthia ('95) Mickelson and Linda Mickelson Graham
- Sanford Health
- South Dakota Trust Company
- Ryan Taylor ('99)
- Charles Thompson ('69)
- Fred ('73) and JoAnn Winkler

Others, such as Siegel, Barnett & Schutz, LLP, have pledged one-third or one-half of a scholarship, not to mention the countless donations we've received from a multitude of additional alumni and friends. Those donations enabled us to provide 13 three-year full-tuition scholarships for students in the USD Law Class of 2021, which were awarded to such deserving students as Berkley Fierro (Rapid City), Tom Schartz (Humboldt), John Nelson (Chester), and Cate Dougherty (Sioux Falls), all of whom met the minimum LSAT and GPA requirements set for recipients. Watch Berkley discuss the impact of this scholarship on her life: <https://www.youtube.com/watch?v=TvKKS7DKunc>

Your generosity has also played a part in the law school's recent successes. The first-time passage rate on the South Dakota Bar Examination for USD Law graduates rose to 82% based on the results from the July 2018 exam. Recent increases in scholarship support helped the school welcome its most highly-qualified incoming first-year class in years. The Class of 2021 includes 73 students (a 22% increase from the previous year) with a 3-point rise in median LSAT score – the highest median LSAT score since 2010. Furthermore, diversity of the class is up from 3% to 14%.

We have come a long way, but we still have far to go. To reach our goal of 15 full-tuition scholarships per class, we need to raise \$726,480 per year or add \$17 million to the law school's endowment. We can't do this without your help. Please consider visiting <http://www.onwardsd.org/donate/supportlaw> or mailing a check – with "Law Class of ____" in the memo line – to the USD Foundation (1110 N. Dakota St., Vermillion, SD 57069) to donate to USD Law's Scholarship Fund. You can also contact me at any time for help or to discuss options for giving (sara.hughes@usdfoundation.org, 605-941-0291).

Thank you so much for your support!

USD Law Class Fundraising Challenge Update as of October 25, 2018 (challenge ends Dec. 31, 2018; does not include full scholarship donations listed above)

| | |
|---------------|-----------------|
| 1958: \$500 | 1991: \$3,500 |
| 1960: \$1,500 | 1992: \$500 |
| 1963: \$350 | 1993: \$2,000 |
| 1966: \$50 | 1994: \$4,800 |
| 1968: \$50 | 1995: \$200 |
| 1970: \$5,300 | 1998: \$1,350 |
| 1971: \$250 | 1999: \$3,700 |
| 1972: \$700 | 2000: \$100 |
| 1973: \$500 | 2002: \$50 |
| 1974: \$1,000 | 2004: \$100 |
| 1975: \$4,100 | 2005: \$100 |
| 1976: \$5,965 | 2006: \$150 |
| 1977: \$1,400 | 2008: \$6,400 |
| 1978: \$50 | 2009: \$50 |
| 1979: \$6,600 | 2010: \$2,500 |
| 1981: \$1,000 | 2012: \$50 |
| 1982: \$100 | 2013: \$200 |
| 1984: \$260 | Total: \$64,793 |
| 1985: \$1,000 | |
| 1987: \$100 | |
| 1988: \$7,268 | |
| 1990: \$1,000 | |

Don't Miss Out!

The 2017 Tax Act has complicated closely-held entity planning and turned estate planning on its head.

This year's Institute presents detailed discussions of these new rules and planning recommendations that are a must for all advisors.

Great Plains

FEDERAL
TAX INSTITUTE

2018

Now in its
56th SEASON



- Three hours from nationally renowned speaker Stephen Akers covering post-mortem tax planning issues and how to structure trustee powers to avoid tax catastrophes.
- Three hours from nationally renowned speaker and Great Plains favorite Stephanie Loomis-Price covering the art of reviewing an appraisal, ethically protecting privileges, avoiding tax problems at the formation of a family business and how a tax litigator views planning for a family business owner. Stephanie will be joined by Stephen Liss, a national tax expert.
- An in-depth review of federal tax law changes, including a specific presentation on the new Section 199A.
- A full discussion on recent developments in Section 355 tax-free spin-offs.
- Detailed analysis of the recent Wayfair decision and the implications for multi-state companies.
- A look at Nebraska and Iowa state tax and economic development updates.
- A review of current developments in income, estate and gift taxes, presented by local tax experts.
- By continued demand, a lengthened presentation on current tax issues and planning opportunities for farmers.
- A practical and valuable ethics presentation from University of Nebraska professor Janet Near. Two hours of the Institute are expected to qualify for ethics credit.

Continuing professional education sponsored by the Great Plains Federal Tax Institute, Inc.

Thursday & Friday
November 29 & 30, 2018

Meeting in a NEW location!

Embassy Suites and
Conference Center
LaVista, Nebraska



Registration Fee Discounts:

■ Early Registration \$450 if received by November 6

■ \$510 thereafter

■ \$345 for participants with 5 or fewer years in practice

Online registration to open by October 1

For more information go to www.greatplainstax.org or contact the Program Manager at **402-483-4234**

DeRouchey Agriculture
Legal Consulting

Roger DeRouchey
700 Broad St. Alexandria, SD 57311
605-770-8080
derouchey.agconsulting@triotel.net

- 34 years Farm Business Instructor at Mitchell Tech
- 3 years of Ag Lending
- 9 years Researching, Deposition, Testifying
- Expert witness on agriculture issues

www.deroucheyagriculturelegalconsulting.com/services.html

SUSAN M. SABERS
 CHAIR
 Sioux Falls, South Dakota

SHERIDAN CASH ANDERSON
 SECRETARY
 State Capitol
 500 E. Capitol Avenue
 Pierre, South Dakota 57501

