



# State Bar of South Dakota

OCTOBER 2021  
NEWSLETTER

## NUTS & BOLTS CLE

October 22, 2021  
9:00 AM

RedRosa Convention Center  
Pierre

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## SWEARING-IN CEREMONY

October 22, 2021  
3:00 PM

Capitol Rotunda  
Pierre

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IMMEDIATELY FOLLOWING  
THE SWEARING-IN  
CEREMONY



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# State Bar of South Dakota

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## PRESIDENT'S CORNER

*William C. Garry*

Last week, I had the pleasure of attending the Jackrabbit Bar in Idaho Falls, Idaho. Although I had heard of the Jackrabbit Bar, I knew very little about it before attending my first meeting.

The Jackrabbit Bar is an association of the Bars of the Northwestern Plains and Mountains and includes the states of Montana, Wyoming, South Dakota, Utah, North Dakota, Idaho, Nevada and New Mexico. The Jackrabbit Bar is in its twenty-fifth year and grew out of a need for leaders of bars with common concerns to share their spirit with each other.

The Jackrabbit Bar meets annually at different sites. South Dakota has hosted the Jackrabbit Bar many times and is scheduled to do so again in June, 2022.

Membership in the Jackrabbit Bar is extended to members of the governing boards, officers and bar executives of the various states. Although the State Bars leadership and management have changed over the years, the goals of the Jackrabbit Bar remain the same and are as follows: (1) to promote the objects and purposes of their respective associations; (2) to provide a forum for the mutual interchange of ideas; (3) to stimulate the work of the respective associations; and (4) to develop a cordial relationship and a spirit of unity and common understanding among the respective Bar Associations of the Northwestern Plains and Mountains for the benefit of the public and the profession.

South Dakota is well known for its support of the Jackrabbit Bar and the number of attendees at the annual meetings. This year was no exception as Andy Fergel, President-Elect Lisa Marso, and Past Bar Presidents Dave Gienapp, Bob Hayes and Dick Travis attended the meeting.

The State Bar Associations that make up the Jackrabbit Bar are mandatory bars of similar size (with the exception of Nevada and Utah). The leadership of these Bars face common issues, topics and controversies so the exchange of information and ideas among them is extremely helpful. As a first time attendee, I was immediately impressed by the warm welcome I received and the collegiality among those in attendance. I look forward to hosting the Jackrabbit Bar in South Dakota next year.

Unfortunately, I was unable to attend the Great Lakes Bar Social in August held at Tom Sannes' cabin on Pickerel Lake. Andy Fergel attended the social and reported it was a great event. I did, however, attend the Watertown Area Barristers' Social at the home of Lee and Donna Schoenbeck. I was joined by Chief Justice Steve Jensen, retired Chief Justice Dave Gilbertson, Justice Scott Myren, Dean Neil Fulton and Andy Fergel. It was great to meet many of the Watertown area lawyers and thanks to Lee and Donna for hosting a great event.

The roll out of the Bar's new website and member hub

last month was a huge success despite a few glitches along the way. Many thanks to Andy, Nicole, Tracie, Beth and Kylee for their hard work on this project. If you have not checked out the new website I would encourage you to do so as it offer many new features.

October means Dakota Days, Hobo Day, the opening of pheasant season, baseball playoffs and the start of the World Series. The UJS Judicial Conference is Oct 13-15 in Chamberlain and the Statewide Swearing-In of new admittees to the Bar will take place in the Capitol Rotunda on October 22. Finally, the unveiling of Justice David Gilbertson's portrait is scheduled for October 29 at the State Capitol. I hope to see many of you at these upcoming events.



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# Swearing-In Ceremony

**Please  
Join  
Us!**

October 22, 2021  
3:00PM CST

CAPITOL ROTUNDA  
PIERRE SD

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

***Reception to follow at  
Capitol Lake Visitor Center***



State Bar of South Dakota  
YOUNG LAWYER SECTION



*Ole Olesen*  
YLS President

**T**his month I would like to focus my message on State Bar involvement and pro bono. I know that not everyone gets involved with the State Bar, but I'm here to tell you that you really should.

I am frequently asked why I volunteer. The answer is simple – I say yes to the opportunities when presented. I have essentially created a rebuttable presumption that I would say 'yes' whenever asked to be involved. As example, when I was asked to consider running for Secretary/Treasurer of the YLS, my mind immediately came up with all of the reasons that might excuse me from such a role. Time is always a struggle, and it is an easy out. I have plenty going on to keep myself busy. But, if I start out knowing that I am going to say 'yes' unless I have a very good reason not to, it's definitely harder to turn down the opportunity to be of service.

Beyond saying yes to opportunities as they arrive, I have found that if it's a cause or project that means enough to me, I will prioritize it and find the time to make it work. And volunteering for leadership roles within the bar has been good for me. It feels good to give back to my profession. I enjoy making a difference even if it is a small one. I distinctly remember a lecture from my undergraduate studies in psychology that helping others releases endorphins and can essentially make you happier. I believe that is 100% true.

I encourage everyone to get out there, volunteer, and serve others. The State Bar has numerous opportunities

for you to serve and improve our profession. There are also opportunities to do pro bono work through our State Bar's Access to Justice program. So, I am asking you to get involved and challenging you to start out with a presumption that you will say 'Yes!'

If you have questions about how you might be able to get involved, please do not hesitate to contact me. I may not have the answer, but I will help you find it!



The State Bar of South Dakota, the Young Lawyers Section & the Committee on Continuing Legal Education present:

# Nuts & Bolts

A stylized illustration of three nuts and bolts, rendered in a light blue color with a hand-drawn, sketchy texture. The top nut is positioned above the middle bolt, and the bottom nut is positioned below the middle bolt. The bolts are shown in profile, with their threads clearly visible.

Register  
Here!

REGISTRATION BEGINS: 8:30 AM

DATE: October 22, 2021

LOCATION: RedRosa Convention Center, Pierre

## Schedule:

8:30 - 9:00: Registration

9:00 - 9:05: Introduction and Welcome

9:05 - 9:35: Fit to Practice- Mindfulness with Tracey Decker, Pennington County Deputy State's Attorney

9:35 - 10:35: Discussion on Lobbying and Advocacy with Justin Bell, May Adam Gerdes & Thompson LLP; and A Lawyers' Role in the Legislature with Ryan Cwach, Birmingham & Cwach Law Office

10:45-11:45: Overview of a Debtor/Creditor practice from both the debtor and creditor's perspective. Practitioners will discuss their experiences, caseload, and share practical tips.

11:45-12:45: LUNCH (provided by RedRosa on-site)

12:45-1:45: Pathways to the Bench:

A Panel Discussion with members of the Judicial Qualifications Committee

1:45-1:50: Closing and surveys

3:00: State-wide Swearing-in Ceremony in the Capitol Rotunda followed by a reception

# *Fellows of the South Dakota Bar Foundation*

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

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

Fred & Luella Cozad

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Frank L. Farrar

## *Diamond Fellows - \$10,000 plus*

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Robert E. Hayes

## *Platinum Fellows - \$10,000*

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Hon. John B. Jones  
Scott C. Moses  
Charles L. Riter  
William Spiry  
Hon. Jack R. Von Wald

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William F. Day, Jr.  
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Dana J. Frohling  
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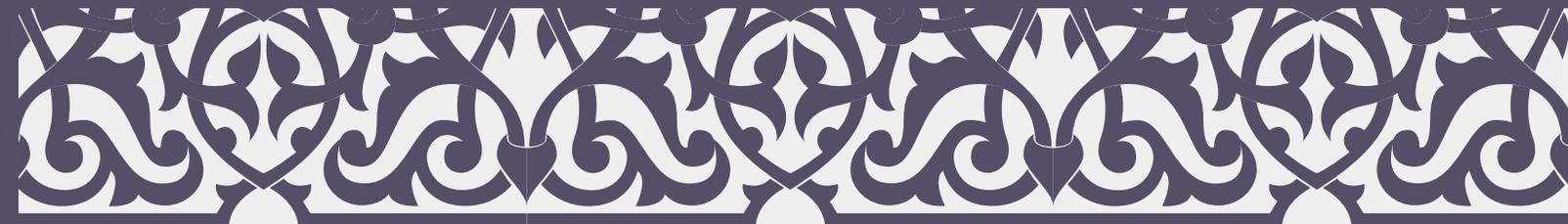
## *Presidential Fellows - \$10,000*

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G. Verne Goodsell  
Robert E. Hayes  
Terry L. Hofer  
Carleton R. "Tex" Hoy  
Steven K. Huff  
Hon. Charles B. Kornmann  
Bob Morris  
Thomas J. Nicholson  
Gary J. Pashby  
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. Westergaard

## *Fellows - \$500 (per year)*

Hon. John Bastian	Robert C. Riter, Jr.
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Andrew L. Fergel	Thomas Eugene Simmons
Neil Fulton	Jason R.F. Sutton
Tom E. Geu	Sarah L. Thorne
Craig A. Kennedy	Barry R. Vickrey
Hon. Judith K. Meierhenry	

*Raising the Bar: Our Profession. Our Responsibility.*



## DEAN'S LIST : NEWS FROM THE LAW SCHOOL



October is very predictable column topic: bar results. In fact, one number, first time bar pass rates in South Dakota, would address what a lot of folks want to know. So, let's get right to it. USD graduates taking the South Dakota bar exam for the first time in July passed at a rate of 80%. That was higher than the overall pass rate for South Dakota and at or above other jurisdictions that have released their results so far. Of those students not passing on their first attempt, the majority passed one portion of the exam, either the MBE or the essays. They can now focus on only one portion going forward. The Law School makes the commercial bar preparation course and other resources available to those students re-taking the exam. Our goal remains to help all students who take the bar pass the bar. It is important to recognize at the outset, and for our graduates to recognize, that there are successful lawyers who did not pass the bar in their first attempt.

Fifteen USD graduates sat for the exam in jurisdictions other than South Dakota. Not all those results are out at the time I write this column. South Dakota consistently gets its results out faster than other jurisdictions. Kudos to Sheri Anderson and the Board of Bar Examiners for their timely work.

In a class of just over sixty students, having that many out of state applicants does mean that the first-time pass rate for USD will continue to evolve for a while this fall. Most applicants sat in neighboring jurisdictions where results do not drag too far into the fall, but they are not in yet. We have matriculated more students from outside South Dakota recently, so the wait for results from other

jurisdictions will likely be part of our calculation for some years to come.

These first-time results continue a positive trend on bar results. For the three graduating classes before this one, ultimate bar passage rates have been 81%, 89%, and 80%. That "ultimate bar passage" is the number that the ABA uses for accreditation. It is the percentage of students taking a bar within two years of graduation that pass. So, the last number can continue to go up for one more administration. Overall, these rates are much improved from a few years ago and consistently meeting and beating the national average. Results in individual years may fluctuate, but we remain on the right track overall.

As important as these results from the July bar exam are, the biggest story around the bar exam continues to be the impending changes to the exam. The National Conference of Bar Examiners is committed to revamping the exam over coming years. The "NextGen" bar exam will test eight foundational subject matters: civil procedure, contracts, torts, evidence, business associations, constitutional law, criminal law, and real property. It will do so through the lens of seven foundational skills: legal research, legal writing, issue spotting and analysis, investigation and evaluation of claims, client counseling, negotiation, and client management. The "NextGen" exam will probably look most like the current Multistate Performance Test and much more like life in practice than the current exam.

NCBE currently has a Content Scope Committee evaluating how to include each of these subject matter

areas and skills in the exam. The Content Scope Committee consists of legal academics, practitioners, bar examiners, and judges. Currently, the Committee plans to release recommendations on content depth and breadth early in 2022. Initial prototypes of the exam questions themselves will begin being pilot tested around the same time. NCBE is planning to take the NextGen bar exam live in 2026. This is on the long end of their initial projection, but this is the most dramatic change to the bar exam in my lifetime. Being deliberate is necessary and will pay off in the long run.

Although the details of the new exam are not certain, it is certain that it will look different and more “practical” than the current exam. The Law School is therefore focused on incorporating more “practical” assessment into the curriculum. This includes professors who use drafting assignments, more incorporation of writing assignments, identifying more experiential placement opportunities, and adjusting our bar preparation class to align with the new exam.

Professor Mike McKey has stepped into our Academic Success and Bar Support position to guide this evolution. Professor McKey has taught legal writing for several years, has taught several doctrinal courses, and has practice experience. He is a great fit for both the Law School’s current bar preparation needs and the transition to the NextGen exam. Everyone at the Law School is involved in the effort, but we have a great captain in Professor McKey.

