



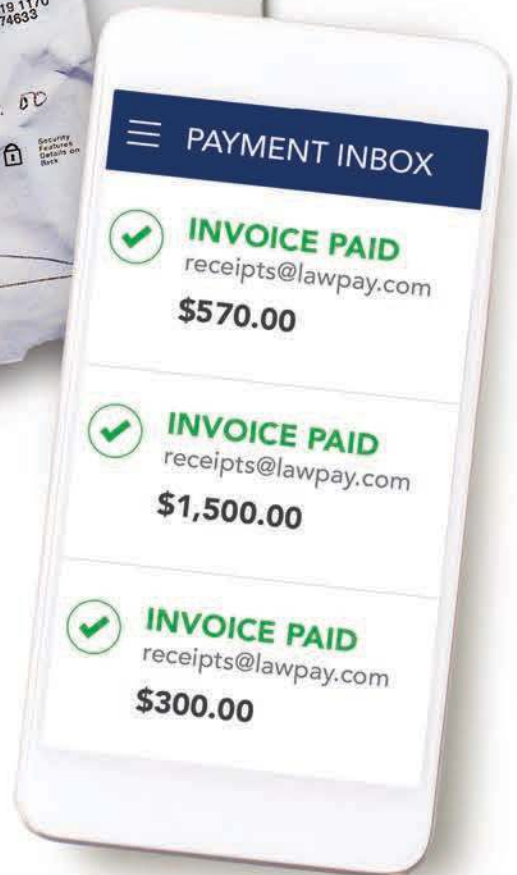
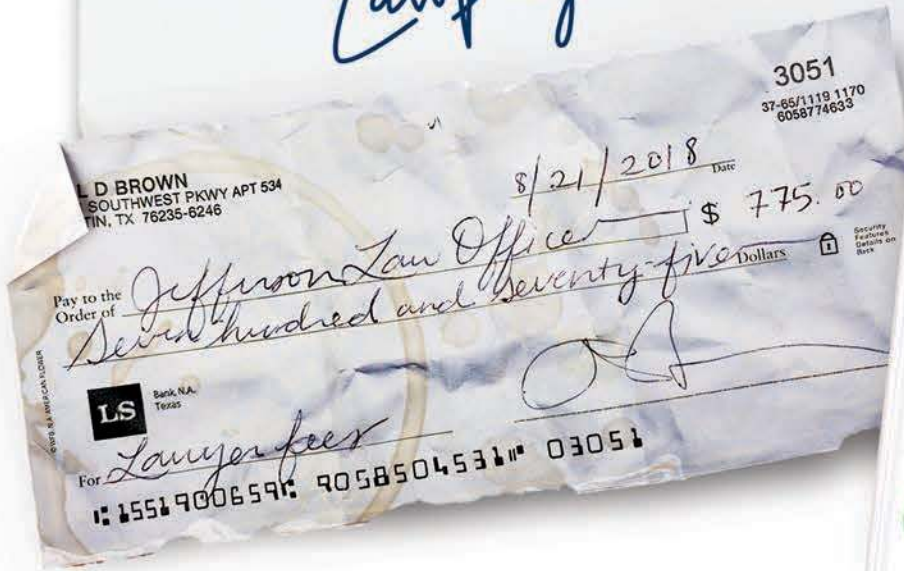
# State Bar of South Dakota

September 2019

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# State Bar of South Dakota

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## President's Corner

Steven K. Huff



While some things change, other things stay very much the same. One thing I was able to observe very early on as a kid was office atmosphere in general and specifically, how lawyers and non lawyers interacted. It was and remains my observation that what makes any lawyer in any setting better at their craft is people who work with the lawyer - their paralegals, secretaries, and support staff.

So, when thinking about another topic for this column, my paralegal Shirlene was in my office asking me some things about her motorcycle club, Fire and Iron. This got me thinking, hey, this is a great opportunity to underscore this link between good lawyering as it is augmented by great support staff who work for them.

I share a paralegal, Shirlene Simonsen, with my partner Sheila Woodward. Shirlene has been employed at our office longer than I have and I started here in September 1999.

I came in as a young newbie having moved from a larger practice in Des Moines. Like my wife Tracy, Shirlene was also militarily trained and was at the time I joined our office in the South Dakota National Guard, which as both will tell you, comes in quite handy when dealing with a cinderblock like myself.

Shirlene lives in Menno and she has commuted from there to Yankton and back every day for twenty plus years. To say she is loyal to our office is a grave understatement. She has a husband Scott, a retired fire fighter and EMT who, like me,

is a diehard Steeler fan. Scott and Shirlene have a daughter Kendra and son-in-law, Josh, who live in Wisconsin with their two grandkids.

Like everything else in life, when you are in a new situation, there is a certain learning curve one must endure. It was quickly obvious to me that while Shirlene could tolerate a great deal, she was not a fan of my music or my office dance moves. Consequently, Sheila and Shirlene passed an interoffice treaty that I could neither sing nor dance within their collective earshot or vision. Perhaps it was because I always over-utilized the gopher moves from Caddyshack, perhaps it was because she found out I was asked to leave a local karaoke bar one night with my parents as well as their friends, because of what I thought was a moving version of Roxanne, or perhaps it was just good self defense, but, that was an easy concession for someone who has endured years of my last minute requests for help, last second of the day assistance with e-filing, repeated corrections to letters or pleadings that I screwed up countless times, and the like.

This relationship was not without mistakes. We both have had each other's backs and both have screwed things up for one another in the short term. However, I have a deep respect for her, her family and generally for all of our co workers here at our firm. Connie is our receptionist, Mindy is our office manager and Deb is also a full time paralegal here with our associates Nick, Beau, Paul and Chris.

Good office chemistry is priceless and helps deal with inevitable office and life challenges. One way Shirlene and Scott handle life's pressures is by being active members of their motorcycle club, Fire and Iron, which has raised thousands of dollars for good causes over the years. For those that do not know, Fire and Iron is a national group of firefighters and EMS personnel who love to ride motorcycles and have a good time. The club prides itself in its effort to support various organizations along with other clubs. Each member of Fire and Iron is either an active or retired full-time or volunteer firefighter or member of the fire service community. In addition

to firefighters they are dispatchers, inspectors, and EMT's who share a passion for not only protecting the lives of the citizens of their community, but also for the open road.

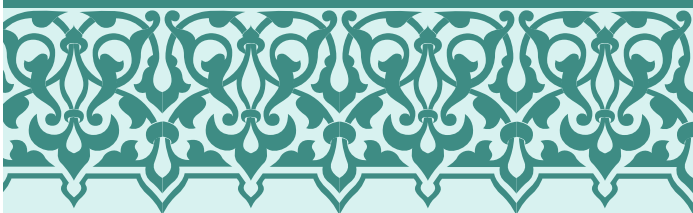


*The Fire & Iron Motorcycle Club in Yankton cares about abused and neglected children, so they generously donated the proceeds from their July 6, 2019 poker run event to our program! Because of this group, area kids who are in foster care due to abuse and neglect will have CASA advocacy. This is important when any decisions are made by the Court, especially the determination of the children's permanent home. Thanks for giving abused and neglected kids a brighter future!*

*Shirlene is standing next to the person holding the check for Fire and Ice. Both she and Scott are officers of this charitable nonprofit.*

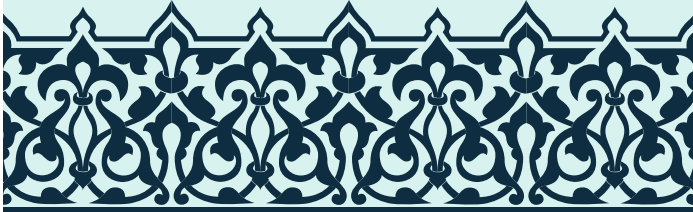
Like most, our office does a great deal of charitable giving. However, knowing that you as an employer are supporting Shirlene and her charity of choice is humbling and special, just as it has been having the honor of her employment all these years.

To all those, regardless of public or private practice, please let those you work with know how much they mean to you. It is more important than most realize and something we should all do far more often.



**I couldn't  
do it  
without  
you.**

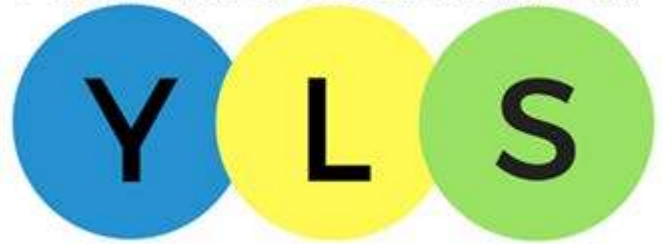
**Thank you!**





## STATE BAR OF SOUTH DAKOTA YOUNG LAWYERS SECTION

by: Nathan Chicoine  
YLS President



A new school year is starting again in Vermillion. The Young Lawyer Section hosted its annual Orientation lunch for 1Ls, and we welcome the large 1L class as members of the Young Lawyers Section. The class of 2022 will be a great group of colleagues and friends.

With a new school year comes a reminder that Autumn has almost arrived. Autumn hosts many milestones and anniversaries for young lawyers. We remember how we finished the bar exam X years ago and took a week of vacation before starting our first real lawyer job. The next Autumn, we showed we could handle the pressure for 12 months. We were proud to have put a year on the odometer. We started to feel comfortable, and in many cases, someone new was hired and we rose from the bottom of the ladder. We found a way to approach our practice minute by minute, hour by hour, day by day, week by week, and month by month, until another year ran its course. We are taking the same steps more experienced members of the bar previously took: first will signing; first closing; first motions hearing; first deposition; first mediation and settlement; first jury trial; first appeal. Each year passes and we feel more like we belong. Before we realize it, our résumés have half of a decade of experience on them. Just don't forget to appreciate your accomplishments when you update your résumé.

Finding a comfort level can be a struggle. In our first few years, practicing law often seems foreign and daunting. Young lawyers may find themselves lost and discouraged. Where do I start with this project? How am I supposed to do this without a form, checklist, or script? What do I tell the client? Can I interrupt the lawyer next door, again? The stress mounts, and time in the office takes a toll

on personal lives. We have student loans to pay, a mortgage, and growing families for which to care and devote time. The added pressure affects happiness. Many of you may have seen the recent story through CNBC "Don't retire early, buy a home, or be a lawyer if you want to be happy, researchers say – here's why." Due to the pressures unique to associate level positions, caution and skepticism serving as prudent advice, and competitiveness, the primary profession to avoid is being a lawyer, according to the article. These problems associated with the profession lead to higher incidences of alcohol abuse. Studies conducted by the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation find that younger lawyers are the segment of the profession most at risk of substance abuse and mental health problems. According to the authors of the studies, our profession can combat the problem through education, training, collaboration with treatment groups, regulation, and mentorship. These are great programs to cope with the challenges of practicing law.

What a perfect segue into the events young lawyers offer for you to connect with those who can relate! Each fall, a mentorship mixer is hosted in every judicial circuit. The Young Lawyers Section Board representative in your area will host a social event where young lawyers and experienced lawyers can mingle. You're invited. Look for the announcement. Mark your calendar for the Nuts & Bolts CLE to be held in Pierre on October 18. A number of the newest lawyers will attend before they take the oath to be admitted at the Statewide Swearing-In Ceremony. It will build collegiality. I look forward to seeing you there.



# YOUNG LAWYERS SECTION STATE BAR OF SOUTH DAKOTA

August 26, 2019

## FOR IMMEDIATE RELEASE

State Bar of South Dakota  
University of South Dakota School of Law  
TV-Radio Assignment Editors

## STATEWIDE SWEARING-IN CEREMONY TO BE HELD OCTOBER 18, 2019

The South Dakota Young Lawyers Section announces annual Statewide Swearing-in Ceremony. This year, some of South Dakota's newest attorneys will be admitted to practice within the South Dakota State Bar on Friday, October 18, 2019, with Chief Justice David E. Gilbertson presiding and administering the Oath of Attorney in the Capitol Rotunda located in Pierre, South Dakota, at 3:00pm.

All of the candidates have passed the South Dakota State Bar examination, a required ethics examination, and have been certified for Character and Fitness.

The statewide swearing-in ceremony is a momentous occasion in the life of a new lawyer. This event provides them with the opportunity to be sworn in by the Chief Justice of the South Dakota Supreme Court, in the presence of family, friends, and other members of the judiciary and leadership of the Bar. The Young Lawyers Section is pleased to organize this event each year to celebrate those who have worked so hard for their admission to the practice of law.

The ceremony is open to family and friends of all new attorneys. A professional photographer will be present, and everyone is invited to take pictures. A reception will follow.

For more information and to RSVP, please contact Young Lawyer Section President-Elect, Caroline Srstka, at [Caroline.Srstka@state.sd.us](mailto:Caroline.Srstka@state.sd.us).

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- Josh Zellmer
- Siri Buller
- Sheila Woodward
- Marilyn Trefz
- Ryan Kolbeck
- Tom Welk

**AND MUCH THANKS TO:**

**SCOTT MOSES**

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*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;*

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



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

Hello again. Fall is in the air and everyone here at the Law School is getting back to work and finding their strides.

When I decided to do a monthly column, I joked with Reed Rasmussen that his repeated observation that it was a lot of work to write the President's Column hit home. So I'm cheating. "My" column this month is introducing a column by Whitney Peterson—current Student Bar Association President at USD Law. Thanks to her for being the first guest columnist, but she will not be the last.

Thanks Whitney! Enjoy her column folks.



When Dean Fulton asked me to write a column for the State Bar newsletter, I became excited for the opportunity to tell everyone about the upcoming year at USD School of Law. As

Student Bar Association (SBA) President, I am lucky to work with four law students, who make up the executive board of the Student Bar Association. The SBA is involved in planning and hosting activities on and off campus and acts as the liaison between the student body and the administration. Fall is always a busy time at the school: 1Ls get settled into life as law students, 2Ls navigate evidence and constitutional law, and 3Ls begin to plan for their futures and the bar exam.

We have many exciting activities happening at the law school this year. Our Alternative Dispute Resolution

(ADR) Board, Moot Court Board, and Trial Team will all be traveling to competitions across the country. Last year, they all competed against Top 14 schools and did amazing. This year will be no different. Our Law Review is hosting an exciting symposium on Cyber Law in Sioux Falls at the Hilton Garden Inn this fall. The 2019-2020 school year is going to be full of excitement and success and we want the State Bar to enjoy those experiences with us.

Additionally, all the boards put time, dedication, and hard work into hosting events. Law Review publishes Law Review journals all while preparing for the symposium. Moot Court hosts a writing retreat for new board members and plans the Sam Masten Moot Court Competition for the spring. The ADR Board, which hosts two intra-school 1L competitions in the fall and spring, is busy preparing for their Negotiation competition in October. We would be honored to have you come to USD Law and judge any of our upcoming competitions. Giving our students the opportunity to network with member of the state bar is extremely meaningful to their experience as law students and as professionals. If you are interested in volunteering, please e-mail Moot Court Vice President Andrew Hurd at [andrew.hurd@coyotes.usd.edu](mailto:andrew.hurd@coyotes.usd.edu) or ADR President Lori Rensink at [lori.rensink@coyotes.usd.edu](mailto:lori.rensink@coyotes.usd.edu).

Our student organizations are busy engaging with the students of the law school by inviting speakers to campus and providing community outreach. Also, our student organizations have been hard at work—even over the summer—planning and preparing events for the fall. One of our new student organizations, Ag Law, plans to host a speaker on campus in the fall and, also, to take students to a conference November 8-10 in Washington, D.C. Our NALSA group is busy preparing for the biannual Indian Law Symposium, set to take place in the Spring of 2020. One of our most active student organizations, the Veterans Legal Education Group (VLEG), hosts legal clinics for members of the military in the fall and spring. The fall clinic will take place in the Black Hills September 19-20, and VLEG is always looking for attorneys who are able and willing to volunteer their time. If you are interested in volunteering, please

e-mail Ashley Flood at [ashley.flood@coyotes.usd.edu](mailto:ashley.flood@coyotes.usd.edu) or Austin Schaefer at [Austin.Schaefer@coyotes.usd.edu](mailto:Austin.Schaefer@coyotes.usd.edu) for more information.

Another exciting student organization that spends a significant amount of time planning and organizing is the Public Interest Network (PIN). Every year, the group sponsors the PIN auction at Eagles in Vermillion. The PIN auction raises money to fund grants for students taking unpaid public-interest positions over the summer. As a 1L, I received a grant from PIN. As a 2L, I participated on the board. Now as a 3L, I'm asking members of the State Bar to keep an eye out for the PIN auction to support students who will provide work that is needed throughout our state. During the summer between my 1L and 2L year, I received a PIN grant that allowed me to spend my summer working as an intern in Pierre at the U.S. Attorney's Office, pursuing hands-on experience in the world of criminal law, an area that I am passionate about, with a group of attorneys who were willing to provide different learning opportunities and experiences that have benefitted my educational and professional goals.

In sum, we are excited for classes to begin. We appreciate all Dean Geu did for the school and for us. We are also excited to welcome Dean Fulton to our school to continue our positive momentum and to advance our community of excellence, service, and leadership. His passion for the law school has set off an exciting buzz among the students. As SBA President, Dean Fulton and I have had the opportunity to meet multiple times. We both agree that communication and culture amongst the students, administration, and the state bar is crucial for the success of our students and our law school. Dean Fulton is always imploring the members of the bar to "come home." In a way, we—the students—are asking you to come home, too.

We are excited to be upcoming members of the legal profession, but we want to get to know the members of our profession, too. If you are interested in getting to know the students of USD Law, contact me at [whitney.reed@coyotes.usd.edu](mailto:whitney.reed@coyotes.usd.edu). The SBA would be thrilled to organize networking events at the school

over a lunch hour or during the evening. Visit Vermillion for Dakota Days and the SDSU/USD Game—go Yotes!—but don't let that be the only visit!

We look forward to the opportunity to get to know more members of the State Bar, and we are excited to be part of the next generation of South Dakota lawyers.



# SOUTH DAKOTA DEPOSITION ACADEMY

TO ALL MEMBERS OF THE STATE BAR OF SOUTH DAKOTA

This letter will provide a report on the Deposition Academy that was conducted on July 18 and 19, 2019 at the USD Law School in Vermillion.

The Deposition Academy was a great success, providing our South Dakota young lawyers the opportunity to learn from South Dakota practitioners and from National Institute of Trial Advocacy (NITA). Bill Elward, a seasoned NITA instructor, served as Teaching Team Leader. Bill works for the Illinois state government and has great experience in both NITA Trial Academy and as a NITA instructor and is also a faculty member of Loyola Chicago Law School. The South Dakota faculty consisted of Lonnie Braun (Rapid City), Mike Bornitz (Sioux Falls), Renee Christensen (Sioux Falls), Tom Horton (Vermillion), Jennifer (Van Anne) Wosje (Sioux Falls), Roy Wise (Aberdeen), Sara Frankenstein (Rapid City), Mark Haigh (Sioux Falls), Eric Schulte (Sioux Falls). Dave Gienapp and Dick Casey were co-trial directors who helped coordinate the faculty and the NITA program. NITA furnished the case and instructional materials. Mark Caldwell and Emily Lozinski from NITA also provided strategic support and coordination. Nicole Ogan of the State Bar and Lanae Romey from USD Law School provided the administrative support for the program. From all accounts, the program was a success.

The leadership of the Trial Academy has been transitioned to the South Dakota chapter of the American Board of Trial Advocates (“ABOTA”). The ABOTA steering committee consists of Melanie Carpenter (Sioux Falls), Gary Jensen (Rapid City), Stephanie Pochop (Gregory), Clint Sargent (Sioux Falls), Lonnie Braun (Rapid City) and Jim Roby (Watertown). The success of this program is based upon the collaboration of the State Bar of South Dakota, NITA, the USD Law School and our practitioners who give unselfishly of their time to be the faculty.