BOARD OF BAR EXAMINERS
STATE CAPITOL
500 EAST CAPITOL
PIERRE, SD 57501-5070

MEMBERS
LARRY M. VON WALD
 Rapid City, South Dakota
JACK H. HIEB
 Aberdeen, South Dakota
NEIL FULTON
 Pierre, South Dakota
JANE WIPF PFEIFLE
 Rapid City, South Dakota

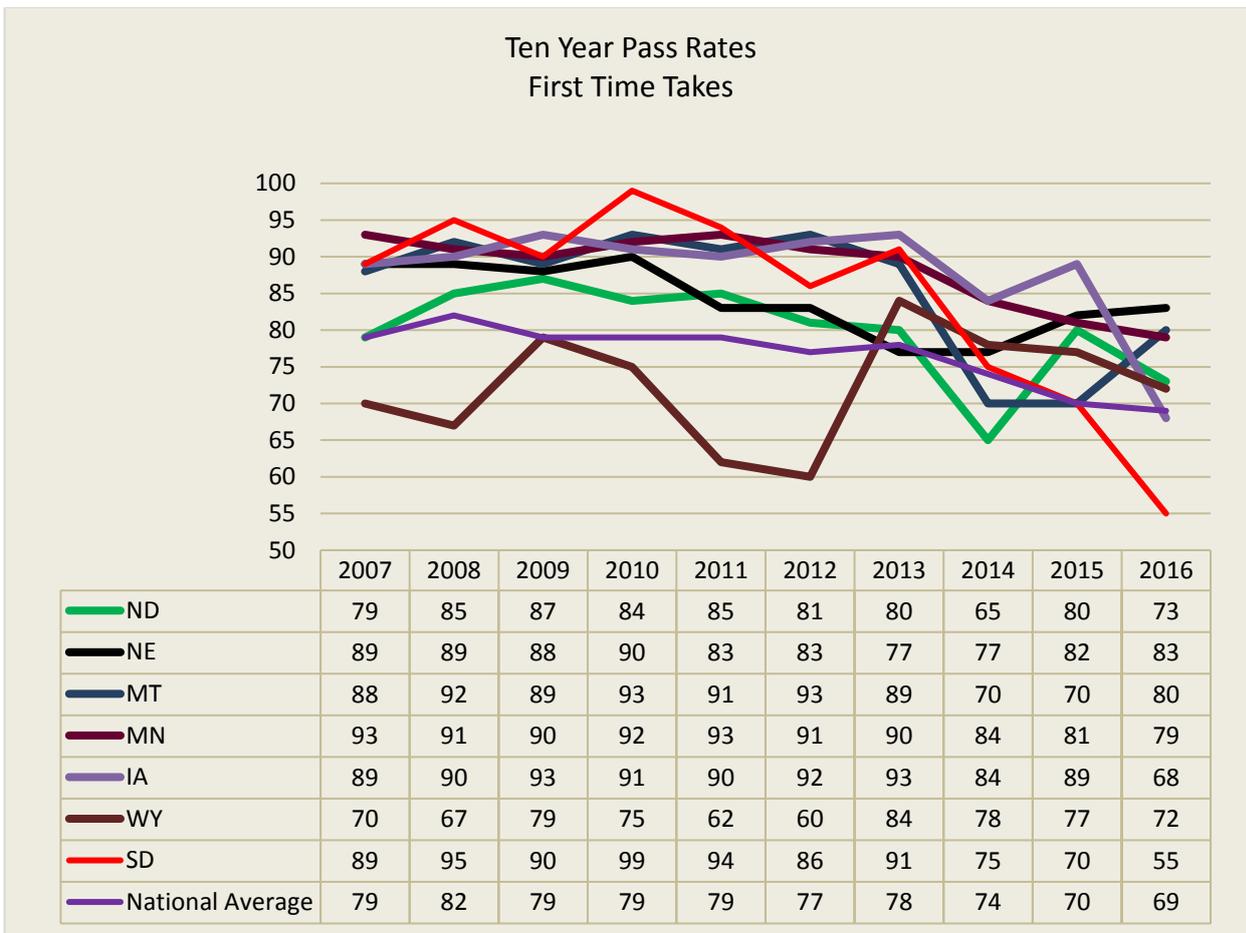
2018 Annual Report to the State Bar

The South Dakota Supreme Court governs admission to practice law. The Board of Bar Examiners assists the Court by examining applicants for good moral character and fitness to practice law. The current members of the Board of Bar Examiners are Susan Sabers (Chair, Sioux Falls), Larry Von Wald (Rapid City), Jack Hieb (Aberdeen), Neil Fulton (Pierre), and Jane Wipf Pfeifle (Rapid City). Collectively, the Board has 39 years of experience in bar admissions.

The South Dakota bar examination has three components. The MPT/MEE/ILQ (Multistate Performance Test, Multistate Essay Examination, and Indian Law Question) requires fundamental understanding of legal principles and the ability to communicate effectively in writing. The MBE (Multistate Bar Examination) is administered in 54 jurisdictions and consists of 200 multiple-choice questions requiring the ability to apply fundamental legal principles to analyze fact patterns. The MPRE (Multistate Professional Responsibility Examination) has 60 multiple-choice questions that measure an applicant’s understanding of standards relating to the professional conduct of lawyers.