With the predictability of a column on the bar exam and results every fall, there is a little repetition. I have written and spoken about most of these issues before. They repeat because they are important, however. It remains a priority for the Law School to effectively prepare students for the bar exam now and forever. Exactly how we do that will change but the mission will not.



*The State Bar Foundation thanks you for your donation*

Robert Riter \$500  
In memory of David Lust and Terry Westergaard

State Bar Staff \$500  
In memory of Terry Westergaard

*We are so appreciative of your generosity*



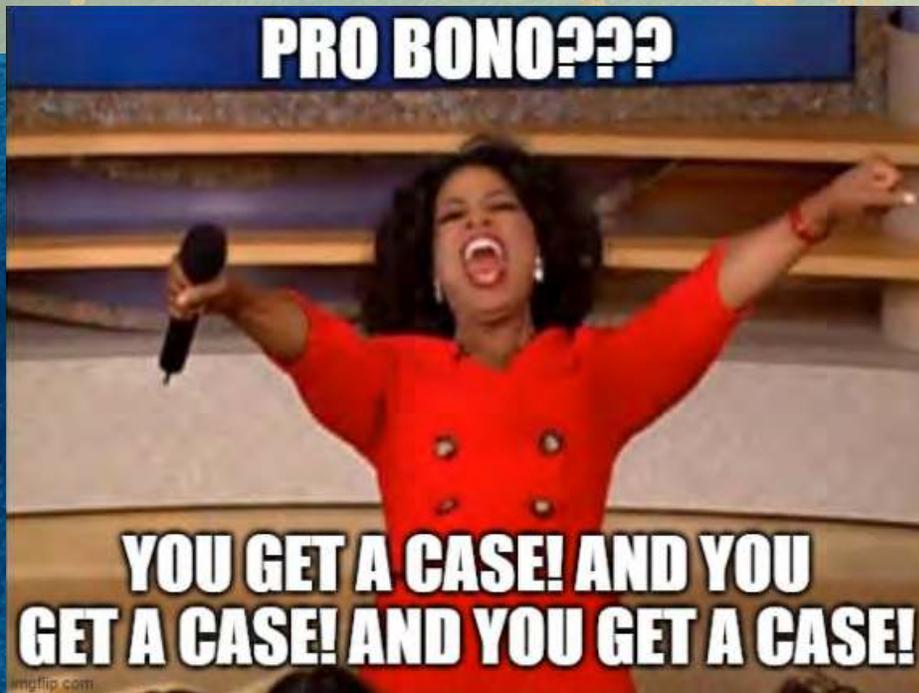
# JUSTICE SQUAD

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.

Ryan Kolbeck  
Susan Jennen  
Aaron Pilcher  
Laura Kulm Ask  
RoseAnn Wendell

And much thanks to:

Linda Lea Viken  
Denise Langley  
Steve Huff  
Joseph Hogue  
Alison Ramsdell  
James Taylor  
Brandy Rhead  
Marwin Smith  
Bob Morris



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OF THE A2J JUSTICE SQUAD?

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[ACCESS.TO.JUSTICE@SDBAR.NET](mailto:ACCESS.TO.JUSTICE@SDBAR.NET)

For their help on SD Free Legal Answers!

## **I'm looking for a few good cases— especially cases that will help a lot of people**

For a couple years, I was trying to get ready to retire, so I stopped taking almost all new cases.

I changed my mind about retirement, so now I'm looking for work.

*I want cases that can help poor, underserved, and disadvantaged people. I prefer cases that can help many people, not just my clients.*

My clients don't need to have any money—few of them ever have had any.

I have 46 years of experience and success in many types of cases, including civil rights (see my article in the October edition of AAJ's TRIAL magazine), election law, environmental law, insurance bad faith, trials, appeals, class actions, and Indian law.

I'm not going to take workers' compensation or employment discrimination cases.

I'm told that my reputation among lawyers is good, so if you've never heard of me, ask a lawyer or two you trust who has been around for awhile. Or check my website, [www.southdakotajustice.com](http://www.southdakotajustice.com).

Jim Leach  
[jim@southdakotajustice.com](mailto:jim@southdakotajustice.com)  
(605) 341 4400

# ANNOUNCEMENTS

Aspen Legacy Planning  
is pleased to announce that

*Tyler Sobczak*  
has joined the firm.

Aspen Legacy Planning / Wesolick Law  
909 Saint Joseph Street, Suite 202  
Rapid City, SD 57701

Telephone: (605) 721-7665  
Facsimile: (605) 721-7673

[tyler@aspenlegacyplanning.com](mailto:tyler@aspenlegacyplanning.com)

Beardsley Jensen & Lee  
is pleased to announce that

*Conor P. Casey*  
has joined the firm as an associate as of  
August 23, 2021.

Beardsley Jensen & Lee  
4200 Beach Drive, Suite #3  
PO Box 9579  
Rapid City, SD 57702

Telephone: (605) 721-2800  
Facsimile: (605) 721-281

[ccasey@blackhillslaw.com](mailto:ccasey@blackhillslaw.com)

Gunderson, Palmer, Nelson & Ashmore, LLP  
is pleased to announce that

*Kerri Cook Huber*  
has joined the firm as an associate attorney.

Gunderson, Palmer, Nelson & Ashmore, LLP  
506 6th Street  
Rapid City, SD 57701

Telephone: (605) 342-1078

[kchuber@gpna.com](mailto:kchuber@gpna.com)  
[www.gpna.com](http://www.gpna.com)

Gunderson, Palmer, Nelson & Ashmore, LLP  
is pleased to announce that

*Maria C. Critchlow*  
has joined the firm as an associate attorney.

Gunderson, Palmer, Nelson & Ashmore, LLP  
506 6th Street  
Rapid City, SD 57701

Telephone: (605) 342-1078

[mcrithlow@gpna.com](mailto:mcrithlow@gpna.com)  
[www.gpna.com](http://www.gpna.com)

Myers Billion, LLP.  
is pleased to announce that

*Berkley F. Fierro*  
has joined the firm as an Associate  
effective August 1, 2021.

Myers Billion, LLP.  
230 S. Phillips Ave, Suite 300  
PO Box 1085  
Sioux Falls, SD 57101-1085

Telephone: (605) 336-3700

[bfierro@myersbillion.com](mailto:bfierro@myersbillion.com)  
[www.myersbillion.com](http://www.myersbillion.com)

Cutler Law Firm, LLP  
is pleased to announce that

*Abigale M. Farley*

&

*Tanner W. Anderson*

have joined the firm as an associate attorneys.

Cutler Law Firm, LLP  
140 N. Phillips Ave., 4th Floor  
PO Box 1400  
Sioux Falls, SD 57101-1400

Telephone: (605) 335-4950  
Facsimile: (605) 335-4961

[abigalef@cutlerlawfirm.com](mailto:abigalef@cutlerlawfirm.com)  
[tannera@cutlerlawfirm.com](mailto:tannera@cutlerlawfirm.com)

Bangs, McCullen, Butler,  
Foye & Simmons, L.L.P.  
is pleased to announce the addition of

*T. Cale Fierro*  
as an associate attorney in Rapid City.

Bangs, McCullen, Butler,  
Foye & Simmons, L.L.P.  
First Interstate Gateway Building  
333 West Boulevard  
Suite 400  
P.O. Box 2670  
Rapid City, SD 57709-2670

Telephone: (605)343-1040  
Facsimile: (605) 343-1503

[cfierro@bangsmccullen.com](mailto:cfierro@bangsmccullen.com)  
[www.bangsmccullen.com](http://www.bangsmccullen.com)

Bangs, McCullen, Butler,  
Foye & Simmons, L.L.P.  
is pleased to announce the addition of

*Erin Schoenbeck Byre*  
as an associate attorney in Rapid City.

Bangs, McCullen, Butler,  
Foye & Simmons, L.L.P.  
First Interstate Gateway Building 333 West  
Boulevard  
Suite 400  
P.O. Box 2670  
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Telephone: (605) 343-1040  
Facsimile: (605) 343-1503

[erin@bangsmccullen.com](mailto:erin@bangsmccullen.com)  
[www.bangsmccullen.com](http://www.bangsmccullen.com)

*Congratulations*  
to former Pennington  
County Deputy State's Attorney

*Stacy Wickre*

on her recent appointment as a  
Seventh Circuit Judge.

The Law Firm of

*Bachand & Hruska, P.C.*

*206 W. Missouri Ave.  
Pierre, South Dakota  
Telephone: (605) 224-0461*

is pleased to announce that

*Jenna R. Schweiss*

[jschweiss@pirlaw.com](mailto:jschweiss@pirlaw.com)

has joined the firm as an associate effective  
October 4, 2021.

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CELEBRATION

OF PRO BONO

OCTOBER 24TH-30TH

#CELEBRATEPROBONO

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*You are cordially invited*  
*to*  
*celebrate and honor*  
**Chief Justice David Gilbertson**  
*for the unveiling of his portrait*



*Fri, Oct. 29th, 2021, 1:15 pm*

*State Capitol*

*2nd Floor, East Hallway,*

*outside Supreme Court Law*

*Library Room 220*

*Pierre, South Dakota*

REGISTRATION NOW OPEN!

# 2021 FALL FORUM

OCTOBER 28 & 29, 2021

MAKE PLANS TO JOIN US  
IN SIOUX FALLS OR ONLINE

[sdtrustassociation.org](http://sdtrustassociation.org)

▶ CLICK ON FALL FORUM LINK



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<https://npweather.com> | [nrnplnsweather@gmail.com](mailto:nrnplnsweather@gmail.com)

The USD Knudson School of Law will be hosting Fall 2021 On Campus Interviews (OCI) on August 19-20, September 9-10, and September 30 - October 1.

Employers are invited to participate in Fall OCI on the date of your choice to interview our 2L students for internship and externship opportunities and our 3L students for post-graduate positions.

Interviews may be conducted either in-person at the law school or virtually.



# FALL 2021 ON CAMPUS INTERVIEWS (OCI)

To register, please contact Brian Boyenga, Director of Career Services, at [brian.boyenga@usd.edu](mailto:brian.boyenga@usd.edu) with your preferred interview date and a job description of the position(s) you are seeking to fill.

THE SOUTH DAKOTA DEFENSE  
LAWYERS ASSOCIATION  
&  
STATE BAR OF SOUTH DAKOTA PROJECT  
RURAL PRACTICE COMMITTEE

Invite you to:

*A Reception for the Court*

October 4, 2021  
5:00PM-7:00PM  
Valiant Vineyards  
1500 West Main Street  
Vermillion, SD 57069



PRP Fall Meeting  
October 4, 2021  
12:00PM-1:00PM  
Dean's Conference Room  
USD Knudson School of Law

PLEASE RSVP FOR THE RECEPTION AND/OR PRP FALL MEETING AT THIS LINK:  
[HTTPS://WWW.SURVEYMONKEY.COM/R/WBJLCQL](https://www.surveymonkey.com/r/WBJLCQL)



*Cheers!*

*Please join us for the 2nd  
Circuit Young Lawyer Section  
Fall Mixer and Reception for*

*Tamara Nash*

*on her recent election as Secretary of the  
ABA Young Lawyers Division*

R Wine Bar  
322 E 8th Street, Sioux Falls  
October 20, 2021  
4:00PM - 6:00PM

RSVP To Brooke Schmidt by Monday, October 11th  
at [BSchmidt@dehs.com](mailto:BSchmidt@dehs.com)

Hosted by Bill Garry and the SD Young Lawyer Section

**DAVENPORT  
EVANS**

LAWYERS

**October 28**  
**11:30AM - 12:30PM CST**

Kay Cee Hodson  
Law Clerk to the Hon. Charles L. Nail, Jr.  
United States Bankruptcy Court for the  
District of South Dakota

# LAW FOR LUNCH

Bankruptcy 101



**REGISTER  
HERE**

1. A Brief History of Bankruptcy Law in the United States
2. The Bankruptcy Bar in South Dakota and the Opportunities that Await
3. Whether Bankruptcy Law be a Good “Fit” for You
4. Bankruptcy Basics: How to Get Up to Speed (and Stay There)

# 2021 Semi-Annual Seminar & Meeting

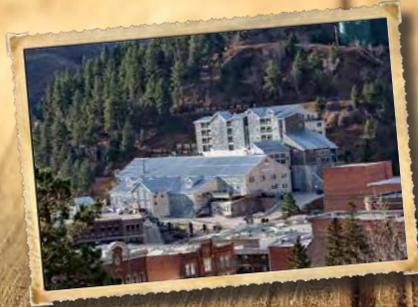
DEADWOOD MOUNTAIN GRAND and via GoToMeeting

