



State Bar of South Dakota

September 2020
Newsletter



Attention South Dakota Attorneys, Paralegals, Legal Assistants, and Law Students!

Election Protection - National Remote Voter Hotline – 1,200 Captains Needed! (Remote)

The Lawyers' Committee for Civil Rights Under Law and its coalition partners seek legal volunteers to remotely serve as Captains for the Election Protection's English language national voter hotline (1-866-OUR-VOTE). The national, nonpartisan Election Protection coalition works year-round to ensure that all voters have an equal opportunity to vote and have that vote count. The hotline is answered by remote trained legal volunteers daily who are supported by Captains through hotline platform's chat function.

Over 1,200 Captains shifts must be filled August-October. These experienced Captains will then also assist during the November 3 election.

As part of Captain training, volunteers will need to serve as hotline volunteers three times (if they have not done so in 2020). Some volunteer hotline shifts for August-September have been set aside for this purpose (i.e. others cannot sign up for them.) In addition, Captains will complete a 2-hour on-demand training and be supported during their first Captain shifts by call center leads. Written guides will also be provided. Overall commitment: Serve as captains for at least 2-3 shifts in September-October and 1+ shift on November 2 and 3.

The Captain role is critical for the success of the national voter hotline. Sign up to play this leadership role!

What:

Serve as Captains for the national voter hotline

Who:

Lawyers, paralegals, legal assistants and law students

When:

Now through November; sign up for specific shifts once trained

How:

Online platform; computer with internet plus headphones needed

Training:

Available on-demand (around 2 hours). You sign up for this on We the Action and will be sent the link via an email from WTA. (Please check your spam folder.)

Volunteer Code of Conduct:

Volunteers must "virtually agree" to Code of Conduct.

<https://forms.gle/EAq8AsM39DA5MeeY9>

How to Volunteer:

Please complete the hotline experience form via the link below. We will be in touch with next steps depending on your experience.

<https://forms.gle/1gqNBRfh6ffjud8K7>



State Bar of South Dakota

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President's Corner

Terry G. Westergaard

Kids are going back to school. University classes are starting.

The schools and universities are attempting to make in-person attendance as safe as possible. Some students attend class in person while others attend through Zoom. Recently, I attended the law school orientation for first year law students. Orientation for the new students was held at the Muenster University Center in a large conference room to allow for social distancing – all law students and guests wore masks. This is the new norm.

The new norm for State Bar is to have a Zoom meeting or a conference call rather than an in-person meeting. One exception is that we recently held Welcome and Orientation meetings for the chairs of the State Bar Committees and Sections. These meetings were held in Rapid City, Sioux Falls, and Pierre. Zoom was available for the Rapid City gathering and several committee and section chairs took advantage of that option. Meetings were well attended and reminded me of how much work our State Bar committees and sections accomplish. Check out the Committees and Sections of the State Bar to get involved. The chairs would love to hear from you.

The Committee/Section work is a key component in the State Bar's Strategic Plan. Here are some highlights of this work to advance the Strategic Plan over the past year.

Goal 1 – The State Bar of South Dakota promotes a diverse and inclusive legal profession that competently serves South Dakota.

- The Administrative Law, Public Sector, and the Labor and Employment Law committees collaborated on programming for members in those practice areas.
- The In-House Counsel committee met weekly

as Covid-19 impacted South Dakota businesses to discuss issues in-house counsel members are facing during the pandemic and to lean on each other and brainstorm ideas on how to best assist

their organizations during this difficult time.

- The Young Lawyers Section has continued to reach out to membership with programming and mentorship.
- The Business Law and Family Law committees were invaluable along with our legislative lobbying team in advancing legislation beneficial to our members and their clients, while also defeating legislation detrimental to our members their clients, and the rule of law.

Goal 2 – The State Bar of South Dakota supports lawyers' pursuit of personal and professional satisfaction in the practice of law.

- The Diversity and Inclusion committee is developing programming for cultural competency and implicit bias training. The committee is also encouraging members to get involved in leadership roles in the State Bar.
- Lawyers Assistance was instrumental in their advocacy to bring a Lawyers Assistance Director on board as a full-time employee of the State Bar. Becky Porter is helping lawyers throughout the state get the assistance that they need. This position helps not only the individual lawyers but the profession as a whole. Along with person-to-person contact, Becky has been holding virtual coffee breaks to allow members to attend the meetings and connect with other members.
- Lawyer Referral transitioned from a referral model to a directory model – making it easier for attorneys to sign up and participate in the program. Learn more about how you can sign up at www.findalawyerinsd.com.

Goal 3 – The State Bar of South Dakota assures access to legal information and services for all South Dakota residents.

- The Legal Services committee is working on a disaster legal services guide to benefit our members and those impacted by natural disasters.
- Veterans committee, along with the Young Lawyers Section, continue to provide valuable

services through the veterans legal clinics and exploring remote options.

- Project Rural Practice continues their work to assist new lawyers who move to rural communities and encourage law students to consider rural practice through the Rural Internship Incentive Program.
- Members of the Alternative Dispute Resolution committee assists pro se litigants in family law related matters across the state, in conjunction with the law school, attorney volunteers, and program coordinators.

Goal 4 – The State Bar of South Dakota builds public trust in the justice system, the legal profession and the law.

- The Website Review committee continues to provide guidance on the best ways to provide information to our members and the public through the website.
- The Indian Law committee and Young Lawyers Section complete outreach annually to tribal communities across the state, to promote law as a career to students K-12.
- Our Ask A Lawyer program, which could not be possible without steadfast committee

leadership, continues to thrive as a public service to South Dakota residents with legal questions. Although postponed in 2020 due to Covid-19, the committee is exploring how to continue service in a virtual environment.

Goal Five – The State Bar of South Dakota builds a responsive, transparent, and forward-looking organization that advances its mission and the strategic plan

- The State Bar committees/sections support the law school in a variety of ways. To enhance this support, the Strategic Planning committee will be meeting in September with a focus on the State Bar’s relationship with the law school and how we can continue to support the law school’s work in preparing the next generation of South Dakota lawyers.

Congratulations to the law school and to David Knudson on the recent gift. The renaming of the law school to the University of South Dakota Knudson School of Law is a well-deserved honor.

Say **Yes** to getting involved or staying involved with the State Bar.

ATTORNEYS - OATH OF ATTORNEY

I do solemnly swear, or affirm, that:

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

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

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

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

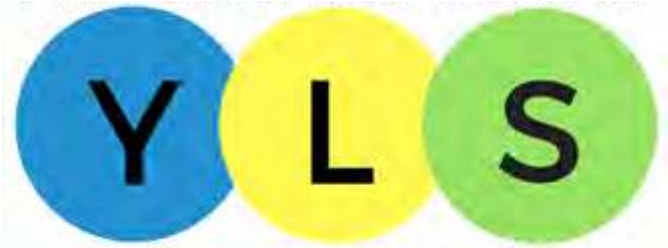
I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from that client or with the client's knowledge or approval;

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

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



STATE BAR OF SOUTH DAKOTA
YOUNG LAWYERS SECTION



by: Caroline A Srstka
YLS President

Happy September everyone! This month I would like to focus on well-being and maintaining a healthy work/life balance. Our careers in the legal profession at times can be all-consuming, and it's important to take time for your mental and emotional health. This is especially prevalent now during the COVID-19 pandemic. It is easy to get bogged down in our legal practice, and now with the addition of the COVID-19 pandemic, life can feel hectic with increased anxiety. I encourage you to find fun, healthy activities and hobbies that you can do for self-care and mindfulness, that also allows for social distancing.

I reached out to friends and family for some healthy, fun, and creative activities they have enjoyed that allowed for social distancing, and here are some great suggestions:

- Pick up a new instrument! YouTube has a plethora of tutorials.
- Snail Mail! Give your thumbs a break from texting and write a loved one a note.
- Become Julia Child! There is no better time than now to try new recipes.
- DIY Refurbishing! Find old furniture and give it a new life.
- Hiking! South Dakota has beautiful trails and national parks all over the state. Get out there and get some Vitamin D!
- Your fruits and veggies should be coming in around this time. Get out your mason jars and start canning!
- Zoom Book Clubs! Get a group of friends together to discuss the book of your choosing.