Between 2008 and 2013, South Dakota’s overall pass rate for the MPT/MEE/ILQ and the MBE averaged 88%; the average pass rate for first-time takers was 93%. Between 2014 and 2017 the pass rate declined significantly. The overall pass rate averaged 59%, while the first-time pass rate averaged 67%. The decline in South Dakota’s bar passage rate reflected a nationwide trend. The charts below demonstrate this decline for first-time takers in South Dakota, regionally, and nationally.





The Board discussed the reasons for the decline in its 2017 annual report to the State Bar that was published in the September 2017 State Bar Newsletter and at the Supreme Court’s February 13, 2018, Rules Hearing No. 137 available at http://ujis.sd.gov/Supreme_Court/ruleshearing.aspx.

Beginning with the February 2015 administration of the bar exam, each of its three components has a separate passing score. The passing score for the MPT/MEE/ILQ was (and remains) a general average of 75%. The MBE required a scaled score of 135. The passing score for the MPRE was (and remains) a scaled score of 85.

At its February 2018 rules hearing, the Supreme Court considered proposals to change how the bar examination was scored. The Court ultimately determined that an applicant should have the option to retake both the MPT/MEE/ILQ and the MBE, or take only the portion of the bar exam that the applicant failed. The passing score on the MBE is now a scaled score of 133. And, an applicant may receive up to three additional points on the MBE based upon their score on a contemporaneous essay portion of the examination. These changes were implemented for the July 2018 bar examination.

All of the July 2018 repeat takers were given the option of taking the MPT/MEE/ILQ and the MBE, or only the portion that they failed. No applicant chose to retake both portions; each elected to only retake the MBE. The change in scoring served to benefit four applicants. Two first-time applicants and one second-time applicant passed the MBE due to decreasing the passing score to a scaled score of 133. One first-time applicant passed because the applicant’s

MPT/MEE/ILQ score was high enough to allow the transfer of one point to the applicant's MBE score, resulting in a passing score of 133.

The July 2018 bar results were released in early September. 62% of all applicants passed both the MPT/MEE/ILQ and the MBE. 94% of all applicants passed the MPT/MEE/ILQ. The highest score on the MPT/MEE/ILQ was 92%. The lowest score was 63%. In July, 60% of all applicants passed the MBE. The mean score for the 70 applicants sitting for the MBE in July 2018 was 137.2. The highest score was 174; the lowest score was 109. South Dakota's July mean score was below the national average MBE score of 139.5, a decrease of 2.2 points from the July 2017 national average. Nationally, 45,274 applicants sat for the MBE in July; it is the smallest group of examinees to take the July MBE since 2001.

The most promising result of the July 2018 bar exam was the passage rate for first-time USD takers. 82% passed, up from 52% in July 2017. Per USD's ABA Standard 509 Reports for 2011 through 2017, this class had LSAT scores comparable to the classes before it. This class, however, is the first USD class required to take and pass a bar preparation course as a part of the law school curriculum.

Included within the overall pass rate calculation is a group of applicants who have taken the bar exam on multiple occasions. Of the 15 applicants sitting for the exam for the second or third time, 20% passed. None of the nine applicants taking the exam for the fourth through ninth time passed.

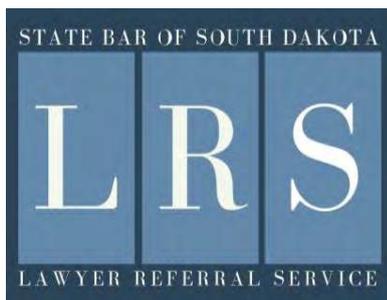
It is uncommon for repeat takers to substantially improve their MBE scores. The Board has reached out to applicants to determine the factors influencing the few dramatic score increases it has seen. The common themes are that life situations have improved, sufficient and substantial time was devoted solely to study, and bar preparation materials tailored to individual strengths and weaknesses were used.

In 2018, the Board has also worked to make its application process and score reporting easier to use. Beginning with the February 2018 examination, all applicants are given their passing and failing scores on the MPT/MEE/ILQ and the MBE. In the past, only failing scores were released.

The NCBE's character and fitness application went online in time for the application process for the February 2018 exam. The Board is working with the UJS IT Department to put the Board's application materials online as well. When this happens, the Board will also be able to accept credit card and e-check payment of fees.

The Board has also revised the South Dakota application for admission to practice law by examination. Applicants now have the option of authorizing the anonymous reproduction and publishing of their MPT, MEE, and ILQ answers on the Board's website. After May 15, 2019, when the NCBE allows website posting of the February 2019 MPT and MEE questions, the Board will post those questions alongside a representative good answer for each question.

Any member of the State Bar with questions regarding the Board or the bar exam is encouraged to contact any Board member.



South Dakota Lawyer Referral Service ENROLLMENT AGREEMENT

Mail completed form and payment to:
State Bar of South Dakota - SDLRS
222 East Capitol Avenue, #3
Pierre, SD 57501

Or pay online at: www.findalawyerinsd.com

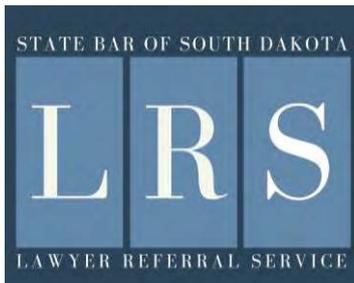
If you pay online, scan and email this completed form to: findalawyer@sdbar.net