**SEMINAR:** Friday, Oct. 15 ~ 8:00am-3:30pm

- Registration & Continental Breakfast: 7:30-8:00am
- Semi-Annual Meeting: 11:20am
- Luncheon (included): 12:00pm

**SOCIAL:** Thursday, Oct. 14 ~ 6-8pm

*Seminar attendees enjoy a complimentary drink + hors d'ouvres! Non-members welcome!*



## **REGISTER**

Online @ [SDParalegals.com/Store](https://SDParalegals.com/Store) or by mail (see the registration form in this newsletter)

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5 NALA CLE Credits: 1 Ethics • 3 Substantive • 1 Non-Substantive

### 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.



# 2021 Semi-Annual Meeting & Seminar

## DEADWOOD MOUNTAIN GRAND

**SOCIAL:** Thursday, October 14 ~ 6-8pm ~ Six String

**SEMINAR & MEETING:** Friday, October 15 ~ 8:00am-3:30pm

### AGENDA

**Thursday (MST)**

6:00–8:00pm

*Social* ..... Six String, Deadwood Mountain Grand

**Friday (MST)**

7:30–8:00am

*Registration & Continental Breakfast*

8:00–9:30am

**Family Law:** ..... Attorney **Kylie Riggins**,  
*Trends & Statutory Updates for Shared Parenting & Child Support* Riggins Family Law

9:40–11:10am

**Topic Pending**

11:20am–12:00pm

*Semi-Annual Meeting* ..... Executive Committee

12:00–1:00pm

*Lunch*

1:00–2:00pm

**Demands of the Legal Profession:** ..... Attorney **Rebecca Porter**,  
*Maintaining Wellbeing and Work-Life Balance* Lawyers Concerned for Lawyers

2:10–3:10pm

**South Dakota Cannabis Legislation:** ..... Attorney **Cassie Wendt**,  
*Ethical Considerations* Butte County State’s Attorney

3:10–3:30pm

*Closing Announcements* ..... **Education Committee**

### REGISTRATION FORM

**SEMINAR: Friday, Oct. 15,**  
**7:30am-3:30pm MST**

In-Person\*  Online

\_\_\_\_\_ Member \$65 (\$75 as of Oct. 14)

\_\_\_\_\_ Non-Member \$85 (\$95 as of Oct. 14)

\_\_\_\_\_ Student \$30 (\$40 as of Oct. 14)

\*Continental Breakfast and Lunch included

**SEMI-ANNUAL MEETING:**  
**Friday, Oct. 15, 11:20am MST**  
**(Members Only)**

Yes  No  Maybe

**SOCIAL: Thursday, Oct. 14, 6-8pm**  
**Six String Restaurant**

Yes  No  Maybe



Continuing legal education credit from NALA will be requested:  
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Name: \_\_\_\_\_

Designation: \_\_\_\_\_ Phone: \_\_\_\_\_

Firm/Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

**REGISTRATION DEADLINE:** Online: Wednesday, October 13 at [SDParalegals.com/Store](http://SDParalegals.com/Store). Postmark: Friday, October 8 to Education Committee Chair Rebekah Mattern at Lynn, Jackson, Schulz & LeBrun, 110 N. Minnesota Ave., Suite 400, Sioux Falls, SD 57104. Please mail checks separately to Treasurer Clara Kiley, CP, at Butte County State’s Attorney, 11158 Valley 1 Road, Belle Fourche, SD 57717.

**LATE REGISTRATIONS:** Rates increase by \$10 on October 14.

**VIRTUAL ATTENDEES:** Our seminars are live-streamed through GoToMeeting. The times listed above are MST. We cannot guarantee your experience will be equivalent to attending in person. We will ensure the best online experience possible; however, audio, visual, and other technical difficulties may be outside our control. We highly recommend testing GoToMeeting on your device prior to the seminar.

**CANCELLATIONS:** SDPA will provide full refunds for registrations cancelled on or before October 1 (registrations made through the website will be refunded to your card, less the online processing fee (approximately 5%). Contact Education Committee Chair Rebekah Mattern at [RMattern@LynnJackson.com](mailto:RMattern@LynnJackson.com) if you need to cancel your registration.

# Notice of Public Hearing on Proposed Child Support Guideline Changes Rapid City

The Commission on Child Support will conduct a public hearing on October 27, 2021 in the Angostura Room at the DSS office at 510 N Cambell St, **Rapid City**, SD 57709, from 6-8 p.m. MDT, to gather public input on potential changes to South Dakota's child support guidelines and related statutes.

The Child Support Commission is conducting the review of South Dakota's child support guidelines required by SDCL 25-7-6.12. The Commission is comprised of representatives of custodial and non-custodial parents, family law attorneys, the judiciary, the legislature, and the Department of Social Services (DSS). The Commission may recommend changes reflecting adjustments in the costs of raising children and other related issues. The Commission will submit its report and recommendations to Governor Kristi Noem and the legislature by December 31, 2021, to be considered during the 2022 legislative session.

Discussions during the public hearing will be limited to potential changes to the child support guidelines and statutes. The hearing is not intended to address individual child support cases, parenting time, or custody concerns.

Members of the public have several options to present public testimony:

- Written comments may be submitted at any time for consideration by the full Commission by mailing them to the Department of Social Services, Attn: Child Support Commission, 700 Governors Drive, Pierre, SD 57501-2291. All written comments must be received by Monday, November 1, 2021.
- Email comments to [DCS@state.sd.us](mailto:DCS@state.sd.us). All emailed comments must be received by Monday, November 1, 2021.
- Members of the public may attend and testify at the hearing in person
- Members of the public may also attend and testify remotely. To provide adequate time and ensure individuals who wish to be heard have the opportunity to speak, individuals wishing to testify remotely for the public

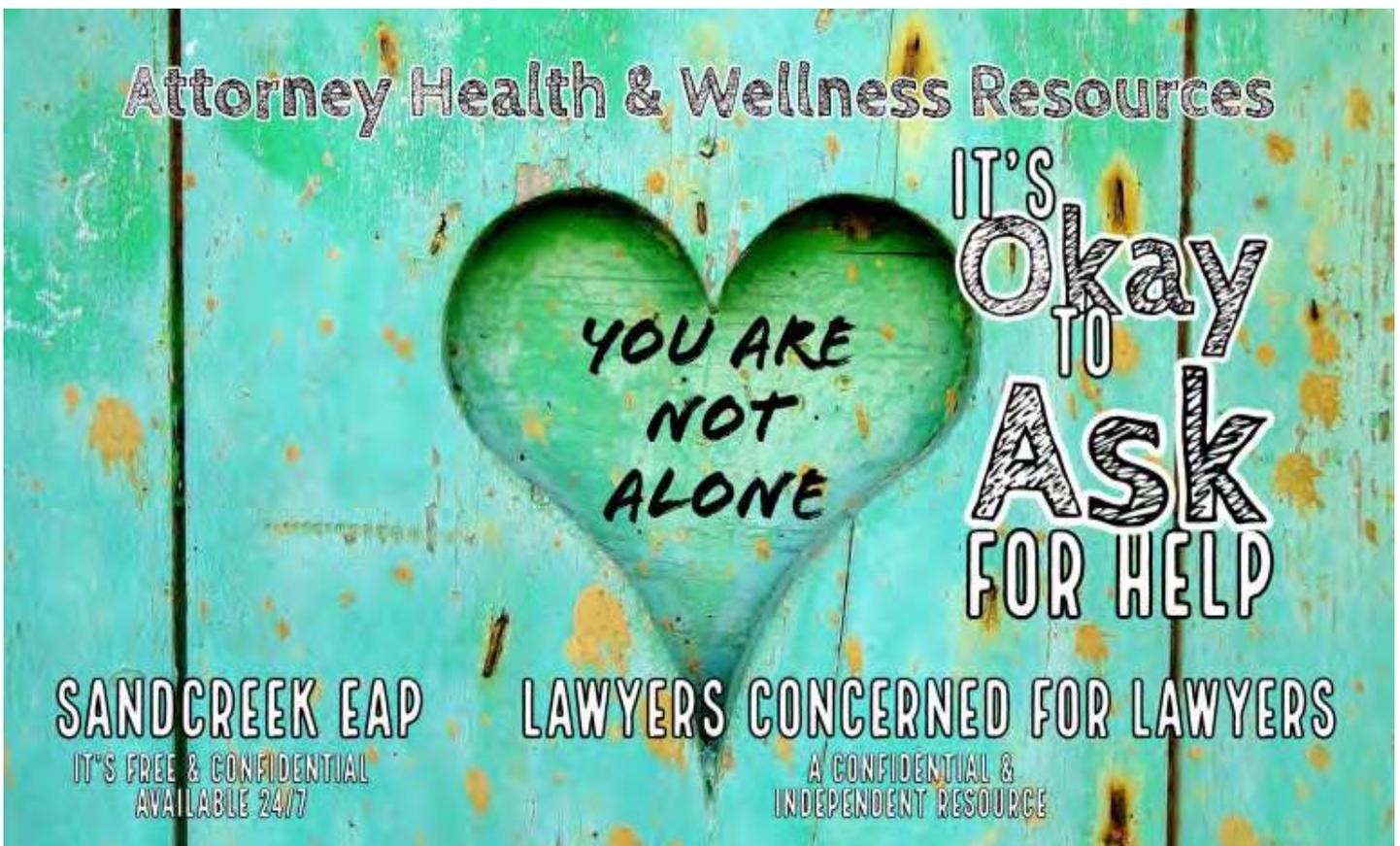
hearing must register

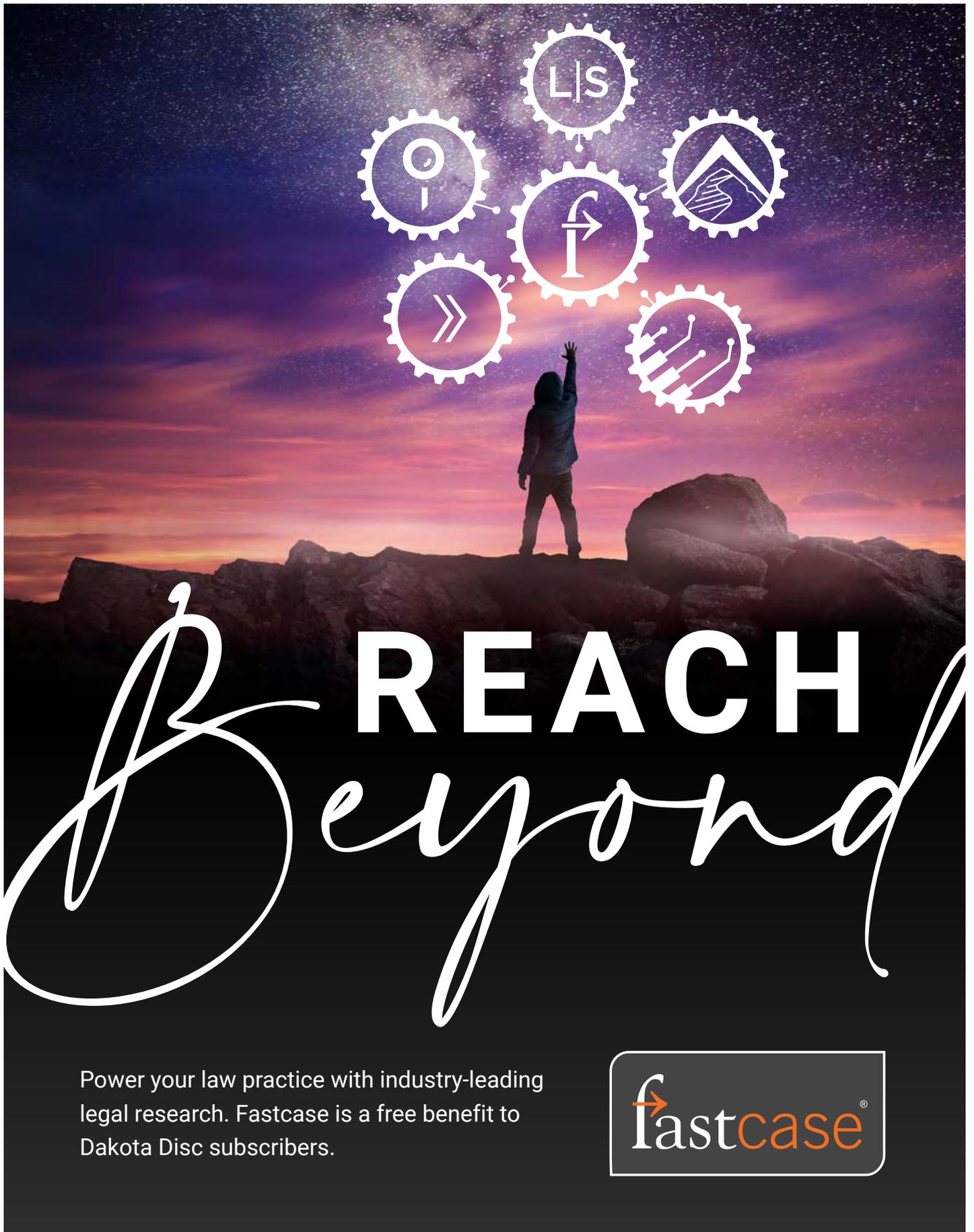
at <https://dss.sd.gov/docs/childsupport/commissionpublictestimony.pdf>

by October 20, 2021.