The ABOTA steering committee has decided to pause any offerings in the calendar year 2020 to allow the pool of potential participants to be refilled with new attorneys. At the present time, it is intended that the Trial Academy, which consists of a full week of participation regarding the civil jury trial, will be offered in July of 2021 and the deposition program reoffered in July 2022.

Below are the names of the participants of this year’s deposition program: Melissa Sommers (Sioux Falls), Marilyn Trefz (Vermillion), Jeremy Lund (Aberdeen), Anthony Sutton (Sioux Falls), Alexis Warner (Sioux Falls), Koln Fink (Sioux Falls), Andy Fick (Sioux Falls), Brian Zielinski (Sioux Falls), Christopher N. Leon (Yankton), Josh Finer (Aberdeen), Zach Flood (Mitchell), Kimberly Pehrson (Rapid City), Seth Lopour (Sioux Falls), Matthew Tysdal (Sioux Falls), Kelsey E.B. Knoer (Sioux Falls), Paul Van Olson (Yankton), Nick Moser (Yankton), Ryan Vogel (Aberdeen), Jacob W. Tiede (Mitchell), Daniel B. Weinstein (Sioux Falls), Trinetta LaFleur (Sioux Falls), Chris Sommers (Sioux Falls), Thomas Johnson (Sioux Falls), Molly K. Beck (Sioux Falls) and Beau Barrett (Yankton).

This program demonstrates the commitment of our Bar to educate the next generation of South Dakota lawyers.

Sincerely yours,

SOUTH DAKOTA STATE  
BAR TRIAL ACADEMY  
COMMITTEE

Thomas J. Welk  
Chairperson

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Clint Sargent

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



Become Your Own Cybersleuth!

HOW TO DO

# Fast, Free, and Effective Investigative Research on the Internet

Thursday, September 26, 2019

Dahl Arts Center • 713 7th Street • Rapid City, SD  
9:00 a.m. - 4:30 p.m. • 6 Hours of CLE

**THIS SEMINAR IS FOR ATTORNEYS, PARALEGALS, JOURNALISTS, LAW ENFORCEMENT PERSONNEL AND ANYONE WHO DOES RESEARCH ON THE INTERNET! YOU WILL LEARN ...**

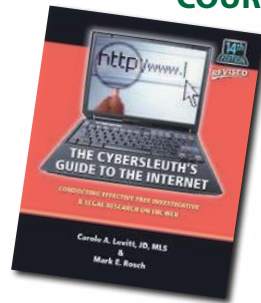
- Some of the best internet search strategies and sources for finding crucial information that you might otherwise miss.
- How to use free public record sites and sites with free “publicly available” information (including social media sites) for investigative research, discovery, trial preparation, background checks, locating missing persons and more!
- About hidden Google search features and shortcuts to speed up your research.
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*Carole Levitt, Esq., and Mark Rosch of Internet for Lawyers are internationally recognized CLE speakers and have authored seven internet research books for the ABA Law Practice Division since 2003. In 2013 they received the “Fast-case Fifty Award,” recognizing them as two of 50 of the most innovative and visionary leaders in the law. In 2014 they became fellows in the College of Law Practice Management that grants awards to distinguished professionals in that area.*

## COURSE MATERIALS



Each attendee will receive a copy of the 540-page, 14th revised edition of *The Cybersleuth's Guide to the Internet* – a \$64.95 value! And you get updates for free through the Internet for Lawyers website!



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**ADVANCE REGISTRATION FEES \$189 – 259** (Includes *The Cybersleuth's Guide to the Internet* and Lunch!)

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**CANCELLATION / NO-SHOW POLICY:** Cancellations by Thursday, September 19 will receive a refund less a \$10 administrative fee. After that date a \$50 administrative fee will be deducted. Refunds will NOT be issued for no shows!

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**JOIN US.  
September 20 & 21, 2019  
Hot Springs & Mitchell**

**Dear South Dakota Bar Member:**

The University of South Dakota School of Law Veterans Legal Education Group is holding a two-day drop in clinic for veterans. On **September 20, 2019**, VLEG will be at the VA Hospital in Hot Springs, SD (500 North 5th Street, Hot Springs, SD 57747). The time of the clinic will be from 9:00AM to 3:00PM. We hope to reach nearly 40 veterans this day.

The second day, **September 21, 2019**, will be at the Mitchell Corn Palace in Mitchell, SD (604 N Main St, Mitchell, SD 57301). The time of this clinic will be from 8:00AM to 4:00PM and held in conjunction with the Davison County Veterans Wellness & Benefits Fair. We hope to reach an additional 40 veterans on day two of the clinic.

We currently have law students planning to attend.

**We are currently in need of attorneys for both days.**

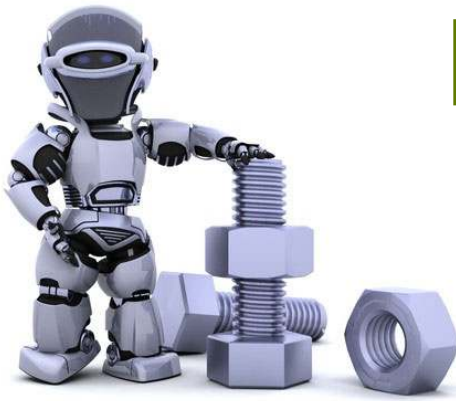
If you would like to volunteer or have any questions about the clinics, please reach out to me at [Ashley.Flood@coyotes.usd.edu](mailto:Ashley.Flood@coyotes.usd.edu).

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

**Sincerely,  
Ashley Flood  
President, Veterans Legal Education Group**

USD SCHOOL OF LAW VETERANS LEGAL EDUCATION GROUP

**volunteer**



# NUTS *and* BOLTS

Brought to you by The State Bar of SD, The Young Lawyers Section & The Committee on Continuing Legal Education

October 18, 2019

Capitol Lake Visitors Center, Pierre

9:30 am – 2:30 pm (prior to the 2019 Swearing In Ceremony)

Holly Farris, Chair

Time	Topic	Speaker
9:15-9:45 am	<b>Registration</b>	
9:45-10 am	<b>Welcome/Introduction</b>	<b>Nate Chicoine</b> , YLS President - Rapid City
10-11 am	<b>Law Practice Management 101</b>	<b>Paul Bachand</b> , Moreno & Bachand - Pierre
11 am – 12 pm	<b>Practice Tips from the Bench</b>	<b>Hon. Bobbi Rank</b> , Presiding Judge, 6 <sup>th</sup> Circuit - Winner
12-12:45 pm	<b>Lunch</b>	
12:45-1 pm	<b>Lawyers Concerned for Lawyers/Lawyers Assistance</b>	<b>Rebecca Porter</b> , Porter Law Office – Rapid City
1-1:45 pm	<b>Administrative Law: An Overview of the Basics</b>	TBA
1:45-2:30 pm	<b>Panel Discussion: Lawyer/Lobbyist – How to Diversify your Law Degree</b>	Panel Discussion

Swearing In Ceremony: 3 pm – Capitol Rotunda



## No Event. No Cake. No Watch.

Professor Frank Pommersheim, who taught at the USD School of Law for 35 years, retired at the end of the 2019 spring semester. He declined a retirement party, hoping to avoid any undue attention as he moved into retirement.

“Please, let it be without fanfare. No event, no cake, no watch,” Professor Pommersheim said. “The ‘good’ that I have done is out there, or come and gone, or never was. I can’t really say, but no matter.”

However, his family still wanted to honor his legacy at USD in some way. They decided to surprise Professor Pommersheim by establishing an endowed scholarship to be known as the Professor Frank Pommersheim Indian Law Scholarship. The scholarship will be awarded yearly to a USD Law Student, who is an enrolled member of a federally recognized Indian tribe.

Professor Pommersheim began his career at USD in 1984. Almost every student who attended USD Law since that time was in one of his classes: Indian Law, Federal Jurisdiction, Rights of Indigenous Peoples, Tribal Courts, Criminal Law, and Criminal Procedure. His impact on the lawyers and legal system of South Dakota is far reaching and something his family wanted to be honored.

Professor Pommersheim has also served for many years as both the chairman and longtime member of the Indian Law Committee of the State Bar, as well as the drafter of the Indian Law question that is part of the South Dakota Bar Examination. In addition, he continues to serve as appellate justice on the Cheyenne River Sioux Tribal Court of Appeals, Rosebud Sioux Supreme Court, and Flandreau Santee Sioux Tribal Court of Appeals.

Since the scholarship’s creation in May, over \$24,000 has been given to support Native law students. Thank you to every alumni, donor, and friend, who has supported Professor Pommersheim’s legacy!

If you would like to contribute, you can do so at [www.usdfoundation.org/donate/pommersheim](http://www.usdfoundation.org/donate/pommersheim) or mail a check to the USD Foundation at 1110 N. Dakota St., Vermillion, SD 57069 (please write “Pommersheim Scholarship” in the memo line). For more information, contact Executive Director of Philanthropy Cynthia Whitney at (605) 228-6869 or [cynthia.whitney@usdfoundation.org](mailto:cynthia.whitney@usdfoundation.org).

LIVING

# ABOVE

THE BAR



*Lifeguarding  
For Lawyers*

by: Bob Burns,  
Co-Chair  
Lawyers Assistance Program  
[robertjburns@gmail.com](mailto:robertjburns@gmail.com)

If you are worried that a friend, colleague or family member might harm themselves, here is a suggested plan to help them. Find a private time and place. Tell them you are very concerned and care about them. Be direct and don't mince words. Ask if they are thinking of harming them self, or taking their life. Don't be afraid to use the word suicide. If they say yes or

seem equivocal then ask "Do you have a plan to do that?" Ask: "Do you have a gun?" If the answer is yes, or even if your intuition tells you they are at risk, then do two things. First, remain with them. Do not leave them alone for even a minute. Second, get them to a hospital or clinic at once. This can be a life or death situation. It is much better to over-react than to under-react. Regardless of the outcome of your conversation, stay vigilant and trust your own instincts as to any further course of action. If you are uncomfortable in confronting the person, for whatever reason, then enlist another family member or professional to help. Don't delay. You are not a doctor, but you can save a life. Be a lifeguard!

Thank you for reading. If you found this information helpful, please share with others in your office, family members or friends.

COMMITTEE NOTE

THIS IS THE CONTINUATION OF A SERIES OF MESSAGES CONVEYING PRACTICAL AND (HOPEFULLY) HELPFUL INFORMATION ABOUT HOW WE AS LAWYERS CAN HELP EACH OTHER. SUGGESTIONS AND CONTRIBUTIONS OF IDEAS OR ARTICLES ARE BOTH SOLICITED AND WELCOMED. IF YOU HAVE A FIRST-PERSON ACCOUNT YOU WOULD BE WILLING TO SHARE, WE WILL USE AN "ANONYMOUS" BYLINE IF SO REQUESTED. THAT ANONYMITY WILL BE PROTECTED.

## STRESS and DEPRESSION HELP

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

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



## SOLACE PROGRAM

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

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

# September 2019

Official Publication of the State Bar of South Dakota

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

Tracie at [tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net).

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

### Address Changes:

email [tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net) or log in to your profile at [www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com)

### Board of Bar Commissioners:

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## 2019 ABA Annual Meeting Report

This year, the 2019 ABA Annual Meeting was held in San Francisco, California. The meeting brought together hundreds of members of the ABA's various Sections, Divisions, and Forums. Including the Young Lawyers Division (YLD). During the meeting, the YLD hosted its own programming, Assembly, networking events, and governance. Below is a summary of the events attended by South Dakota young lawyers Tamara Nash and Carrie Srstka.

### Tamara P. Nash

Tamara serves within the Division in several capacities. She serves as Chair of the Minorities in the Profession Committee (MIPC), Liaison to the ABA's Commission on Women in the Profession, she is a member of the Resolutions team, and she was appointed to serve on LORALAB (the YLD's long-range planning board). Due to her various roles within the YLD, Tamara sits on Council and Cabinet.



Tamara was also recognized within the Division for her work. Tamara was recognized by Chair, Tommy Preston, as a 2019-2020 Star of the Year. This honor is awarded at the Chair's discretion and was provided to six recipients this year. Secondly, Tamara was recognized as a 2019 "On The Rise" Honoree. This program recognizes ABA young lawyer members who exemplify a broad range of high achievement, innovation, vision, leadership, and legal and community service. This year, forty young lawyers were honored.



This meeting, Tamara attended all governance events as well as programming. Conference highlights for Tamara include:

- **Uncomfortable Conversations about Legal Education, Student Debt, Diversity, and More-** This summit was a joint effort; hosted by the Iowa State Bar Young Lawyers Division and Law School Transparency. It focused on how the legal profession can address growing crisis of law student debt. It also highlighted the newly minted law student debt taskforce that will be lead by the ABA YLD.
- **CLE "US Too! Leading the Fight for a More Equitable and Safe Profession-** This year, the International Bar Association developed a worldwide study to bring harassment and workplace bullying to the forefront of profession. Following

this report, the ABA YLD has hosted a forum and several CLEs to discuss the report and solutions to the problems it identified. This CLE continued the conversation of how we as a profession can be leaders in addressing this problem.



### Carrie Srstka

Carrie attended the conference as an Affiliate President-Elect. Conference highlights for Carrie, include:

- **The Courage to Say No: Fulfilling your Ethical Responsibilities as A Young Associate-** This panel discussed ethical concerns that may arise by advice and orders from more senior attorneys, and discussed how to professionally and effectively voice those concerns as required by our ethical duties.
- **What Long-Term Change Can Make Legal Education More Affordable?-** This panel comprised of an Iowa young lawyer, the Dean of Syracuse University College of Law, and Dean Emeritus at UCLA Law School, led an interesting discussing regarding whether to take law school classes online as to reduce law school costs for students. The panel discussed the pros of online law school-such as lowering costs to students, and cons-such as the missed opportunities for students to get to know each other and their professors, and lack of networking.



### South Dakota Young Lawyers Section

During the meeting, the South Dakota Young Lawyer Section was recognized for its work with Project Destination. Project Destination is a public service project, which aims to engage Native American students in a conversation about the law and to plant seeds in the minds of high school and college students about having a future legal career. In the programs third year, we were awarded the ABA Partnership Award.

### YLD Assembly

The ABA Young Lawyers Division Assembly ("Assembly") is the principal policy-making body of the ABA YLD. Assembly convenes during the ABA's Midyear and Annual meetings. During Assembly, young lawyer issues and resolutions are debated and voted upon. The following resolutions were debated by the delegation, comprised of 166 young lawyer delegates from across the nation.

<b>HOD Resolution 111</b>	Urges the United States Government, state, territorial, and tribal governments to take a leadership role in addressing the issue of climate change and urges Congress to enact and the President to sign appropriate climate change legislation. Submitted by the Environment, Energy & Resources Section; Law Student Division; International Law Section; Science & Technology Law Section	Passed by voice vote
<b>HOD Resolution 114</b>	Urges legislatures and courts to define consent in sexual assault cases as the assent of a person who is competent to give consent to engage in a specific act of sexual penetration, oral sex, or sexual contact, to provide that consent is expressed by words or action in the context of all the circumstances, and to reject any requirement that sexual assault victims have a legal burden of verbal or physical resistance. Submitted by the Commission on Domestic and Sexual Violence; Commission on Domestic and Sexual Violence; Criminal Justice Section; and Civil Rights and Social Justice	Passed
<b>HOD Resolution 115E</b>	Urges the United States Congress, and local, state, territorial and tribal governments to enact legislation or regulations that require all law enforcement entities to meet training standards set by the Commission on Police Officer and Standard Training (POST) similar to California's legislation, AB 2504, Peace Officer Training. Submitted by the Section of Civil Rights and Social Justice and Commission on Sexual Orientation and Gender Identity	Passed
<b>HOD Resolution 115F</b>	Urges federal, state, local, territorial, and tribal governments to refrain from imposing upon reproductive healthcare providers requirements that are not medically necessary or have the purpose or effect of burdening women's access to such services. Submitted by the Section of Civil Rights and Social Justice and Commission on Women in the Profession	Passed
<b>YLD Resolution 19-5YL</b>	Urges agencies of the United States federal government to include in any exit interview with a departing employee a question about the impact of federal government shutdowns on the employee's decision to leave the agency, and urges Congress to request a study on the impact of federal government shutdowns on 1) the longevity of the current federal legal workforce, 2) the ability of agencies to hire and retain attorneys, and 3) the decision of recent law school graduates to apply for legal work in federal agencies. Submitted by the YLD Government, Military & Public Sector Lawyers Committee	Passed by voice vote
<b>YLD Resolution 19-6YL</b>	Amends the ABA YLD's bylaws to make each state's designated young lawyer representative to the ABA House of Delegates pursuant to Article 6.4(a) of the ABA Constitution, or his or her proxy, a delegate to the ABA YLD Assembly. Submitted by the YLD HOD Representatives	Passed
<b>YLD Resolution 19-7YL</b>	Amends the definition of a young lawyer to mean a lawyer who has been admitted to practice in his or her first bar within the past ten years or is less than thirty-six years old. Submitted by the Kansas Bar Association Young Lawyers Section; New Jersey State Bar Association Young Lawyers Division; New York State Bar Association Young Lawyers Section	Passed as amended

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

If you have interest in becoming involved in the ABA YLD or the State Bar Young Lawyers Section, please feel free to contact the Section President Nate Chicoine (nathan@demjen.com).

*The conferences for the 2019-2020 bar year are:*

*YLD Fall Conference- October 3-6, 2019 New Orleans, LA*

*ABA Midyear- February 12-17, 2020 Austin, TX*

*YLD Spring Conference- April 29-May 2, 2020 Nashville, TN*

*ABA Annual- July 29-August 4, 2020, Chicago, IL*

## *The Ins and Outs of Tail Coverage*

Mark Bassingthwaighte, Esq.  
[mbass@alpsnet.com](mailto:mbass@alpsnet.com)

To this day I still get the occasional call from an attorney wanting to know how to go about purchasing a tail policy and my response is always the same. I need to make sure that the caller understands there really is no such thing as a tail “policy.” Clarification on this point is important because confusion over what a tail is and isn’t can have serious repercussions down the road. To make sure you don’t end up running with any similar misperceptions, here’s what you need to know.

An attorney leaving the practice of law can’t purchase a malpractice insurance policy because he or she will no longer be actively practicing law. There simply is no practice to insure. This is why an attorney can’t buy a tail “policy.” What you are actually purchasing when you buy a tail is an extended reporting endorsement (ERE). This endorsement attaches to the final policy that is in force at the time of your departure from the practice of law. In short, purchasing an ERE, which is commonly referred to as tail coverage, provides an attorney the right to report claims to the insurer after the final policy has expired or been cancelled.

Again, under most ERE provisions, the purchase of this endorsement is not one of additional coverage or of a separate and distinct policy. The significance of this is that under an ERE there would be no coverage available for any act, error, or omission that occurs during the time the ERE is in effect. So for example, if a claim were to arise several years post retirement out of work done in retirement as a favor for a friend, there would be no coverage for that claim under the ERE. This is why you hear risk managers say things like never write a will for someone while in retirement. I know it can be tempting, but don’t practice a little law on the side in retirement because your tail coverage will not cover any of that work.

Another often misunderstood aspect of tail coverage arises when an attorney semi-retires and makes a decision to purchase a policy with reduced limits in order to save a little money during the last few

years of practice. The problem with this decision is that insurance companies will not allow attorneys to bump up policy limits on the eve of a full retirement, again, because no new policy will be issued. For many attorneys, this means the premium savings that came with the reduced limits on the final policy or two will turn out not to have been worth it and here’s why. All claims reported under the ERE will be subject to the available remaining limits of the final policy that was in force at retirement and this may not be enough coverage.