- And my personal favorite, start your collection of vinyls and spend the night listening to some great tunes.

Changing gears, the Young Lawyers Section is busy planning our fall Nuts & Bolts CLE and Statewide Swearing-In Ceremony, to be held November 6, 2020 in Pierre, South Dakota. Keep an eye out for future mixer events in your circuit as well!

Finally, in closing, I encourage anyone that is in need of a mentor, please reach out to one of the following YLS Board members, and we would be happy to assist you. Your 2020-2021 Board of Directors are:

- President – Carrie Srstka (Sioux Falls)
- Vice-President – Ole Oleson (Rapid City)
- Secretary/Treasurer – Anthony Sutton (Sioux Falls)
- 1st Circuit Representative – Rachel Mairose (Plankinton)
- 2nd Circuit Representative – Tyler Coverdale (Sioux Falls)
- 3rd Circuit Representative – Tony Teesdale (Brookings)
- 4th Circuit Representative – Mariah Bloom (Spearfish)
- 5th Circuit Representative – Jenny Jorgenson (Webster)
- 6th Circuit Representative – Chelsea Wenzel (Pierre)
- 7th Circuit Representative – Kelsey Weber (Rapid City)
- At Large Representative – Arman Zeljkovic (Rapid City)
- Law Student Representative – Lexi Baca (Vermillion)



YOUNG LAWYERS SECTION STATE BAR OF SOUTH DAKOTA

PRESIDENT

NATHAN CHICOINE
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Rapid City, SD 57709
(605) 342-2814
Nathan@demjen.com

PRESIDENT-ELECT

CAROLINE SRSTKA
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(605) 367-5880
Caroline.Srstka@state.sd.us

SECRETARY/TREASURER

OLE OLESEN
130 Kansas City Street Ste 310
Rapid City, SD, 57701
(605) 394-2181
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BOARD OF DIRECTORS

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HOLLY FARRIS
Pierre

7th Circuit
KELSEY WEBER
Rapid City

At Large
TYLER COVERDALE
Sioux Falls

Law Student
WHITNEY PETERSEN
Vermillion

May 26, 2020

South Dakota State Bar
University of South Dakota School of Law

STATEWIDE SWEARING-IN CEREMONY CHANGE OF DATE

Dear Members of the Bar:

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

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

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

Sincerely,

Caroline A. Srstka
President-Elect

RETIREMENT ACCOUNTS: PLANNING FOR INHERITED ACCOUNTS AND FOR MARITAL RIGHTS

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



September 18, 2020
8:30 am



Event has
changed to

ONLINE

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

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

Joe DYLLA,
CHAIR

Register @
statebarofsouthdakota.com

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We'll work with you as part of your TEAM!

YOU ARE INVITED TO JOIN!

Fellows of the South Dakota Bar Foundation

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

Full Name _____

Address _____

City _____ State _____ Zip Code _____

I would like to contribute:

in Lump Sum Annually Semi-Annually Quarterly Monthly

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

In Memoriam

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

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

Mail payment to:

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

Or you can email this form to:

tracie.bradford@sdbar.net or call 605-224-7554 to set up a payment.

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

Fellows of the South Dakota Bar Foundation

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

Sustaining Life Fellow - \$50,000 plus

(cumulative, including pledges & testamentary gifts)

- * Fred & Luella Cozad

Life Fellow - \$25,000 plus

(cumulative, including pledges & testamentary gifts)

- * Frank L. Farrar

Diamond Fellows - \$10,000 plus

(cumulative, including pledges & testamentary gifts)

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

Platinum Fellows - \$10,000

(cumulative, including pledges & testamentary gifts)

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

Gold Fellows - \$5,000

(cumulative, including pledge)

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

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

- * William C. Garry
- * Timothy J. Rensch
- * James E. Smith



Fellows of the South Dakota Bar Foundation

Presidential Fellows - \$10,000

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

Fellows - \$500 (per year)

- * Hon. John Bastian
- * Mary Jane Cleary
- * Andrew L. Fergel
- * Craig A. Kennedy
- * Hon. Bobbi Rank
- * Robert C. Riter, Jr.
- * Thomas Eugene Simmons
- * Jason R.F. Sutton
- * Barry R. Vickrey



Our Profession. Our Responsibility.

Dean's List: News from the Law School



by: *Neil Fulton*
Dean
USD School of Law

One thing that we work hard on at the Knudson School of Law is finding a way to give students practical opportunities to apply their doctrinal knowledge. With all the demands of time law students face it is not always easy to do. We also seek to do that in ways that contribute service to our communities. Our Tribal Wills Clinic, Low Income Taxpayer Clinic, Misdemeanor Defense Clinic, Alaska Tax Clinic, and Veterans Legal Assistance Clinics all do this. In each of these settings law students provide necessary assistance for some of the neediest among of us. Intersections of this kind provide a great way for students to learn, prepare for practice, and solve problems. We are proud of the clinics we have in place and are looking to expand these opportunities in coming years. This month, I'd like to let you learn more about our newest clinical offering from Marilyn Trefz, who serves as an adjunct professor in several settings, and has written about the WORKS Clinic. I hope you find it as interesting and exciting as I do.

Marilyn Trefz



In Spring Semester 2020, the Second Circuit WORKS (Working Out Resolutions for KidS) Program coordinated with the University of South Dakota Knudson School of Law to expand and improve the efficiency and ability of the program through the development

of WORKS Clinic.

WORKS was developed in 2016 by the Second Circuit and the SD Bar Association ADR committee, under

the leadership of Mike McKnight and Retired Judge Larry Long with generous funding from the SD Bar Foundation. WORKS was designed to improve judicial efficiency by assisting Second Circuit Judges with self-represented cases by decreasing the amount of courtroom time spent on forms and self-represented contested matters. The Second Circuit continues to participate by providing a Steering Committee for WORKS Clinic, chaired by Judge Doug Hoffman, with additional members to include: Brenda Jarrott, Jill Moraine, Elizabeth Overmoe, Judge James Power, Judge Camela Theeler, Karl Thoennes and representatives from East River Legal Services and the Second Circuit Bar.

WORKS Clinic helps self-represented litigants completing UJS court approved divorce forms, helps with general legal and court procedure information, and offers mediation services. To qualify to participate in the WORKS Clinic, both parties must be self-represented, live in the First or Second Circuit, use the UJS divorce forms and have an income at or below 200% of the federal poverty guidelines. Initial members of WORKS Clinic included six enthusiastic and committed law students: Kevin Barrow, Nick Montieth, and Elizabeth Stanley, as WORKS Clinic Externs; and, Hillary Beyer, Spencer Determan, and Ann Shoemaker as pro-bono WORKS Clinic volunteers.

Associate Dean for Academic Affairs Collinsworth and I trained the students on the ethical obligations of working with community participants, family law court processes, and UJS Divorce form requirements while supervising them throughout the process. Law students then planned, organized, scheduled, called, and walked through the forms to completion with the participants.

With these processes in place, law students were able to assist 27 individuals in January and February of 2020 prior to the COVID-19 pandemic. WORKS Clinic then revised normal protocol to offer form sessions and mediations through Zoom and in social-distanced settings.

The participating law students came to appreciate that while divorce is neither ideal nor easy, there are

times when it is needed (e.g., abuse, desertion, toxic environments for children). The students found that so many of the WORKS Clinic participants had waited years for this kind of assistance because they could not afford attorneys or they found the forms confusing and overwhelming, or they had reached an impasse where mediation was needed to help resolve issues in order to come to an agreement between the parties. Meeting with people in these difficult circumstances allowed law students to gain perspective about the fortune of their lives and expand their experience interacting with real people with real problems, facilitating resolutions and agreements, and providing valuable legal services. They also gained the satisfaction of being part of the improved judicial efficiency that WORKS provides.

Comments from the students who participated in the WORKS Clinic have indicated their experiences were

highlights of their law school career. As one of those “bigger than yourself” projects, the students achieved a certain camaraderie working together to help others.

In Fall 2020 six more law students are signed up to participate in the WORKS Clinic. With the addition of law students based in Vermillion, it is the goal of the WORKS Clinic Steering Committee to also provide these services in the First Circuit by starting WORKS Clinic in Vermillion. Expansion serves two purposes, including saving time and expense to the judicial system, as well as allowing additional students the opportunity to work directly with and serve the community.