For Persons with Disabilities, this hearing will be located at a physically accessible place. Please contact the Department of Social Services at least 48 hours before the public hearing if you have special needs for which special arrangements can be made by calling 605.773.3641.

The Commission's final report will be available on the DSS website at [dss.sd.gov](https://dss.sd.gov).





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The Center for the Prevention of Child Maltreatment and the South Dakota Unified Judicial System are hosting monthly Court Improvement Program (CIP) trainings for attorneys, judges, and other multidisciplinary professionals working with families involved in abuse and neglect cases.

The goal of these trainings is to provide relevant and up-to-date information on the South Dakota child welfare system, while offering unique approaches and standards for best practices when working with children throughout the court process.

### Future CIP training sessions:

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Use the linked session titles below to register.

- Wed Oct 13 - Cultural Awareness in the Courtroom
- Wed Oct 27 - Connecting Families and Clients with Services
- Wed Nov 17 - Stress Triggers on Families, including Holiday Stress
- Wed Dec 29 - Codington County Family Court Pilot Project
- Wed Jan 26 - Implicit Bias
- Wed Feb 23 - Family Time and Sibling/Relative Placement Preferences
- Wed Mar 30 - Conversation with a Foster Family
- Wed Apr 27 - Best Practices on Abuse/Neglect Cases in Conjunction with State Bar

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## Are You Giving Your Clients Non-Verbal Cues About Your Competency as a Lawyer?

The number of times I've observed or heard about a problematic nonverbal interaction with a client (to which the involved lawyer or staff member was completely oblivious) probably wouldn't surprise anyone. After all, who hasn't walked away from an occasional conversation knowing they haven't been heard, been treated in an unexpected negative way from time to time, or occasionally felt uncomfortable upon entering a room? It happens, and when it does an impression about the interaction is formed. That's a problem, particularly if the problematic interaction occurred with a potential new client, current client, or even a referral source. This leads me to ask if nonverbal messages are something worth worrying about. As I see

it, you bet they are.

Perhaps a few examples are in order to demonstrate why. I remember visiting a lawyer whose staff literally took dozens of phone messages during our 90-minute meeting, many of which were repeat calls. His clients were calling in five or more times an hour hoping to get through. Staff shared this was commonplace because this lawyer would only get around to returning a call when doing so could no longer be avoided. In short, over time clients would start to figure out that the only way they could get their lawyer to respond was to be the one who became the biggest annoyance on any given day.

Another memorable situation occurred while I and a potential new client were sitting in the reception area of a small firm located in a rural community. The subject lawyer had been practicing at this firm for years and thus had a number of long-term attorney/client relationships within the community. As a result, the lawyer had developed a certain camaraderie and casual way of interacting with these folks. While we were waiting, one of this lawyer's long-term clients walked into reception hoping to have a quick question answered. The lawyer happened to see the client enter and immediately walked right up to the client. After a warm "Hello!" and pat on the back he began discussing the established client's legal matter right in the middle of the reception area. The lawyer did this because he knew the established client wouldn't be concerned about discussing the issue in this public space. What was missed, however, was the extreme discomfort the potential new client was feeling by being allowed to overhear a discussion of someone else's legal issue.

One firm visit I will never forget involved experiencing the décor (and I use this term loosely) of a law firm that might be best described as "old dusty attic storage." Signs, boxes, files, books, old furniture, you name it were strewn about throughout the firm. A walk down the hall to the conference room was like navigating an obstacle course. Clients were treated to this delightful experience every time they met with one of the firm's lawyers as this was the norm. From all appearances, nothing had been cleaned or picked up in years.

In contrast, I once entered a firm's reception area where clients were present and found the space to be welcoming and well maintained. What wasn't was the receptionist. This young woman was slovenly dressed, had her feet on the counter in front of her, and was reading a paperback while chewing away on a wad of gum. I kid you not. I was forced to announce myself in order to be noticed and it was abundantly clear that she

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was bothered about having to put the book down and do her job. The clients who had arrived ahead of me had received a similar welcome. Their polite smiles and head shaking as I took a seat made that perfectly clear.

Of course, these examples are but a few. Poorly or rudely written emails, an outright dismissal of a client's thoughts or ideas, allowing for multiple interruptions during a client meeting, bills that provide limited to no information, and regularly allowing people to wait in reception for long periods of time are additional examples of nonverbal messages lawyers sometimes send that can all too easily result in a problematic interaction.

Here's the point I'm trying to make. It's worth taking a little time now and again to think about the nonverbal messages you are sending during your day-to-day interactions. Hopefully, more than a few will be positive messages, but if no thought is ever given to the messages that are being sent, some nonverbal messages may actually be saying something you never intended to say.

Think about it. When a client needs to be the one who screams the loudest in order to have a call returned the message is clear. Clients, as individuals, are not important. Unkempt office space and cluttered desks makes some naturally ask "If these lawyers can't keep their workplace organized, how in the world can they stay on top of my legal matter?" Lawyers who take shortcuts with their email by writing informally and not taking the time to proofread fail to appreciate that certain recipients may respond to the poorly written email by thinking "Wow, this guy isn't the sharpest tool in the shed." Other clients who happen to overhear another client's name or a discussion about someone else's matter can't help but wonder what other clients might be hearing about them. In fact, my own initial

response to the slovenly dressed receptionist was to conclude that her employer couldn't afford to hire anyone who would be competent as a receptionist or simply didn't care enough to spend the money.

Perhaps all of this is of little concern if every legal matter taken on resolves quickly, cheaply, and with the best possible outcome for every single client. Of course, we all know how often that happens. From a client's perspective, when things don't go quite as planned the mind's going to start to ask what's going on. It's not much of a stretch for some clients to conclude that a disheveled office, challenges in being acknowledged or affirmed, and/or experiencing unprofessional communication and behaviors are indications of their lawyer's competency. I'm not saying they'll always literally think their lawyer is incompetent; it's more that they'll conclude their lawyer doesn't really care. If it helps, look at it as halfhearted lawyering. In the end, whatever the problem might end up being, it's going to be your fault and the entirety of their experience will simply confirm it.

Yes. It does take extra effort to keep offices clean, to enforce a rule concerning appropriate dress (and financially compensate enough to account for that requirement), to continue emphasizing the importance of confidentiality, and to insist upon courteous, civil, and professional behavior from everyone in the office at all times. Nevertheless, I strongly want to emphasize that such efforts are worth it. What we're really talking about here is professionalism. A professional presentation, or lack thereof, does make an implied statement about your competence. Don't minimize the significance of the nonverbal messages being given to clients. As much as some might wish otherwise, nonverbal messages speak volumes and clients will often respond accordingly.



Authored by: Mark Bassingthwaighte, Risk Manager

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

# HOW THE STATE BAR ETHICS COMMITTEE WORKS

Identifying and responding to ethical issues that arise in practice can be challenging and frightening. The Ethics Committee of the South Dakota Bar is available to help all lawyers in South Dakota through those questions.

It is important to remember that the Ethics Committee is NOT the Disciplinary Board. The Ethics Committee exists not to identify and discipline ethical violations, but to confidentially assist lawyers in achieving compliance with the Rules of Professional Responsibility. As a result, there are some rules about how the Ethics Committee operates that are important to know:



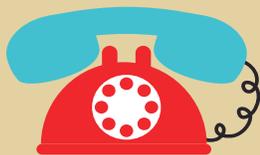
## 2. QUESTIONS MUST RELATE TO YOUR OWN CONDUCT

The Ethics Committee can only provide an opinion about the conduct of the lawyer making the request or another lawyer with whom that lawyer practices in partnership or similar association. Opinions cannot be sought about the conduct of opposing or unaffiliated lawyers lest they be used as swords rather than shields.



## 4. SEND TO CHAIR WITH DEADLINE

Opinion requests can be directed to the chair via email: [Sander.Morehead@woodsfuller.com](mailto:Sander.Morehead@woodsfuller.com) and are then circulated for discussion within the Ethics Committee. The Committee endeavors to be timely, so it is useful to note any time pressures for the opinion.



## 1. REQUESTS ARE CONFIDENTIAL

The Ethics Committee will provide an opinion about concrete ethical questions to lawyers admitted to the State Bar of South Dakota. Action taken in reliance on a formal ethics opinion of the Committee is protected against discipline. Opinion requests are held confidential, and formal written opinions are de-identified to the greatest degree possible.



## 3. NO HYPOTHETICALS PLEASE

Requests for opinions need to be presented in concrete situations, with a description of the operative facts involved. Those facts will be assumed true by the Ethics Committee and the opinion limited to them. It is difficult to address hypothetical questions, so requests need to be tied to an actual factual scenario the requesting lawyer presently faces or is likely to.



## 5. WE ARE HERE TO HELP

Lastly, although formal opinions are common, the Committee is always happy to try to brainstorm an ethical issue with lawyers. Feel free to email or call the chair or another Committee member directly.

Opinions of the Committee over the years are collected on the State Bar Website. They make an excellent starting place to research an ethical question. The Committee also can steer lawyers to ethics opinions from the ABA, other states, and other ethics resources that may be helpful. Most importantly, the Ethics Committee exists to be a resource for members of the Bar. Please never hesitate to get in touch with questions or suggestions of how the Committee can best serve you.

*This message is provided to members of the state bar by Ethics Committee Chair, Sander Morehead. Other members of the committee include: Cameo Anders, James Billion, Jeffrey Bratkiewicz, Tracey Dollison-Decker, Kimberly Dorsett, Dan Fritz, Alecia Fuller, Neil Fulton, Taylor Hayes, Eric Kelderman, Yvette Lafrentz, Christopher Madsen, Donald McCarty, Kimberly Pehrson, Mike Schaffer, Thomas Simmons, Ryan Snell, Cassidy Stalley.*

# *In Memoriam*



Terry Gerald Westergaard  
August 17, 1963 - July 28, 2021

Terry Gerald Westergaard passed away on July 28, 2021 at the age of 57.

Terry was born in Viborg, SD, on August 17, 1963, to Gerald and Norma (Pearson) Westergaard. He carried his farm upbringing with him in both his professional and private life.

He met his future wife, Karen Renae Mark, when they were in elementary school. They were high school sweethearts and married on August 8, 1987.

Terry graduated from Augustana College in 1985 and worked as an underwriter until he began law school in 1987. He earned his J.D. at the University of South Dakota School of Law in 1990.

Terry clerked for the First Judicial Circuit, and practiced in Belle Fourche with Buckmaster & Macey, and in Sioux Falls with May Johnson before joining Bangs McCullen's Rapid City office in 1998. Terry's practice focused on insurance law and business litigation. He was the firm's Managing Partner at the time of his death.

Terry lived his life for his family. He leaves behind his wife, six children—Brandon (Lindsey) Westergaard, Atlanta, GA; Kallan Jo (Harley) Lunt, Sioux Falls, SD; Kiley (Christopher) Bradshaw, Omaha, NE; Hannah, Kaden, and Kolton Westergaard, Rapid City, SD; and four grandchildren—Tiyauna, Skye, Everlee, and Spencer Lunt, Sioux Falls, SD.

Terry was dedicated to professional and community service. He was President of the State Bar of South Dakota from 2020 to 2021. Terry was a former Bar Commissioner and served on the State Bar Disciplinary Board. He was a member of the South Dakota State Bar Law School Committee and Strategic Planning Committee. Terry was also a member of the

American Bar Association's Council of the Solo, Small Firm, and General Practice Division, where he served on several committees. Terry was previously President of the South Dakota Defense Lawyers Association, President of the Young Lawyers Section of the State Bar of South Dakota, and a Fellow of the American Bar Foundation. Terry was also a member of the Defense Research Institute and the South Dakota Trial Lawyers Association. He served on various local community boards.

Terry spent most of his time outdoors dirt biking, swimming, gardening, hunting, kayaking, camping, and boating. Even on his final day, Karen, as usual, remarked what a beautiful day it was at Pactola. Every time she repeated it, he replied, "Yes. It. Is." Every day at Pactola was his favorite day; he was fortunate to spend his last day there.