1. I am an active member in good standing of the State Bar of South Dakota.
2. I wish to be a member of the South Dakota Lawyer Referral Service (“SDLRS”) and agree to pay a \$50 service fee on an annual basis.
3. Once I receive notice that my payment to SDLRS was received and processed, I will create my referral profile at www.findalawyerinsd.com.
4. The service fee is invoiced to participating attorneys in August. I understand that failure to pay the \$50 fee within 30 days will result in a suspension of referrals until the fee is received.
5. In the event I am suspended from the SDLRS for nonpayment of the invoiced amount, I agree that in order to be reinstated to the SDLRS I will pay the balance owed.
6. My practice is covered by Errors and Omissions Insurance totaling at least \$100,000/\$300,000. My policy is issued through:
Name: _____
Dates of coverage: _____
Limits of coverage: \$_____ \$_____
I will maintain such insurance at all times while participating in SDLRS. (You will be required to upload a pdf copy of your insurance declaration page to the SDLRS website to begin receiving referrals.)
7. I will promptly inform the State Bar of South Dakota Bar of any change in my address or phone number.
8. Enclosed is the total amount of \$50, to cover the registration fee for the following Practice Panels:
1. _____
2. _____
3. _____
9. I would like to add the following Practice Panels at the rate of an additional \$20 per panel:
1. _____ (add \$20)
2. _____ (add \$20)
3. _____ (add \$20)
10. If any of the following occur, I hereby agree to a suspension of referrals until final resolution of the matter:
 - a. My license to practice law is suspended for any reason;
 - b. I transfer to inactive status for any reason;
 - c. Formal disciplinary proceedings are initiated against me; or
 - d. A criminal complaint is filed or an indictment returned against me alleging a serious crime as defined in SDCL 16-19-37.
11. In the event I receive a referral through the SDLRS that results in attorney fees, I understand it is strongly encouraged I contribute 7% of those fees to the SD Bar Foundation.

I have read the foregoing and hereby certify that the answers are complete and true to the best of my knowledge.

Name: _____
(Signature)
(Print or Type)

Date: _____ Member No.: _____ Amount Enclosed: _____



South Dakota Lawyer Referral Service PANEL & SUB-PANEL LIST

BANKRUPTCY

- Business Bankruptcy(Creditor)
- Business Bankruptcy (Debtor)
- Personal Bankruptcy (Creditor)
- Personal Bankruptcy (Debtor)

BENEFITS & ADMINISTRATION

- Medicaid/Medicare
- Municipal or Local Government
- Professional Licensing
- Social Security
- State Government
- Unemployment
- Utilities
- Veterans Benefits

BUSINESS

- Antitrust litigation
- Business dissolution
- Business formation
- Business litigation or dispute
- Buy-sell agreements
- Compliance
- Contracts
- Franchise Agreements or purchase of franchise
- Gaming Law
- Non-profit formation
- Online business law
- Partnership agreements
- Securities
- Trade regulation
- Business mediation

CONSUMER & DEBT

- Collection Practices & Creditor Harassment
- Car repair/lemon law
- Credit Reports
- Debt Collections (Creditor)
- Debt Collection (Debtor)
- Identity Theft
- Predatory Lending Practices
- Small Claims Court
- Unfair and Deceptive Sales and Practices

CRIMINAL

- Appeals
- Criminal Record
- DWI/DUI
- Drugs
- Federal Criminal Defense
- Felony (non-homicide)
- Homicide
- Juvenile Delinquency
- Misdemeanor
- Probation Violation
- Property Forfeiture
- Traffic

DISPUTE RESOLUTION

- Arbitration
- Mediation

EDUCATION

- Academics
- Access (including bilingual and testing)
- Bullying
- Discipline (including Expulsion and Suspension)
- Special Education & Learning Disabilities
- Teachers and Other Educational Professionals

EMPLOYMENT

- Civil Service
- Employee Benefits
- Employer Representation
- Employment Contracts
- Employment Discrimination
- Medical Leave
- Non-compete/Non-disclosure Agreements
- Professional Licensing
- Safe Working Conditions
- Separation Agreement
- Sexual Harassment
- Wage and Labor Standards
- Whistleblower
- Wrongful Termination

FAMILY

- Adoption
- Alimony/Marital Support
- Annulment
- Child Abuse and Neglect
- Child Support and Custody
- Divorce (complex/contested)
- Divorce (simple/uncontested)
- Domestic Violence/Protection Order (Petitioner)
- Domestic Violence/Protection Order (respondent)
- Emancipation
- Family Mediation
- Guardianship
- Conservatorship
- Interstate/International
- Name Change
- Parental Rights Termination
- Paternity
- Post-nuptial Agreement
- Pre-nuptial Agreement
- Separation
- Visitation

HOUSING & APARTMENT

- Home Construction/Improvement
- Housing Discrimination
- Landlord Representation
- Mortgage Foreclosures (Not Predatory Lending)
- Predatory Mortgage Lending Practices
- Tenant Representation

IMMIGRATION

- Asylum
- Consular Practices
- Criminal Issues
- Employer Sanctions
- Employment-based immigration
- Family-based immigration
- Investors
- Naturalization
- Juvenile Status
- Removal Defense

INDIAN LAW

- Business
- Family Law
- Federal Government
- Housing
- Land
- Probate/Will
- Tribal Court
- Tribal Enrollment/Status
- Tribal Government

INSURANCE

- Automobile/Property Insurance
- Bad Faith
- Employer-provided insurance (disability, health, life, accident)
- Health Insurance
- Homeowner Insurance
- Life Insurance