By way of example, if you were to reduce your coverage limits from one million per occurrence/three million aggregate to five hundred thousand per occurrence/five hundred thousand aggregate during the last year or two of active practice in order to save a little money, you will only have coverage of five hundred thousand per occurrence/five hundred thousand aggregate available to you for all of your retirement years assuming there was no loss payout under that final policy. In terms of peace of mind, for many that would be an insufficient amount of coverage. Therefore, if you anticipate wanting those higher limits of one million/three million during your retirement years, keep those limits in place heading into retirement.

Unfortunately, while many attorneys hope to obtain an ERE at the end of their career, the availability of tail coverage isn’t necessarily a given. For example, most insurers prohibit any insured from purchasing tail coverage when an existing policy is canceled for nonpayment of premium or if the insured failed to reimburse the insurance company for deductible amounts paid on prior claims. An attorney’s failure to comply with the terms and conditions of the policy; the suspension, revocation, or surrender of an insured’s license to practice law; and an insured’s decision to cancel the policy or allow coverage to lapse may also create an availability problem.

An attorney’s practice setting is also relevant. Particularly for retiring solo practitioners, insurers frequently provide tail coverage at no additional cost to the insured if the attorney has been continuously insured with the same insurer for a stated number of years. Given that tail coverage can be quite expensive,



shopping around for the cheapest insurance rates in the later years of one's practice isn't a good idea as the opportunity to obtain a free tail could be lost. Review policy provisions or talk with your carrier well in advance of contemplating retirement in order not to unintentionally lose this valuable benefit.

The situation for an attorney who has been in practice at a multi-member firm is a bit different. Here, when an attorney wishes to retire, leave the profession, or is considering a lateral move and worried about the stability of the about-to-be-departed firm, some insurance companies will not offer an opportunity to purchase an ERE due to policy provisions. The reason is the firm's existing policy will continue to be in force post attorney departure. This isn't as much of a problem as it might seem in that the departing attorney will be able to rely on former attorney language under the definition of insured. However, because the definition of insured varies among insurers, you should discuss this issue with your firm's malpractice insurance representative so options can be identified and reviewed well in advance of any planned departure. That said, I can share that under two ALPS policies and as long as certain conditions are met, we provide some of the most comprehensive tail coverage options in the industry, to include free individual EREs in event of retirement, death, disability or a call to active military service.

Be aware that the period in which one can obtain an ERE can be quite limited. Most policies provide a 30-day or shorter window that will start to run on the effective date of the expiration or cancellation of the final policy. There are even a few very restrictive policies in the market that require the insured to exercise the option to purchase an ERE on the date of cancellation or expiration. Given this, you should review relevant policy language well in advance of contemplating departing the profession as the opportunity to purchase an ERE is one you can't afford to miss.

The duration of tail coverage or more accurately the length of time under which a claim may be reported under an ERE varies depending upon what is purchased. Coverage is generally available with a fixed or renewable one, two, three, four, or five-year reporting periods or with an unlimited reporting

period. If available to you, the unlimited reporting period would be the most desirable, particularly for practitioners who have written wills during their later years of practice.

The premium charge for an ERE is usually specified in the policy. Often the cost is a fixed percentage of the final policy's premium and can range from 100% to 300% depending on the duration of the purchased ERE.

Given all of the above, if the ERE provisions outlined in your policy language have never been reviewed, now's the time. One final thought, be aware that if the unexpected ever happens such as the sudden and untimely death of an attorney still in practice, know that tail coverage can be obtained in the name of the deceased attorney's estate if timely pursued in accordance with policy provisions. This is why even attorneys who are not nearing retirement should still have some basic awareness of ERE policy provisions because one just never knows.

**Estate Planning with Paul**  
**S. Lee, J.D., LL.M**

September 20, 2019 | 8:30 am  
Ramkota Hotel | Sioux Falls

QSBS: The Quest for Quantum Exclusions  
(Queries, Qualms & Qualifications)  
Top Tax and Estate Planning Techniques  
after "Tax Reform" (Sorting Through  
the COVFEFE)

**CLICK  
TO  
REGISTER**

# ANNOUNCEMENTS

CADWELL SANFORD DEIBERT & GARRY LLP  
is pleased to announce that

*Claire E. Wilka*

has joined the firm as an associate attorney  
effective August 15, 2019.

Cadwell Sanford Deibert & Garry, LLP  
200 East 10th Street - Suite 200  
Sioux Falls SD 57104

Telephone: (605) 336-0828  
Facsimile: (605) 336-6036

E-mail: [cwilka@cadlaw.com](mailto:cwilka@cadlaw.com)  
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Walnut Desk 74 in. x43 in. with 8 drawers.  
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doors in the center.

Call Jim Haar – 605-935-6103 or 605-857-0374.

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## STATEWIDE SWEARING-IN CEREMONY

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OCTOBER 18, 2019  
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US!

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CAPITOL ROTUNDA  
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RECEPTION TO FOLLOW AT  
CAPITOL LAKE VISITOR CENTER

The *South Dakota Law Review* cordially invites you to

# Wine Review

**SATURDAY, SEPT. 28 AT 5:30 P.M.**

Hotel Alex Johnson • Rapid City, SD • Tickets: \$50



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Join us for a wonderful evening of wine, food and celebration as we present the **Distinguished Alumna Award** to Linda Lea Viken.



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Contact Brianna Eaton for additional sponsorship opportunities.

Please RSVP by Sept. 20 to [Brianna.Eaton@coyotes.usd.edu](mailto:Brianna.Eaton@coyotes.usd.edu) and mail a check to University of South Dakota, Attn: Brianna Eaton, 414 E Clark St., Vermillion, SD 57069.

Checks should be made out to "South Dakota Law Review" with "Wine Review 2019" in the memo line.

# Estate Planning

Joe Dylla, Chair

With Paul S. Lee, J.D., LL.M., the  
Global Fiduciary Strategist of  
The Northern Trust Company

## QSBS: The Quest for Quantum Exclusions (Queries, Qualms & Qualifications)

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

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

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

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

# CONSTITUTION DAY

**Gregory P. Magarian**

Professor of Law

Washington University  
School of Law



## Free Speech and Modernity: One Hundred Years of the First Amendment

**WEDNESDAY,  
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**18**

**AT NOON IN THE  
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Professor Magarian writes about U.S. constitutional law with emphasis on the freedom of expression.

Magarian's first book, *Managed Speech: The Roberts Court's First Amendment*, was published in 2017 by Oxford University Press.



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If you are a person with a disability and require special accommodation to fully participate, please contact Disability Services 48 hours before the event at 605-677-6389 or e-mail [disabilityservices@usd.edu](mailto:disabilityservices@usd.edu).

19<sup>TH</sup> ANNUAL

# COMMUNITY RESPONSE TO CHILD ABUSE CONFERENCE

OCTOBER 3 AND 4, 2019



## CONFERENCE REGISTRATION NOW OPEN

### Overview

In its 19<sup>th</sup> year, the Community Response to Child Abuse Conference is expected to gather over 700 attendees from across South Dakota and beyond. This two-day, multi-disciplinary conference provides opportunities for continuing education, networking, learning, and collaboration for those who work to prevent and respond to child maltreatment. Please join us on October 3 and 4, 2019.

### Intended Audience

Those passionate about the prevention of and response to child abuse and maltreatment, including:

- Medical Providers
- Nurses
- Behavioral Health
- Social Workers
- Educators
- Counselors
- Criminal Justice
- Law Enforcement
- Community Advocates

### Date

Thursday, Oct 3, 2019  
8:00 AM – 5:00 PM CDT

Friday, Oct 4, 2019  
8:00 AM – 4:00 PM CDT

### Location

Sioux Falls Convention Center  
1201 Northwest Avenue  
Sioux Falls, SD 57104

**Register Now!**

[www.sdcpcm.com/conference](http://www.sdcpcm.com/conference)

October 3 and 4, 2019      Sioux Falls Convention Center

# COMMUNITY RESPONSE TO CHILD ABUSE CONFERENCE

## Keynote Speakers

### Sasha Joseph Neulinger - Voice for the Kids

Sasha's life journey has brought him from sexual abuse victim, to survivor, to advocate. As part of this advocacy work, he travels the nation sharing his story and providing a voice for children who experience abuse. Sasha works to empower survivors to look inward and find their strength, and find a path forward toward healing.

### Kay Glidden and Beth Reynolds Lewis - Compassion Resiliency

Kay and Beth offer interactive trainings for trauma informed care, compassion fatigue, and vicarious trauma resiliency. Kay and Beth have trained several thousand people with skills, strategies and resources to prevent compassion fatigue. When organizations recognize signs and symptoms of vicarious trauma they can then improve employee satisfaction and reduce turnover.

## Conference Partners

### Building a stronger South Dakota through joint educational opportunities:

- Unified Judicial System
- Center for the Prevention of Child Maltreatment
- Child's Voice at Sanford Health

## Registration Costs

### Early Bird Registration (Through September 15<sup>th</sup>)

- Two Day - \$99
- One Day - \$59

### Late Registration (September 15<sup>th</sup> - October 1<sup>st</sup>)

- Two Day - \$119
- One Day - \$69

### Student Registration (Through October 1<sup>st</sup>)

- Student Two Day - \$60
- Student One Day - \$35

## Continuing Education

### Applications have been made for the following\*:

- Addiction and Prevention Professionals
- Counselors and Marriage and Family Therapists
- Dental
- CME
- CNE
- Social Work
- Education

\*For full CEU application information and disclosures, visit [www.sdcpm.com/conference](http://www.sdcpm.com/conference)

## Register Now!

[www.sdcpm.com/conference](http://www.sdcpm.com/conference)

For questions regarding registration, please email [CPCM@usd.edu](mailto:CPCM@usd.edu)

## **PUBLIC NOTICE**

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

The current appointment of Magistrate Judge Marya Tellinghuisen is due to expire on January 8, 2020. Magistrate Judge Marya Tellinghuisen serves in the Seventh Judicial Circuit.

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

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

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

**Comments must be received by October 20, 2019**





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

SDDL A is seeking nominations for their 2019 Awards Program. Below are the three Awards that will be considered by the Board and awarded at the Annual Meeting on November 8, 2019 in conjunction with the SDDL A Seminar in Sioux Falls (register at <https://vaminc.regfox.com/2019-sddl-a-annual-seminar>). If you have a colleague that is a current\* or past member of SDDL A, and fits this criterion, please consider nominating them.

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

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

- 2018 winner: None

**Collegiality Award**

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

- 2018 winner: Reed Rasmussen

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

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

- 2018 winner: Reece Almond

Please submit the nominee's name, CV and a short paragraph outlining reasons for the nomination by emailing Kris Rahm at [krisrahm@me.com](mailto:krisrahm@me.com) no later than September 15, 2019.

\*nominations cannot include current SDDL A Board Members.

## 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 can 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.

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.

### CARIBOU COFFEE CLUB

For more information or to receive blind copies of group announcements, send an email to: [cariboucoffeeclub@gmail.com](mailto:cariboucoffeeclub@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](http://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](http://www.sandcreekeap.com)  
Click the Work Life Wellness Login Link

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*All discussions and services are kept strictly confidential.*



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Morgan Stanley Smith Barney LLC ("Morgan Stanley"), its affiliates and Morgan Stanley Financial Advisors or Private Wealth Advisors do not provide tax or legal advice. Clients should consult their tax advisor for matters involving taxation and tax planning and their attorney for matters involving trust and estate planning and other legal matters.  
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# *In Memoriam*

John E. Harmelink  
1937 - 2019

John was born October 24, 1937 in Sheldon, IA to Edward Harmelink and Caroline Getting Harmelink. John attended public schools in Harwarden, IA, graduated from Harwarden High School in 1956, earning letters in football, basketball, and track. He attended the University of Iowa and graduated with a law degree in 1962. He was a member of Delta Tau Delta fraternity. In a delay of a law career, he was called to assist an ailing father to manage Yankton Concrete Products, Inc. until it's closing in 1975. He often jokingly said that he saved Karen Schempp from "old maidenhood" by marrying her in 1965 and to this union, three children were born. He was a very affectionate grandfather. They have since resided in Yankton. John was an active member of Hillcrest Golf and Country Club, serving as president in 1976. He was a member of St. John's Lodge Masonic Order and Yankton Shrine Club, and Christ Episcopal Church.

John's law career began in a partnership with attorney David Humphrey and later formed his own firm with Wanda Fox, eventually including Jason Ravensborg. John specialized, but not entirely, in bankruptcy work especially during the farm crisis of the 1980's. After retiring from law, he and Karen

became "snowbirds" in Cave Creek, AZ where he divided his leisure time between golf and serving on the Board of Directors of the Villas at Black Mountain part time as president. Other hobbies he had enjoyed and been involved with were family farming, hunting, fishing, and gardening.

John is survived by his wife, Karen of Yankton, SD; children: Jason (Rena) Harmelink of Crofton, NE, Scott (Stacy) Harmelink of Sioux City, IA, and Krista Haugen of Cave Creek, AZ; grandchildren: Amanda (Kurt) Watkins of Phoenix, AZ, Tyler (Taylor) Harmelink of Crofton, NE, Tara (Tanner) Foxhoven of Bennington, NE, Raychel Schurman of Crofton, NE, Emma and Maya Harmelink of Sioux City, IA, and Jacob and Nathan Haugen of Cave Creek, AZ; great-grandsons: Cash of Phoenix, AZ and Jameson and Kyler of Bennington, NE; sister, Mary (Jan) Mennig of St. Louis, MO

John is preceded in death by his parents.

Memorials may be sent to the Mead Cultural Education Center at 82 Mickelson Dr., Yankton, SD, 57078.



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UNIVERSITY OF  
**SOUTH DAKOTA**  
SCHOOL OF LAW

July 31, 2019

Andrew Fergel  
State Bar of South Dakota  
222 E. Capitol Ave. #3  
Pierre, SD 57501

Dear Andy:

Thank you so much to everyone who took the time to play and contribute to the ALPS golf tournament at this year's Bar Convention. The Law School benefits enormously from the time and generosity of everyone who participates in this event. As a new class of students arrives, I feel overwhelming excitement for the opportunity to help their careers begin. And I feel enormous gratitude for support like this for the Law School and its mission.

As I said in my remarks at the business meeting, "this isn't a one person show." All of us are working together to recruit, train, and place for success the next generation of South Dakota's lawyer leaders. Thanks so much to all the golf tournament participants for their help in that mission.

Sincerely,

A handwritten signature in black ink that reads "Neil Fulton".

Neil Fulton  
Dean  
USD School of Law

# THURGOOD MARSHALL LECTURE

*USD LAW COURTROOM*

Date: October 7, 2019

Time: 3 - 4 p.m.

Speaker: U.S. Senator Heidi Heitkamp



Heidi Heitkamp

 Twitter: @HeidiHeitkamp

**Heitkamp will be discussing  
Savanna's Act.**

"When I introduced this bill last year, I wanted to honor the memory of Savanna and a spark a nationwide call to action against the growing crisis of missing and murdered indigenous women and girls."

**Excellence. Service. Leadership.**

If you have a disability and need assistance to participate, please contact Disability Services 48 hours prior to attendance of the event at 605-677-6389 or email [disabilityservices@usd.edu](mailto:disabilityservices@usd.edu). This document is available in alternative formats, upon request from Disability Services.



## Project Rural Practice's Rural Internship Program:

*A Valuable Asset to Small Communities and Law Students  
by: Nolan Welker*

Growing up on a farm in the South-central part of the state provided my siblings and I with a simple and quiet childhood unique to the rural South Dakota experience. For all the benefits provided by the lifestyle in the small agricultural communities in our state, there are some disadvantages that have become more apparent to me during my law school education. Prior to law school, I do not remember ever meeting or even knowing the name of any lawyer from my area. This could be explained by any number of reasons, such as my nature of not getting into the kind of trouble that required a lawyer and the fact that I lived twenty miles from the nearest town. The most likely reason is that lawyers are sparse in my old stomping grounds: no attorney or anyone who claimed to be related to an attorney attended my church, school, or 4-H club to the best of my knowledge.

When I began to look for summer internships near home in Tripp and Gregory counties for summer 2019, the legal desert that I grew up in was a concern. I wondered whether any law firm in the general area would have the means, time, or interest in hosting a law student intern for the summer. Fortunately, my employer, Johnson Pochop & Bartling in Gregory, have plenty of opportunity for an intern to learn the ropes of practicing law in a rural area, Project Rural Practice's Rural Internship Program offered both of us the means to benefit from bringing a law student to an area that is sparsely populated by legal professionals.

The first goal of the Rural Internship Program is to help remove monetary boundaries for rural law firms and potential interns to work in rural areas. The second goal of the program is to expose law students to legal issues important to rural South Dakotans. After spending the summer working for Johnson Pochop & Bartling in Gregory County as a participant in this program, I can attest – without hesitation – that this program offers an important opportunity to the students and law firms who use it.

My application to the Rural Internship Program was simple. First, law students interested in this program should identify the geographical area of the state that they want to intern in: rural South Dakota counties are ranked for Project Rural Practice (PRP) purposes by their relative need for attorneys as either Primary, Secondary, or non-rural counties (and “non-rural counties” are not eligible for the program). From the student, the Rural Internship Program only requires an up-to-date resume. Similarly, employers interested in the program need only complete an uncomplicated, one-page application. The Rural Internship Program helps applicant law firms match up with an intern by providing the academic characteristics of the intern applicants, the wages/benefits/incentives being offered by the law firm and a generic description of the type of legal practice that the employer is engaged in so that the intern and law firm can be assured of a good fit.

A definite benefit of being introduced to the real-time practice of law as an intern in a rural area is the opportunity to delve into a diverse assortment of legal issues. Specialization can be difficult in rural areas because there is so much need for legal services by local clientele; as a result rural attorneys rarely have the opportunity to specialize in one area of law. This fact, coupled with Gregory County's proximity to several tribal court systems, provided me with the opportunity to have a colorful educational and experiential internship at the Johnson Pochop & Bartling law office.

During our participation in the Rural Internship Program, I worked directly with three lawyers. The lawyers and their staff were committed to offering me a substantive and meaningful internship experience: I was immediately included as a member of their office team. There is a lot of driving involved in rural practice, but on the upside, it tends to offer a work environment where formal courtroom attire is necessary only when going to court and where work hours are flexible because family and community events are prioritized. I was expected to factor personal time into my work schedule to help me learn about work/life balance and to help me learn how to avoid burn-out.



Throughout the summer, I was included and expected to participate in the law firm's case selection processes and discovery efforts. The lawyers I worked with sought my advice and perspective about case development and litigation strategy, and they had a sincere appreciation for my input. I was not treated as a law student who has a lot to learn: they valued my input as a person who is also studying and learning the law.

I was intentionally given assignments involving a wide variety of civil cases so that I could get a flavor of that type of work. As a result, I researched issues involving 8th Amendment prisoner rights claims, contract disputes, building construction disputes, EEOC discrimination charges, divorces, agricultural loan defaults, wage garnishments, and estate planning matters. The research I was involved in covered federal law, state law and tribal law.

I gained significant practical experience in criminal law practice, in both state and tribal court venues. I was able to work on cases from both the defense and the prosecution standpoints. I argued a motion to suppress, to present plea deals to the court, to provide comments on sentencing and bond, and I drafted criminal complaints and motions. According to the lawyer I worked with, I was an invaluable member of his trial team at a jury trial. Another one of the lawyers was sad to see me start law school before a series of depositions that I helped her be prepared for.