He also enjoyed discovering and experimenting with new recipes. Criticism of his cooking was not allowed; compliments were freely encouraged. He was his own biggest fan, often saying, "This is pretty good if I do say so myself." He was a handyman and problem-solver; he could fix anything and did. If he ever sat down, it was to watch Viking football on Sundays. An entire lifetime was not enough to see them win the Super Bowl; he will be ecstatic when they do.

His favorite thing to do was to spend time with Karen, his best friend of 42 years – 34 of those married. He cherished every minute with Karen, his children, his dog, and his four grandchildren, to whom he will always be Papa. Terry was an extraordinary husband, father, grandfather, son, brother, and friend. In his strong faith, he taught his children to love the Lord with all you have and to love others in the same way. Above all, he passed along his patience, acceptance, and humor to his children.

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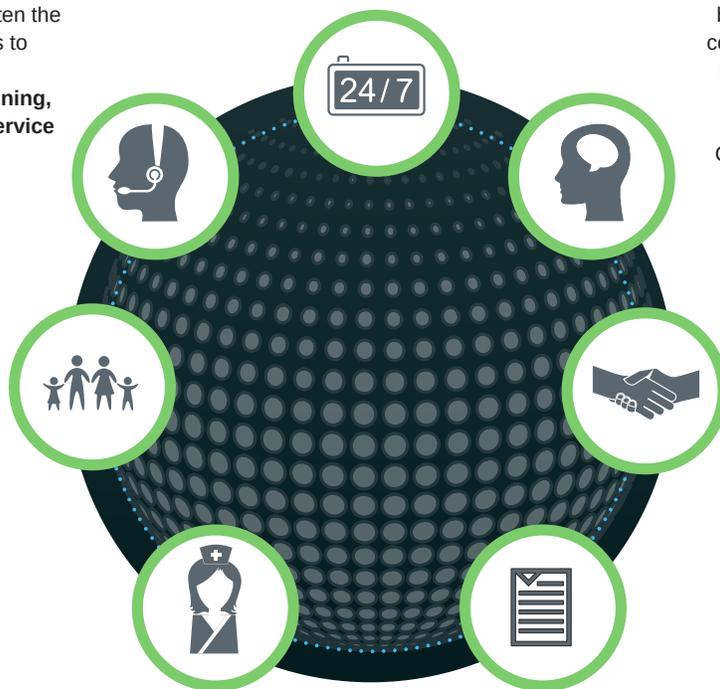
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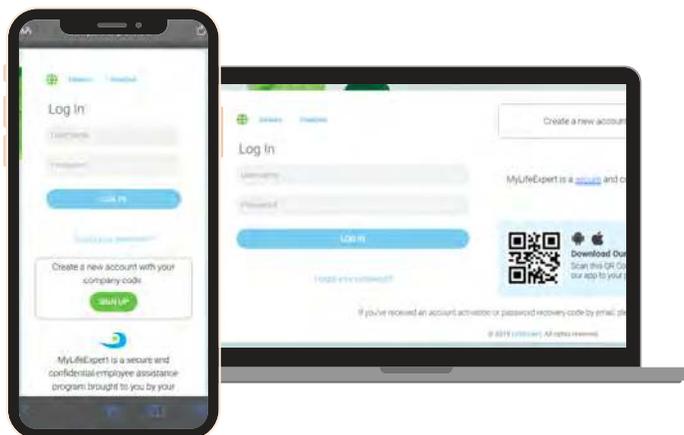
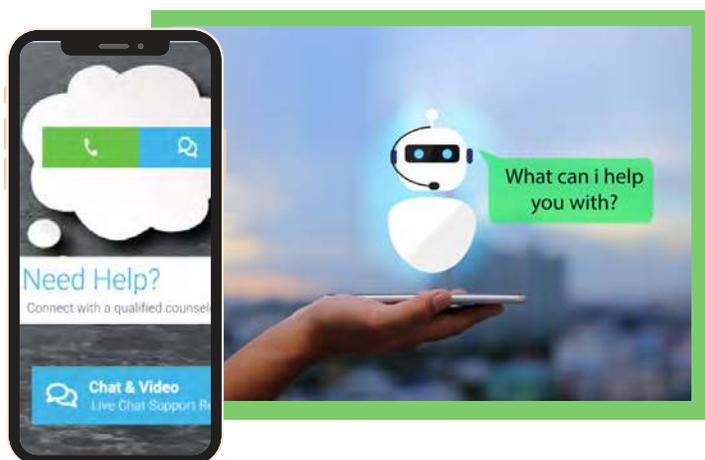
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In the Matter of the	)	JUDGMENT OF PUBLIC CENSURE
Discipline of	)	
ROSE ANN WENDELL,	)	#29695
as an Attorney at Law.	)	
	)	

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On July 6, 2021, the Disciplinary Board of the State Bar of South Dakota, pursuant to the provisions of SDCL 16-19-67, filed its findings of fact, conclusions of law, recommendation, and formal accusation against respondent Rose Ann Wendell. No response was served and filed thereto.

The Court having thoroughly considered the Board's findings of fact, conclusions of law and recommendation, and adopted the same into the record and having determined that public censure is an appropriate discipline to be imposed upon Respondent for violating Rules 1.7 and 3.3 of the Rules of Professional Conduct, and SDCL 26A-8A-18, now, therefore, it is

ORDERED that Rose Ann Wendell be and she is hereby publicly censured pursuant to SDCL 16-19-35(4) and the findings of fact, conclusions of law and recommendation are hereby adopted into this judgment.

IT IS FURTHER ORDERED that the Judgment of Public Censure and the attached Disciplinary Board's findings of fact, conclusions of law, recommendation, and formal accusation be published in the State Bar Newsletter and Northwest Reporter.

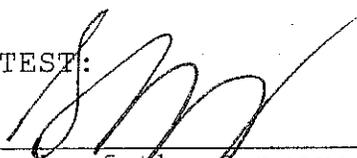
#29695, Judgment of Public Censure

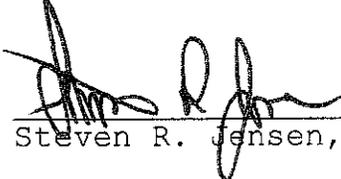
IT IS FURTHER ORDERED that Rose Ann Wendell shall on or before October 5, 2021, pay to the State Bar of South Dakota \$2,432.06 as reimbursement of the itemized expenses allowed under SDCL 16-19-70.2, proof of said payments to be filed with the Clerk of this Court on or before November 4, 2021.

DATED at Pierre, South Dakota, this 3rd day of September, 2021.

BY THE COURT:

ATTEST:

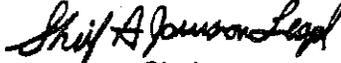
  
\_\_\_\_\_  
Clerk of the Supreme Court  
(SEAL)

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

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

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

SEP - 3 2021

  
Clerk

JUL - 6 2021

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

*Shirley A. Johnson Legal*  
Clerk

In the Matter of the Discipline of  
**ROSE ANN WENDELL**  
As an attorney at law

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
RECOMMENDATION AND  
FORMAL ACCUSATION**

SDCL § 16-19-67

Case No. 29695

A complaint was filed with the Disciplinary Board of the State Bar of South Dakota, hereinafter "Board", against Rose Ann Wendell, attorney at law, hereinafter "Respondent", by Attorney Dana Hanna and an investigation was conducted by the Board.

Pursuant to Notice of Hearing, the matter was heard by the Board on June 15, 2021, at Sioux Falls, South Dakota. The Board was represented by its counsel, Thomas H. Frieberg and Robert B. Frieberg of Frieberg, Nelson & Ask, LLP, Beresford, South Dakota. Respondent appeared without counsel.

Pursuant to SDCL § 16-19-67 the Board submits the following Findings of Fact, Conclusions and Recommendation and Formal Accusation.

**FINDINGS OF FACT**

1. Respondent is a winter 1999 graduate of the University of South Dakota Knutson School of Law and was admitted to the South Dakota Bar in 2000. Respondent is married and has two adult children.
2. Prior to attending law school, Respondent worked for 5 to 6 years as a child protection worker for the South Dakota Department of Social Services, hereinafter "DSS".
3. Respondent is a sole practitioner in Pierre, South Dakota.
4. Respondent's practice is primarily focused on family law, including court appointments in Abuse and Neglect cases.
5. In 2018, Respondent was appointed to represent CC, a minor child and the victim of abuse and neglect by his parents. The action was venued in Mellette County.
6. CC's younger brother CC-W was also alleged to be an abused and neglected child in a separate proceeding in Hughes County.

7. CC and CC-W were placed in foster care by DSS with JA and LA and continued in their care throughout the relevant portion of the proceedings.
8. The mother and father's parental rights were terminated as to CC on September 7, 2018 and as to CC-W on September 11, 2019.
9. Eventually, CC and CC-W's cases were joined and Respondent was appointed as attorney for CC-W in addition to her representation of CC.
10. CC and CC-W are both Indian children as defined in the Indian Child Welfare Act ("ICWA") and members of the Rosebud Sioux Tribe.
11. Respondent is familiar with and often deals with abused and neglected children who are identified as Indian children which requires compliance with the provisions of ICWA.
12. During the search for permanent placement for the children, the foster parents JA and LA consistently expressed an interest in adopting the children.
13. CC and CC-W had family members who were interested in providing foster care for the children, but the family members had not been approved by DSS.
14. On February 26, 2020, the foster parents advised a DSS worker that they had hired Respondent to represent them in seeking an adoption of the minor children.
15. Respondent indicated that it is common practice for attorneys appointed to represent minor children to represent the adoptive parents in a later adoption proceeding.
16. Respondent also indicated that DSS often reimburses adoptive parents for legal fees associated with the adoptions.
17. On March 25, 2020, Respondent sent JA and LA a fee agreement for providing services to complete the adoption of CC and CC-W and requesting a \$2,500.00 retainer and JA and LA executed the fee agreement.
18. On March 25, 2020, Respondent received and deposited into her client trust account a retainer from JA and LA in the amount of \$2,500.00 for the adoption proceedings.
19. Respondent made file notes and began the process of getting information together to assist JA and LA in getting approved for the adoption of CC and CC-W.
20. On June 15, 2020, a hearing was held with regard to the status of the placement of CC and CC-W. At that hearing, JA and LA were represented by Attorney Stacy Hegge.

21. On June 30, 2020, Respondent refunded JA and LA \$1,767.81. Respondent charged JA and LA \$687.50 plus sales tax for her services.
22. At the June 15, 2020 hearing, Respondent objected to the removal of the children from JA and LA and indicated that she was in favor of a placement outside of a family placement as required, if appropriate, under ICWA.
23. At the June 15, 2020 hearing, Respondent did not disclose her representation of JA and LA.
24. On November 24, 2020, a Motions Hearing was held before Circuit Court Judge Margo Northrup.
25. Among the various motions to be heard on November 24, 2020, was a Motion to Disqualify Respondent as attorney for CC and CC-W based upon a conflict of interest. The Motion to Disqualify was filed by Attorney Dana Hanna as attorney for the Rosebud Sioux Tribe and was based upon DSS notes from February 26, 2020 wherein Respondent's representation of JA and LA was mentioned.
26. Prior to the November 24, 2020 hearing, Respondent did not review her records relating to the representation of JA and LA and the alleged conflict of interest.
27. At the November 24, 2020 hearing, Respondent indicated that she did not believe that there was a retention agreement between herself and JA and LA.
28. At the November 24, 2020 hearing, rather than require an evidentiary hearing on the Motion to Disqualify Respondent, Respondent withdrew from further representation of CC and CC-W.
29. As of the June 15, 2021 hearing before the Board, Respondent had not contacted Judge Northrup to advise her that she had been incorrect when she stated that she had not been retained by JA and LA.
30. Respondent had not refunded any further monies to JA and LA as of the date of her June 15, 2021 hearing before the Board. JA and LA were refunded the balance of their \$2,500.00 retainer after the Board hearing.
31. Respondent provides a valuable service to the Court system as an attorney willing to represent minor children in difficult abuse and neglect cases.
32. Respondent has a lengthy history of complaints filed with the Board which includes seven complaints which were dismissed and expunged without a finding of a rule violation, four dismissals where the Respondent was cautioned for her conduct and three admonitions which reflected elevated concerns by the Board about Respondent's conduct.