WORKS Clinic has been a benefit to its participants and opportunity for the student participants. I have enjoyed working with the students and look forward to the expansion this fall.

YOU'RE INVITED

Statewide Swearing-In Ceremony

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

3:00 P.M.
Friday, November 6



Capitol Rotunda
Pierre, South Dakota

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

Reception to
Follow

A2J JUSTICE SQUAD

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

- **CHRISTOPHER DOHRER**
- **ROBIN EICH**
- **MARY ASH**
- **JEREMY LUND**
- **JOEL ARENDS**

AND MUCH THANKS TO:

SCOTT MOSES

FOR HIS CONTINUED WORK WITH
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And let her know you will answer the call to be an a2j legal superhero!



"
PLEASURE
IN THE
JOB
PUTS
PERFECTION
IN
THE
WORK."

- **ARISTOTLE**

TRIVIA: The first Labor Day celebration was in 1882.



A2J

HERO



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

ANNOUNCEMENTS

Davenport, Evans, Hurwitz & Smith, LLP
is pleased to announce that

Lori M. Rensink
and
Alayna A. Holmstrom

have joined the firm as associate attorneys.

Davenport, Evans, Hurwitz & Smith, LLP
9206 West 14th Street
P.O. Box 1030
Sioux Falls, SD 57101-1030

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Facsimile: (605) 342-5185

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Lynn, Jackson, Shultz & Lebrun, P.C.
is please to announce that

Jennifer S. Frank

is now a shareholder of the firm.

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Administrative Law

Administrative Law Program:

Who is Your Client?

Professor Tom Simmons and Lake County State's Attorney Wendy Kloepfner are excited to visit with us via Zoom on the important topic of "Who is your client?" They will be addressing this issue from a variety of perspectives, including the governmental perspective, the estate and guardianship perspective, and the insurance perspective.



**SEPTEMBER 29, 2020
2:00 PM CST**



**PRE-REGISTRATION
IS REQUIRED**



REGISTER HERE



**NEW
UPDATES**

2020-2021 COMMITTEE ASSIGNMENTS



CHECK IT OUT

A WORLD OF DIFFERENCE



Law Street Media
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- 4 years of Ag Lending
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- Expert witness on agricultural issues

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DO YOU HAVE A JOB ANNOUNCEMENT?

Send it to
tracie.bradford@sdbar.net

The life sized bronze statue of former Governor Coe Crawford, Sixth Governor of South Dakota, 1907-1909m and accomplished lawyer who practiced in Pierre and Huron will be unveiled in June 2021. It will per permanently displayed on the Trail of Governors in front of the entrance to the new State Bar headquarters located in the historic Hyde Block building on Capitol Avenue in Pierre. For a general refence to “Member and Friends of the State Bar of

South Dakota” to be included on the bronze plaque to accompany the statue and included as a Sponsor, at least one quarter of the cost (\$18,000) will have to be raised.

To date, the law firms, lawyers and friends of the Bar have contributed over \$6,000 toward this goal. The names of all individual donors will be included on the plaque to be installed inside the headquarters.



Thank You

FOR YOUR SUPPORT!

Since the announcement of the donor opportunities to assist with funding for the statue of Governor Coe Crawford, more than \$5800.00 has been received to date towards the goal of \$18,000! Thank you bar members, law firms and friends!

Contributors:

Pierre lawyer Jason Glodt and family, as owners of the building have agreed to become an additional sponsor of the Crawford statue.

Members of the State Bar of South Dakota have sponsored one quarter of the cost.

Davenport, Evans, Hurwitz
& Smith, LLP of Sioux Falls

South Dakota State’s Attorneys
Association of Pierre

Lori Wilbur of Sioux Falls

Bill Van Camp, Jr. of Pierre

Robert C. Riter, Jr. of Pierre

Bob and Kim Hayes of Sioux Falls

Sandy Zinter of Pierre

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

All donors are also individually recognized on the Trail of Governors website: www.TrailofGovernors.com and in future editions of the Newsletter.

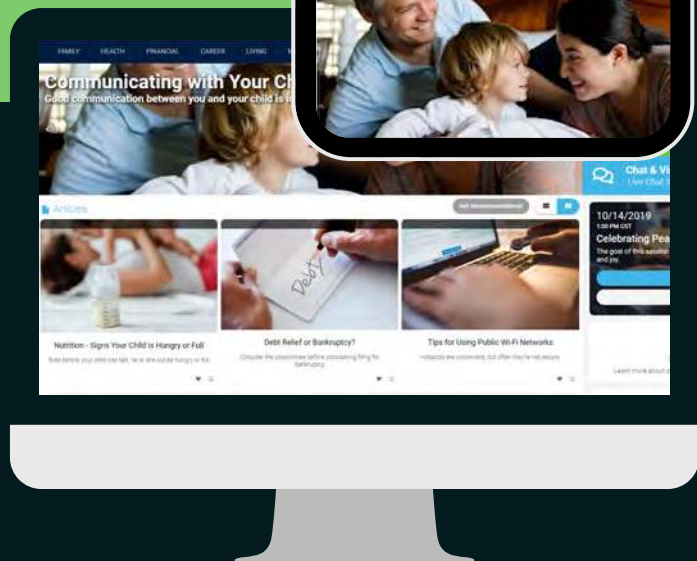




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Ethics and Disaster Recovery Planning

Mark Bassingthwaite, Esq.
Risk Manager, ALPS
mbass@alpsnet.com

The ABA's issuance of Formal Ethics Opinion 482 in September of 2018 finally made it quite clear. Lawyers have an ethical duty to develop a disaster recovery plan. Consider the import of how the Standing Committee on Ethics and Professional Responsibility concluded their opinion when they stated:

“Lawyers must be prepared to deal with disasters. Foremost among a lawyer's ethical obligations are those to existing clients, particularly in maintaining communication. Lawyers must also protect documents, funds, and other property the lawyer is holding for clients or third parties. By proper advance preparation and taking advantage of available technology during recovery efforts, lawyers will reduce the risk of violating professional obligations after a disaster.”

Speaking frankly, I've always assumed this duty existed because I've never come across an exception in any of the Model Rules of Professional Conduct that says something along the lines of this rule doesn't apply if the lawyer happens to be dealing with the aftermath of a disaster. Over the years my only challenge has been in trying to convince other lawyers of the necessity and obligation to put such a plan in place.

With this duty to prepare now firmly established, what rules need to be taken into consideration? Among a few others, Formal Opinion 482 underscored the importance of Rule 1.1 Competence, Rule 1.4 Communications, and Rule 1.15 Safekeeping Property; but I would also encourage you to not overlook Rule 1.3 Diligence and Rule 1.6 Confidentiality. Think about all these rules in the context of developing a disaster recovery plan, or better yet, a business continuity plan. Start with comment 8 to Rule 1.1 Competence,

which in part reads “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” This means lawyers must not only understand how any technology in use at a firm might be impacted by various disaster scenarios, they must also be able to determine how any relevant technology might be utilized to minimize the impact of various disasters.

Next is Rule 1.3 Diligence, which I see as a no brainer. “A lawyer shall act with reasonable diligence and promptness in representing a client.” There are no exceptions to this rule; and it should go without saying that experiencing a fire, flood, ransomware attack or hurricane can all too easily make it extremely difficult to be prompt in representing your clients. Therefore, lawyers are to consider all possible disaster scenarios they potentially face and plan accordingly.

Rule 1.4 Communication makes it clear that lawyers are to keep their clients informed about the status of their matters. This means lawyers must think through the various disasters scenarios that might occur with the intent of trying to determine how client contact information could be accessed, used, and by what communication channels. It's about making sure they can reach their clients in order to advise on whether their representation will continue or if they must withdraw. Similarly, lawyers should try to determine how their clients can reach them under the various identified disaster scenarios.

Rule 1.4 also requires that clients have enough information to allow them to make informed decisions regarding the representation. This means clients need to be timely notified if their files or digital information has been compromised or destroyed while in a lawyer's custody or control. In light of this obligation, lawyers should consider implementing remote access options and cloud-based services, if they are not already in place. Of course, lawyers should also think through their options if they are forced to deal with limited or no Internet access.