My experiences were not limited to learning by watching or researching, though I wrote my fair share of research memos. I interacted directly with law firm clients and witnesses. Some of the experiences were nerve-wracking because what I was doing was for actual clients; other experiences were invigorating. For example, I learned how to conduct client intake interviews in divorce cases and in a potential wrongful death case. I actively investigated the facts of a potential wrongful death claim by finding and interviewing potential witnesses and by acquiring necessary documentary evidence. I also analyzed a virtual pile of electronic evidence that will be used in a complicated civil rights case.

One of the most important things that the lawyers I worked with wanted me to learn from this experience is that being a lawyer is a heavy responsibility because of the public's trust in our profession. During my internship, I discovered that the clients and witnesses

who I interacted with trusted me simply because of my standing as a law student. They did not seem to limit or discount their trust in me because I am still in law school. I witnessed first-hand what a difference it makes for those who live in rural communities to have ready access to a lawyer, which in and of itself makes me better appreciate the power of the law degree I hope to acquire in a few short months.

Another important aspect of the Rural Internship Program is one that is not advertised or easily quantified: working as an intern in a rural law firm offers a unique array of networking contacts among attorney and members of the court system. Perhaps because there are not many other lawyers to refer to or collaborate with in any given rural community, rural lawyers make a point of developing relationships with other lawyers across the state. Rural practice is a great venue to find a life-time legal mentor.

I have been able to expand my legal connections as well as my legal horizons because of the Rural Internship Program experience. I spent my youth without knowing a single attorney. During my time in law school, I have met dozens of attorneys who practice in the urban areas of our state and many law students who hope to do the same. I have now returned to the University of South Dakota School of Law to complete my third year, and when I graduate this coming May, I know that the rural lawyers I interned for will remain invested in my future and that they want to help me succeed in the profession whether I ultimately choose rural practice or not.



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## Ethics Opinion 2019-05

**Rules: 1.5, 1.6, 1.15, and 1.16**

**Subject: Disposition of Client Trust Account Funds**

**Summary: A Lawyer may not take possession of unearned funds remaining in a Client's trust account even if the Client has discontinued communication with and cannot be located by Lawyer after a diligent search, and even if an operative fee agreement appears to permit the lawyer to do so.**

### BACKGROUND

Lawyer began representing Client regarding what was hoped to be an uncontested divorce under a flat-fee arrangement. The fee agreement between the Lawyer and Client, signed by the Client states

“[i]f Client fails to communicate with [Lawyer], any unclaimed retainer funds will become property of [Lawyer] after one year. Client understands that the retainer is a deposit to ensure payment of fees and expenses and not a flat fee.”

Before the divorce action was filed, Client left the state, requested that the divorce be postponed, and indicated that Client would contact Lawyer upon returning to the state. This occurred two years ago. Lawyer has had no further contact with the Client. The Lawyer cannot reach the Client by email or telephone. The Lawyer, admittedly, has not attempted to reach Client by mail. But this is because Lawyer believes the Client likely still lives with Client's spouse, and that any communication might be received and read by the spouse. Lawyer reasonably believes Client simply decided to no longer pursue a divorce, and that representation has effectively terminated.

There is a small amount (less than \$100) remaining in Lawyer's Client trust account that belongs to Client. It was intended to cover the filing fee for the divorce proceeding.

Lawyer has asked the Committee if it is permissible for Lawyer to invoke the language, above, from the fee agreement, and take possession of the funds. If not, what must Lawyer do with them? Lawyer has also inquired whether there is any retainer language Lawyer could include in future fee agreements to address the overarching issue of an unresponsive client that has funds remaining in trust.

Lawyer has posed this question in light of Rules 1.5 and 1.15 of the South Dakota Rules of Professional conduct, and ethics opinions from South Dakota and other jurisdictions where similar issues were addressed under similar rules.

For example, Lawyer recognizes that, under Rule 1.5, any fee must be “reasonable,” but remarks that the small amount involved here (less than \$100) might militate against application of that rule in this specific instance.

Lawyer likewise acknowledges Rule 1.15, which imposes an obligation of “safekeeping” regarding client property. Lawyer notes that some other jurisdictions have modified Rule 1.15 to

require attorneys to remit unclaimed funds to those jurisdictions' IOLTA programs, although South Dakota has not done so. Lawyer also notes that one of the Committee's previous opinions, Opinion No. 98-11, provided that, in the event of a client's death, an attorney should maintain the funds in trust until a valid claim is made or until they escheat to the state, but suggests this opinion may not be strictly on point.

Finally, Lawyer has noted that a 2006 formal ethics opinion in North Carolina opined that it was permissible for an attorney to include provisions in fee agreements assessing up to a certain amount per year as a "dormancy fee;" but that the New Hampshire Bar Association had issued an article cautioning against provisions in fee agreements that unclaimed funds are forfeited to the Lawyer.

### ANALYSIS

Lawyer's situation is governed generally by Rules 1.5, 1.6, 1.15, and 1.16, which govern, respectively, fees, confidentiality, safekeeping of property, and a lawyer's obligations upon termination of representation, including return of client funds. This opinion is also informed by a recent opinion issued by this Committee, Opinion 2019-01, and an older opinion, Opinion 98-11.

For the reasons that follow, the Lawyer must maintain the funds at issue in an account segregated from the Lawyer's operating account unless the Client is located or otherwise claims the funds, or some other substantive legal obligation outside the scope of the Committee's purview requires the Lawyer to take other action.

#### **I. Client funds must be returned to a client when representation is terminated, or kept safe and segregated from the lawyer's funds until the client is located.**

As a starting point, Rule 1.16(d) provides in part that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of fee or expense that has not been earned or incurred." So generally, any advance payment of a fee or expense not yet earned or incurred by the lawyer must be returned upon termination of representation. Importantly, here, the funds being held by Lawyer were specifically designated to cover the filing fee of a legal action that was never filed. Therefore, the expense was not incurred, and the funds remain Client property.

Assuming the representation has terminated, Lawyer appears to have diligently attempted to satisfy Rule 1.16(d). Specifically, it has been reasonable for Lawyer to not send the funds or communications to the address where the Lawyer believes Client resides (with Client's spouse), because this might violate Rule 1.6(a), i.e., a lawyer "shall not reveal information relating to the representation of a client," subject to certain exceptions not relevant here. However, "reasonably practicable" steps to return the funds under Rule 1.16(d) would include Lawyer continuing to periodically attempt to contact Client about the funds.

Meanwhile, the funds remain Client’s property. Rule 1.15(a) provides that a “lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third party.”

Absent some exception or other Rule, the Lawyer must retain the funds in trust because they are Client’s property.

## **II. The forfeiture provision of the fee agreement is not enforceable.**

Lawyer has inquired whether the language in Lawyer’s fee agreement contemplating Client’s forfeiture of unclaimed retainer funds permits Lawyer to take possession of those funds, particularly here, where the fund is nominal. This would not be acceptable under Rule 1.5, regardless of the amounts involved. Rule 1.5 provides that a lawyer may not “make an agreement for, charge, or collect an unreasonable amount for fees or expenses” subject to a multi-factor analysis regarding reasonableness. However, under the language of the Lawyer’s fee agreement, it is the Client’s mere failure to communicate (as opposed to the Lawyer performing some service, or incurring some fee related to the representation) that triggers the forfeiture. This appears to preclude a finding that any amount, regardless of how small, has been “reasonably” earned or incurred. The fee agreement’s language precludes a meaningful “reasonableness” analysis, because it is not contingent on the “reasonableness” of any particular fee, which the Committee has previously stated is unacceptable. *See* South Dakota Ethics Opinion 2019-01 (“We have stated in our prior opinion that a fee arrangement ‘that would not, under any circumstances’ allow for a reasonableness review under Rule 1.5 violates the Rules”) (quoting South Dakota Ethics Opinion 2000-5A).

## **III. The size of the fund is insufficient to justify assessing fees related to the search.**

Lawyer has also inquired whether Lawyer could take possession of some or all of the funds as legal fees related to the time or expense incurred in attempting to find the Client. There are opinions from other jurisdictions applying Rule 1.5 to this situation that contemplate a lawyer being compensated for *costs incurred* in attempting to locate a Client, such as postage, telephone bills, and even a private investigator’s services, if the fund is substantial enough to justify them. *See* Virginia LEO 1673; Utah State Bar Ethics Advisory Opinion Committee Opinion No. 97-01. The Committee agrees, here, that the Lawyer could appropriately deduct from the funds at issue actual costs incurred by the Lawyer to locate the Client, because that would constitute an “expense” under Rule 1.5.

Assessing attorneys’ fees for the search to justify retention of the funds, however, is another matter. At least one out-of-state opinion suggests “[a]ttorney’s . . . fees associated with the search might appropriately be paid out of the trust fund.” *See* Utah State Bar Ethics Advisory Opinion Committee Opinion No. 97-01 at fn. 2. However, that very same opinion states

“[c]learly expending all of the money held in trust to locate the client is not warranted and violates the rule of safely keeping a client’s property” before stating that, for large sums of money, such fees *might* be reasonable. (*Id.* ¶ 2.)

The Committee declines to opine there can never be circumstances where the size of the client fund might justify a lawyer spending time to locate the client and then billing the client attorneys’ fees because that situation is not presented here. Here, where there is less than \$100 in funds, assessing the Client attorneys’ fees for the search would be unreasonable under Rules 1.5 and 1.15.

#### **IV. Other substantive law may dictate Lawyer’s future conduct.**

This leaves Lawyer in the position of maintaining the funds at issue indefinitely. However, the Committee has previously provided guidance in a related circumstance that appears applicable here. In Opinion 98-11, a lawyer represented a client who died before completion of the representation, with over \$200 remaining in the client’s trust account. The lawyer believed the client had no spouse or children, and that no estate had been opened or ever would be opened. The lawyer asked how the funds should be disposed of. The Committee noted that it was possible that some party (such as the client’s surviving parents or client’s creditors) might assert a claim against the funds. The Committee then noted that the ABA/BNA *Lawyers Manual on Professional Conduct* had reported a decision from Missouri requiring a lawyer in a similar circumstance to “continue to make reasonable efforts to find the heirs, if further leads arise, and must keep the funds in the account until they escheat to the state.” (Opinion 98-11 at 2, (citing ABA/BNA § 45:1201).) The Committee also noted the ABA/BNA Manual suggested that “the lawyer may petition the appropriate court for judicial determination regarding the disposition, or the lawyer may follow the procedures contained in the state’s disposition of abandoned property laws.” (*Id.*) Ultimately, the Committee determined that the lawyer had to maintain what appeared to be abandoned client property “until a lawful claim is made to it or it escheats to the state” or “pursuant to an order of a court of appropriate jurisdiction.” (*Id.*)

Although the facts here are admittedly different, the Committee believes the rationale of this earlier Opinion still applies. In the case of so-called “missing” clients, many jurisdictions either allow, or even require, a lawyer to dispose of the “missing” client’s property according to the state’s abandoned property procedures. (*See* ABA/BNA § 45:1206 (citing ethics opinions from Alabama, Arizona, Colorado, Connecticut, Louisiana, Maryland, New York, North Carolina, Oregon, South Carolina, Utah, and Vermont).)

This Committee does not opine on matters of substantive law, and it cannot opine whether South Dakota’s own statutes regarding escheat of unclaimed property (SDCL Chapter 43-41B) apply here, but consistent with former Opinion 98-11, Lawyer should consider whether Lawyer already has or eventually will have an obligation to comply with these or similar statutes.

In addition, to ensure consistency with the directives of Opinion 98-11, Lawyer could, in theory, ask a court to resolve this issue, although there may be practical issues outside the scope of the Committee's purview (i.e., notice to the Client, confidentiality, etc.) that foreclose this option.

**V. A “dormancy” fee *might* be enforceable, if reasonable.**

On a related note, Lawyer asks whether Lawyer could include a provision in future fee agreements to the effect that a reasonable “dormancy” fee will be charged each year against remaining funds in a client's trust account which are not claimed after a reasonable period of time after notice. Lawyer notes that the North Carolina State Bar in its Opinion 2006-15 stated that this was acceptable if (1) the client gives written consent to the fee; (2) the fee violates no state law regarding fees charged for holding unclaimed property; and (3) the fee is reasonable under Rule 1.5.

It is the Opinion of the Committee that Lawyer may include a “dormancy” fee in future written fee agreements, but to comply with Rule 1.5, the fee must be reasonable, given the Lawyer's typical costs associated with administering the account in which the funds are held, and the amount of the funds at issue in relation to the overall balance of funds held by Lawyer in the account. Put another way, the fee must be set at an amount that reasonably approximates Lawyer's true anticipated administrative costs associated with maintaining the funds. The Committee (and perhaps Lawyer) cannot define this reasonable fee in advance because it will likely vary depending on the circumstances of a given situation. In addition, the fee agreement would need to not violate any unclaimed property statutes that might preclude assessment of such a fee, such as SDCL Chapter 43-41B, which is a substantive issue that is outside of the Committee's purview.

**CONCLUSION**

In conclusion, it is the Committee's Opinion that:

- A. The funds in Lawyer's trust account are neither “attorney fees” nor “costs” that Lawyer has earned from the representation of Client and, therefore, must generally be returned to the Client, or retained until the Client can be located;
- B. Lawyer has been reasonably diligent in attempting to locate and/or communicate with Client to return the funds, but must continue to periodically attempt to do so;
- C. Lawyer may not take possession of the funds based on the attorney/client fee agreement provision providing for forfeiture of the funds;
- D. Because the amount of the funds is nominal, Lawyer may not take possession of the funds under the theory that they would represent fees earned while attempting to locate

the Client, although the Committee does not state or imply there could never be a circumstance where that would be appropriate, such as in the case of a large fund;

- E. Lawyer should consider whether there are state abandoned property laws or other laws that might dictate what Lawyer must do with the funds; and
- F. Lawyer could, in the future, use a fee agreement that contemplates a “dormancy fee” for retention of a client’s funds, so long as the fee would violate no substantive law regarding unclaimed property, but any fee would have to be consented to in writing, and would have to be reasonable in relation to the actual costs Lawyer incurs in retaining funds.

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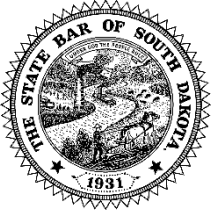
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Lindsey Quasney, Sioux Falls  
Lindsey Riter-Rapp, Pierre  
Jason Rumpca, Sioux Falls  
Heather Sazama, Rapid City  
Janki Sharma, Rapid City  
Hon. Richard Sommers, Aberdeen  
Carrie Srtska, Sioux Falls  
Jeffery Tronvold, Pierre  
Eric Whitcher, Rapid City

**PRACTICE RULES REVISION**

Mallori Barnett, Pierre  
Gregory Bernard, Rapid City  
**John Burke, CH, Rapid City**  
Delia Druley, Sioux Falls  
Aaron Eiesland, Rapid City  
Gregory Erlandson, Gregory  
Shannon Falon, Sioux Falls  
Gregory Grajczyk, Milbank  
Jeffrey Hurd, Rapid City  
Meghann Joyce, Sioux Falls  
Shiloh MacNally, Rapid City  
Ann Mines-Bailey, Pierre  
Sander Morehead, Sioux Falls  
Jay Schultz, Rapid City  
Tim Shattuck, Sioux Falls  
Hon. John Sogn, Sioux Falls  
Roger Sudbeck, Sioux Falls  
Gary Thimsen, Sioux Falls  
**Ex-Officio:**

Shirley Jameson-Fergel, Pierre

**PROJECT RURAL PRACTICE**

Ashley Anson, White Lake  
Margaret Bad Warrior, Dupree  
Amy Bartling, Gregory  
Chris Beesley, Custer  
Ryan Cwach, Bloomfield, NE  
Jennifer English, Salem  
Dennis D. Evenson, Clear Lake  
Thomas Frieberg, Beresford  
Hon. Chief Justice David Gilbertson, Pierre  
**Patrick Goetzinger, Co-CH, Rapid City**  
Thomas Graslie, Rapid City  
Kristen Kochejian, Redfield  
Sarah Larson, Gettysburg  
**Bob Morris, Co-CH, Belle Fourche**  
Chad Nelson, Milbank  
Thomas Nicholson, Sioux Falls  
Rachelle Norberg, Burke  
Shane Penfield, Lemmon  
Scott Peterson, Valentine  
Suzanne Starr, Pierre  
Kelsea Kenzy Sutton, Burke  
Amanda Work, Winner

**SOLO AND SMALL FIRM**

Ashley Anson, White Lake  
Corey Bruning, Flandreau  
Erika Campbell, Rapid City  
James Craig, Sioux Falls  
Jennifer English, Salem  
Vincent Foley, Watertown  
John Frederickson, Deadwood  
Anita Fuoss, Murdo  
Gregory Grajczyk, Milbank  
**Thomas Graslie, Co-CH, Rapid City**  
Nicole Griese, Sioux Falls  
**Katie Johnson, Co-CH, Beresford**  
Richard Johnson, Sioux Falls  
Thomas Keller, Sioux Falls  
Kristen Kochejian, Redfield  
Scott Kuck, Aberdeen  
Cheryl Laurenz Bogue, Faith  
Chris McClure, Sioux Falls  
Bob Morris, Belle Fourche  
Seth Nielsen, Minneapolis  
Langu Okall, Sioux Falls

**SOLO AND SMALL FIRM  
continued...**

Michael Ortner, Hot Springs  
N. Bob Pesall, Flandreau  
Glen Petersen, Tyler MN  
Greg Protsch, Howard  
Richard Rahn, Sioux Falls  
Jay Schultz, Rapid City  
Danny Smeins, Britton  
Sandy Steffen, Gregory  
John Stekly, Platte  
Lisa VonWald, Selby  
Daniel Weinstein, Sioux Falls

**STRATEGIC PLAN**

**Richard Casey, Co-CH, Sioux Falls**

Andrew Fergel, Pierre  
Hon. Franci Foral, Sturgis  
Thomas Frieberg, Beresford  
Patrick Goetzinger, Rapid City  
Terry Hofer, Rapid City  
Taneeza Islam, Sioux Falls  
Samuel Kerr, Rapid City  
Melissa Neville, Aberdeen  
Margo Northrup, Pierre  
Elizabeth Overmoe, Sioux Falls  
Seth Pearman, Flandreau  
Alison Ramsdell, Sioux Falls  
Mrg Simon, Sioux Falls  
Kirsten Taggart, Coleman  
Rodrick Tobin, Terry Westergaard,  
Rapid City

**Jennifer Williams, Co-CH, Rapid City**

**VETERANS COMMITTEE**

Kirk Albertson, Pierre  
Kathrn Cahoy, Sioux Falls  
Justin Clarke, Sioux Falls  
Linton Clarke, Rapid City  
Craig Evenson, Clear Lake  
Bruce Ford, Watertown  
Dusty Ginsbach, Buffalo  
Edward Hruska, Pierre  
Darrell Jesse, Dakota Dunes  
Amanda Kippley, Sioux Falls  
Seth Klentz, Sioux Falls  
Gregory Litton, Rapid City  
Donald McCarty, Brookings  
Bob Morris, Belle Fourche  
David Natvig, Kimball

Philip Peterson, Beresford  
Jason Ravensborg, Yankton  
Alice Rokahr, Sioux Falls  
Tracye Sherrill, Sioux Falls  
Melissa Sommers, Sioux Falls  
Hon. Robert Spears, Watertown  
Hon. Greg Stoltenburg, Brookings  
James Sword, Hot Springs  
John Taylor, Sioux Falls  
**Sarah Theophilus, Co-CH, Sioux Falls**  
**Gary Thimsen, Co-CH, Sioux Falls**  
Kellen Willert, Belle Fourche