33. At the June 15, 2021 hearing before the Board, Respondent acknowledged that she violated Rule 1.7 of the Rules of Professional Conduct in representing JA and LA while acting as counsel for CC and CC-W.
34. At the June 15, 2021 hearing before the Board, Respondent acknowledged that she violated Rule 3.3 of the Rules of Professional Conduct when she failed to correct a false statement made in a hearing before Judge Northrup.
35. At the June 15, 2021 hearing before the Board, Respondent acknowledged that she violated SDCL 26-8A-18 which prohibits an attorney for a child in an abuse and neglect case from acting as attorney for any other party involved in the judicial proceedings.

### **CONCLUSIONS OF LAW**

1. Respondent received due and proper notice of the proceedings against her and the Board has jurisdiction to initiate formal proceedings against the Respondent.
2. Respondent, while well intentioned, violated Rule 1.7 of the Rules of Professional Conduct in that she represented JA and LA while at the same time representing the minor children CC and CC-W.
3. Respondent violated Rule 3.3 of the Rules of Professional Conduct when she made a false statement to the Court and failed to timely correct a false statement of material fact previously made to the tribunal. Specifically, Respondent represented to the Court that she had not been retained by JA and LA when in fact she had. Respondent failed to correct the misstatement to the Court.
4. Respondent violated SDCL 26-8A-18 by representing JA and LA in proceedings in which she had been appointed to and was currently representing CC and CC-W.
5. Respondent's actions reflect a lack of understanding of her obligations under the Rules of Professional Conduct.
6. Respondent's history of disciplinary complaints reflects a lack of understanding of her obligations under the Rules of Professional Conduct.

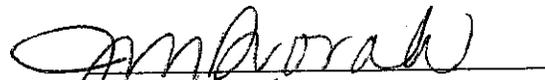
### **RECOMMENDATION**

The Disciplinary Board recommends:

1. Respondent be publicly censured by the Supreme Court as allowed under SDCL 16-19-35(4).

2. Respondent be required to reimburse the State Bar of South Dakota for expenses incurred by the Board as allowed under SDCL 16-19-70.2.
3. Pursuant to SDCL § 16-19-67(3), Respondent has thirty days in which to admit or deny the allegations of the formal accusations set forth above. If Respondent admits the allegations or fails to answer, the Supreme Court may proceed to render judgment.
4. If Respondent denies the allegations, the matter may be referred to a Referee pursuant to SDCL § 16-19-67(4) or tried by the Supreme Court which may thereafter determine and impose such discipline as it deems appropriate.

Dated this 15<sup>th</sup> day of July, 2021.

  
Julie M. Dvorak  
Chairperson, Disciplinary Board

## CERTIFICATE OF SERVICE

The undersigned certifies that the Findings of Fact, Conclusions of Law, Recommendation and Formal Accusation was served on the 6<sup>th</sup> day of July, 2021, by sending a copy thereof, by certified mail, return receipt requested, to Respondent at the following address:

Ms. Rose Ann Wendell  
Attorney at Law  
2520 E. Franklin St., Ste 1  
Pierre, SD 57501

Dated this 6<sup>th</sup> day of July, 2021.

  
\_\_\_\_\_  
Thomas H. Frieberg



The State Bar Member Hub is an online password protected community for our members. This hub allows members to easily access directories, forums and other resources.

# Features

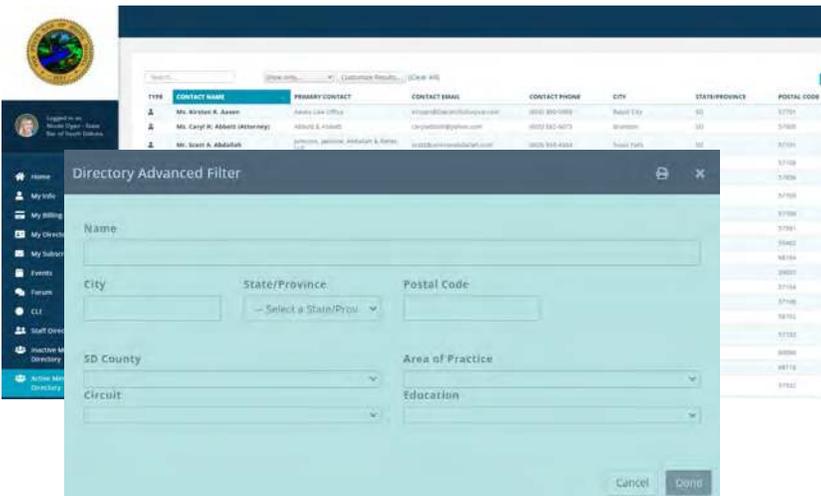
## CLEAN DESIGN

The straightforward layout is built for ease-of-use and finding information quickly.



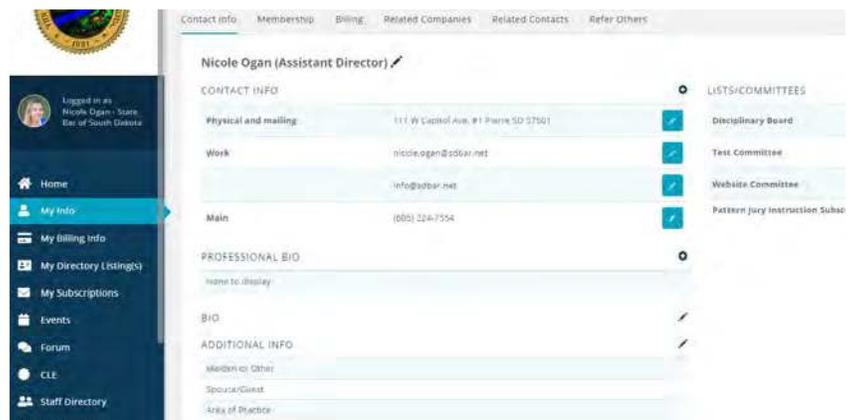
## DIRECTORY

Members can search to find other members and can filter results by city, state, county, etc.



## EASILY UPDATE PROFILE

Update contact information, area of practice, photos and bio.



**ONLINE COMMUNITIES**  
View information about Committees, Sections, Boards, and Related Groups. These groups can access their committee files and forums here as well.

# Ethics

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### Mission Statement

Interprets the South Dakota Rules of Professional Conduct through 16-19-99, case law, ABA Ethics Opinion, and practice in order to provide opinions as to whether conduct is professionally proper. Members are invited to bring problems to the Committee. The Ethics Committee and the Disciplinary Board enforce the rules.

If you would like to learn more about this committee Chair: [Sander Morehead](#)

### HOW THE STATE BAR ETHICS COMMITTEE WORKS

Identifying and responding to ethical issues that arise in practice can be challenging and frightening. The Ethics Committee of the South Dakota Bar is available to help all lawyers in South Dakota through those questions.

It is important to remember that the Ethics Committee is NOT the Disciplinary Board. The Ethics

EVENT NAME	START DATE	DESCRIPTION
CLE - Estate Planning with Robert Keebler	9/17/2021	Estate Planning with Robert Keebler
Veterans Legal Clinic	9/17/2021	The University of South Dakota School of Law Veterans Legal Outreach (VLEO), with support from the SD Young Lawyers Section and State Veterans Committee, hosts drop-in clinic for veterans throughout the year. VLEO hosts events at...
CLE - Cryptocurrency	9/17/2021	
Disciplinary Board	9/23/2021	Quarterly Disciplinary Board Meeting
September Law for Lunch - Keep Calm and Be CyberSmart	9/23/2021	In today's unpredictable environment, organizations must protect the by being aware of current cyber threats and develop tools to combat before they arrive. Tyler will discuss what infoTech is seeing inside of organizations that could...
News & Bills CLE <b>Registered</b>	10/22/2021	The SD ALS continues to provide this CLE programming on the same statewide basis as in previous years. SD, join other members of programming of interest to the newer SD attorney.
Statewide Swearing In Ceremony	10/23/2021	
Celebrate Pro Bono Week!	10/24/2021	As we move forward in a post-pandemic world, we encourage you to recognize the efforts of pro bono attorneys during the pandemic and on the many impacts on vulnerable communities. We hope you will p...

**EVENTS**  
Find and register for events right in the Member Hub.

**FORMUS**  
Participate in community discussion from within the Member Hub.

**TEST FORUM**

- test  
Posted by Nicole Ogan 7 hours ago | Category: Committees | Forum: Test Forum | Last Activity: Nicole Ogan 7 hours ago | Messages: 0
- And another test with the auto email option for committees turned on  
Posted by Nicole Ogan 4 days ago | Category: Committees | Forum: Test Forum | Last Activity: James Wosapha 4 days ago | Messages: 1
- ok lets try this again  
Posted by Nicole Ogan 4 days ago | Category: Committees | Forum: Test Forum | Last Activity: Nicole Ogan 4 days ago | Messages: 3 | Watching
- test  
Posted by James Wosapha 4 days ago | Category: Committees | Forum: Test Forum | Last Activity: Nicole Ogan 4 days ago | Messages: 1 | Watching
- Test Forum Post  
Posted by Nicole Ogan 4 days ago | Category: Committees | Forum: Test Forum | Last Activity: Nicole Ogan 4 days ago | Messages: 0 | Watching



# Features

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE PROPOSED )  
AMENDMENT OF SDCL 15-5A-1; )  
AMENDMENT OF SDCL 15-26A-87.1; )  
AMENDMENT OF SDCL 15-30-1; )  
AMENDMENT OF THE COMMENTARY TO CANON )  
3(B) (5) AND (6) CONTAINED IN APPENDIX )  
A TO SDCL CHAPTER 16-2 SOUTH DAKOTA )  
CODE OF JUDICIAL CONDUCT; )  
A PROPOSAL TO MANDATE SEXUAL )  
HARASSMENT PREVENTION TRAINING FOR )  
JUDGES BE ADDED TO A NEW SECTION TO )  
SDCL CHAPTER 16-14; )  
A PROPOSAL TO MANDATE SEXUAL )  
HARASSMENT PREVENTION TRAINING FOR )  
LAWYERS BE ADDED TO A NEW SECTION TO )  
SDCL CHAPTER 16-18 )

NOTICE OF SPECIAL  
RULES HEARING

NO. 146

-----  
Petitions for amendments of existing sections of the South  
Dakota Codified Laws and adoptions of new rules having been filed  
with the Court, and the Court having determined that the proposed  
amendments and adoptions should be noticed for hearing, now  
therefore,

NOTICE IS HEREBY GIVEN THAT ON November 9, 2021, at  
11:00 A.M., C.T., at the Courtroom of the Supreme Court in the  
Capitol Building, Pierre, South Dakota, the Court will consider  
the following:  
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**1. Proposed Amendment of SDCL 15-5A-1. General provisions.**

Whenever a proceeding in civil or criminal court is permitted under these rules to be conducted by interactive audiovisual device, the device shall enable a judge or magistrate to see and converse simultaneously with the parties, their counsel or other persons including witnesses. The interactive audiovisual signal shall be transmitted live and shall be secure from interception through lawful means by anyone other than the persons participating in the proceeding.

Parties and witnesses appearing by means of an interactive audiovisual device at proceedings authorized under this chapter to be conducted by such device are deemed to be present at the proceedings. Proceedings conducted by interactive audiovisual device under this chapter are also deemed to be conducted in open court unless otherwise closed to the public pursuant to statute.

A judge or any other person authorized by law to administer oaths may administer an oath to a witness who is not personally present but who is appearing by means of the interactive audiovisual device. The provisions of SDCL § 22-29-1 shall apply even though the person taking the oath was not personally present before the person administering the oath, and prosecution for perjury shall take place in the jurisdiction of the tribunal receiving the interactive audiovisual testimony.

If ~~a party~~ parties and their counsel are at different locations, arrangements must be made so that they can communicate privately. Facilities must be available so that any documents filed or referred to during the interactive audiovisual communication, or required to be provided to a ~~defendant~~ party, his or her counsel, or a witness prior to or during the proceeding, may be transmitted electronically, including, but not limited to, facsimile, personal computers, other terminal devices, and local, state, and national data networks. Any documents furnished by means of such an electronic data transmission may be served or executed by the person to whom it is sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures on the electronic data transmissions shall be treated as original signatures.

Nothing contained herein shall be construed as affecting a defendant's right to waive counsel.

Explanation for Proposal

In 2007, the Court enacted the rules in SDCL chapter 15-5A authorizing the use of interactive audiovisual devices for certain types of court proceedings and under certain conditions. The proposed amendments are intended to clarify that the appearance or participation of a party or witness in a proceeding conducted via an interactive audiovisual device as authorized in chapter 15-5A constitutes presence in open court. The following provisions in criminal procedure statutes in Title 23A require a defendant to be "present" in "open court":

**SDCL 23A-39-1 (Rule 43 (a)) Presence required at all times except as provided.**

A defendant shall be present at his arraignment, at the time of his plea, at every stage of his trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as provided by §§ 23A-39-2 and 23A-39-3.

