



# State Bar of South Dakota

*November*

2021

Newsletter

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# State Bar of South Dakota

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## PRESIDENT'S CORNER

*William C. Garry*

I was invited to speak at two recent events at the State Capitol. The first was the Statewide Swearing-in Ceremony hosted by the Young Lawyers Section. It was awesome to witness Chief Justice Steven Jensen administer the Oath of Attorney to eight new admittees to the State Bar of South Dakota. Thanks to Ole Olsen and the Young Lawyers Section for continuing this great tradition.

The second event was Chief Justice David Gilbertson's portrait unveiling ceremony. Gilbertson retired at the end of 2020 having served as Chief Justice for nearly two decades. Gilbertson is the longest-tenured Chief Justice in South Dakota history. His innovative leadership helped shape the judiciary in South Dakota in so many important ways. We wish him a very long and enjoyable retirement.

Over the next several months, I will introduce you to the members of the Bar Commission. This month features Renee Christensen (First Circuit), Matt Roby (Third Circuit), Eric Pickar (At Large) and Rory King (At Large).

### Renee Christensen

I am from Schaumburg, Illinois, I went to Eastern Illinois University undergrad and received a political science degree.

My father was an immigrant from Bagdad Iraq whose family fled the genocide in Turkey. He immigrated to

Chicago in the early 1950's where he met my mother. Throughout my childhood I witnessed his additional families make the transition to America.

I have one sibling a sister, Celeste Coungeris who died from cancer, my father Harry is deceased, my mother Marlene still lives in Schaumburg, Illinois.

I have a husband Jon who works out of our home as CFO for Bookyourbillboard.

We have 2 children, Mary a sophomore at Augustana University and Michael a second year law student at the University of South Dakota.

I handle plaintiff personal injury, workers compensation and social security work.

### Matt Roby

I was born and raised in Watertown. I received my BS in 2007 from the University of Nebraska-Lincoln, and my JD in 2010 from the University of St. Thomas School of Law (MN). My first job out of law school was in the SD Attorney General's Office where I worked in the appellate and civil divisions. Prior to my current role as in-house City Attorney for the City of Watertown, where I've been for almost four years, I worked in the insurance industry and in solo private practice.

I've been married to my wife Stefanie for eight years and we have three children – Bennett (6), Griffin (4), and Hannah (2).



I was encouraged to run for the Third Circuit Bar Commission seat by my friend and former colleague, Rich Williams. And I'm glad I agreed! It's been a rewarding experience getting to know the inter-workings of the

State Bar and, more importantly, getting to know other lawyers from around the state. If you have the opportunity to serve, I would encourage it.

### Eric Pickar

I am a proud graduate of Sturgis Brown High School. I received my BS in Psychology from SDSU (2000) and my JD from USD (2003). In law school, I was on Law Review and the Trial Team. As a 2L and 3L, I taught a technical writing course for the USD English Department. I joined Bangs McCullen in Rapid City after graduating from law school, and I am currently the firm's managing partner. My practice primarily focuses on family law and civil litigation.

I am married to my best friend, Jessica, and together we enjoy traveling, hiking, gardening, and entertaining friends and family on our pontoon at Angostura. I enjoy the theatre, and I am the President of the Board of Directors for the Performing Arts Center of Rapid City. If you have met me, you already know I am a huge sports fan, and a zealous supporter of the Milwaukee Brewers and Green Bay Packers.



I have been an At-Large Bar Commissioner since 2020. I sought to become a Bar Commissioner at the urging of

my dear friend and law partner, Terry Westergaard. As usual, his advice was spot on, and I have truly enjoyed serving the South Dakota State Bar.

### Rory King

I am a native of Aberdeen. I received my BA, in 1970, and my JD, in 1973, from the University of South Dakota. I was a law clerk for the Hon. Fred Nichol, and have been practicing in Aberdeen since 1974. I am a retired Captain in the United States Army reserve. I am a partner in the law firm of Bantz, Gosch and Cremer in Aberdeen. I have been happily married to the former Susan Wilber, from Miller, S.D., for 46 years, am the father of six, and the grandfather of eighteen, all of whom live in Aberdeen. Two of our sons, and one of our sons-in-law, are also Aberdeen members of the S.D. Bar Association.