INTELLECTUAL PROPERTY

- Copyrights
- Patents
- Trademarks

LOBBYING

- Federal
- State

PERSONAL INJURY & RIGHTS VIOLATIONS

- Accountant Malpractice (Defendant)
- Accountant Malpractice (Plaintiff)
- Animals
- Assault and Battery (Defendant)
- Assault and Battery (Plaintiff)
- Auto Collision (Defendant)
- Auto Collision (Plaintiff)
- Civil Rights
- Discrimination
- False Arrest/false imprisonment
- Jail/Prison Injuries
- Legal Malpractice (Defendant)
- Legal Malpractice (Plaintiff)
- Libel, Slander, or harassment (Defendant)
- Libel, Slander, or harassment (Plaintiff)
- Medical Malpractice (Defendant)
- Medical Malpractice (Plaintiff)
- Negligence (Defendant)
- Negligence (Plaintiff)
- Police misconduct
- Product liability (Defendant)
- Product liability (Plaintiff)
- Property Damage (Defendant)
- Property Damage (Plaintiff)
- Slip, trip and fall (Defendant)
- Slip, trip and fall (Plaintiff)
- Toxic tort (Defendant)
- Toxic tort (Plaintiff)
- Wrongful death or catastrophic injuries (Defendant)
- Wrongful death or catastrophic injuries (Plaintiff)

REAL ESTATE

- Commercial real estate litigation
- Commercial real estate transactions
- Condemnation, eminent domain & annexation
- Land Use & Zoning
- Natural Resources
- Neighborhood, Coop & Condominium Associations
- Residential real estate litigation
- Residential real estate transactions

TAX

- Business
- Personal
- Estate Tax
- Tax Litigation/Audits

WILLS, TRUSTS, ELDER

- Conservatorship
- Elder Abuse/Neglect
- Estate Administration
- Estate Court/Probate
- Estate Planning
- Estate Tax
- Guardianship
- Living Will/Advanced Directive
- Medicaid/Medicare/Nursing Home Planning
- Power of Attorney
- Simple Will
- Specialty Trusts
- Estate Dispute (Petitioner)
- Estate Dispute (Respondent)
- Trust Dispute (Petitioner)
- Trust Dispute (Respondent)

WORKERS COMPENSATION

- Federal Employee
- Private Employee
- Private Employer
- State Employee



ACCESS TO JUSTICE, INC.

To register your firm, please visit
<http://www.statebarofsouthdakota.com>
and click on Access to Justice

ATTORNEYS - OATH OF ATTORNEY

I do solemnly swear, or affirm, that:

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

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

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

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

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

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

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

IS THE LAWYER REFERRAL SERVICE RIGHT FOR ME?

LRS Committee

Are you looking for new clients? If so, the Lawyer Referral Service is right for you! The Lawyer Referral Service is not a free or reduced-fee legal service program. We are simply the right website for clients to find the right lawyer.

In the past, potential clients seeking legal representation were encouraged to call the State Bar Office for a referral. We have replaced that outdated system. Now, potential clients will be directed to our new website at www.findalawyerinsd.com.

Since launching the website in late June, thirty-two lawyers have enrolled. And while we have not yet released our public media campaign (this is coming soon), potential clients are already using our website and have been matched with enrolled lawyers in their area.

Ready to give it a try? Enrolling is easy:

- Send your completed enrollment form to the State Bar Office along with a \$50 payment for the annual service fee
- Create your referral profile on our website at www.findalawyerinsd.com
- Choose up to three practice panels, and an unlimited number of subpanels within your practice panel group (additional practice panels may be added for \$20 per panel)
- Begin receiving matches in your area

Enrollment in the Lawyer Referral Service is a great way to grow your practice, help potential clients seeking legal representation, and support the mission of the State Bar.



www.findalawyerinsd.com

Guidelines to Closing Your Law Practice

Mark Bassingthwaighe, Esq.
mbass@alpsnet.com

I have been writing and lecturing about metadata for years. (And in case you have forgotten, metadata is the “hidden” information about the electronic documents we create that we’re all supposed to be worried about.) I guess for some of late, I’ve run on with the topic long enough because a few have started to say “enough already.” Then this happened.

Earlier this year I was on the road visiting a dozen or so law firms over the course of two weeks and learned that several attorneys at two different firms were routinely emailing documents out to other attorneys without first removing the associated metadata. Making matters worse, in many instances the attorneys who were in receipt of these documents didn’t have to do anything to view the metadata. In other words, there was no metadata mining going on, no digging for it. All they had to do was open the document and they would find interesting and useful information staring them in the face. Think tracked changes as an example. Now here’s the kicker, no one was saying anything to anyone in order to keep the information coming. After all, this is a gift that keeps on giving. “Enough already.” I don’t think so.

Let’s talk ethics for a minute. There are basically two issues in play when it comes to metadata. The first is an attorney’s obligation to maintain client confidences, some of which can be metadata based. There is no exception in the confidentiality rule that says an attorney needn’t worry about maintaining client confidences if an electronic document is in use. This is why firms routinely require that all electronic documents be either scrubbed clean of metadata or converted to a pdf format prior to sending. Our professional conduct rules mandate this outcome. In fact, I can assure you that the two firms where the above mentioned problem attorneys practice have such a rule in place.

The second, and in my mind more interesting issue, concerns the viewing of metadata. At its most basic, if an attorney receives electronic documents with associated metadata intact, may the attorney view it? Suffice it to say that the issued ethics opinions on the subject run the gamut. Some opinions state it’s fine to take your

advantages where you find them. At the other extreme you will find ones that say nope, can’t do it. But here’s where it gets interesting. If you read the opinions that come down on the side of saying an attorney should not view metadata you often find an analysis that mirrors the analysis used with opinions issued over misdirected faxes back in the day. You find terms including the likes of inadvertent disclosure driving the analysis which takes me back to my story.