SDCL 23A-7-1 (Rule 10) Arraignment in open court-- Procedure--Verification or correction of name--Copy given to defendant.

An arraignment shall be conducted in open court, except that an arraignment for a Class 2 misdemeanor may be conducted in chambers, and shall consist of reading the indictment, information, or complaint, as is applicable, to the defendant or stating to him the substance of the charge and calling on him to plead thereto.

**SDCL 23A-7-2 (Rule 11(a)) Pleas permitted to defendant--Requirements for plea of guilty or nolo contendere.**

Except as otherwise specifically provided, a plea of guilty or nolo contendere can only be entered by a defendant himself in open court.

In addition, the following rules of civil procedure also contain references to "open court":

**SDCL 15-6-77(b). Trials and hearings--Orders in chambers.**

All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the

attendance of the clerk or other court officials and at any place either within or without the circuit; but no hearing, other than one ex parte, shall be conducted outside the circuit without the consent of all parties affected thereby.

**SDCL 15-6-43(a). Forms and admissibility of evidence.**

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by this chapter or by the South Dakota Rules of Evidence.

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**2. Proposed Amendment of SDCL 15-26A-87.1. Disposition on briefs and record--Grounds--Citation of decisions restricted.**

(A) After all briefs have been filed in any appeal, the Supreme Court by unanimous action may, sua sponte, enter an order or memorandum opinion affirming the judgment or order of the trial court for the reason that it is manifest on the face of the briefs and the record that the appeal is without merit because:

- (1) The issues are clearly controlled by settled South Dakota law or federal law binding upon the states;
- (2) The issues are factual and there clearly is sufficient evidence to support the jury verdict or findings of fact below; ~~or~~
- (3) The issues are ones of judicial discretion and there clearly was not an abuse of discretion; or
- (4) Other good cause exists for summary affirmance, in which case the order or memorandum shall contain a succinct statement of the reason for affirmance.

(B) Notwithstanding the provision in section (A) requiring unanimous action, an order or memorandum opinion affirming the judgment or order of the trial court may be entered pursuant to subsections (1) through ~~(3)~~ (4) of section (A) on a majority vote, even though the claim may have merit in the view of the minority, provided that all justices participating in the action shall agree that such summary disposition of the action may be made.

(C) After all briefs have been filed in any appeal, the Supreme Court by unanimous action may, sua sponte, enter an order or memorandum opinion reversing the judgment or order of the trial court for the reason that it is manifest on the face of the briefs and the record that it is clear the order or judgment is ~~clearly~~ erroneous for one or more of the following reasons:

- (1) Summary judgment was erroneously granted because a genuine issue of material fact exists;
- (2) The judgment or order was clearly contrary to settled South Dakota law or federal law binding upon the states; ~~or~~
- (3) The issue on appeal is one of judicial discretion and there clearly was an abuse of discretion; or
- (4) Other good cause exists for summary reversal, in which case the order or memorandum shall contain a succinct statement of the reason for reversal.

(D) Notwithstanding the provision in section (C) requiring unanimous action, an order or memorandum opinion reversing the judgment or order of the trial court may be entered pursuant to subsections (1) through ~~(3)~~ (4) of section (C) on a majority vote, even though the claim may have merit in the view of the minority, provided that all justices participating in the action shall agree that such summary disposition of the action may be made.

(E) A list indicating the disposition of all decisions rendered by the Supreme Court under this section shall be published quarterly in the Northwestern Reporter. Such decisions shall not be cited or relied upon as authority in any litigation in any court in South Dakota except when the decision establishes the law of the case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same defendant or a disciplinary action or proceeding involving the same person.

A petition for rehearing of a cause decided under this section may be served and filed pursuant to the provisions of § 15-30-4.

Costs in favor of the prevailing party shall be assessed as provided in chapter 15-30.

Explanation for Proposal

The proposal by the State Court Administrator's Office amends SDCL 15-26A-87.1 to include an "other good cause" reason for the Supreme Court to summarily affirm or reverse a judgment or order of the trial court provided that a succinct statement of the reason for affirmance or reversal is included in the order or memorandum opinion. In addition, the introductory paragraph for subsection (C) is amended to avoid confusion over the manner in which the existing phrase "clearly erroneous" is used to refer to multiple ways in which an error is clear.

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**3. Proposed Amendment of 15-30-1. Remand to trial court to permit motion for new trial.**

Whenever, after appeal to the Supreme Court, it shall appear to the satisfaction of the Supreme Court upon application of a party that the ends of justice require that such party should be permitted to make a motion for a new trial for a cause set forth in subdivision 15-6-59(a)(1), (2), (3), or (4), and that sufficient excuse exists for not having made said motion prior to the appeal, the Supreme Court may remand the record to the trial court for the purpose of making such motion, but no such remand shall be made unless such motion can be made and hearing thereon had in the trial court within sixty days from and after the date on which the time for appeal commences unless the Supreme Court extends the time for good cause shown.

Explanation for Proposal

The proposal by the State Court Administrator's Office is intended to allow flexibility if good cause is demonstrated to the Supreme Court for a remand to the trial court to consider a motion for new trial and a hearing thereon pursuant to this rule. The proposal is not based on any other state or federal rule.

**4. Proposed Amendment of the Commentary to Canon 3(B) (5) and (6) Contained in Appendix A to SDCL Chapter 16-2 South Dakota Code of Judicial Conduct.**

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

**B. Adjudicative Responsibilities.**

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

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

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

B(5) and (6) COMMENTARY

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

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

Explanation for Proposal

The Supreme Court's Commission on Sexual Harassment in the Legal Profession proposes additional commentary to the Code of Judicial Conduct to further define the expectations for judicial officers. Reciprocal language will also be proposed to the State Bar Ethics Committee for inclusion in the Commentary to Rule of Professional Conduct 8.4 for lawyers. The additional language was recommended by the Commission after studying how best to prevent and address sexual harassment within the South Dakota legal profession. The Commission's full report is attached as an Appendix to this rule proposal. See *Recommendation Twelve*. The proposed language identifying what sexual harassment or sexual misconduct includes comes primarily from the language in 29 C.F.R. § 1604.11(a). The proposed language should not affect existing rules or statutes.

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**5. Proposed adoption to Mandate Sexual Harassment Prevention Training for Judges to be Added to a New Section to SDCL Chapter 16-14 Judicial Conference.**

Every judge or retired judge acting pursuant to an appointment by the Chief Justice shall complete sexual harassment prevention training offered by the Unified Judicial System or approved by the Chief Justice within two years after the enactment of this rule or after beginning judicial service and at least once

every three years thereafter. Completion of sexual harassment prevention training approved by the State Bar will meet the requirements of this rule. Failure to complete such required training may be grounds for disciplinary action.

**6. Proposed adoption to Mandate Sexual Harassment Prevention Training for Lawyers to be Added to a New Section to SDCL Chapter 16-18 Powers and Duties of Attorneys.**

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

Explanation for Proposals

The Supreme Court's Commission on Sexual Harassment in the Legal Profession proposes these rules mandating sexual harassment prevention training for lawyers and judges. The proposed rules were recommended by the Commission after studying how best to prevent and address sexual harassment within the South Dakota legal profession. The Commission's full report is attached as an Appendix to this rule proposal. See *Recommendation Three*. The proposed rules are not directly based on federal or state law, and the rules should not affect existing rules or statutes.

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Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and five copies thereof filed with the Clerk of the Supreme Court no later than October 25, 2021. Subsequent to the hearing, the Court may reject or adopt the proposed amendments or adoption of any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <https://uj.s.sd.gov/Supreme Court/Hearings.aspx> or the State Bar of South Dakota's website <https://www.statebarofsouthdakota.com>.

DATED at Pierre, South Dakota this 27th day of September, 2021.

BY THE COURT:

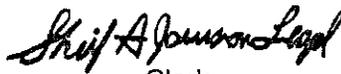
ATTEST:

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

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

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

SEP 27 2021

  
Clerk



## INTRODUCTION

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

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

## MEMBERSHIP

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

## BACKGROUND

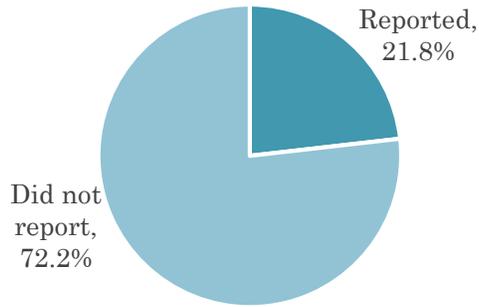
In February 2020, the State Bar submitted a proposed amendment to Rule 8.4 of the South Dakota Rules of Professional Conduct for lawyers. The proposed amendment sought to add a section to Rule 8.4 prohibiting certain harassing or discriminatory conduct. The proposal generated significant input from State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

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

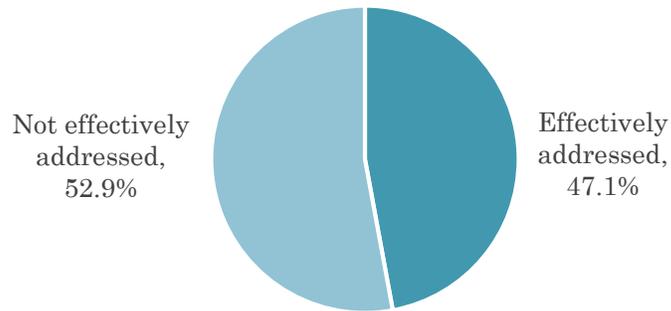


- I have experienced sexual harassment while working in the profession
- I have experienced sexual assault while working in the profession
- I have not experienced sexual assault or harassment while working in the profession

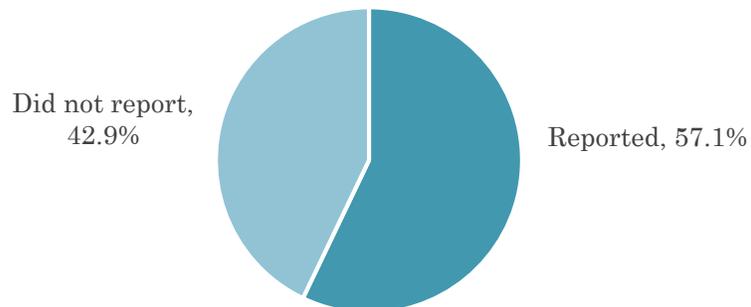
Only 21.8% of those who responded “yes” to experiencing sexual harassment reported it to someone they believed could effectively address the issue  
(N=78)



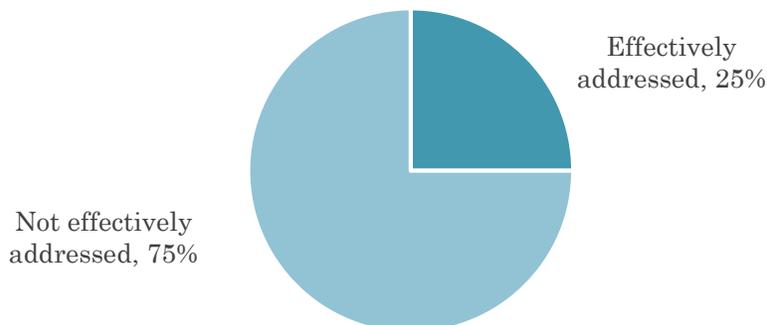
52.9% of those who reported their harassment felt that the issue was not effectively addressed  
(N=17)



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



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



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

### *Commission Goals*

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

### *Commission Findings*

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

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

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

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

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

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

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

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

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

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

### *Commission Workplan*

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

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

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

## RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Rule 8.3. Reporting Professional Misconduct

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

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

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

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

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

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

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

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

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

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

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

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

**Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to:

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

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

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

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

COMMENT:

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

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

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

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

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

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

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

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

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

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

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

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

B(5) and (6) COMMENTARY

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

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

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

## **CONCLUDING REMARKS**

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

## **APPENDIX**

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

## **PUBLIC NOTICE**

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

The current appointment of Magistrate Judge Abigail Howard is due to expire on January 29, 2022. Magistrate Judge Howard serves in the Third Judicial Circuit.

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

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

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

**Comments must be received by October 31, 2021.**

## **OFFICE OF ATTORNEY GENERAL CIVIL LITIGATION POSITION**

**DETAILS:** The Office of Attorney General seeks an attorney for a position with the Civil Litigation Division. The Civil Litigation Division is responsible for representing the state in civil cases defended or prosecuted by the State and in many administrative licensing and regulatory cases. Division attorneys practice in both state and federal courts and are involved in constitutional, natural resources, Indian law and environmental litigation. The Civil Litigation Division also provides legal advice to state officials, agencies, boards and commissions. The person eligible for this position must have strong research and writing capabilities, must be able to communicate well to clients and the courts, and must have strong legal advocacy skills. Prior litigation experience is not required.