Taken together, Rule 1.6 Confidentiality and Rule 1.15 Safekeeping Client Property require lawyers to take steps to preserve client confidentiality and exercise reasonable care to protect and, if necessary, restore client information and client property in the event of a disaster. Think about it. If lost documents or property can be restored or reconstructed, client notification isn't necessary. However, according to Opinion 482, if reconstruction or restoration isn't possible, notification is necessary if the lost documents or property have intrinsic value or are useful or necessary to continue representation.

Finally, don't avoid the money issue. Lawyers do need to ask and answer the following two questions. What do we do if access to financial systems, firm accounts, client funds and the like are limited or not available for a period of time; and what steps

can we take to prevent any unauthorized access to our trust and business accounts?

In sum, disaster recovery planning is about being proactive. It's about thinking through the what ifs should something like a cyber-attack, extreme weather event, firm break-in, or a serious accident ever occurs and then coming up with a plan that responsibly addresses the associated risks. That said, I can appreciate the headache this obligation might bring about for some; so, here's another way to look at it. Disaster recovery planning is ultimately about coming up with a plan that allows you to stay in business should the unexpected ever happen. Because, as we all know, a failure to plan is in reality a plan to fail.

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In Memoriam



Gustave "Gus" Jacob, 85, passed away on August 18, 2020. Gus was born to Gustave F. Jacob and Catherine (Renner)

Jacob in the "little town on the prairie" DeSmet, South Dakota, on March 27, 1935, the year Will

Rogers died. He obtained a B.S. in political science from SDSU, a JD from USD, and a Master of Laws from New York University.

Gus spent twenty-nine and a half years in the Army, the first two years on a Nike Missile Site near Chicago. After law school in Vermillion and two years of private practice in Groton, SD, Gus returned to the Army in the Judge Advocate General's Corps. High lights of his JAG career were teaching law to cadets at the Military Academy, West Point, New York, a year spent in Viet Nam, and the last half of his career as a military judge. Colonel Jacob presided over all levels of courts martial involving all types of criminal offenses, including capital murder. He traveled over much of the United States and Europe hearing some of these cases.

Gus received many awards and decorations during his military career. The two which rank highest with him were the Senior Parachutist badge and the Legion of Merit.

After retiring from military service, Gus spent three years as a staff attorney with the South Dakota Public Utilities Commission. Later in Rapid City he taught several courses, including Law for Engineers, at SDSM&T.

On June 14, 1996, Gus married Maryann (Schoenfield) Torrey, and together they shared many happy years traveling and making their home in Rapid City.

Gus was a member of Blessed Sacrament Church where he was both a hospitality minister and a lector. He was involved in the local Elks Club where he served as chairman for the Veterans Service Committee. Also, he was an active member and officer of the Downtown

Kiwanis Club. Gus played in both the 7th Calvary Drum and Bugle Corps and the New Horizons Band. Later in life Gus volunteered at Storybook Island where he drove the children's train throughout the park. Gus loved Big Band music and had an extensive CD and tape collection of the Big Bands of the 1940's. He was also a member of the 39 Club, and along with serving on its board, attended most dances sponsored by the club with his wife.

Gus will be long-remembered for his kindness and politeness, as well as his acceptance of everyone, his gift of storytelling and marvelous sense of humor. He is survived by his wife, Maryann; children: Paula Shimazu of Seattle, Washington; Gregory; Cameron (Linda) of Athens, Georgia; Teri Johnson (Marty) of Brookings, SD and Mike Robinson (Heather) of Boise, Idaho. Grandchildren: Cody Shimazu, Ryan Jacob, Abigail Jacob, Taylor Johnson (Nefeli) Alyssa Laufmann (Spencer) Alec Johnson (Alexa) Emily Johnson, Elliot Johnson (Quvondo Brown) Bennett and Naia Robinson and great-grandchildren Logan and Adalyn Laufmann; sister Karmel Gole (Bob) of Texas, and niece Natalie Hooper (Charles) and nephew Robbie Gole (Kristi). He was preceded in death by his parents and sister Elizabeth Jacob.

"A thousand time I've done my best—Oh! Grant me now a final rest!"

A private family service will be held at Kirk Funeral Home and live-streamed at 10:00 am Friday August 21, 2020. Burial will take place at Black Hills National Cemetery.

In lieu of flowers memorials may be given in memory of Gus Jacob to Kiwanis Children Fund. P.O. Box 6457 Dept. #286, Indianapolis, IN. 46206. Please indicate Gus's name in the memo line of the check. Gifts may also be made online at www.kiwanis.org/give



DAVIS, Martha Sherrill
In her sleep, before she
was scared, in pain, alone,
or broke.

Martha Sherrill Davis,
born January 7, 1939 in
Austin, BA UT at A, JD
Baylor Law, LLM Harvard
Law, "Federal Standards

of Review" by Childress and Davis, Professor Emeritus,
Thurgood Marshall Law School, died in Duncansville
PA, August 8, 2020.

Martha Jo Sherrill was born to M.O. "Red" Sherrill
and "Billie" Drake Sherrill, in 1939, the eldest of five
surviving children, and into a very different Austin.
When her class opened a brand new and first for
Austin, integrated McCallum High, she made friends
and she lost friends. The ones she lost, she chose not
to recall, the ones she kept and added were close to her
heart until these final days. Times change. Places and
other people change. Red heads hold grudges and love
deeply forever.

Married to Carl Bowen Davis of Ft. Worth in 1962,
among many notions, he offered gently, "You were not
properly appreciated. Universities should have been
competing for you, not 'letting you type and take some
classes.'" Thus, began her conscious consciousness
raising.

Two children, four cars, 7 street addresses, 4 PO Boxes,
two mortgages, and three law firms later, Martha,
nearing 40, went to her attorney boss to quit her legal
typing job and take a higher paying, office manager job
across town. She came home looking dazed. Bowen
said, "You didn't quit. You're going to law school." "
Did they call you?" "No, I've just been waiting for you
to make up your mind." Martha went to law school,
sponsored by two former Texas Bar presidents, one
successful SCotUS appellate attorney, and a sitting US
Federal Judge. They too had been waiting for her to
make up her mind. After starting her JD as a 'mature
student' and depleting nearly all the family savings,
mid-way she realized she had no interest in practicing
law. She extended her schooling for a Harvard Law
post doctorate LLM, 'a teaching degree'. Thirty-nine
class months after she left the typing pool, at age 43,
Martha began teaching law in 1982 at the University

of South Dakota Law School. There were not enough
female law professors in the U.S. to fill a school bus.
Bowen counted them.

The degrees took 15 years to pay off, took away
her poetry writing, relegated 'pleasure reading' to
between semesters, and uprooted her family 4+ times
in 13 years. But she authored two parts of the first
comprehensive and still premier legal treatment of
Federal Standards of Review (the path from the street
to the supreme court, step by step, rule by rule). It is a
book about deference, from a woman who earned the
right to show almost none. Yes indeed, "she wrote the
book". She also taught thousands of now practicing
attorneys, judges, and all-around good folk. They can
each tell you, they understand 'the awwwl biness', the
statue of frogs, how not to get lost on a black acre, and
how to negotiate with 'gawdawful binesses' (beyond
those just in 'awwwl') to get the working man and
woman their due.

Two brain aneurysms were discovered in 2010 and 1
hour after she turned in her graded spring finals, she
went under the knife. Per the surgeon, it "turned out
to be a really interesting procedure", ending her legal
career at Thurgood Marshall Law School, the last and
fondest stop of her 26 years of teaching (one year out
to clerk for that US Federal Judge, incredibly proud
to have a bonafide Harvard grad and law professor
clerking for him in Tyler Texas).

Martha has spent the last decade with frustrating
aphasia, but has been content, happy, reading mysteries
again, reminiscing with family, and singing almost
everything published in the American catalog between
1880 and 1958. Largely by choice, the only adult
responsibilities she kept for herself were picking her
books, her clothes, and VOTING.

It was a good life. It ended on terms to be envied. The
only piece of 'biness' left undone was to live long
enough to vote that rascal out. That she leaves to the
rest of us.