I can imagine that some of you reading this might be troubled by the story above. The fact that no attorney was willing to do the right thing and speak up seems so unfair. After all, the attorneys who sent the documents were simply unaware. Apparently they didn’t understand what metadata was all about, let alone what to do about it. Well I beg to differ. The attorneys receiving the useful information didn’t speak up because they understood there was nothing inadvertent about the actions of the attorneys who were sending out the documents.

Again, the Rules of Professional Conduct are in play. As attorneys we are to maintain client confidences. And in today’s world, professional competency means having an understanding about what computers and applications like word processing programs do and don’t do. This isn’t optional. You see, I understand why the attorneys receiving the documents kept their mouths shut. I actually think they made the correct decision because the ongoing disclosures were not inadvertent. A number of years ago, I might have called the disclosures innocent or naive, but not today. Today, I would label the attorneys who continue to routinely send out documents with the associated metadata intact incompetent. Yes, that may seem harsh, but it is true nonetheless.

If you aren’t already responsibly addressing the issues surrounding metadata on a daily basis, all I can say is now is the time and here’s why. There are firms that are using software tools that literally mine for metadata and sometimes they hit real pay dirt. Should opposing counsel ever do that to you, do you really want to try to argue that your routine delivery of the metadata was an unintentional act? I suspect that any impacted client

would be less than impressed with that approach. In fact, I think they would call it what it is, just as I did, incompetent.



ALPS Risk Manager Mark Bassingthwaite, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. Check out Mark's recent

seminars to assist you with your solo practice by visiting our on-demand CLE library at alps.inreachce.com. Mark can be contacted at: mbass@alpsnet.com.

Disclaimer:

ALPS presents this publication or document as general information only. While ALPS strives to provide accurate information, ALPS expressly disclaims any guarantee or assurance that this publication or document is complete or accurate. Therefore, in providing this publication or document, ALPS expressly disclaims any warranty of any kind, whether express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement.

Further, by making this publication or document available, ALPS is not rendering legal or other professional advice or services and this publication or document should not be relied upon as a substitute for such legal or other professional advice or services. ALPS warns that this publication or document should not be used or relied upon as a basis for any decision or action that may affect your professional practice, business or personal affairs. Instead, ALPS highly recommends that you consult an attorney or other professional before making any decisions regarding the subject matter of this publication or document. ALPS Corporation and its subsidiaries, affiliates and related entities shall not be responsible for any loss or damage sustained by any person who uses or relies upon the publication or document presented herein.

BECAUSE...

YOUR FIRM DESERVES THE **BEST PROTECTION** FOR THE GREATEST VALUE.

MORE STATE BARS, INCLUDING YOURS, ENDORSE ALPS THAN ANY OTHER CARRIER.

IF YOU GET A CLAIM, YOUR CLAIM WILL BE HANDLED BY **LICENSED ATTORNEYS**.

BECAUSE BAD THINGS CAN

HAPPEN TO GOOD LAWYERS

Find out more about your endorsed carrier at:

www.alpsnet.com/sdnewsletter



**THE NATION'S LARGEST DIRECT WRITER
OF LAWYERS' MALPRACTICE INSURANCE.**

(800) 367-2577 • www.alpsnet.com • learnmore@alpsnet.com



Dean of the School of Law
University of South Dakota
Position Announcement

The University of South Dakota in Vermillion, SD invites nominations and applications for the Dean of the School of Law. The Dean reports to the Provost and is a senior level administrator.

USD Law, South Dakota's premier and only law school, seeks an energetic, confident leader with a deep knowledge of the legal academy to serve as its Dean. The Dean will also be a capable executive with skills in fundraising and development, as well as in fiscal and human resource management. The Dean must possess the strategic acumen and personal leadership style necessary to inspire its faculty and students to continue advancement of the School of Law as part of USD.

USD Law is an intimate law school that combines a practical curriculum with a uniquely personal and engaging learning environment that prepares students for the practice of law in a changing world. Established in 1901, USD Law is fully accredited by the American Bar Association (ABA) and is a member of the American Association of Law Schools (AALS). The School of Law offers several specialized course tracks and nine joint degree programs that operate in conjunction with other Master's degree programs at USD, as well as three dual degree programs offered in partnership with Vermont Law School. The USD Law faculty and staff are leaders in their respective fields, adding first-rate quality and diverse expertise to the USD Law program. Students at USD law will find an opportunity to study in a close-knit, cooperative environment. As the only law school in the state of South Dakota, it is USD Law's task to populate the legal infrastructure of South Dakota for the benefit of its residents. Currently, there are far more law jobs in South Dakota than USD Law can fill. All of USD Law's innovative efforts in legal education have taken the school on a strong upward trajectory as recognized by a recent 14-spot leap in *U.S. News & World Report* rankings. More information is available at www.usd.edu/law.

The successful candidate will, at minimum, possess a J.D. degree or its equivalent and will have an outstanding record of accomplishment in the legal academy and/or in the practice of law that warrants appointment as a tenured Professor of Law. In addition to a record of academic and professional accomplishment, the successful candidate will have demonstrated a commitment to service to the legal profession and the public, and will offer a proven record in management or administration suitable for appointment as Dean.

Founded in 1862 on the banks of the Missouri River in Vermillion, South Dakota, USD is the state's flagship institution and its designated liberal arts university. USD is home to the state's only medical and law schools as well as the state's first and longest-standing College of Fine Arts. It also houses the Beacom School of Business, School of Education, College of Arts & Sciences, School of Health Sciences, and the state's largest Graduate School. With an enrollment exceeding 10,000 students and employing more than 400 faculty members, USD has a strong commitment to student outcomes and success. USD is part of a system of six universities governed by a nine-member Board of Regents.