**OFFICE LOCATION:** This position will be stationed in Pierre or Rapid City.

**STARTING SALARY:** Entry level salary is \$68,000 annually or greater, depending upon experience and funding availability. The State of South Dakota has an excellent benefit package including retirement, employee insurance coverage and paid leave.

**QUALIFICATIONS:** Applicants must have a JD degree and be licensed to practice law in South Dakota; must be a motivated self-starter and be prepared to assume immediate civil litigation responsibilities.

**APPLICATION PROCESS AND DEADLINE DATE:** Interested persons should send a resume containing three references, a writing sample and a letter describing their qualifications to the email or address below. The closing date for this position will be October 29, 2021.

[Jeffery.Tronvold@state.sd.us](mailto:Jeffery.Tronvold@state.sd.us)

OR

**JASON RAVNSBORG, OFFICE OF ATTORNEY GENERAL, 1302 E. HIGHWAY 14, SUITE 1, PIERRE, SOUTH DAKOTA 57501.**

# Career Center

STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

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



## Attorney - Aberdeen

Bantz, Gosch & Cremer, LLC is seeking an associate attorney, with primary work consisting of general and specialized practice depending on the attorney's experience. Bantz, Gosch & Cremer provides mentorship in all practice areas to facilitate the associate's professional growth. Strong academic background and communication skills required. Compensation depends on experience. The firm offers an excellent benefit plan. Inquiries will be kept confidential. Please send a cover letter and resume describing experience to Bantz, Gosch & Cremer, LLC, PO Box 970, Aberdeen, SD 57402-970 or email to [attorneys@bantzlaw.com](mailto:attorneys@bantzlaw.com).

## Deputy State's Attorney – Clay County

The Clay County State's Attorney's Office invites applications for a full-time Deputy State's Attorney to perform professional legal services on behalf of the State of South Dakota, Clay County and county departments in criminal and civil court, as well as administrative proceedings. This position serves under the general direction of the Clay County State's Attorney. Duties vary but include the prosecution of criminal cases, juvenile crimes, and juvenile abuse and neglect cases.

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

South Dakota bar examination. Working knowledge of civil and criminal law and methods and practices of pleadings; court procedures and rules of evidence; principles, methods, materials and practices utilized in legal research; and general law and established precedents. Ability to prosecute cases. Ability to manage large case volume and respond quickly and effectively to changing circumstances. Ability to speak and write effectively in the preparation and presentation of legal matters. Ability to establish and maintain effective working relationships with coworkers, other agencies and the public. Ability to maintain professional appearance and demeanor. Must successfully complete pre-employment background process.

Clay County offers a comprehensive benefit package including health, dental and vision insurance, SD Supplemental Retirement insurance and paid time off (vacation, sick and holiday).

See more details and apply at: <https://jobs.ourcareerpages.com/job/636455?source=newsletter>

## Deputy State's Attorney - Pierre

DEPUTY STATE'S ATTORNEY POSITION, HUGHES COUNTY: Full-time permanent position now open for a Deputy State's Attorney in the Hughes County Office of the State's Attorney in Pierre, South Dakota.

The Hughes County State's Attorney's Office is looking for a criminal attorney to handle misdemeanor cases, present those cases for legal proceedings, perform legal research, and prepare, draft and file legal documents

and correspondence. Additional responsibilities include but are not limited to: covering felony hearings when required, advising local law enforcement agencies, dealing with juvenile justice issues, providing information to victims and witnesses, performing civil work on behalf of the County, and helping to fulfill the statutory responsibilities of the office.

Applicants must be able to: manage a large case volume and respond quickly and effectively to changing circumstances; speak and write effectively; establish and maintain effective working relationships with coworkers, other agencies, and the public; maintain professional appearance and demeanor.

Minimum Qualifications: Graduation from a college of law, attainment of a Juris Doctorate degree from an accredited law school, and admission by the Supreme Court of South Dakota to practice law in the state of South Dakota or willing and qualified to sit for the next available South Dakota bar examination.

Hughes County offers a comprehensive benefits package for employees including health and dental insurance, participation in the SD Retirement System, and paid time off. Salary range is \$71,029. To \$86,491 and is determined in part based on years of professional experience.

Please send a resume and cover letter to Jessica LaMie, Hughes County State's Attorney, 104 E. Capitol, Pierre, SD 57501. Resumes and cover letters will also be accepted via facsimile at 605-773-7460 and email at [jessica.lamie@co.hughes.sd.us](mailto:jessica.lamie@co.hughes.sd.us).

Posting to remain open until the position is filled. All inquiries are confidential. Hughes County is an Equal Opportunity Employer.

### **Attorney - Yankton**

Marlow, Woodward & Huff, PLLC in Yankton has an opening for an associate attorney with 2-5 years of experience in litigation. Our firm represents clients in personal injury claims, products liability, construction litigation, commercial claims, and general civil litigation matters. Our ideal candidate will be an excellent communicator, both in writing and verbally. Competitive salary, excellent retirement benefits, and the opportunity to become a partner in short order are part of the position. Yankton is located on the Missouri

River, has abundant recreational opportunities, and a great educational system. Interested candidates should submit a cover letter and resume to Mike Marlow: [mike@mwhlawyers.com](mailto:mike@mwhlawyers.com).

### **Director of Policy & Legal Services - Pierre**

Job ID: 17406

Agency: Unified Judicial System, State Court Administrator's Office

Location: Pierre

Salary: \$84,396.96 - \$88,635.60/annually, depending on experience

Closing date: October 8, 2021

For more information on the Unified Judicial System, please visit <http://uj.s.sd.gov>.

Position Purpose:

Provides timely, accurate, consistent, and reliable leadership, advice, information, and analysis in support of the Unified Judicial System (UJS) employees and programs while increasing the public's trust and confidence in the UJS through proactive policy development, legal consultation, and public relations.

Duties may include:

- serving as Legal Counsel for the UJS by researching complex legal issues and representing staff to ensure legal compliance and eliminate liability;
- assisting with lobbying activities to ensure successful passage of UJS legislation and to protect UJS interests.
- overseeing the development and distribution of the court publications such as the annual report and ad hoc reports to ensure enhanced public relations and court image through these publications;
- managing and overseeing division programs to ensure effective and efficient operation;
- participating in various committees and meetings to carry out division objectives; and
- performing other works as assigned.

Minimum Qualifications:

Comments: Graduation from an ABA accredited law school and possession of a Juris Doctorate. Licensed by the South Dakota State Bar to practice law in South Dakota. In addition, five (5) years of progressively responsible work experience in the legal field, policy administration, or lobbying or legislative arena, and supervision of staff; or a related field; or an equivalent

combination of related education and experience. Successful completion of a criminal background investigation is required for employment.

Knowledge, Skills and Abilities:

Knowledge of:

- the law;
- the court system;
- functions of the court;
- the legal and judicial system;
- legislative process and procedures;
- budgeting fundamentals;
- supervisory and leadership techniques and tools.

Skill in:

- organizational and time management;
- project management;
- critical thinking.

Ability to:

- provide supervision, leadership, coaching, and mentoring to staff;
- manage expectations of staff and constituents;
- develop and provide public presentations and training;
- be diplomatic, self-motivated, persuasive, decisive, consistent, and assertive;
- effectively manage highly stressful situations and remain patient and calm;
- research, administer, establish, and interpret rules, policies, guidelines, and procedures;
- act as liaison with other courts, executive branch, and outside entities to build networks and consensus and foster collaborative relationships;
- communicate in a clear and concise manner both orally and in writing;
- establish credibility and integrity;
- maintain confidentiality of personnel issues and records.

The State of South Dakota, Unified Judicial System does not sponsor work visas for new or existing employees. All persons hired will be required to verify identity and eligibility to work in the United States and complete an Employment Eligibility Verification, Form I-9. The Unified Judicial System as an employer will be using E-Verify to complete employment eligibility verification upon hire.

You may view our benefits information at

[https://uj.s.sd.gov/uploads/pubs/Come\\_work\\_for\\_us.pdf](https://uj.s.sd.gov/uploads/pubs/Come_work_for_us.pdf).

Apply at:

Unified Judicial System  
500 East Capitol Avenue  
Pierre, SD 57501-5070  
Phone: 605.773.4867

"An Equal Opportunity Employer"

### **Deputy Public Defender - Deadwood**

The Lawrence County Public Defender's Office is seeking applications for a full-time Deputy Public Defender position. Duties of the position are as follows: Representation of indigent clients through all stages of the state court system in criminal and some civil matters. This includes pre-trial proceedings, motions, various court hearings and jury trials in criminal matters, appeals, habeas corpus proceedings, abuse and neglect actions, and juvenile proceedings.

The successful applicant must possess a J.D. degree and be a current member in good standing or eligible for admission to the South Dakota Bar. Criminal trial experience or clinical program experience in criminal law are preferred. Applicant must be a resident of Lawrence County or willing to become a resident within eleven months of start date. Applications will be reviewed until position is filled with a start date dependent upon availability. Salary will be a range of \$63,256 - \$75,290.00 annually (DOE). Lawrence County offers health, dental and life insurance, paid vacation and sick leave and retirement benefits and is an equal opportunity employer. Please contact the the Lawrence County Public Defender's Office for more information at (605) 578-3000.

A resume with references and writing sample should be submitted to: Amber L. Richey, Director, Lawrence County Public Defender Office, 90 Sherman Street, Deadwood, SD 57732 or [arichey@lawrence.sd.us](mailto:arichey@lawrence.sd.us).

### Litigation Associate - Sioux Falls

Donahoe Law Firm P.C. is seeking an associate attorney. Practice includes litigation, estate planning and business law/commercial matters. Associate will have significant client contact and responsibility including hearings, motion practice, trials and appeals before public bodies or agencies, and the state and federal courts mainly in South Dakota, plus Minnesota and Iowa. All applications will be held confidential. Please send a cover letter, resume and writing sample to: [brian@donahoelawfirm.com](mailto:brian@donahoelawfirm.com) or Donahoe Law Firm, P.C., 401 East 8th Street, Suite 215, Sioux Falls, SD 57103.

### Senior Trust Officer - Sioux Falls

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

#### Job Description

Responsible for the administration, risk management and servicing of assigned fiduciary and investment management accounts. May include Relationship Management responsibilities as well as product specialty knowledge and expertise (such as IRAs, Charitable/Philanthropic Accounts, ILITs, Estates, etc.). Will likely work as part of a team of experts administering accounts where tasks are assigned based on complexity. Accountable for servicing and retention of existing accounts. Administers accounts in a manner which ensures compliance with the governing documents, state statutes and U.S. Bank policies and procedures. Responsible for meeting all corporate and regulatory compliance standards.

#### Basic Qualifications

- Bachelor's degree, or equivalent work experience
- 10 or more years of experience in Trust administration
- Professional Designation is required and may include, but is not limited to: CTFA, CFP, JD, CPA

and/or Graduate of National Trust School Program  
Preferred Skills/Experience

- Considerable knowledge of estate settlement, income, estate and multi-generational taxation and trusts
- Thorough knowledge of fiduciary law, tax implications and practices in multiple jurisdictions, trust accounting/reporting, and other regulatory compliance requirements
- Strong project and information management skills
- Strong organizational, analytical and problem-solving skills
- Basic leadership and team-building skills
- Excellent interpersonal, verbal and communication skills
- Well-developed customer service/relations skills

#### Benefits:

Take care of yourself and your family with U.S. Bank employee benefits. We know that healthy employees are happy employees, and we believe that work/life balance should be easy to achieve. That's why we share the cost of benefits and offer a variety of programs, resources and support you need to bring your full self to work and stay present and committed to the people who matter most - your family.

Learn all about U.S. Bank employee benefits, including tuition reimbursement, retirement plans and more, by visiting [usbank.com/careers](http://usbank.com/careers).

DO YOU HAVE A JOB ANNOUNCEMENT?

Send it to  
[tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net)



# Upcoming Events

OCTOBER 22 | BAR COMMISSION MEETING | REDROSA CONVENTION CENTER, PIERRE

OCTOBER 22 | NUTS AND BOLTS CLE | REDROSA CONVENTION CENTER, PIERRE

OCTOBER 22 | STATEWIDE SWEARING IN CEREMONY | CAPITOL ROTUNDA, PIERRE

OCTOBER 24-30 | LET'S CELEBRATE PRO BONO WEEK

OCTOBER 28 | LAW FOR LUNCH - BANKRUPTCY 101 | WEBINAR!