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Ethics Opinion 2020-05

Issues Presented: Whether South Dakota substantive law providing that a personal representative or the PR's "agents" (which would include the PR's lawyer) may be compensated based upon a percentage of an estate's value eliminates any need to separately analyze whether the Rules of Professional Conduct regarding reasonableness of attorney fees permit such a fee to be assessed?

Answer: No; although it is possible that a fee calculated in this way would satisfy the Rules of Professional Conduct, it is also possible that such a fee would be excessive.

Rules Implicated: 1.5

FACTS

SDCL § 29A-3-719(a) states that PR's and their agents are entitled to reasonable compensation, and then lists seven factors considered when determining the compensation. SDCL § 29A-3-719(c) then further states:

When compensation is not provided by will, or in an intestate proceeding, the personal representative may be allowed commissions upon the amount of personal property accounted for by the personal representative, excluding personal property not ranked as assets, as follows:

- (1) On the first one thousand dollars at the rate of five percent;
- (2) On all sums in excess of one thousand dollars and not exceeding five thousand dollars at the rate of four percent;
- (3) On all sums in excess of five thousand dollars at the rate of two and one-half percent.

Lawyer inquires whether the Rules of Professional Conduct permit Lawyer to rely solely upon the percentages set forth above in calculating a reasonable fee for work on behalf of a PR.

DISCUSSION

Reasonableness of fees is governed by Rule 1.5(a) of the Rules of Professional Conduct:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable amount for fees or expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Although not identical, these factors are very similar to those identified in SDCL § 29A-3-719(a) as bearing on how much a PR or a PR's agent should be compensated.

This Committee has stated in Ethics Opinion 2000-5a that “any fee agreement that would not, under any circumstances, allow for a review of the fee at the conclusion of the representation to ensure that it comports with the above factors would be in violation” of the Rules. It echoed this principle in Ethics Opinion 2019-1, stating that flat fees for representation are permissible, but they still must be reasonable under Rule 1.5, and that such a flat fee must be subject to a separate reasonableness review under these eight factors.

CONCLUSION

These principles lead to the conclusion that, regardless whether South Dakota law contemplates a PR or the PR's “agent” assessing a fee based on 2.5% of an estate's overall value, South Dakota's Rules of Professional Conduct impose an independent requirement on Lawyer to determine and then charge a fee that is reasonable in light of the eight factors listed above. It is *possible* a fee calculated using the identified formula would be reasonable, but use of the formula is not *per se* reasonable.

Weather-Related Insurance Claims for Special Events

Matthew J. Bunkers, Ph.D., CCM
Northern Plains Weather Services
www.npweather.com

This article presents two examples where insurance was purchased to protect against weather-related losses in attendance for fund-raising events.

In the first example, insurance was purchased to protect against losses in attendance for a winter event. For an insurance payment to be made, at least 5 inches of snow was required to fall in a 12-hour period for a specific date during the winter of 2018–2019 near Valley City, North Dakota. The analysis by the insurance company’s meteorologists was that only 4.6 inches fell at the venue during the 12-hour period; therefore, payment of the claim was denied.

Based on this decision, Northern Plains Weather Services was retained to do an independent analysis of the snowfall. The first step was to assess snowfall for the sites around Valley City (Fig. 1). The storm-total 7.5-inch snowfall report closest to the venue was the lowest of the four reports in the area. Upon further examination, this was a “public” report, and not from a trained observer, and thus should not be weighted as strongly as the other three reports.

The main challenge in this case was determining how much of the snow fell in the 12-hour insurance window (it snowed for a total of 16.17 hours at the venue). In order to do this, five methods were used to calculate the percentage of snow that fell in the 12-hour window. The first method simply took the percentage of time that it snowed during the 12-hour period compared to the total time it snowed (68%). This was multiplied by three different interpolated snowfall estimates at the venue, and all three indicated snowfall of > 5 inches. The other methods relied on radar-based reflectivity and precipitation

estimates using varying algorithms.

Collectively, these methods showed a 67% likelihood that snowfall was 5 inches or greater during the time of interest; accounting for the questionable public report indicated an 80% likelihood. After considering other factors such as the snow-to-liquid ratio and how that changed with time, there was very high confidence (up to at least 90%) that at least 5 inches of snow fell at the venue during the insured period. Based on this new information, the insurance company ultimately decided to pay the claim.

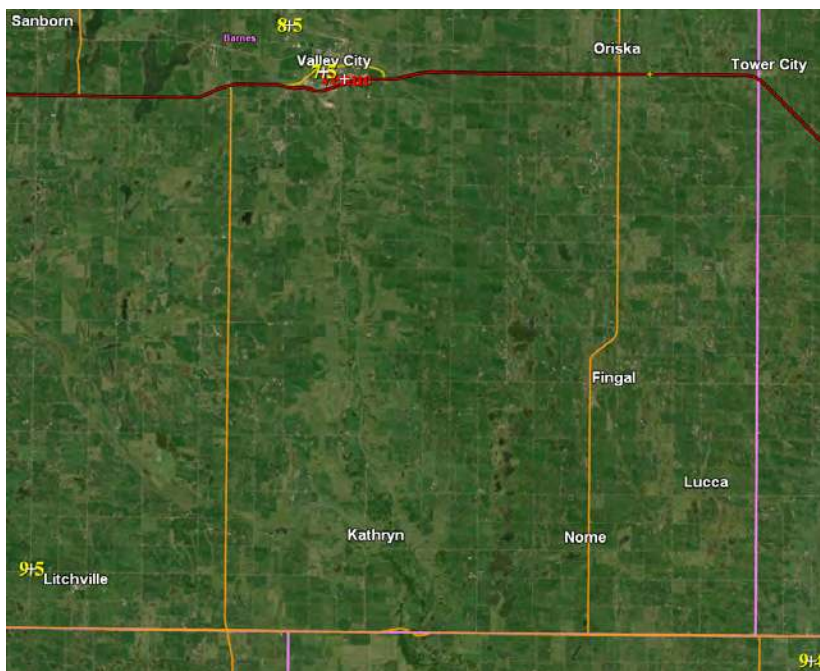


Figure 1. Snowfall (inches, in yellow) for the winter 2018–2019 event at the four sites with available data relatively close to the venue (red). White plus signs denote the locations of the sites.

The second example was like the first, but instead the insurance was based on at least 0.25 inches of rain falling at the venue in a 12-hour period during an event in the summer of 2018. The insurance company’s meteorologists estimated that 0.14 inches of rain fell at the venue during the 12-hour period; therefore, payment of the claim was denied. Their analysis was based on an algorithm that combines radar and observer information into a 1 km x 1 km gridded product, and thus can result in smoothing of observations.

Based on this decision, Northern Plains Weather Services was retained to do an independent analysis of the rainfall. The first step was to assess the radar-estimated storm-total precipitation. Fortunately, all of the rain fell within the required 12-hour window, so no estimates had to be made in that regard. However, the venue was located in-between observing stations (Fig. 2); therefore, interpolation was required to arrive at a rainfall estimate for the venue.

At first glance, it is apparent that the venue was very close to the axis of heaviest rainfall (cf. yellow plus sign and red line in Fig. 2); locations along this line had at least 0.25 inches of rain, such as the Millard Airport (orange plus sign). Upon further examination of the radar as well as a comparison to the observed rainfall reports, a low bias in the radar-based rainfall estimates was found for some of the sites, which is not uncommon at close range to the radar (as in this case). Finally, the radar never sampled the heaviest part of the storm as it moved over the venue. The end result was 80% confidence that the rainfall at the venue was at least 0.25 inches.

The insurance company had its meteorologists reevaluate the rainfall estimate based on this new information. They noted that their smoothed

analysis was inappropriately reducing the rainfall estimate at the venue based on the observed rainfall reports, and agreed that the radar analysis suggested rainfall should have been higher. Ultimately, they arrived at an estimate of 0.26 inches, and agreed to pay the insurance claim.