**WEBSITE REVIEW COMMITTEE**

Nathan Chicoine, Rapid City  
Andrew Fergel, Pierre  
Samuel Kerr, Rapid City  
Scott Moses, Rapid City  
**Colleen Zea, CH, Sioux Falls**

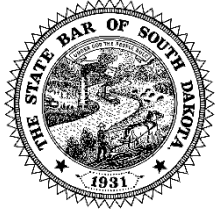
**WOMEN IN LAW**

Robin Aden, Sioux Falls  
Deb Birgen, Sioux Falls  
Sarah Bouwman, Sioux Falls  
Mary Burd, Sioux Falls  
Hon. Natalie Damgaard, Sioux Falls  
Delia Druley, Sioux Falls  
Anita Fuoss, Murdo  
Nicole Griese, Hartford  
Roxanne Hammond, Pierre  
Stacy Hegge, Pierre  
Laura Hensley, Sioux Falls  
Wendy Hess, Vermillion  
Ann Hoffman, Sioux Falls  
Jenipher Jones, Denver CO  
Lindsey Martin, Watertown  
Kristi Vetri, Box Elder  
Linda Lea Viken, Rapid City  
Kelsey Weber, Rapid City  
**Ashlee Wendt, CH, Sioux Falls**  
Amanda Work, Winner  
Rosa Yaeger, Pierre

**WORKERS COMPENSATION**

Daniel Ashmore, Rapid City  
**Jami Bishop, CH, Sioux Falls**  
Gene Bushnell, Rapid City  
Kristi Holm, Sioux Falls  
Margo Tschetter Julius, Rapid City

Charles Larson, Sioux Falls  
James Leach, Rapid City  
Brad Lee, Rapid City  
Rebecca Mann, Rapid City  
James Marsh, Pierre  
John McCoy, Rapid City  
Jolene Nasser, Sioux Falls  
Rick Orr, Sioux Falls  
R. Alan Peterson, Sioux Falls  
Clint Roberts, Pierre  
Catherine Sabers, Rapid City  
Jeff Shultz, Sioux Falls  
Tracye Sherrill, Sioux Falls  
Sue Simons, Sioux Falls  
Michael Simpson, Rapid City  
Justin Smith, Sioux Falls  
Jennifer Van Anne, Sioux Falls  
Bram Weidenaar, Sioux Falls



# State Bar of South Dakota Officers, Section Leadership, & Officers of Related Groups 2019-2020

## Officers of the Bar

President, Steve Huff, Yankton  
President-Elect, Terry Westergaard, Rapid City  
Andrew Fergel, Executive Director & Secretary-Treasurer, Pierre

## Board of Bar Commissioners

1<sup>st</sup> – Marilyn Trefz, Vermillion  
2<sup>nd</sup> – Renee Christiansen, Sioux Falls  
3<sup>rd</sup> – Matthew Roby, Watertown  
4<sup>th</sup> – Kellen B. Willert, Belle Fourche  
5<sup>th</sup> – Roderick L. Tobin, Aberdeen  
6<sup>th</sup> – Brent Kempema, Pierre  
7<sup>th</sup> – Kirsten Aasen, Rapid City  
AL – Edward Hruska, Pierre  
AL – Josh Wurgler, Aberdeen  
AL – Dusty Ginsbach, Buffalo  
AL – Aaron Pilcher, Huron  
AL – Jennifer M. Williams, Rapid City  
AL – Colleen M. Zea, Sioux Falls

## Access to Justice

Denise Langley, Co-Coordinator, Pierre  
Elizabeth Overmoe, Co-Coordinator, Sioux Falls

## American Board of Trial Advocates

Gary D. Jensen, President, Rapid City  
Richard Travis, President-Elect, Beresford  
Heather Lammers Bogard, Secretary, Rapid City  
William Garry, National Rep., Sioux Falls  
Gary Thimsen, National Rep., Sioux Falls

## Attorneys Liability Protection Society (ALPS)

Jeffrey T. Sveen, Director, Aberdeen

## Board of Bar Examiners

Susan M. Sabers, Ch., Sioux Falls  
Jack H. Hieb, Aberdeen  
Larry M. Von Wald, Rapid City  
Jane Wipf Pfeifle, Hon., Rapid City  
Reed Rasmussen, Aberdeen

## Commission on Equal Access to Our Courts

Sally Christenson, Pierre  
Hon. Joni Clark, Sioux Falls  
Thomas Fritz, Rapid City  
Michelle Glodt, Pierre  
Lynn Hammerstrom, Belle Fourche  
Gregory L. Sattizahn, Pierre  
Thomas J. Welk, Sioux Falls

## Council of School Attorneys

Rodney Freeman, President, Huron  
Kelsey Parker, Vice-Pres., Rapid City  
Gerald Kaufman, Sec./Treas., Pierre

## Disciplinary Board

Terry G. Westergaard, Ch., Rapid City  
Heather Lammers Bogard, Rapid City  
Julie M. Dvorak, Aberdeen  
William C. Garry, Sioux Falls  
Eric Schulte, Sioux Falls  
Kara Semmler, Pierre  
Steve Willard, Lay Member, Pierre  
Roy Wise, Aberdeen  
Robert B. Frieberg, Counsel, Beresford  
Tom Frieberg, Counsel, Beresford

## Fellows of the American Bar Foundation

Bob Hayes, State Ch., Vermillion

## Judges Association

Hon. Mark Anderson, President  
Hon Doug Hoffman, Vice President  
Hon. Patty DeVaney, Secretary-Treasurer

## Judicial Qualifications Commission

Kimberly Mortenson, Fort Pierre, Chair  
Mark S. Roby, Watertown, Vice Chair  
Hon. Bruce V. Anderson, Armour, Secretary  
Hon. Robin J. Houwman, Sioux Falls  
Rebecca Porter, Rapid City  
Timothy Engel, Fort Pierre  
Mark Haigh, Sioux Falls

## Lawyers Concerned for Lawyers

Rebecca Porter, Co-Ch., Rapid City  
Mary Dell Cody, Yankton, Co-Ch.,  
Kirsten Aasen, Rapid City  
Robert Burns, Minneapolis, MN

Thomas Clayton, Sioux Falls  
Ryan Darling, Pierre  
John "Jack" Delaney, Rapid City  
William Delaney, III, Sioux Falls  
Frank Driscoll, Rapid City  
Henry Evans, Sioux Falls  
Gregg Greenfield, Sioux Falls  
Sarah Baron Houy, Rapid City  
James Jeffries, Rapid City  
Renae Kruse, Sioux Falls  
Robert Lewis, Rapid City  
James Margadant, Rapid City  
Mark Marshall, Rapid City  
Boyd McMurchie, Sioux Falls  
Steve Miller, Nehalem, OR  
Gary Pashby, Sioux Falls  
Donald Porter, Rapid City  
Thomas Reynolds, Yankton  
Matthew Roby, Watertown  
Robert "Robbie" Rohl, Rapid City

## Local Bar Presidents

Clay-Union Bar – Katie Johnson  
First Circuit Bar - John P. Blackburn  
Yankton County Bar – Erich K. Johnke  
Second Circuit Bar – Justin Clarke  
Beadle County Bar – David Wheeler  
Brookings County Bar – Abigail Howard  
Tri-County Bar County Bar – Abby Oftedal  
Codington County Bar – James C. Roby  
Glacial Lakes Bar - Dana J. Frohling  
Brown County Bar – Ryan Dell  
Rosebud Bar – Amanda Work  
Pennington County Bar – Alicia Garcia  
Black Hills Criminal Defense Bar – Robbie Rohl  
Butte County Bar - Bob L. Morris  
Fourth Circuit Bar - Keith R. Smit  
Fall River County Bar - Jane M. Farrell

## Public Sector Section Officers and Board of Directors

David Pfeifle, President, Sioux Falls  
Matthew Roby, Vice-President, Watertown  
Stacy Hegge, Secretary-Treasurer, Pierre  
Wenzel Cummings, Pierre  
John Richter, Pierre  
Mark Vargo, Rapid City  
Kristi Vetri, Box Elder

**Real Property, Probate & Trust Section  
Executive Council**

Tyler Wetering, Chair, Rapid City  
Dana J. Frohling, Secretary, Britton  
Andy Fergel, Budget Officer, Pierre  
John R. Frederickson, Deadwood  
Brian K. Kirby, Sioux Falls  
Nancy L. Oviatt, Watertown  
Henry K. Evans, Sioux Falls  
Marc S. Feinstein, Sioux Falls  
Haven L. Stuck, Rapid City  
Mike Porter, Spearfish

**Rocky Mountain Mineral Law Director**  
Dwight A. Gubbrud, Trustee, Belle Fourche

**SD Association of Criminal Defense  
Lawyers**

Victoria Reker, President, Sioux Falls  
Brad A. Schreiber, Vice-President, Pierre  
Matt Laidlaw, Secretary, Rapid City  
Jan Olson, Treasurer, Sioux Falls  
Cheri Scharffenberg, Legislative Affiliate,  
Sioux Falls  
D. Sonny Walter, East River Rep., Sioux  
Falls  
Alecia Fuller, West River Rep., Rapid City

**South Dakota Bar Foundation**

Thomas H. Frieberg, Beresford, President  
Eric C. Schulte, President-Elect, Sioux  
Falls  
Andrew Fergel, Sec.-Treas., Pierre  
Pat Goetzinger, Rapid City  
Harvey Jewett, IV, Aberdeen  
Stephanie Judson, Pierre  
Kimberley Mortenson, Pierre  
Stephanie E. Pochop, Gregory  
Reed Rasmussen, Aberdeen  
Pamela Reiter, Sioux Falls  
Carrie Srtksa, Sioux Falls  
Tracey Ann Zephier, Rapid City

**South Dakota Code Commission**

Michael B. DeMersseman, Ch., Rapid City  
Margaret V. Gillespie, Vice-Ch., Alcester  
Mike Stevens of Yankton  
Sen. Arthur Rusch, Vermillion  
Thomas E. Lee, Pierre

**SD Court Reporters Association**

Teresa Fink, President, Rapid City  
Tammy Stolle, President-Elect, Aberdeen  
Sandra Semerad, Secretary, Kayla  
Marsuka, Treasurer, Rapid City  
Pat Beck, Past President, Sioux Falls

**SD Defense Lawyers Association**

Paul Tschetter, President, Sioux Falls  
Terry Westegaard, President-Elect, Rapid  
City  
Meghann Joyce, Vice President, Sioux  
Falls  
Douglas Abraham, Secretary, Pierre  
Zachary Peterson, Treasurer, Aberdeen  
Margo D. Northrup, Past President, Pierre  
Jennifer L. Van Anne, DRI Representative,  
Sioux Falls

**S.D. Defense Lawyers Directors:**

William C. Garry, Sioux Falls  
Rebecca Mann, Rapid City  
Daniel Duffy, Rapid City  
Lisa Prostrollo, Sioux Falls

**SD Municipal Attorneys Association**

Mark Kroontje, President, Herreid  
Gary Blue, 1st Vice Pres., Wessington  
Springs  
Jeff Banks, 2nd Vice Pres., Huron  
Ross DenHerder, Director, Yankton  
Eric Davis, Director, Spearfish

**S.D. Paralegal Association**

Jennifer Frederick, President  
Vicki Blake, 1st Vice President  
Jackie Shad, 2nd Vice President  
Victoria Swenson, Secretary  
Bonnie Woolam, Treasurer  
Courtney Vanden Berg, NALA Liaison

**S.D. State's Attorneys Association**

Eric Bogue, President, Faith  
John Fitzgerald, Vice-President, Deadwood  
Paul E. Bachand,  
Exec. Dir. /Traffic Safety Resource  
Prosecutor, Pierre  
Edward S. Hruska III, Asst. Dir./Prosecutor  
Coordinator  
Jerry Miller, Ch. Of the Board, Elk Pointe  
Alexis Tracy, 1<sup>st</sup> Circuit  
Rhett Bye, 2<sup>nd</sup> Circuit  
Vacant, 3<sup>rd</sup> Circuit  
Shane Penfield, 4<sup>th</sup> Circuit  
Christopher White, 5<sup>th</sup> Circuit  
Alvin Pahlke, 6<sup>th</sup> Circuit  
Lara Roetzel, 7<sup>th</sup> Circuit  
Abigail Howard, At Large  
Danny Smeins, At Large  
Cheryl Bogue, At Large

**S.D. Trial Lawyers Association**

Alecia Fuller, President, Rapid City  
Kasey Olivier, President-Elect, Timothy  
Rensch, Secretary-Treasurer, Rapid City  
T.J. Von Wald, Immediate Past President,  
Sioux Falls  
Sara Hartford, Executive Director, Pierre

**State Bar, ABA Delegates**

Elizabeth Overmoe, Young Lawyers, Sioux  
Falls  
Sarah Sharp Theophilus, State Bar, Sioux  
Falls  
Richard L. Travis, ABA, Sioux Falls

**Student Bar Association**

Whitney Reed, President, Vermillion

**Trial Academy**

Thomas J. Welk, Ch., Sioux Falls  
David Gienapp, Madison  
Dick Casey, Sioux Falls  
Lonnie Braun, Rapid City  
Melanie Carpenter, Sioux Falls  
Gary Jensen, Rapid City,  
Stephanie Pochop, Gregory  
Jim Roby, Watertown  
Clint Sargent, Sioux Falls

**Uniform Laws Commissioners**

Michael B. DeMersseman, Legislative  
Liaison, Rapid City  
Tom E. Geu, Vermillion  
David E. Lust, Rapid City  
Marc S. Feinstein, Sioux Falls  
Brian G. Gosch, Rapid City  
Richard O. Gregerson, Life Member, Sioux  
Falls  
Gene N. LeBrun, Life Member, Rapid City

**Women in Law**

Abby Kolar, President, Vermillion

**Young Lawyers Section**

Nathan Chicoine, President, Rapid City  
Carrie Srtksa, Vice-President, Sioux Falls  
Ole Olesen, Secretary/Treasurer, Rapid  
City  
Bert Bucher, 1st Circuit, Mitchell  
Anthony Sutton, 2nd Circuit, Sioux Falls  
Anthony Teesdale, 3rd Circuit, Brookings  
Mariah Bloom, 4th Circuit, Spearfish  
Vacant, 5th Circuit, Aberdeen  
Holly Farris, 6th Circuit, Pierre  
Kelsey Weber, 7th Circuit, Rapid City  
Kelsey Knoer, At Large, Sioux Falls  
Whitney Reed, Law Student, Vermillion







# 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

**EIGHTY-SEVENTH ANNUAL MEETING OF  
THE STATE BAR OF SOUTH DAKOTA  
RAMKOTA HOTEL  
RAPID CITY, SOUTH DAKOTA  
JUNE 19, 20, 21, 2019**

The 2019 Annual Meeting of the State Bar of South Dakota was held at the Rapid City Ramkota Hotel and Convention Center on June 19, 20, and 21, 2019.

Related groups meeting during the Annual Meeting were: South Dakota Bar Foundation, CLE Committee, South Dakota Trial Lawyers, Young Lawyers Section, American College of Trial Lawyers, SD Judges Association, SD Code Commission, American College of Trust and Estate Counsel, American Board of Trial Advocates, Council of School Attorneys, Real Property, Probate and Trust Law Section, Public Sector Section, Administrative Law Committee, Agricultural Law Committee, Council of School Attorneys, Municipal Attorneys Association, SD Court Reporters Association, Debtor/Creditor Committee, SD Criminal Defense Lawyers, Project Rural Practice Committee, Solo and Small Firm Committee, Judicial-Bar Liaison Committee, Lawyers Concerned for Lawyers, Inc., Family Law Committee, SD Paralegal Association, Women In Law, Fellows of the American Bar Foundation, Disciplinary Board, and Child Support Modification Referees.

The team of Patrick Goetzinger, Dan Fritz, Tim Purintun and Brian Kirby won the annual ALPS/Law School Golf Tournament. The tournament is a charitable fundraiser for the USD Foundation for the benefit of the USD Law School.

On Wednesday afternoon the following CLEs were held:

<u>CLE Title</u>	<u>Number Registered to Attend</u>
ALPS (Ethics)	200
Making the Connection: Understanding the Intersectionality of Substance Use and Court Systems	172

On Wednesday evening a social hour was sponsored by the South Dakota Trial Lawyers, South Dakota Defense Lawyers, and Young Lawyers Section. Thereafter, the annual banquet was held with over 565 in attendance. *Oahe Light and Sound* entertained the crowd.

On Thursday Morning and early Thursday afternoon the following CLEs were held:

<u>CLE Title</u>	<u>Number Registered to Attend</u>
Early Bird	336
Real Property – Coming Changes and Common Issues	220
Implicit Bias: Its Impact and How to Combat It	167
Unwinding Irrevocable Trusts	218
Affordable Technology for the Solo and Small Firm	152
Why Your Digital Footprint Should Matter To You	202
Litigating Undue Influence and Lack of Capacity Claims	199
Common Issues/Concerns: When Immigration Issues Show Up In Family Law Cases	137
In the Know: State Bar Resources to Help You Stay Connected	224
eCourts – UJS Odyssey eAccess Solution Training	177

On Thursday afternoon, a reception was hosted by the South Dakota Bar Foundation, South Dakota Community Foundation, and USD School of Law Foundation to thank those who have contributed this year.

Total registration for the 2019 Annual Meeting was 721, including 502 lawyers, 153 spouses/guests, and 66 law students/paralegals.

## **FRIDAY, JUNE 21ST**

President Reed Rasmussen called to order the 87th business meeting of the State Bar of South Dakota promptly at 8:15 a.m. at the Ramkota Hotel and Convention Center. Pennington County Bar President Alicia Garcia gave the address of welcome. State Bar President Elect Steven Huff gave the response. President Rasmussen welcomed the first-time attendees.

Secretary-Treasurer Fergel gave a financial report, noting that the State Bar is in as good or better financial position than it was in the preceding fiscal year. Further, he advised that membership dues were last increased over ten years ago. Fergel explained that past decisions of the Bar Commission to provide digital newsletters and CLE materials have resulted in savings that have delayed the need for a dues

increase. However, it was noted that inflationary and program pressures may require the membership to vote on an increase in membership dues as early as June of 2021.

Rod Tobin, a member of the Bar Commission's Audit and Finance Committee reported that the committee had reviewed the GAAP audit for the preceding year, that the audit appeared to be in order and moved approval. The motion was seconded and approved.

State Bar Foundation President Terry Hofer summarized the work of the Foundation during the past year by referring members to the Annual Meeting program report. He then asked all members to consider intentionality in charitable giving and to make the State Bar Foundation the go to philanthropic endeavor in each of their lives. Mr. Hofer concluded his remarks by thanking those that have supported the Foundation by becoming fellows of the Foundation or participating in the opt out when submitting dues. Next, Beth Massa with the South Dakota Community Foundation, discussed the progress the Community Foundation has made over the past year and thanked the Bar for entrusting it to manage its Foundation's endowed funds.

Denise Langley, Co-Coordinator of Access to Justice, Inc. presented the programs statistics for the past year. After her report to the body Ms. Langley announced the William F. Day, Jr. Law Student Pro Bono Award winner. This year's recipient of the award is Kylie Beck. Thereafter, President Rasmussen presented the President's Pro Bono award to Scott Moses.