The Search Committee invites letters of nomination, expressions of interest, or applications and

they may be sent to Werner Boel, LL.M., Zachary A. Smith, Ph.D. and Sophie Stava, the Witt/Kieffer consultants assisting USD Law with this search, at USDLawDean@wittkieffer.com. Electronic submissions are strongly encouraged. A complete application will include a letter of interest, a curriculum vitae, and contact information for five professional references. This search will be conducted with respect for the confidentiality of candidates; references will not be contacted without prior knowledge and approval of the candidate. Review of materials will begin immediately and continue until an appointment is made. To ensure full consideration, please submit your application before November 5, 2018. Applications received after this date may be considered at the discretion of the Search Committee. The anticipated starting date for the new dean is July 1, 2019.

The University of South Dakota shall offer equal opportunities in employment and for access to and participation in educational, extension and other institutional services to all persons qualified by academic preparation, experience, and ability for the various levels of employment or academic program or other institutional service, without discrimination based on sex, race, color, creed, national origin, ancestry, citizenship, gender, gender identification, transgender, sexual orientation, religion, age, disability, genetic information or veteran status or on any other status that may become protected under law against discrimination. If you have questions or concerns, please contact Human Resources, Office of Equal Opportunity, <http://www.usd.edu/human-resources/equal-opportunity>.



CAREER CENTER

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

ATTORNEYS

Managing Attorney– Eagle Butte

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Managing Attorney position in our Eagle Butte, South Dakota, branch office. The Eagle Butte office serves Cheyenne River Indian Reservation in South Dakota and Dewey, Haakon, Potter and Ziebach 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; must demonstrate an interest in poverty law and working with Native American and low income clients.

Applicant must have at least one year's experience in the practice of poverty law or Indian law, with trial and appellate experience in state and federal courts or two years' experience in the general practice of law. If Applicant does not possess this experience we would consider Applicant for a staff attorney position until qualified to be a Managing Attorney.

SALARY: Competitive, depending on experience.

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

CLOSING DATE: January 31, 2019.

APPLICATION INFORMATION: Please submit a letter of interest and resume to: Dalene M. Bettelyoun, Administrator, Dakota Plains Legal Services, PO Box 727, Mission, SD 57555, (605) 856-4444, dpls2@gwtc.net

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

Richardson, Wyly, Wise, Sauck & Hieb, LLP, Aberdeen,

Associate Attorney: Aberdeen

SD is seeking to hire an associate attorney with 1-5 years of experience. An ideal candidate will possess strong oral and written skills as well as courtroom experience. Confidential inquiries, including resume, cover letter, and academic transcript, should be sent to Stacy M. Johnson, Richardson, Wyly, Wise, Sauck and Hieb, LLP, P.O. Box 1030, Aberdeen, SD 57402-1030 or sjohnson@rwwsh.com.

Executive Director: Mission

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, is accepting applications for the Executive Director position in our Mission, South Dakota, office.

GENERAL RESPONSIBILITIES: The Executive Director has overall responsibility for the operation of Dakota Plains Legal Services, including general administration of the program, its fiscal affairs, the securing of funds and the maintaining of funding levels sufficient to meet programmatic needs, personnel management, working with the organized Bar throughout the state, implementing programmatic policies, and providing necessary litigation support.

QUALIFICATIONS: Applicants must be admitted to practice in any jurisdiction for a minimum of four years; must be admitted to practice law or applying for admission to practice law in South Dakota; must have a minimum of two years administrative experience at a policy making level in legal services or a legal services program; and must be bondable.

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

CLOSING DATE: January 31, 2019.

APPLICATION/INFORMATION: Persons interested in being considered for this position should submit a letter of introduction along with a resume and

references to: Dalene Bettelyoun, Administrator, Dakota Plains Legal Services, P.O. Box 727, Mission, SD 57555 or to dpls2@gwtc.net. For further information, or to request a copy of the full job description for this position, please contact Dalene Bettelyoun at (605) 856-4444.

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

Litigation Associate: Sioux Falls

Boyce Law Firm in Sioux Falls, South Dakota is accepting applications for a litigation associate position. We are looking for candidates with experience levels ranging from newly licensed lawyers to those with up to five years of experience. We look for candidates with solid academic backgrounds and good writing and communication skills. The position offers competitive salary, a generous retirement plan, health benefits, and an upbeat, collegial, and positive work environment. Only candidates seeking a long-term employment opportunity will be considered. If you want to see our past, present and future vision, visit our website at www.boycelaw.com and visit our "news" link. Please send a cover letter, resume, and law school transcript to Boyce Law Firm, L.L.P. – Attn: Thomas J. Welk – P.O. Box 5015 – Sioux Falls, SD 57117-5105; or email to him at tjwelk@boycelaw.com.

Estate Planning Attorney:Sioux Falls

Lynn, Jackson, Shultz & Lebrun, PC, is a progressive and unique full-service law firm with three offices in South Dakota, serving clients locally, regionally, and nationally. Our Sioux Falls office is seeking to add an attorney to its expanding Estate Planning/Trust group. Our Firm's estate planning and trust attorneys draft wills, trusts, powers of attorney, asset protection plans and transition plans for businesses. In addition, attorneys in our Estate Planning group assist clients with guardianships, conservatorships, probates, and trust administration. As part of our Trust group, our attorneys assist clients in creating, modifying and reforming a variety of trusts. The ideal candidate for this position need not have experience in these areas, but must be a problem solver and detail-oriented, and must possess a willingness to learn quickly, take direction, and talk with and counsel clients. Candidates for this position must possess

excellent written and verbal communication skills, and must be licensed in South Dakota or willing to sit for the next South Dakota bar exam. Lynn, Jackson offers a competitive salary, as well as an excellent benefit package, and our attorneys are provided with the latest in technology and continuing education to assist in their practice area. All applications will be confidential and should be directed to Eric Kerkvliet, 110 N. Minnesota Avenue, Suite 400, Sioux Falls, South Dakota 57104 or ekerkvliet@lynnjackson.com.