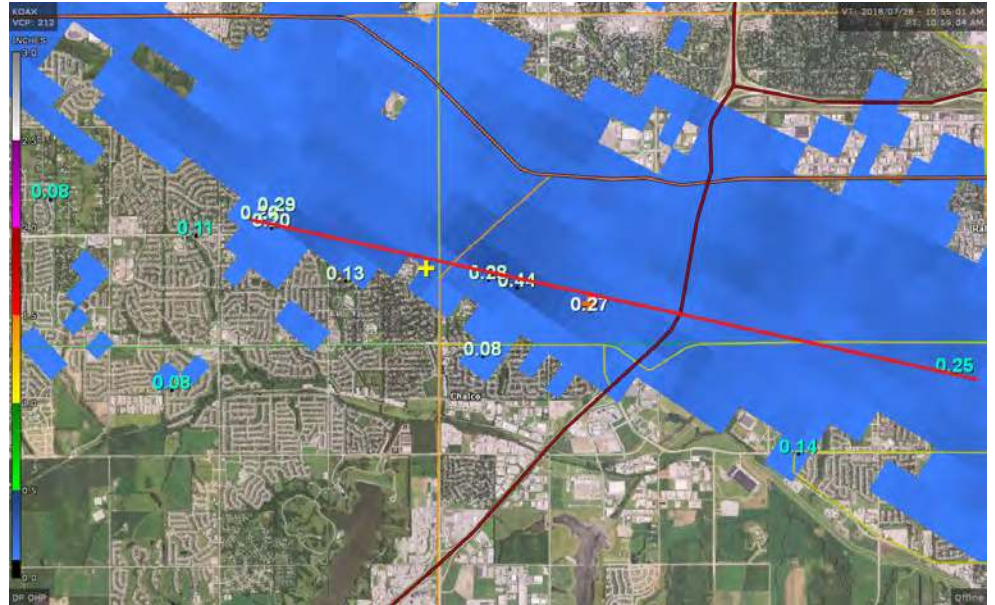


Figure 2. One-hour precipitation estimation from the Omaha, NE, National Weather Service radar using the dual-polarization algorithm. Values ≥ 0.10 inches are shaded blue. The venue is indicated with a yellow plus sign and the Millard Airport is indicated with an orange plus sign (with 0.27 inches of rain). The very light green-colored numbers are Community Collaborative Rain, Hail, and Snow (CoCoRaHS) network rainfall reports, while the cyan-colored numbers are from citizen weather observers from the Weather Underground. The red line is the axis of heaviest rainfall.

In summary, a consulting meteorologist can dig deeper into insurance-related claims like these, and thus provide a better picture of the weather at the time of the event, which may reveal things that the insurance company's weather provider did not consider.

Northern Plains Weather Services

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





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August 7, 2020

VIA E-MAIL and U.S. MAIL

andrew.fergel@sdbar.net

Andrew Fergel
Executive Director and Secretary-Treasurer
State Bar of South Dakota
222 East Capitol Avenue, #3
Pierre, SD 57501-2596

RE: Rocky Mountain Mineral Law Foundation.

Dear Andrew:

The Trustees Council of the Rocky Mountain Mineral Law Foundation held a virtual Annual Meeting July 22-25, 2020. I attended the meeting as Trustee for the South Dakota State Bar. Professor Sean Kammer serves as Trustee for the University of South Dakota Knutson School of Law.

During the past year, the Foundation sponsored three Short Courses, and four Special Institutes, three Workshops, and seven live webinars in addition to the Annual Institute.

The Foundation's Scholarship Committees awarded over \$229,000 in law school scholarships last year. The RMMLF Scholarship Recipient Attendance Program pays travel, accommodation, and incidental expenses for law students to attend Foundation Institutes and Short Courses. Applications for this assistance can be made through the law school Trustee.

The following officers were elected to serve for the coming year:

- President - Stuart R. Butzier, Modrall Sperling, Santa Fe, New Mexico;
Vice President - Scott W. Anderson, Hogan Lovells, Denver, Colorado;
Secretary - Neil G. Westesen, Crowly Fleck PLLP, Helena, Montana;
Treasurer - Sandi Ann Snodgrass, Holland & Hart, Denver, Colorado.

The Annual Meeting of the Trustees Council is held during the Foundation's Annual Institute. The 2021 Annual Meeting and Institute will be held in Seattle, Washington from July 15 to 17.

If anyone wants further information, please feel free to contact me. You can also learn more about the Foundation and its many programs and publications, by visiting www.rmmlf.org. It was an honor to represent the State Bar on the Foundation's Trustees Council.

Sincerely,

BENNETT MAIN GUBBRUD & WILLERT, P.C.



Dwight A. Gubbrud

DAG/jn

cc: Alex Ritchie, Executive Director, RMMLF

2020 ABA Annual Meeting Report South Dakota Young Lawyers Section

This year, due to the COVID-19 Pandemic, the 2020 ABA Annual Meeting was held virtually! This meeting now holds a place in Association history, as it is the FIRST meeting held virtually. Due to its on-line platform, the meeting produced excellent attendance! Hundreds of members representing the ABA’s various Sections, Divisions, and Forums, including the Young Lawyers Division (YLD)., gathered together. 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 (Sioux Falls), Elizabeth Overmoe (Sioux Falls), Holly Farris (Pierre), and Arman Zelijovic (Rapid City).

Tamara P. Nash

For the 2019-2020 bar year, Tamara served in the ABA YLD in several capacities. She served as Director of the Diversity & Inclusion Branch and vice-chair of the YLD’s Long-Range Planning Board. She also served as a member of the YLD Council and Cabinet, the senior leadership bodies of the ABA YLD. This meeting, Tamara attended all governance events as well as programming.

At the meeting, Tamara was also recognized for her work during the 2019-2020 bar year. Chair Logan Murphy awarded Tamara with the ABA YLD Star of the Year award. An honor awarded at the Chair’s discretion annual. This year, two ABA YLD members (including Tamara) were recognized.

For the 2020-2021 bar year, Tamara will serve the ABA YLD as the Administrative Director. Tamara is also proud to announce she formerly announced her candidacy for ABA YLD Secretary, a position that ascends to ABA YLD Chair. To learn more about her campaign, please visit www.tamaraforyld.com.

Elizabeth Overmore

Elizabeth attended the meeting in her capacity as the South Dakota ABA House of Delegates Young Lawyers Representative, a position which provides her a delegate seat in the ABA YLD Assembly.

Holly Farris

Holly attended the meeting in her capacity as incoming District Representative for North Dakota/South Dakota. She attended Assembly as one of South Dakota’s two delegates.

Arman Zelijovic

Arman attended the meeting in his capacity as a YLS board member. He attended as one of South Dakota’s two delegates.

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. There were 15 items on the Assembly Consent Calendar. The following resolutions were debated by the delegation, comprised of 237 young lawyer delegates from across the nation.

YLD Resolution 20-9YL	This resolution amends the ABA YLD’s Bylaws to accomplish the goals of: (1) clarifying the role of District Representatives, (2) removing ambiguity in the processes applicable to District Representatives, and (3) clarify the process by which District Representatives are appoint by Affiliates. District Representatives are a vital part of the ABA YLD and increasing the effectiveness of these officers allows the YLD to better serve its members.	Passed
HOD Resolution 100B	This resolution urges that the interpretation of “race,” as included in antidiscrimination statutes, be not limited to the color of one’s skin, but rather, includes other physical and cultural characteristics associated with race; urges federal, state, local, territorial, and tribal governments to enact legislation banning race discrimination on the basis of the texture, style, or appearance of a person’s hair; encourages all federal, state, tribal, territorial, and local court systems, in conjunction with state, territorial, tribal and local bar associations, to carefully review their discrimination policies and provide implicit bias training to eradicate discrimination on the basis of the texture, style, or appearance of a person’s hair; and supports enactment of the Creating a Respectful and Open World for Natural Hair Act of 2019 (S. 3167, H.R. 5309, 116th Congress) or similar legislation that	Passed Subsequently passed in the ABA HOD

2020 ABA Annual Meeting Report South Dakota Young Lawyers Section

	advances antidiscrimination on the basis of the texture, style, or appearance of a person's hair	
YLD Resolution 20-8YL	This resolution urges that the Code of Conduct for United States Judges apply to United States Supreme Court Justices. The Code goes beyond basic ethical requirements to create uniformity regarding recusals and participation in political activities. This would seek to address that limitation applicability to the United States Supreme Court.	Passed
HOD Resolution 301A	This resolution urges federal, state, local, tribal, and territorial governments to enact legislation to eliminate or substantially curtail the defense of qualified immunity in civil actions brought against law enforcement officers to redress deprivations of rights, privileges, and immunities secured by the Constitution and laws of the United States or any State or Territory.	Passed Subsequently passed in the ABA HOD
HOD Resolution 10G	This resolution urges the highest court or bar admission authority of each jurisdiction to cancel and to not administer any in-person bar examination during COVID-19 until and unless public health authorities determine that the examination can be administer in a manner that ensures the health and safety of bar applicants, proctors, other staff, and local communities.	Passed Subsequently passed in the ABA HOD

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

If you have interest in becoming involved in the ABA YLD or the State Bar Young Lawyers Section, please feel free to contact the Section President Caroline Srstka (Caroline.Srstka@state.sd.us).