Terri L. Williams, Chair of the Family Law Committee, presented the Family Law Committee report that included two rule proposals and one legislative proposal. The first proposal presented was to amend the Appendix to SDCL Chapter 25-4A – "South Dakota Parenting Guidelines" by Supreme Court Rule. After describing the proposed changes to Guidelines to the membership, Ms. Williams moved that the State Bar support amending the Guidelines as presented. The motion was seconded by Linda Lea Viken. Motion passed. Next, Ms. Williams presented proposed legislation to amend SDCL 25-4A-19 and SDCL 25-5-13 (Relocation Laws) and moved that the State Bar support the proposed legislation as presented. Ms. Williams motion was seconded by Linda Lea Viken. Motion passed. Lastly, Ms. Williams presented a proposal for a Supreme Court Rule requiring a party to demonstrate a prima facie showing of substantial and material change in circumstances by affidavit before the party may proceed on a motion for change of physical custody. After her presentation she moved that the State Bar support the proposed rule change as presented. Tom Frieberg seconded the motion. A few members had questions about the proposal, and

one member offered suggestions about what else he would like to see added to the rule. After discussion the motion passed.

Andrew Knutson and Heath Oberloh, members of the Business Law Committee, presented the report of the Committee. Mr. Knutson presented a proposed bill that would create a South Dakota Uniform Power of Attorney Act and moved that the South Dakota Bar support the proposed legislation as presented during the next legislative session. The motion was seconded. Motion Passed. Next, Heath Oberloh described the Committee's legislative proposal to add several sections to the South Dakota Limited Liability Company Act to provide for series LLCs and moved that the South Dakota Bar support the legislation as presented at the next legislative session. The motion was seconded by Pat Goetzinger. Motion passed.

President Reed Rasmussen introduced a proposal to add a new subsection to Rule 8.4 (Misconduct) of the South Dakota Rules of Professional Conduct by Supreme Court Rule. President Rasmussen summarized the road the proposal took to be approved by the Commission for presentation to the membership at the annual meeting. After President Rasmussen finished with his comments, Jason Sutton made a motion that the State Bar of South Dakota propose and support a change to the South Dakota Rules of Professional Conduct before the Supreme Court by supporting the addition to Rule 8.4 approved by the Bar Commission. Rod Tobin seconded the motion. Thereafter, passionate comments were made by members both for and against the proposed change to Rule 8.4. After a lengthy discussion the question was called, and the call was supported by the membership. Thereafter, a voice vote was held and the motion was declared passed by the President. Immediately thereafter, a request for a division of the house was made by a member and granted by the President. Those that supported the motion were asked to stand and then those that were opposed were asked to stand. After observing the division, President Rasmussen declared the motion passed.

Tommy Preston, an Executive in the Boeing Company's Government Operations Division and Current Chair of the ABA's Young Lawyers Division was the keynote speaker. Mr. Preston's remarks centered around embracing innovation in the practice of law and ensuring our profession remain "ahead of the curve" with regard to technology, access to justice and working with the next generation of lawyers for the benefit of all.

USD School of Law Dean Neil Fulton, in his remarks concerning the law school, presented the membership with the "Top Ten Things I Learned in 45 Days as Dean"

as follows: 10) I am excited to be here; 9) Legal Education is facing challenges; 8) We are a community of excellence, service, and leadership; 7) We have great students; 6) We have engaged faculty; 5) We have opportunities for graduates to change the world; 4) We can't do this alone; 3) You can always come home; 2) Thank you; and 1) It's a great day to be a South Dakota Lawyer.

Chief Justice David Gilbertson gave a brief report on Unified Judicial System. In his remarks the Chief Justice spoke about the turnover in circuit judges and magistrates, the unexpected passing of Justice Steven Zinter and the welcoming of two new Supreme Court Justices to the bench - Justices Salter and DeVaney, the success of removing the sunset provision on the Rural Attorney Recruitment Program during the past legislative session and obtaining funding for an additional circuit court judge for the Second Circuit.

Next, Judge Michael Day, presented a resolution for the State Bar of South Dakota to support the efforts of the judiciary to request that the South Dakota Legislature increase compensation for judges, justices, and other judicial employees so that highly qualified individuals will continue to apply to fill judicial positions and other important roles in the judicial system; and for the State Bar of South Dakota to task the Judicial Bar Liaison Committee to support the judiciary's endeavor to obtain increased compensation from the Legislature. After his presentation, Judge day moved that the proposed resolution be adopted. The motion was seconded. Motion passed.

Whitney Petersen, USD Student Bar Association President announced the winners of the McKusick Award. This year the joint recipients were Robert B. Anderson and Sheridan Cash Anderson.

Awards were presented to the following 50-year veterans of the State Bar: Everett E. Hoyt, Rapid City, Ronald P. Johnsen, Rapid City, Ralph A. Kemnitz, Philip, William J. Klimisch, Surprise, AZ, Marlin M. Lessmann, Sioux City , IA, Ronald K. Miller, Plankinton, Charles P. Schroyer, Pierre, Ronald L. Schultz, Batesland, William L. Severns, Spearfish, H. Bruce Shreves, New Orleans, LA, and Charles M. Thompson, Pierre.

The meeting was recessed and a joint reception was held for the McKusick Award recipients and the 50-year State Bar Veterans.

President Rasmussen called the meeting back to order at 1:15 p.m. Tamara Nash, Young Lawyers President, read the Necrology in memory of the following members deceased since the last annual meeting: Donald E. Covey, Richard A. Cutler, Marshall M. Gerken, Wayne D. Groe, Dale R. Hansen, Comet H. Haraldson, Larry D. Hollmann, Roger W. Hunt, Ronald R. Kappelman, Albert B. Kerkhove, Paul J. Kern, Larry H. Lovrien, Jeanne R. Lyke, Ted L. McBride, David E. Morrill, Adam Yagaloff, Hon. Steven L. Zinter and Luella Cozad, though not an attorney an ardent supporter of the South Dakota Bar.

After the Necrology, Ms. Nash presented a report on the activities of the Young Lawyers Section. Immediately following the report Ms. Nash presented the first Young Lawyers Section President's Appreciation Award to Bob Morris.

Elections for the Young Lawyers Section were held and the following persons were elected to the board position stated: President-Elect: Caroline Srstka (Sioux Falls), Secretary/Treasurer: Ole Olesen (Rapid City), 1st Circuit representative: Bert Bucher (Yankton), 3rd Circuit representative: Anthony Teesdale (Brookings), 4th Circuit representative: Mariah Bloom (Spearfish), 7th Circuit representative: Kelsey Weber (Rapid City). No nomination for 5<sup>th</sup> Circuit representative was received, and the position is currently vacant.

Next, President Rasmussen announced the names of those members that has filed petitions for circuit vacancies on the Bar Commission. Petitions had been filed for Marilyn Trefz (1<sup>st</sup> Circuit), Renee Christensen (2<sup>nd</sup> Circuit), Matthew Roby (3<sup>rd</sup> Circuit), Brent Kempema (6<sup>th</sup> Circuit), Kirsten Aasen (7<sup>th</sup> Circuit) and Eric Pickar (7<sup>th</sup> Circuit). No other nominations were received from the floor. Running uncontested were Marilyn Trefz, Renee Christensen, Matthew Roby, and Brent Kempema. A unanimous ballot was cast for those candidates. An election was held between 7<sup>th</sup> Circuit candidates Kirsten Aasen and Eric Pickar in which Kirsten Aasen was elected.

President Rasmussen installed Steven Huff as President of the State Bar. After installing Mr. Huff, President Rasmussen gave a brief final address that included thanks to many which was received by the membership with applause.

Next, newly install President Huff called for nominations for the position of President Elect. Daniel Duffy nominated Terry Westergaard for president elect which nomination was seconded by Jeffrey Hurd. There being no further nominations, a unanimous vote was cast for Terry Westergaard.



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

Respectfully submitted,

Andrew L. Fergel  
Executive Director & Secretary-Treasurer

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BOARD OF BAR COMMISSIONERS  
Minutes, June 19, 2019  
Rapid City Ramkota, Bear Butte Room

President Reed Rasmussen called the meeting to order at 10:30 a.m. Mountain Time on Wednesday, June 19, 2019. Present were: President Rasmussen, President Elect Huff, Commissioners Duncan, Ginsbach, Sutton, Thompson Kerver, Tobin, Willert, Williams (Jennifer), Williams (Rich), Wurgler, and Zea, and Secretary-Treasurer Andrew Fergel. Others present during all or part of the meeting were Tom Frieberg, Stephanie Judson, Judge Heidi Lingren, Judge Sarah Morrison, Robert Minto, Linda Lea Viken, Mark Bassingthwaighte, Judge Robert Mandel, Bob Burns, Eric Schulte, Caroline Srstka, Justice Janine Kern, Chief Justice David Gilbertson, Stephanie Pochop, Becky Porter and Tom Barnett.

Living Above the Bar Pilot Project: Tom Barnett, Stephanie Pochop and Becky Porter appeared before the Commission to request that the State Bar contribute financially in the amount of \$10,000.00 towards a Living Above the Bar Pilot Project. Several weeks in advance of the meeting, detailed information about the need and purpose of the pilot project was provided to Commission members. Tom Barnett reported to the Commission that both ALPS and the South Dakota Bar Foundation had already agreed to provide a like sum of \$10,000 toward support of the program. The stated purpose of the funding was to allow Lawyers Concerned for Lawyers (“LCL”) to obtain a Lawyers Assistance Program Director for one year and that during the pilot year the LAP Director would oversee LCL’s peer to peer services, develop a pool of at least five more trained LCL volunteers, and assure that educational information about how to get help will be presented at all Bar-related events. After the presentation by Barnett, Pochop and Porter, Commissioner Sutton made a motion to approve \$10,000 from the State Bar to help fund the Living Above the Bar Pilot Program. The motion was seconded by Commissioner Ginsbach. Motion passed.

Reimbursement of Travel Expenses for State Bar Member Serving on ABA Standing Committee on Lawyer Referral and Information Services: Executive Director Fergel reported to the Commission that Pamela Reiter has been appointed by ABA President-Elect Judy Perry Martinez to the ABA Standing Committee on Lawyer Referral and Information Service for a three-year term. Though the ABA does reimburse some travel expenses for Standing Committee members it does not cover all expenses and a request was made of the Commission to cover travel expenses related to service on the standing committee not covered by the ABA. After a short discussion a motion was made by Commissioner Tobin for the Bar to reimburse Ms. Reiter for travel expenses related to her service on the Standing Committee not covered by the ABA, including travel expenses associated with the August 2019 Standing Committee meeting. The motion was seconded by President Elect Huff. Motion passed.

Court Recorder Request to be Included in State Bar Membership Directory: A short discussion was held about a court recorder's request to have their contact information included in the State Bar Membership Directory. The request led to a discussion about the contact information that we currently include in the directory for other groups like the Court Reporters and what the future of the directory would be. After the discussion, it was the consensus of the Commission that it was too soon to make any definite decisions related to the request and that development of a policy concerning like requests should be considered.

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

Respectfully submitted,

Andrew L. Fergel  
Secretary-Treasurer

**BOARD OF BAR COMMISSIONERS  
MINUTES, JUNE 21, 2019  
RAMKOTA HOTEL, RAPID CITY**

As mandated by the By-laws of the State Bar of South Dakota, the Board of Bar Commissioners met at the close of the Annual Meeting on Friday, June 21, 2019, in Rapid City, South Dakota. President Steven Huff called the meeting to order. In attendance were President Huff, President Elect Terry Westergaard, Commissioners Kirsten Aasen, Renee Christensen, Brent Kempema, Marilyn Trefz, and Jennifer Williams and Secretary-Treasurer Andrew L. Fergel.

Executive Director Fergel informed the new Commissioners that a Bar Commission Retreat and Meeting would be held in Pierre on July 23<sup>rd</sup> and 24<sup>th</sup>. Orientation for new commissioners will be conducted on Tuesday morning, social and mixer with the YLS Board Tuesday afternoon, with a business meeting to follow on Wednesday morning. The primary business to be conducted at the business meeting will be the adoption of a budget for the 2019-2020 fiscal year.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Andrew L. Fergel  
Secretary-Treasurer & Executive Director

# BOARD OF BAR COMMISSIONERS

Minutes, July 24, 2019

Drifters

Fort Pierre, South Dakota

President Steve Huff called the meeting to order at 8:30 a.m. Central Time on Wednesday, July 24, 2019, in Fort Pierre, South Dakota. Present at the meeting were Huff, and Commissioners Aasen, Christensen, Kempema, Pilcher (by telephone), Roby, Tobin, Trefz, Williams, Wurgler, and Zea, and Executive Director/Secretary-Treasurer Andrew Fergel. Also, present during all or part of the meeting were Strategic Plan Coordinator Elizabeth Overmoe, Assistant Executive Director Nicole Ogan, Access to Justice, Inc. Co-Coordinator Denise Langley and Young Lawyer Section President Nathan Chicoine.

Minutes of May 16, 2019 Meeting by Teleconference: Commissioner Tobin moved to approve the minutes of the May 16, 2019 meeting held by teleconference. Commissioner Wurgler seconded the motion. Motion passed.

Minutes of June 19, 2019 Bar Commission Meeting: Commissioner Tobin moved to approve the minutes of the June 19, 2019 Bar Commission meeting. Commissioner Wurgler seconded the motion. Motion passed.

Minutes of June 21, 2019 Bar Commission Meeting: Commissioner Williams moved to approve the minutes of the June 21, 2019 Bar Commission meeting. Commissioner Aasen seconded the motion. Motion passed.

2019 Annual Meeting Minutes: President Huff and Fergel gave a short report on the 2019 Annual Meeting. After the report, Commissioner Williams made a motion to approve the minutes of the 2019 Annual Meeting. The motion was seconded by Commissioner Kempema. Motion passed.

Young Lawyers Section Report: Nathan Chicoine, President of the Young Lawyers Section reported on the section's planned activities for the fiscal year. Mr. Chicoine stated that the section's theme for this year is "To Connect" and then went on to describe how the planned work of the section ties into the theme.

Access to Justice Report (A2J): A2J Co-Coordinator Denise Langley gave a report on the work of the A2J program (January 1, 2019 through July 23, 2109). As of July 23, 2019, A2J has closed 41 cases and opened 50 cases. Ms. Langley reported that so far, in 2019, South Dakota attorneys have provided over 536 hours of pro bono service to the A2J program and that those hours of donated service exceed \$111,688.00 in value.

Approval of New Strategic Plan: Strategic Plan Coordinator Overmoe presented the Commission with a new strategic plan that was developed through the work of the Strategic Plan Committee over the course of the past year. The new plan, along with supporting documents and information, was provided to the Commission members in advance of the meeting. After Ms. Overmoe's presentation, Commissioner Tobin made a motion that the Bar Commission adopt the new strategic plan as presented. The motion was seconded by Commissioner Williams. After some discussion on the motion a vote was held and the motion passed.

Lawyer Referral Service Update: Fergel updated the Commission on the Bar's on-line Lawyer Referral Service Program. Fergel reported that the Lawyer Referral Service Committee is continuing its work on implementing a marketing plan to promote the Lawyer Referral Service Program to the public. He also stressed that the program needs more attorneys to participate in the program in order to meet the needs of individuals utilizing the service to find counsel.

State Bar of South Dakota Employee Handbook: Fergel presented a draft employee handbook to the Commission for its consideration. After a question and answer session concerning the contents of the handbook, a motion was made by Commissioner Tobin to have the President appoint a few members of the board to work on the handbook with the executive director and then bring the handbook back to the Commission for approval. The motion was seconded by Commissioner Wurgler. Motion passed. Thereafter, President Huff appointed himself and Commissioners Tobin and Trefz to work on the handbook with Executive Director Fergel.

Contract Lobbyists for 2020 Legislative Session: Fergel presented a lobbyist retention agreement dated July 16, 2019, from the Riter Rogers Law Office, to the Commission for its consideration. Commissioner Christensen made a motion to authorize the Executive Director to execute the agreement, as presented, with the Riter Rogers Law Office, on behalf of the State Bar of South Dakota. The motion was seconded by Commissioner Wurgler. Motion passed.

Financial Report: Fergel presented a financial report to the Commission that included information about fund balances in all the operational accounts for the State Bar of South Dakota, SD CLE, Inc., Access to Justice, Inc., and the South Dakota Bar Foundation.

Fiscal Year 2019-2019 State Bar Budget Supplements: After the financial report, a request was made by Fergel that the FY 2018-2019 State Bar budget be supplemented as follows:

ABA Delegates:	\$107.39
Disciplinary Board:	\$6981.75

Publications:	\$2841.74
PJI – Criminal:	\$133.98
Strategic Planning:	\$437.58
Women in Law Committee:	\$36.25

Commissioner Wurgler made a motion to supplement the FY 2018-2019 budget as requested. Commissioner Trefz seconded the motion. Motion passed.

Fiscal Year 2018-2019 SD CLE, Inc. Budget Supplements: The State Bar Commission recessed and convened as the Board of Directors of SD CLE, Inc. A request was made by Fergel that the FY 2018-2019 SD CLE, Inc. budget be supplemented as follows:

Committee Travel	\$1800.00
Insurance	\$765.50

Director Tobin made a motion to supplement the FY 2018-2019 SD CLE, Inc. budget as requested. Director Williams seconded the motion. Motion passed.

Fiscal Year 2018-2019 Access to Justice, Inc. Budget Supplement: The State Bar Commission recessed and convened as the Board of Directors of Access to Justice, Inc. A request was made Fergel to supplement the retirement line item in the FY 2018-2019 budget of Access to Justice, Inc. by \$134.08. Director Tobin made a motion to supplement Access to Justice budget as requested. Director Williams seconded the motion. Motion passed.

FY 2019-2020 State Bar General Budget: After reconvening as the Board of Bar Commissioners, Fergel presented a proposed FY 2019-2020 State Bar General Budget for approval. Commissioner Tobin made a motion to approve the FY 2019-2020 State Bar general budget as presented. Commissioner Wurgler seconded the motion. Motion passed.

FY 2019-2020 CLE, Inc. Budget: The State Bar Commission recessed and convened as the Board of Directors of SD CLE, Inc. Thereafter, Fergel presented a proposed FY 2019-2020 budget for SD CLE, Inc. Director Williams made a motion to approve the FY 2019-2020 SD CLE, Inc. budget as presented. The motion was seconded by Director Tobin. Motion passed. Thereafter, a motion was made by Director Roby to adjourn as the Board of SD CLE, Inc. and reconvene as the Board of Directors for Access to Justice, Inc. Motion passed.

FY 2019-2020 Access to Justice, Inc. Budget: The State Bar Commission recessed and convened as the Board of Directors of Access to Justice, Inc. Thereafter, Fergel presented a proposed FY 2019-2020 budget for Access to Justice, Inc. Director Roby made a motion to approve the FY 2019-2020 Access to Justice, Inc. budget as

presented. The motion was seconded by Director Aasen. Motion passed. Thereafter, the Board of Access to Justice, Inc. adjourned and reconvened as the Board of the State Bar of South Dakota.

Monthly Meetings by Teleconference: The Commission discussed whether to continue the practice of meeting by teleconference every month that the Commission does not meet in person at scheduled quarterly meetings. After a short discussion, Commissioner Tobin made a motion to continue meeting by teleconference at 9:00 AM on the third Thursday of each month, in those months where no in person meeting is scheduled, unless there is no business to discuss. Commissioner Aasen seconded the motion. Motion passed.

Contract for State Bar to Provide Services to South Dakota Bar Foundation: A contract was presented to the Commission for the State Bar to provide services to the South Dakota Bar Foundation for a nominal fee. A motion was made by Commissioner Kempema to have President Huff execute the contract, as presented, on behalf of the State Bar of South Dakota to be effective August 1, 2019 for FY 2019-2020. The motion was seconded by Commissioner Roby. Motion passed.