Attorney: South Dakota

Well-established Pittsburgh, PA law firm specializing in the national representation of healthcare providers in insurance reimbursement matters seeks attorney to join practice on a long-term contract basis to assist in representation of potential South Dakota clients. Active South Dakota bar admission is required, together with strong research/writing skills and ~ 5+ years of experience in litigation, healthcare, healthcare insurance, reimbursement, workers' compensation and related matters. The position is part-time, 15-25 hours per week with flexible scheduling and a collegial environment. Resumes may be submitted in confidence to rferguson@pointlegal.com, and further information is available by calling POINT LEGAL LLC at 908.561.6171.

Staff Attorney: Pierre

Disability Rights South Dakota is currently seeking an attorney for the position of Staff Attorney in the Pierre, SD office. The primary purpose of this position is to provide legal representation to clients of Disability Rights South Dakota and perform oversight of program(s) within Disability Rights South Dakota. The successful candidate will hold a Juris Doctor degree with admission to the state bar or within six months of hiring date; one to three years applicable law and litigation experience is preferred. The candidate should be highly motivated, organized, have excellent communication skills (written and oral), be detail orientated, and understand database programs. Other skills needed are the ability to meet and greet the public, work in a team environment, and understand the service delivery system. This position requires the incumbent to have knowledge of grant management including compliance to the sponsored programs at the local, state and/or federal levels (depending on granting agency). The incumbent

should have knowledge of state laws, programs, and issues concerning persons with disabilities and understanding of a non-profit office environment. Competitive salary and full benefits are provided. Position is open till closed. To apply please include a letter of interest, resume, and writing sample to sandy.hook@drsdlaw.org or mail to:
Disability Rights South Dakota
Attn. Sandy Hook - Executive Assistant
2520 E. Franklin Street, Ste. 2
Pierre, SD 57501
For a detailed job description please visit the employment page at www.drSDLaw.org.

Deputy/Senior Deputy State's Attorney: Sioux Falls

The Minnehaha County State's Attorney's Office is looking for a 2 prosecutors to join our top performing team of attorneys in early 2019. Supported by experienced investigators, victim/witness assistants, paralegals, and legal office assistants, our attorneys enjoy a strong sense of camaraderie working in a think tank of legal minds. Incumbents will perform professional legal work on behalf of Minnehaha County in civil and criminal court and administrative proceedings. Requires graduation from law school, JD degree, and admission by Supreme Court of SD to practice law; or out of state license & eligible to sit for next SD bar exam. Appointment at Senior level requires 2+ yrs of relevant experience. 5yrs complex felony prosecution, jury trial, and civil litigation experience preferred. 2019 hiring range: \$2,603.20 - \$2,667.20/bi-weekly; Senior level, \$2,735.20 - \$3,093.60/bi-weekly with full earning potential to \$3,768.80/bi-weekly. Minnehaha County offers health, dental, vision and life insurance, a generous paid time off program, extended sick leave, retirement, and an employee assistance program.

For a full list of qualifications and the application process visit: <http://jobs.minnehahacounty.org>. Posting will remain open until positions are filled. Review of applications will begin October 19, 2018. Contact HR with questions at 605-367-4337. EO/AA Employer.

Associate Attorney: Sioux City, IA

Rawlings, Ellwanger, Mohrhauser, Nelson & Roe, L.L.P., an established "AV" rated law firm in Sioux City is seeking to hire an attorney to work in the areas of business, real estate, probate and estate planning. Candidates will be organized and possess excellent writing and oral skills. We offer competitive salary, 401(k), health insurance, CLE and bar dues. Membership in Nebraska and/or South Dakota bars a plus. Confidential inquiries, including resume, should be sent to Kathleen Roe, 522 4th Street, Suite 300, Sioux City, Iowa, 51101, or kroe@rawlings-law.com.

LEGAL ASSISTANT

Legal Assistance/Secretary or Paralegal: Sioux Falls

Ronke Law, PLLC is currently seeking a Legal Assistant/Secretary or a Paralegal with Bankruptcy experience who is highly motivated, friendly, has great attention to detail, and is a quick learner. Duties include fielding telephone calls, greeting and working directly with clients, word processing, data entry and filing, along with much more. Extensive computer and software skills, internet research abilities and strong communication skills are required. Preference will be given to a candidate that has experience working in a Bankruptcy law firm setting. This position will begin in January 2019.

Pay based on experience. Please email cover letter, resume and salary requirements to wendy@ronkelaw.com.

Job type: Part-Time, approx. 28 hours per week, with the possibility of transitioning to Full-Time.



November 2018

| | | |
|---------------------------------|--------------------|-------------------------------|
| Juvenile Law CLE..... | December 7..... | Ramkota, Rapid City |
| Bar Commission Meeting..... | January 4..... | Dakota Event Center, Aberdeen |
| Disciplinary Board..... | January 10-11..... | Drifters, Pierre |
| YLS BootCamp..... | March 1..... | Rapid City & Sioux Falls |
| Disciplinary Board..... | April 4-5..... | Clubhouse, Pierre |
| Bar Cimmission Meeting..... | April 11..... | Ramkota, Rapid City |
| CLE Retreat..... | April 12..... | TBA |
| Strategic Planning Meeting..... | May 9-10..... | Sioux Falls |