The conferences for the 2020-2021 bar year are:

YLD Fall Conference; October 8-10, 2020 (virtual)

ABA Midyear Meeting; February 17-22, 2021 (Chicago, Illinois)

YLD Spring Conference: April 14-19, 2021 (Pittsburgh, Pennsylvania)

ABA Annual Meeting; August 4-10, 2021 (Toronto, Ontario)

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION OF) RULE 20-04
A NEW RULE RELATING TO THE CREATION)
OF A COMMISSION ON PARENTING TIME)
GUIDELINES TO BE DESIGNATED AT)
SDCL CH. 25-4A)

A hearing was held on August 25, 2020, at Pierre, South Dakota, relating to the adoption of a new rule relating to the creation of a commission on parenting time guidelines to be designated at SDCL Ch. 25-4A and the Court having considered the proposed adoption and being fully advised in the premises, now, therefore, it is

ORDERED that the proposed adoption of a new Supreme Court rule relating to the creation of a commission on parenting time guidelines be adopted in its entirety as follows:

The Creation of a Commission on Parenting Time Guidelines.

Section 1. That a new rule be added to SDCL ch. 25-4A as follows:

The Supreme Court shall, commencing in the year 2021, establish quadrennially a Commission on Parenting Time Guidelines. The commission shall review the standard parenting guidelines outlined in § 25-4A-10 and shall report its findings and recommendations to the Supreme Court, Governor and the Legislature no later than October 1 of the year in which it is appointed.

Section 2. That a new rule be added to SDCL ch. 25-4A as follows:

The commission shall be composed of seven members.

(1) The Supreme Court shall appoint the following positions:

- (1) A member of the South Dakota Judiciary;
- (2) A member in good standing of the South Dakota State Bar;
- (3) A professional in the field of childhood development.

- (4) The Governor shall appoint the following two positions:
 - (5) Noncustodial parent;
 - (6) Custodial parent.
- (2) The Speaker of the House of Representatives shall appoint the following position:
 - (1) State Representative.
- (3) The President Pro Tempore of the Senate shall appoint the following position:
 - (1) State Senator.

Section 3. That a new rule be added to SDCL ch. 25-4A as follows:

The Commission shall hold at least three public hearings on three separate occasions prior to the submission of the report. In addition to public testimony, the Commission may receive and review other information deemed necessary in preparation of its report and recommendations.

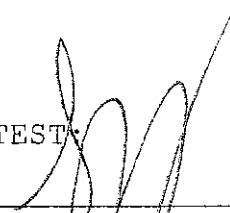
IT FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 26th day of August, 2020.

BY THE COURT:


David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

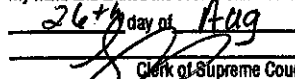
SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

AUG 26 2020


Clerk

STATE OF SOUTH DAKOTA
in the Supreme Court

I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

26th day of Aug, 2020.

Clerk of Supreme Court

Deputy

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 20-05
OF JUDICIAL CANON 3(B) (9))

A hearing was held on August 25, 2020, at Pierre, South Dakota, relating to the amendment of Judicial Canon 3(B) (9) and the Court having considered the proposed amendment, and being fully advised in the premises, now, therefore, it is
ORDERED that Canon 3(B) (9) of the Code of Judicial Conduct found in SDCL ch. 16-2 (appendix) be amended in its entirety as follows:

CANON 3 A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

B. Adjudicative Responsibilities.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require * similar abstention on the part of court personnel * subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity. In connection with a judicial election or recall campaign, this canon does not prohibit a judge from making a public comment about a pending or past proceeding, provided (a) the comment would not reasonably be expected to affect the outcome or impair the fairness of the proceeding, and (b) the comment is about the procedural, factual, or legal basis of a decision about which a judge has been criticized during the election or recall campaign.

Rule 20-05

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial * performance of the adjudicative duties of the office.

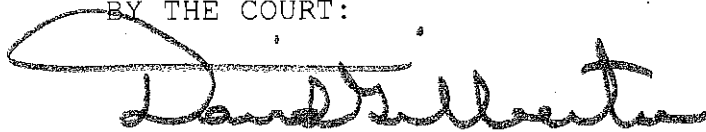
B(9)(10) COMMENTARY

Sections 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Sections 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by South Dakota Rule of Professional Conduct 3.6.

IT FURTHER ORDERED that this rule shall become effective immediately.

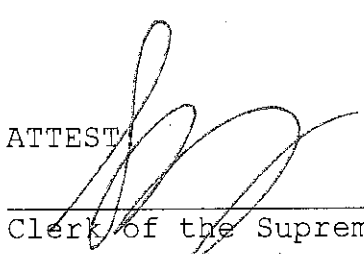
DATED at Pierre, South Dakota, this 26th day of August, 2020.

BY THE COURT:



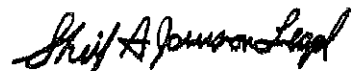
David Gilbertson, Chief Justice

ATTEST


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

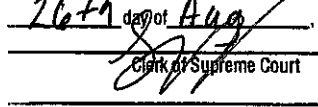
AUG 26 2020


Clerk

-2-

STATE OF SOUTH DAKOTA
In the Supreme Court

I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

26th day of Aug, 2020

Deputy
Clerk of Supreme Court

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 20-06
OF JUDICIAL CANON 3D)

A hearing was held on August 25, 2020, at Pierre, South Dakota, relating to the amendment of Canon 3D of the Code of Judicial Conduct (SDCL 16-2 Appendix) and the Court having considered the proposed amendment, and being fully advised in the premises, now, therefore, it is

ORDERED that Canon 3D of the Code of Judicial Conduct (SDCL 16-2 Appendix) be amended in its entirety as follows:

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge * that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.*

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Code of Professional Responsibility should take appropriate action. A judge having knowledge * that a lawyer has committed a violation of the Code of Professional Responsibility that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

(3) Sections 3D(1) and 3D(2) shall not apply to information obtained by a judge as a member of a committee, organization or related group established or approved by the South Dakota Judges Association, the State Bar or the Supreme Court to assist lawyers, judges or law students with a medical condition as defined in §16-19-29(1), including the name of any individual in contact with the member and sources of information or information obtained therefrom.

(4) A judicial member of an entity described in Section 3D(3) shall not be required to treat as confidential, communications that cause him or her to believe a person intends or contemplates causing harm to himself, herself or a reasonably

Rule 20-06

identifiable person and that disclosure of the communications to the potential victim or individuals or entities reasonably believed to be able to assist in preventing the harm is necessary.

(3 5) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1), 3D(2), 3(D)3 and 3(D)(4) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

COMMENTARY

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

Information about a lawyer's or judge's misconduct or fitness may be received by a judge in the course of that judge's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of Sections 3D(1) and 3D(2) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

Section 2. That Rule 8.3 of the Rules of Professional Conduct (SDCL 16-18 Appendix) be amended as follows:

Rule 8.3. Reporting Professional Misconduct

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

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

(c) Paragraphs (a) and (b) shall not apply to information obtained by a lawyer or judge as a member of a committee, organization or related group established or approved by the State Bar or the Supreme Court to assist lawyers, judges or law

Rule 20-06

students with a medical condition as defined in § 16-19-48-29(1), including the name of any individual in contact with the member and sources of information or information obtained therefrom. Any such information shall be deemed privileged on the same basis as provided by law between attorney and client.