Commission's Finance and Audit Committee: President Huff appointed Commissioners Aasen, Tobin and Willert to the Commission's Finance and Audit Committee.

Addendum to Executive Director Employment Agreement: Commissioner Tobin made a motion to have President Huff execute an addendum to amend the original employment contract between the State Bar and Executive Director Fergel to reflect a compensation increase and payment of certain membership fees for Fergel as approved by the Commission in adopting the FY 2019-2020 State Bar Budget. The motion was seconded by Commissioner Kempema. Motion passed.

Potential Partnership: The Commission discussed the potential for entering into a partnership with Identillect Technologies, a company that offers email encryption services and secure electronic signatures to legal and other professionals. After discussion, the Commission instructed the Executive Director to continue to explore options for entering into a mutually beneficial partnership with the company.

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

Respectfully submitted,

Andrew L. Fergel  
Executive Director/Secretary-Treasurer

# BUDGET INFORMATION

General Fund 19-20 Proposed Budget						
	16-17 Spent	17-18 Budget	17-18 Spent	18-19 Budget	18-19 spent	19-20 Approved Budget
ABA & State Bar Delegates	\$ 15,446.93	\$ 14,000.00	\$ 12,978.84	\$ 14,107.39	\$ 14,107.39	\$ 25,000.00
Access to Justice	\$ 35,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
Administration	\$ 512,141.83	\$ 555,152.63	\$ 529,793.94	\$ 520,483.42	\$ 503,625.67	\$ 543,133.61
Committees *see breakdown	\$ 54,715.77	\$ 64,759.59	\$ 51,513.84	\$ 64,875.70	\$ 57,012.23	\$ 70,800.00
Annual Meeting	\$ 73,517.90	\$ 80,000.00	\$ 83,202.69	\$ 80,000.00	\$ 64,012.42	\$ 80,000.00
Bar Commissioners	\$ 24,994.36	\$ 30,000.00	\$ 33,935.07	\$ 30,000.00	\$ 26,264.04	\$ 30,000.00
Disciplinary Board	\$ 69,282.22	\$ 110,000.00	\$ 104,134.72	\$ 114,186.73	\$ 114,186.73	\$ 110,000.00
Contract Lobbyist	\$ -	new	new	\$ 40,000.00	\$ 32,070.00	\$ 45,000.00
Law School - Moot Court	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
President's Office	\$ 41,246.52	\$ 45,000.00	\$ 39,917.82	\$ 45,000.00	\$ 34,304.67	\$ 45,000.00
Professional Liability Ins.	\$ 4,477.22	\$ 3,000.00	\$ 2,263.05	\$ 2,263.05	\$ 2,263.05	\$ 2,300.00
Publications	\$ 63,844.59	\$ 65,000.00	\$ 43,895.41	\$ 22,841.74	\$ 22,841.74	\$ 23,500.00
Public Information	\$ 13,359.06	\$ 15,000.00	\$ 14,960.36	\$ 15,000.00	\$ 6,508.45	\$ 15,000.00
Socius - Website/Online Community/Membership Database	\$ 22,200.00	\$ 23,000.00	\$ 20,419.89	\$ 23,000.00	\$ 21,766.00	\$ 24,000.00
Strategic Planning	\$ 30,747.59	\$ 27,500.00	\$ 25,227.10	\$ 20,437.58	\$ 20,437.58	\$ 20,000.00
Stress/Depression Treatment (carry over)	\$ 2,657.94	\$ 29,293.06	\$ 1,426.92	\$ 28,066.14	\$ 1,734.60	\$ 26,331.54
Living Above the Bar Grant	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,000.00
Transition / Consulting	\$ 1,075.54	\$ 12,310.01	\$ 12,310.01	\$ 10,000.00	\$ -	
<b>TOTAL</b>	<b>\$ 966,207.47</b>	<b>\$ 1,125,515.29</b>	<b>\$ 1,027,479.66</b>	<b>\$ 1,081,761.75</b>	<b>\$ 972,634.57</b>	<b>\$ 1,121,565.15</b>



2019-2020 Proposed Committee and Section Budgets						
	<u>16-17 Spent</u>	<u>17-18 Budget</u>	<u>17-18 Spent</u>	<u>18-19 Budget</u>	<u>18-19 Spent</u>	2019-2020 Approved Budget
Admin. Law	\$ 168.10	\$ 200.00	\$ 150.38	\$ 200.00	\$ 153.51	\$ 200.00
Ag. Law	\$ 84.04	\$ 500.00	\$ 213.05	\$ 200.00	\$ 122.81	\$ 200.00
Alternative Dispute Resolution	\$ 32.76	\$ 200.00	\$ 252.37	\$ 200.00	\$ -	\$ 200.00
Business Law	\$ -	\$ 3,000.00	\$ -	\$ 2,000.00	\$ 516.98	\$ 2,000.00
Consumer Protection	\$ -	\$ 100.00	\$ -	\$ 100.00	\$ -	\$ 200.00
Criminal Law	\$ -	\$ 200.00	\$ 48.44	\$ 200.00	\$ 12.12	\$ 200.00
Debtor-Creditor	\$ 416.33	\$ 200.00	\$ 92.30	\$ 200.00	\$ 122.81	\$ 200.00
Diversity & Inclusion	\$ 704.08	\$ 1,000.00	\$ 919.74	\$ 1,000.00	\$ 827.73	\$ 1,000.00
Education	\$ 74.58	\$ 200.00	\$ 140.16	\$ 200.00	\$ -	\$ 200.00
Elder Law	\$ 23.81	\$ 200.00	\$ 108.29	\$ 200.00	\$ -	\$ 200.00
Ethics	\$ 5,103.73	\$ 2,500.00	\$ 2,435.65	\$ 2,509.14	\$ 2,509.14	\$ 2,600.00
Evidence	\$ -	\$ 200.00	\$ -	\$ 200.00	\$ -	\$ 200.00
Family Law	\$ 915.15	\$ 1,000.00	\$ 947.72	\$ 1,000.00	\$ 902.15	\$ 1,000.00
Immigration	\$ 194.99	\$ 200.00	\$ 113.30	\$ 200.00	\$ 32.90	\$ 200.00
Indian Law	\$ 36.50	\$ 200.00	\$ 36.50	\$ 200.00	\$ -	\$ 200.00
In-House Counsel	\$ 648.64	\$ 750.00	\$ 6.21	\$ 200.00	\$ -	\$ 200.00
Judicial Bar Liaison	\$ 216.19	\$ 200.00	\$ 379.52	\$ 200.00	\$ 112.57	\$ 200.00
Labor & Employment Law	\$ 97.86	\$ 200.00	\$ 49.40	\$ 200.00	\$ 55.17	\$ 200.00
Law Practice Management	\$ 134.92	\$ 1,000.00	\$ 159.80	\$ 200.00	\$ 10.17	\$ 200.00
Law School - Committee	\$ 1,114.95	\$ 1,066.46	\$ 1,066.46	\$ 1,766.56	\$ 1,766.56	\$ 1,200.00
Lawyers Assistance - Depression/Stress	\$ 1,629.15	\$ 2,500.00	\$ 1,236.64	\$ 1,500.00	\$ 1,361.44	\$ 5,000.00
Lawyer Referral	\$ 7,880.06	\$ 4,443.13	\$ 4,443.13	\$ 5,000.00	\$ 4,526.34	\$ 3,500.00
Lawyers Concerned for Lawyers - Chemical D	\$ 214.50	\$ 2,500.00	\$ 1,537.14	\$ 2,500.00	\$ 2,482.73	\$ 2,500.00
Legal Services	\$ 228.76	\$ 1,000.00	\$ 259.06	\$ 500.00	\$ 253.39	\$ 500.00
Liaison w/SD IRS	\$ -	\$ 200.00	\$ -	\$ 200.00	\$ -	\$ 200.00
Natural Resources	\$ -	\$ 200.00	\$ -	\$ 200.00	\$ -	\$ 200.00
Negligence and Tort Law	\$ 284.73	\$ 200.00	\$ -	\$ 200.00	\$ -	\$ 200.00
PJI - Civil	\$ 10,099.99	\$ 7,500.00	\$ 6,046.70	\$ 6,000.00	\$ 6,000.00	\$ 7,500.00
PJI - Criminal	\$ 2,312.78	\$ 2,000.00	\$ 2,255.50	\$ 5,000.00	\$ 5,133.98	\$ 7,500.00
Practice Rules Revision	\$ -	\$ 200.00	\$ 15.38	\$ 200.00	\$ -	\$ 200.00
Project Rural Practice	\$ 2,575.09	\$ 2,500.00	\$ 1,894.95	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00

2019-2020 Proposed Committee and Section Budgets						
	<u>16-17 Spent</u>	<u>17-18 Budget</u>	<u>17-18 Spent</u>	<u>18-19 Budget</u>	<u>18-19 Spent</u>	2019-2020 Approved Budget
Public Sector Lawyers	\$ -	\$ 200.00	\$ -	\$ 200.00	\$ -	\$ 1,000.00
Real Property, Probate & Trust	\$ 700.39	\$ 1,000.00	\$ 713.82	\$ 1,000.00	\$ 460.53	\$ 1,000.00
Solo & Small Firm	\$ 361.92	\$ 500.00	\$ 690.58	\$ 500.00	\$ 482.53	\$ 500.00
Veterans	\$ 603.16	\$ 2,500.00	\$ 1,653.00	\$ 2,000.00	\$ 1,053.83	\$ 2,000.00
Website	new	new	new	\$ 2,500.00	\$ 2,110.84	\$ 2,000.00
Women in Law	\$ 405.42	\$ 1,000.00	\$ 1,000.00	\$ 1,036.25	\$ 1,036.25	\$ 1,000.00
Worker's Compensation	\$ -	\$ 200.00	\$ -	\$ 200.00	\$ -	\$ 200.00
Young Lawyers	\$ 17,453.19	\$ 23,000.00	\$ 22,648.65	\$ 23,000.00	\$ 22,965.75	\$ 23,000.00
	\$ 54,715.77	\$ 64,759.59	\$ 51,513.84	\$ 64,911.95	\$ 57,012.23	\$ 70,800.00

2019-2020 Approved CLE Budget						
Item	16-17 Spent	17-18 Budget	17-18 Spent	18-19 Budget	18-19 spent	Approved Budget 2019-2020
Books & Printing (includes 1/2 directory)	\$ 49,904.53	\$ 40,000.00	\$ 18,631.53	\$ 12,000.00	\$ 11,913.59	\$ 14,000.00
Audit	\$ 1,432.30	\$ 5,000.00	\$ 1,411.13	\$ 1,500.00	\$ 1,437.75	\$ 1,500.00
Copies	\$ 638.47	\$ 600.00	\$ 598.59	\$ 750.00	\$ 83.08	\$ 600.00
Phone/Internet	\$ 7,651.45	\$ 8,000.00	\$ 6,713.38	\$ 8,000.00	\$ 7,623.10	\$ 8,000.00
Postage	\$ 14,154.46	\$ 12,000.00	\$ 5,102.37	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00
Refreshments, equipment rentals	\$ 10,532.01	\$ 12,000.00	\$ 11,558.15	\$ 10,368.54	\$ 10,368.54	\$ 10,000.00
Audio/Video - CLE Programs	\$ 1,106.53	\$ 3,000.00	\$ 1,237.42	\$ 2,000.00	\$ 1,887.84	\$ 2,000.00
Staff Travel	\$ 13,869.31	\$ 20,000.00	\$ 10,393.05	\$ 15,000.00	\$ 11,100.96	\$ 20,000.00
Committee Travel	\$ 349.64	\$ 1,000.00	\$ 386.96	\$ 1,000.00	\$ 850.30	\$ 5,000.00
Program Travel & Speaker Expenses	\$ 14,424.36	\$ 10,000.00	\$ 6,846.53	\$ 10,000.00	\$ 9,911.33	\$ 10,000.00
Fastcase Contract (Royalty \$10,567)	\$ 114,174.61	\$ 125,000.00	\$ 103,897.19	\$ 125,000.00	\$ 108,440.05	\$ 120,000.00
Fastcase Expenses	\$ 2,121.33	\$ 5,000.00	\$ 1,998.66	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Rackspace	\$ 14,472.76	\$ 19,000.00	\$ 19,008.97	\$ 5,000.00	\$ 3,247.76	\$ 5,000.00
Capital Acquisition Fund	\$ 800.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
State Bar Payment	\$ 100,000.00	\$ 155,000.00	\$ 150,000.00	\$ 200,000.00	\$ 150,000.00	\$ 150,000.00
Federal Taxes	\$ 4,530.00	\$ 4,000.00	\$ 1,428.12	\$ 4,000.00	\$ -	\$ 4,000.00
Insurance (1/2 auto, 1/2 work comp, 1/2 premises)	\$ 2,442.30	\$ 4,025.00	\$ 2,357.92	\$ 3,760.50	\$ 3,760.50	\$ 4,000.00
Machine Lease (copier, postage meter)	\$ 5,836.12	\$ 8,000.00	\$ 6,999.07	\$ 8,000.00	\$ 6,585.98	\$ 3,000.00

2019-2020 Approved CLE Budget						
Item	16-17 Spent	17-18 Budget	17-18 Spent	18-19 Budget	18-19 spent	Approved Budget 2019-2020
Supreme Court Opinions (printing)	\$ 12,532.61	\$ 15,000.00	\$ 12,802.78	\$ 15,000.00	\$ 10,681.58	\$ 12,000.00
Office Supplies	\$ 6,834.03	\$ 15,000.00	\$ 8,223.71	\$ 10,000.00	\$ 6,925.11	\$ 10,000.00
Equipment/ Maintenance Fund	\$ 3,879.28	\$ 7,000.00	\$ 6,560.66	\$ 6,000.00	\$ 5,186.39	\$ 9,000.00
Speaker Fees	\$ 3,000.00	\$ 3,000.00	\$ 1,225.56	\$ 3,000.00	\$ 2,900.00	\$ 3,000.00
Pattern Jury Instructions Printing	\$ 2,820.27	\$ 3,500.00	\$ 3,406.54	\$ 3,541.61	\$ 3,548.08	\$ 3,500.00
Remote Deposit/ Credit Card Fees	\$ 201.00	\$ 500.00	\$ 243.30	\$ 500.00	\$ 500.00	\$ 500.00
Rent (6 months)	\$ 13,530.00	\$ 13,530.00	\$ 13,530.00	\$ 13,530.00	\$ 13,530.00	\$ 14,466.00
SDBF Endowment Fund Speakers Donations	\$ 2,450.00	\$ 3,500.00	\$ 3,000.00	\$ 3,500.00	\$ 3,350.00	\$ 3,500.00
Tape Lending Library	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ -	\$ -	\$ -
Miscellaneous	\$ 4,745.59	\$ 8,500.00	\$ 4,757.09	\$ 8,500.00	\$ 8,280.96	\$ 8,500.00
<b>TOTAL</b>	<b>\$ 413,432.96</b>	<b>\$ 516,155.00</b>	<b>\$ 417,318.68</b>	<b>\$ 485,450.65</b>	<b>\$ 397,612.90</b>	<b>\$ 437,066.00</b>

# CAREER CENTER



LINCOLN COUNTY (SD)  
invites applications for the position of:

## Chief Civil Deputy State's Attorney

All applications must be submitted by 5:00 p.m. on the date the position closes.

---

**SALARY:** \$2,536.00-\$3,752.80 Biweekly **OPENING DATE:** 7/9/19 **CLOSING DATE:** Continuous

*With budget approval, a compensation study is anticipated to be implemented at the end of 2020. The potential salary range is projected to be \$3,779.20 - \$5,592.80 Biweekly.*

### GENERAL INFORMATION:

The State's Attorney invites applications for the position of Chief Civil Deputy State's Attorney. The Chief Civil Deputy State's Attorney performs supervisory and complex professional legal work in the civil representation of Lincoln County in state and federal courts and before administrative and legislative agencies and bodies. Responsibilities include providing legal advice and representation to County officials and staff, prosecuting violations of state law and County ordinances, drafting, filing and presenting proposed legislation and performing a variety of public relations functions.

### EXAMPLES OF DUTIES INCLUDE:

- Represent and advise the Board of County Commissioners, elected and non-elected county department heads, and county agencies and offices on litigation and legal issues by attending commission meetings, drafting correspondence, giving oral and written legal opinions, and preparing and reviewing contracts, agreements, easements, bid specifications, civil/criminal proceedings, and other legal documents.
- Represent the County in criminal, involuntary civil commitment and juvenile case proceedings, prepare and present cases for legal proceedings, perform pre-trial motion practice, and perform appellate work.
- Supervise and assign work to paralegals, provide direction to attorneys and other staff, consult in the planning, development, and implementation of office policy and procedures for State's Attorney's Office, and assist the State's Attorney on internal personnel issues.
- Prepare and present training to County officials on legal issues involving county government, coordinate and plan with other governmental legal and management staff at the municipal, township, state, and federal levels of government on county issues.
- Represent the State's Attorney's Office and Lincoln County at public, private, and inter-governmental programs and events, attend speaking obligations and educational functions, and communicate with the media.
- Assist and advise County offices on the collection of obligations to the County. Review mortgage foreclosure actions.
- Draft, file and present proposed County ordinances and state legislation, lobby legislative and other State governmental agencies on the operation and funding issues of county governments.

### MINIMUM QUALIFICATIONS:

Graduation from a college of law and attainment of a Juris Doctorate degree from an accredited law school and five years of relevant legal work experience, along with admission by the Supreme Court of South Dakota to practice law in the state of South Dakota or be licensed to practice law in any other state and able to take the next available South Dakota bar examination. Comparable combination of education and experience may be considered.

### PREFERRED QUALIFICATIONS:

Demonstrated leadership abilities, supervisory skills, and strong organizational and motivational skills.

**APPLICATIONS MAY BE FILED ONLINE AT: <http://www.lincolncountysd.org>**

HUMAN RESOURCES OFFICE IS LOCATED AT: 104 N. Main Canton, SD 57013 605-764-6609 [jdisburg@lincolncountysd.org](mailto:jdisburg@lincolncountysd.org)

Lincoln a County is an Equal Opportunity Employer and does not discriminate on the basis of race, color, creed, religion, national origin, citizenship, ancestry, gender, gender identity, sexual orientation, marital status, pregnancy, age, disability, veteran's status, genetic information, or any other protected group in accordance with state and federal law. Arrangements for accommodations required by disabilities can be made by contacting Human Resources at (605) 764-6609

**MAGISTRATE JUDGE  
Second Judicial Circuit  
Sioux Falls, South Dakota**

**Requisition #:** J20-09

**Agency:** Unified Judicial System

**Salary:** \$105,350.22 annually

**Closing Date:** September 30, 2019

**Position Purpose:** Position performs highly responsible legal work in the disposition of certain types of cases in magistrate court in the Second Judicial Circuit. This position may require travel. Work involves responsibility for hearing and ruling on certain cases of Drug/DUI court, traffic, civil, criminal and small claims matters. Work is supervised by the Presiding Judge of the judicial circuit. Position includes generous benefits program with retirement system, health and life benefits, vacation plan and other options.

Duties may include:

- administering oaths;
- taking acknowledgements;
- issuing warrants of arrest, search and seizure warrants;
- acting as committing magistrate;
- fixing bond;
- handling initial action on protection orders;
- reading or listening to allegations;
- determining if action cited is supported by facts;
- hearing and evaluating evidence;
- trying and determining all cases of misdemeanor and actions or proceedings for violation of any ordinance by law or other police regulation of a political subdivision;
- taking pleas of guilty;
- taking forfeitures of appearance bonds;
- trying civil actions or small claims up to a specific jurisdictional amount;
- participating and assisting with Drug Court and/or DUI court;
- taking evidence;
- entering judgment;
- occasional work on weekends and holidays.