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

COMMENT:

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

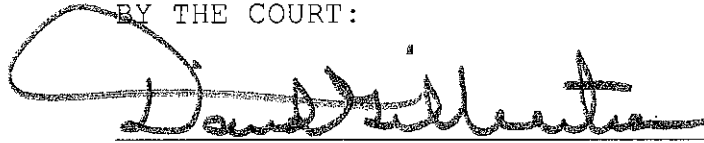
Rule 20-06

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

IT FURTHER ORDERED that this rule shall become effective immediately.

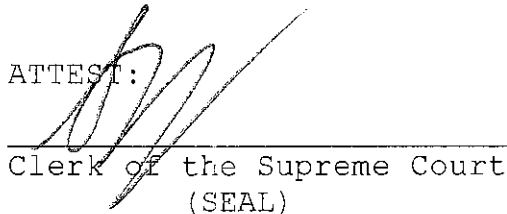
DATED at Pierre, South Dakota, this 26th day of August, 2020.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

AUG 26 2020


Clerk

STATE OF SOUTH DAKOTA
in the Supreme Court

Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

26th day of Aug, 2020
Clerk of Supreme Court

Deputy

Career Center



STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

Email your employment announcement to 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

ATTORNEY

Associate Attorney - Sioux Falls

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

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

Start Date: Upon hiring.

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

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

Associate Attorney - Rapid City

Litigation firm in Rapid City, SD seeks an associate with zero to five years of legal experience. Strong academic credentials (top 33% of law school class preferred) and excellent communication skills (both oral and written) required. Compensation DOE.

Confidential inquiries, including résumé and cover letter detailing experience, should be directed to Nathan Oviatt, Goodsell + Oviatt Law Firm, 246 Founders Park Drive, Suite 201, Rapid City, SD 57701 or by email at nate@goodselloviatt.com.

Staff Attorney - Pine Ridge

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Pine Ridge, South Dakota, branch office. The Pine Ridge office serves the Pine Ridge Indian Reservation in South Dakota and Oglala Lakota, Jackson and Bennett counties in South Dakota.

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

demonstrate an interest in poverty law and working with Native American and low income clients. Applicant must have at least one-year experience in the practice of poverty law or Indian law, with trial and appellate experience in state and federal courts or two years' experience in the general practice of law.

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

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

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

Staff Attorney - Rapid City

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Rapid City, South Dakota, branch office. The Rapid City office serves the counties of Butte, Custer, Fall River, Harding, Lawrence, Meade, Pennington and Perkins in South Dakota.

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

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

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

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

Personal Injury Law Attorneys - Colorado

Franklin D. Azar & Associates is seeking experienced Personal Injury Law attorneys to join its large and growing practice. A qualified candidate will be able to demonstrate strong dedication to personal injury law and a passion for helping people, have experience with complex litigation, possess strong organizational and writing skills and will be energetic, hard-working, and a team-player. A qualified candidate will be licensed to practice law in Colorado or eligible to get a license on-motion. Two years of experience preferred but all candidates will be considered.

Benefits and compensation:

Franklin D Azar & Associates offers a comprehensive benefits package and competitive compensation based on results.

Please email resumes to malcolmo@fdazar.com.

Associate Attorney - Sioux City, IA

The law firm of Moore, Corbett, Heffernan, Moeller & Meis, LLP, in Sioux City, Iowa is seeking to hire an associate attorney. Interest in real estate, probate, and/or litigation preferred. Preferred candidates should possess excellent oral and written skills. The Moore Corbett Law Firm supports work-life balance, mentorship, and the professional development and community involvement of its attorneys. Benefits include PTO, 401K, health insurance, flex plan, CLE, bar dues and professional memberships.

Please send a cover letter, resume and writing sample to, Moore, Corbett, Heffernan, Moeller & Meis, LLP, P.O. Box 3207, Sioux City, Iowa 51102-3207 or email: dhorton@MooreCorbett.com.

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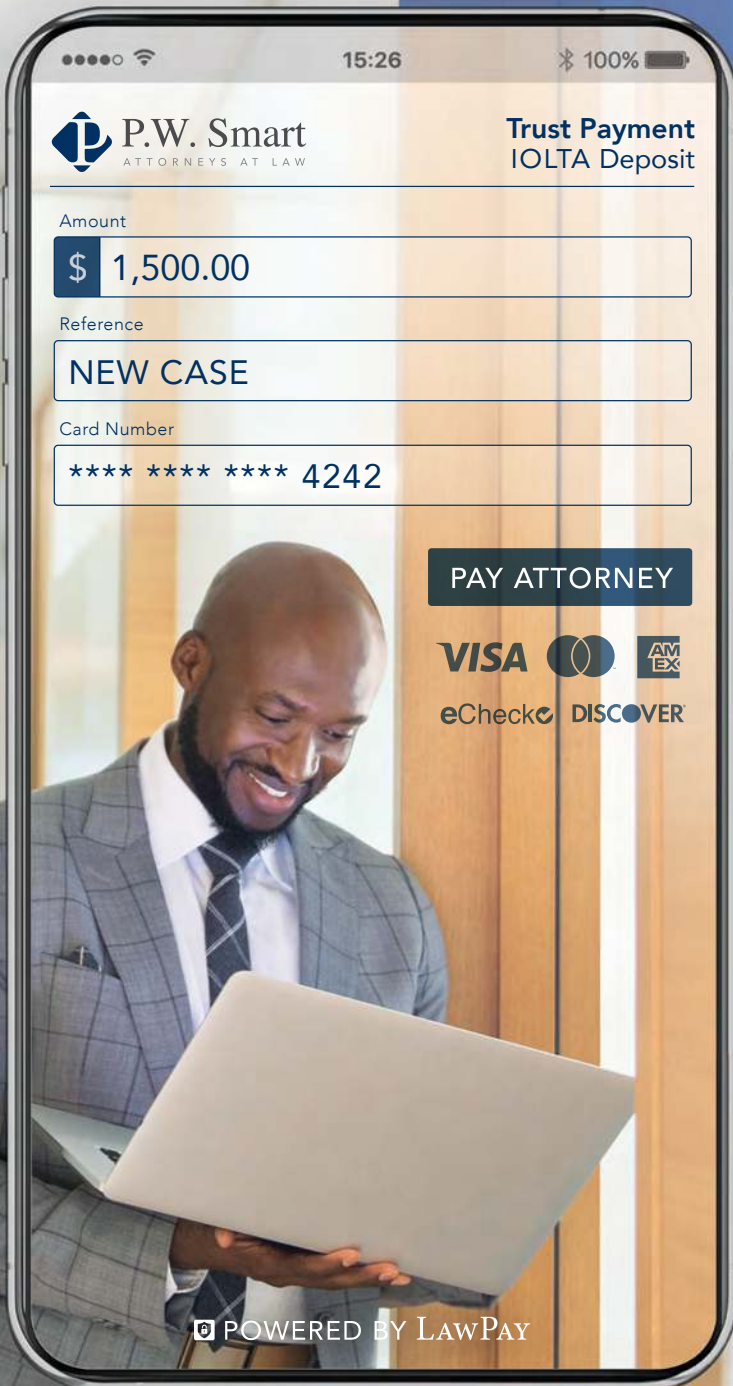
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State Bar of South Dakota

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September 2020

Bar Commission Meeting	September 17, 2020	Teleconference
Disciplinary Board	September 17-18, 2020	Lodge at Deadwood
Estate Planning CLE	September 18, 2020	Virtual
Strategic Planning Retreat	September 18, 2020	Virtual
Bar Commission Meeting	October 15, 2020	Teleconference
Nuts & Bolts CLE	November 6, 2020	TBA
Swearing-In Ceremony	November 6, 2020	Capitol Rotunda, Pierre
Bar Commission Meeting	November 6, 2020	TBA
Bar Commission Meeting	December 17, 2020	Teleconference
Bar Commission Meeting	February 18, 2021	TBA
Bar Commission Meeting	March 18, 2021	TBA
Bar Commission Meeting	May 20, 2021	TBA

For all upcoming webinars, check out the calendar on the State Bar website at www.statebarofsouthdakota.com.