**Comments:** Graduation from an accredited law school and experience in the practice of law. Licensed to practice law in the State of South Dakota. Applicants must meet the State of South Dakota Constitutional requirements set in Article V Section 6 upon appointment. This position is appointed by the Presiding Judge of the judicial circuit, subject to approval by the Supreme Court, for a four-year term subject to potential renewal. The applicant recommended for appointment will undergo an intensive background investigation.

**To Apply:** Applicants must complete a letter of interest and personal data questionnaire. The personal data questionnaire can be obtained by accessing the following link <http://uj.s.sd.gov/uploads/hr/MagistratePDQ.pdf> or contacting the Human Resources office. All personal data questionnaires must be submitted by the closing date to:

PMB 2713-000  
Director of Human Resources  
Unified Judicial System  
500 East Capitol Avenue  
Pierre, SD 57501  
Phone: (605) 773-4867; Fax: (605) 773-8437  
[Lisa.Mammenga@uj.s.sd.us](mailto:Lisa.Mammenga@uj.s.sd.us)  
An Equal Opportunity Employer



## **ACS Seeks Assistant Director of Chapters**

[ACS](#) has an immediate opening for an Assistant Director of Chapters to help manage a growing national network of over 200 lawyer and law student chapters in cities across the country, and support the overall work of the Department of Network Advancement. The ideal candidate could be based in Washington, DC, or could work remotely from a location other than Charlotte, Chicago, Denver, Houston, or Los Angeles where ACS currently has staff.

### **RESPONSIBILITIES**

The Assistant Director of Chapters will assist in:

- Managing the existing network of ACS lawyer chapters across the country and strategic expansion of ACS lawyer chapters in new cities and states;
- Managing and strengthening the existing network of ACS student chapters across the country;
- Building a vibrant, diverse, active and cohesive network for members at all stages of their careers;
- Facilitating programming for chapters;
- Approving and handling funding for chapter events;
- Implementing the division's budget and strategic priorities;
- Integrating chapter activities and chapter members into ACS's various substantive initiatives;
- Developing and planning signature events to raise money and to raise ACS's profile and broaden its impact in key legal markets around the country;
- Facilitating outreach to chapter members and outside organizations;
- Working to ensure career-long engagement of recent law school graduates and law students with the ACS network;
- Coordinating the participation of network members with ACS special projects and career opportunities; and
- Other duties as may be assigned from time to time within the overall department.

### **DESIRED QUALIFICATIONS**

The ideal candidate will possess many of the following qualifications and personal attributes:

- Campaign or other organizing experience
- Would do anything for a networking opportunity (loves it, loves it, loves it!)
- Strong attention to detail
- Ability to absorb information about several moving parts
- Works equally well with millennials, members of Gen Z, law students, new and seasoned lawyers, scholars, judges and public officials
- Event planning experience
- Excellent writing skills
- Thrives in an outcome-driven work culture
- Performs well in a team environment, but can also consistently accomplish tasks independently
- Knowledge of current legal and public policy issues
- Some travel for meetings and events is required
- JD and 1+ years of post-law school experience
- Social media, HTML and Excel experience are a plus

Salary will be commensurate with experience. ACS values a diverse workforce and an inclusive culture. ACS encourages applications from all qualified individuals without regard to race, color, religion, gender, sexual orientation, gender identity or expression, age, national origin, marital status, citizenship, disability and veteran status. Interested applicants should email a cover letter, resume, & list of three references to [jobs@acslaw.org](mailto:jobs@acslaw.org).

1899 L Street NW, Suite 200 | Washington, DC 20036 | 202.393.6181 | [info@acslaw.org](mailto:info@acslaw.org) | [acslaw.org](http://acslaw.org)

## **ASSOCIATE JUDGE**

### **SWO TRIBAL COURT**

**APPOINTED BY:** Tribal Council

**REVIEW COMMITTEE:** Judicial Committee

**TERM OF APPOINTMENT:** Four (4) years

#### **DUTIES AND RESPONSIBILITIES:**

Arbitrates, advises, administer justice in the court to flaw.

Establishes standard rules and procedures for legal matters.

Reads or listens to allegations made by plaintiff in civil suites and determines if action cited is supported by facts.

Examines evidence on criminal cases to determine if charges are true or determine if evidence will be supported by facts.

Listens to presentations of cases, rules on admissibility of evidence, and settled disputes.

Instructs jury on applications o facts to questions of law involved.

Sentences defendants in criminal cases upon conviction, or determines liability of defendants in civil cases.

Represents the tribe in State court proceedings, drafts appropriate notices, petitions and briefs and makes ultimate decisions regarding all Indian Child Welfare Act matters after consultation with the Child Protection Program and other appropriate persons.

Performs all other duties consistent with the purpose of this position and as assigned by the Chief Judge.

#### **QUALIFICATIONS:**

Juris-doctorate degree required. Extensive background in India Law as it applies to Indian Country. Applicants must be familiar with Acts of Congress pertaining to the jurisdiction of the Sisseton Wahpeton Oyate. Must have five (5) years of experiences as a practicing Attorney in State and Federal Court, and two (2) years as a practicing attorney in Tribal Court. Must adhere to the Tribe's drug free work place policy.

## **CHIEF JUDGE**

### **SWO TRIBAL COURT**

**APPOINTED BY:** Tribal Council

**REVIEW COMMITTEE:** Judicial Committee

**TERM OF APPOINTMENT:** Four (4) years

#### **DUTIES AND RESPONSIBILITIES:**

Arbitrates, advises, administer justice in the court to flow.

Establishes standard rules and procedures for legal matters.

Reads or listens to allegations made by plaintiff in civil suites and determines if action cited is supported by facts.

Examines evidence on criminal cases to determine if charges are true or determine if evidence will be supported by facts.

Listens to presentations of cases, rules on admissibility of evidence, and settled disputes.

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# CAREER CENTER

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

## ATTORNEYS

### **Tenure-Track Position in Criminal Law - Vermillion**

The University of South Dakota School of Law looks to hire an Assistant or Associate Professor, dependent upon qualifications, with expertise in the fields of Criminal Law and Criminal Procedure. This position is on the tenure track and will start at the beginning of the 2020-2021 academic year.

The successful candidate will teach our Criminal Law, Criminal Procedure, and Advanced Criminal Procedure courses. The remainder of the course package will be subject to negotiation. Areas of potential interest include dispute resolution, insurance, bankruptcy, secured transactions, cyberlaw, intellectual property, and agricultural law.

Individuals appointed to tenure-track positions are expected to fulfill the tripartite responsibilities of teaching, scholarship, and service. The successful applicant must be a licensed attorney in a United States jurisdiction (a state or the District of Columbia).

The University of South Dakota embraces and practices the values of diversity and inclusiveness. Candidates who support these values are encouraged to apply. EEO/AA

Applications must be submitted through the Board of Regents electronic employment site: <https://yourfuture.sdbor.edu/>. For application assistance or accommodation, call 605-677-5671. Please include your application letter, vita, and the names and addresses of three current references.

Inquiries may be directed to Tiffany C. Graham, Associate Dean of Academic Affairs, University of South Dakota School of Law, 414 East Clark Street, Vermillion, SD 57069. You may also send a message by email to [Tiffany.Graham@usd.edu](mailto:Tiffany.Graham@usd.edu), or you may call at 605-658-3509.

### **Patent Attorney - Sioux Falls**

Established intellectual property firm seeks a patent attorney to assist with expanding its focused IP practice to Sioux Falls South Dakota. Candidates

must be admitted to the patent bar, have a few years of patent prosecution experience, and have, or be open to acquiring, experience and skills in areas including trademarks, copyrights, trade secrets, and domain names. Fluency in one or more foreign languages welcome, but not necessary. Admission or eligibility for admission to the South Dakota Bar required. Confidential Inquiries may be made to: C/o Jamison Rounds PO Box 705 Crooks SD, or via email: [Jamison@Valuevisor.com](mailto:Jamison@Valuevisor.com)

### **Estate Planning Attorney - Sioux Falls**

Ver Beek Law, Prof. L.L.C. is seeking an ESTATE PLANNING ATTORNEY for our Sioux Falls office. We are looking for candidates with experience levels ranging from newly licensed lawyers to those with several years of experience. Only candidates seeking a long-term employment opportunity will be considered. The position offers competitive salary. Interested applicants should send their cover letter and resume to [kelsey@verbeeklaw.com](mailto:kelsey@verbeeklaw.com).

### **Contract Attorney**

McDonough Law Firm, a regional law firm, has an excellent opportunity for an experienced contract attorney. A minimum of 2 years civil litigation is preferred. Candidates must be licensed in South Dakota and be able to handle a case from inception through pre-trial work with little or no supervision. Please submit cover letter, writing sample and resume by email to [crystal@mcdonoughlawllc.com](mailto:crystal@mcdonoughlawllc.com). Please reference "SD Contract Attorney" in the subject line. No recruiter or telephone calls please. McDonough Law LLC is an equal opportunity employer

### **State's Attorney - Meade County**

The Meade County Board Commissioners is soliciting applications for the position of: Meade County State's Attorney. Closing date: September 26, 2019. See: [www.meadecounty.org/human-resources](http://www.meadecounty.org/human-resources) for application instructions.



## Legal Director - Sioux Falls

The ACLU's National Chapter office in Sioux Falls, SD seeks applications for the full-time position of Legal Director.

Reporting to the Executive Director, the Legal Director will lead and expand the ACLU legal program across South Dakota, North Dakota, and Wyoming, including developing and litigating high-impact cases and managing the legal department. The Legal Director will be responsible for setting the overall legal strategy to advance the ACLU's mission, as well as handling the day-to-day management of legal staff and cooperating attorneys.

As a critical member of the office's senior management team, the Legal Director will provide strategic leadership on both litigation and non-litigation legal advocacy in priority areas of criminal justice, immigrants' rights, indigenous justice, and LGBTQ equality, as well as other areas including First Amendment rights.

- 7-10 years of trial and appellate litigation experience in state and federal courts, including class actions, with a strong interest and experience in constitutional law and civil rights.
- Admitted to the South Dakota, North Dakota, or Wyoming Bar or eligible for admission on motion.
- Excellent organizational skills and a creative and strategic approach to problem-solving and litigation.
- Creative, persuasive, results-oriented, self-starting, persevering, and willing to learn.
- High ethical standards and genuine interest in developing authentic relationships.
- Team player who inspires collaboration, lifts up the work of others, and maintains balance and perspective with patience and a sense of humor.
- A commitment to diversity, equity and inclusion; a personal approach that values the individual and respects differences.
- Demonstrated commitment to civil rights and civil liberties consistent with the mission and goals of the ACLU.

The complete job description can be found at <https://www.aclusd.org/en/jobs/legal-director>

## Program Attorney

The National Judicial College seeks an experienced Program Attorney responsible for researching, designing and implementing continuing judicial education programs. Under direction of the Academic Director the Program Attorney will:

- Manage NJC's Tribal Judicial Center including supervision of program manager.
  - Research, design and implement curricula for in-person and web-based continuing judicial education programs.
  - Identify and recruit judicial, medical, legal, and other professional faculty.
  - Develop faculty, provide feedback on performance and presentation style.
  - Edit faculty-provided material for accuracy and compliance with NJC standards.
  - Analyze enrollment trends and promote NJC products through a wide array of marketing tactics to increase judicial participation.
  - Lead manager/administrator team during all stages of course facilitation.
  - Handle all logistics for off-site courses including direct contact with host site staff.
  - Participate in grant concept papers and applications, including deliverable identification, budgeting time and expenditures, and project length. Ensures deliverables are met.
  - Develop yearly program budgets.
  - Assist in all areas of the Academic Department and special projects as required.
  - Continually uphold the NJC values of maintaining an absolute commitment to justice, delivering and inspiring excellence and innovation in our work, championing integrity, and demonstrating engaged leadership.
  - Depending on experience, position may be filled as a Senior Program Attorney or Tribal Program Attorney.
- KNOWLEDGE/SKILLS REQUIRED:**
- Law degree from an ABA accredited law school.
  - Exemplary written and verbal communications skills with the ability to express ideas clearly and concisely.
  - Ability to be professional and diplomatic, and relate well with individuals at all levels.
  - Excellent organization and time management skills.
  - The ability to manage multiple priorities and produce under tight deadlines.
  - Flexibility to handle multiple priorities with the ability to adjust to high pressure and rapidly changing

business conditions.

- Broad based knowledge of issues that come before the nation's judiciary.
- Proficient use of Microsoft Office programs and databases required.
- Travel as required.

#### PREFERRED SKILLS

- Experience with events planning, program or project management, or meeting planning preferred.
- CJE/CLE program design experience preferred.

This position is open until filled; salary DOE. To apply please visit: [jobs.judges.org](http://jobs.judges.org)

### **Telecommunications/Consulting Attorney - Mitchell**

Vantage Point Solutions (VPS) a growing and dynamic telecommunications consulting and engineering firm headquartered in Mitchell, SD is seeking a staff attorney to:

#### Primary Functions:

- Work with consulting staff to provide, legal, regulatory and business consulting for telecommunications, wireless, CATV and ISP clients
- Regulatory research and client compliance with FCC and state regulatory commission rules
- Contracts, network and customer service agreements, CATV programming and interconnection negotiations, acquisitions, mergers and business and strategic planning

#### Required Qualifications:

- Juris Doctorate with excellent academic and work history
- 0-5 years' experience in the telecommunications industry – will train the right person
- Interest in Internet, telecommunications, video and wireless law and technology
- Excellent written and verbal communication skills and ability to interact effectively with clients
- Ability to independently manage a substantial workload in cooperation with and support of consulting team on a variety of time-sensitive matters
- Ability to determine the facts, law and the client's business position and efficiently assimilate information from a variety of sources to determine creative business plans and solutions
- Outstanding legal research and writing skills
- Understanding of business finances and business planning basics
- Strong computer skills, including Microsoft Office

Suite (Excel, PowerPoint, MS Office, Word)

Review of qualified candidates will begin August 24. VPS offers a competitive pay and outstanding benefits package based on experience. VPS is an employee owned ESOP. Please submit a resume and cover letter to Doug Eidahl, VP of Regulatory and Legal at [doug.eidahl@vantagepnt.com](mailto:doug.eidahl@vantagepnt.com). See [www.vantagepnt.com](http://www.vantagepnt.com) for more information about VPS.

### **Indigenous Justice Organizer - Rapid City**

The ACLU of South Dakota seeks applicants for a full-time Indigenous Justice Organizer position, which will be located in its Rapid City, South Dakota office. The ACLU-SD defends civil liberties and civil rights in South Dakota, North Dakota, and Wyoming through litigation, legislation, and public education. Reporting to the Director of Campaigns, the Indigenous Justice Organizer will work to implement a community outreach strategy to build scalable public education and advocacy programs, while incorporating organizing, coalition-building, leadership development, communication, and lobbying tactics.

#### RESPONSIBILITIES

- Execute effective organizing plans with motivating tactics for volunteers that balance achieving immediate campaign goals with building long-term volunteer capacity.
- Develop, strengthen, and nurture alliances and work in coalition with tribal leaders, community members, and other stakeholders in South Dakota and North Dakota.
- Recruit and train community leaders and volunteers in support of campaigns.
- Elevate the stories and experiences of impacted communities and individuals, ensuring that the interests and vision of impacted populations and the broader community are reflected in campaigns.
- Develop advocacy materials including fact sheets, toolkits, action alerts, blog posts, and social media content in collaboration with the Communications Director and Communications Associate.
- Demonstrate a commitment to diversity and inclusion within the workplace; using a personal approach that values all individuals and respects differences in regards to race, ethnicity, age, gender identity and expression, sexual orientation, religion, ability, and socio-economic circumstance
- Other duties as assigned.

## QUALIFICATIONS

- History of living in or working with Indigenous communities, preferably in South Dakota or North Dakota.
- Knowledge regarding current Indigenous movements, including: Standing Rock, Keystone XL, and Missing and Murdered Indigenous Women.
- Three years' experience in community/field organizing and base building.
- Ability to work on fast-paced campaigns with many moving pieces and ability to adapt to changing circumstances.
- Self-starting and willing to learn.
- Ability to travel across the state, as necessary, and participate in occasional evening and weekend meetings.

## HOW TO APPLY

Please send cover letter and resume by email to [HRJobsSD@aclu.org](mailto:HRJobsSD@aclu.org). Reference [ASD-91] in subject line. Please email: [southdakota@aclu.org](mailto:southdakota@aclu.org) with questions.

Please indicate in your cover letter where you learned of this career opportunity. Applications will be accepted until the position is filled.

This job description provides a general but not comprehensive list of the essential responsibilities and qualifications required. It does not represent a contract of employment. The ACLU reserves the right to change the description and/or posting at any time without advance notice.

This is a two year, grant funded position.

## **JOB OPPORTUNITIES WITH DAKOTA PLAINS LEGAL SERVICES**

Click job for complete job description

[MANAGING ATTORNEY – FORT THOMPSON](#)  
[STAFF ATTORNEY - PINE RIDGE](#)  
[PARALEGAL – RAPID CITY](#)  
[PARALEGAL \(TRIBAL ADVOCATE\) – MISSION](#)

## **PERSONAL TRUST RM PLAYER**

### **U.S. Bank Personal Trust RM Player/Coach - Sioux Falls**

Responsible for managing a team responsible for developing, managing, and retaining Personal Trust account relationships. The team provides clients

with expert financial advice and counsel in all areas of Personal Trust and is knowledgeable about all other related U.S. Bancorp products and services. Incumbent develops and executes the team's business plan. Incumbent plays a leadership role within Personal Trust.

For the complete job description, go to <https://usbank.taleo.net/careersection/10000/jobdetail.ftl?job=190021216>

## **ADMINISTRATOR**

### **Estate Settlement Administrator - Sioux Falls**

The First National Bank in Sioux Falls is accepting applications for an Estate Settlement Administrator. This is an excellent opportunity to join an industry leading Wealth Management team with a focus on providing excellent service and expertise. This position will handle administration of Estate accounts naming The First National Bank in Sioux Falls in a fiduciary capacity and assist with Irrevocable Trusts where the work involved is gathering and distributing decedent's assets in accordance with testamentary documents. At times, the Specialist will also cover administration of open accounts when an Administrator is absent. Will handle Medicaid applications for clients whose assets are depleted. Will maintain close communication with personal trust officer, beneficiaries, and professionals to accomplish goals and objectives of account relationships and cohesively and collaboratively work with other trust officers and risk management to share knowledge on unique and unusual assets. Will also assist with business development activities of the Wealth Management Department.

Candidates must have a Bachelor's Degree and attain a CFP, CTFA or CIFRS certification within five years of employment. Three to Five years of Trust or Banking/Financial services experience or an advanced degree are preferred. Please visit our Careers page to learn more about us and to apply: [www.fnbsf.com/careers](http://www.fnbsf.com/careers).

# September

Disciplinary Board.....	September 12-13.....	The Lodge at Deadwood
2019 Estate Planing CLE.....	September 20.....	Ramkota, Sioux Falls
Bar Commission Meeting.....	October 18.....	Red Rosa, Pierre
Swearing In Ceremony.....	October 18.....	Pierre
September Law For Lunch.....	September 26.....	
Nuts & Bolts CLE .....	October 18.....	Red Rossa, Pierre
Disciplinary Board.....	January 9-10, 2020.....	Red Rossa, Pierre
Bar Commission Meeting.....	January 10, 2020.....	TBA
Bar Commission Meeting.....	April 30, 2020.....	The Lodge at Deadwood
Strategic planning Retreat.....	May 1, 2020.....	The Lodge at Deadwood