With my professional, family, Church and local community obligations, I haven't been involved in Bar activities as much as I would have liked. My partner, Josh Wurgler, enjoyed his tenure, and urged me to run for a slot on the Bar Commission. Someone told me that, at age 73, I'm probably one of the oldest lawyers to have served in that capacity. I'll rely on my fellow Commissioners to let me know if they detect any encroaching dementia!





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# Application for Pro Bono Emeritus Status

I, \_\_\_\_\_, an active member of the State Bar of South Dakota, do hereby apply for Pro Bono Emeritus Status, for the year 2022.

I understand that if approved, rather than pay regular dues for the year 2022, I will only be required to tender the sum of \$125 (same as inactive dues) but I will be entitled to all the rights and privileges of an active member of the State Bar.

Further, I recognize that this status means that I will be requested from time to time to take a referral from East River Legal Services, Dakota Plains Legal Services, or Access to Justice, and I am willing to accept at least one referral in the year 2022.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

# *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.

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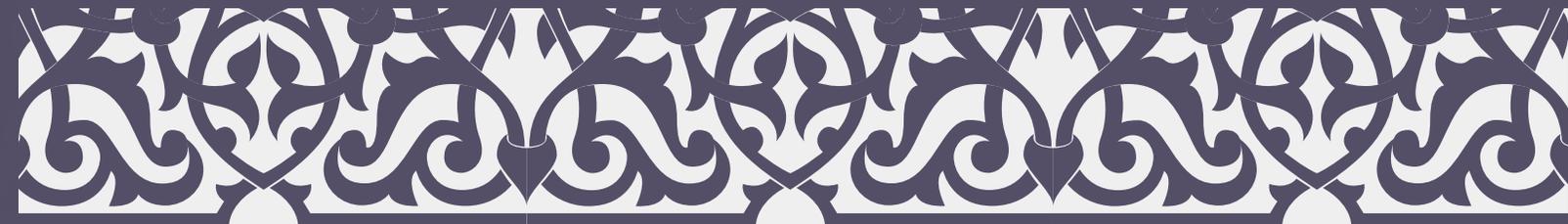
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## DEAN'S LIST : NEWS FROM THE LAW SCHOOL



**B**ack to normal. A lot of us have said those words many times over the last 18 months often as a seemingly distant hope or goal. As we approach the end of the first semester, they are the words defining this academic year at the Law School. Every day we are working on getting “back to normal.” I wanted to share a little insight into what that process looks like.

The biggest way in which we are getting back to normal is returning to in person classes. Some students have had to periodically participate via Zoom due to close contact with COVID positive family members. So far, only two students have tested positive and no faculty or staff. Most students are vaccinated; regular testing offered by USD helps them make sure they stay COVID free. Masks are no longer required, students are active in the hallways, and being together is once again the norm. This is a huge shift from last year. If we have not gotten back to a normal world that is “post-COVID,” daily life is not dominated by it in the same way that last year was. I really cannot overstate how good it is to be “back to normal” in this respect.

Another way in which we are getting back to normal, albeit a “new normal,” is settling in with lots of new faces. The Law School is undergoing a generational faculty transition. In the just over two years that I have been dean, almost half of the faculty has changed. Law School faculty had been extremely stable for decades. For many of you, “normal” was a set of faces in the front of the classroom, at events, or that you bumped into at the Bar Convention. This generation of students is getting “back to normal” with a new generation of faculty. Those new

faculty members are getting set in their normal rotation of courses, developing their scholarship, building connections with students, and becoming part of the Law School community. I could not be more excited about the next generation of faculty. We are currently searching for two more faculty members to succeed Tom Geu and Myanna Dellinger. I will let them introduce themselves to you in a column after the New Year. I hope that those of you who invested so much with their predecessors, you will engage in getting back to normal in having real connections to faculty, albeit with many new faces.

We got back to normal in October by welcoming the South Dakota Supreme Court to campus to hear arguments. The Courtroom was full as students got to see up close what life as a lawyer looks like. The Court graciously participated in a panel where they discussed appellate advocacy, their careers, and even gave students some personal insight into what inspires them most. Students drank in the opportunity. Thank you so much to the Justices for taking the time to do that; it is very normal for students at USD to get to connect with leaders in the bench and bar early in their careers.

We’ve gotten back to normal with more events this fall. As I watch students in the room, it is apparent that precautions we had to take against COVID-19 denied the Class of 2023 a huge part of a normal first year. Those students are just now developing their connections as a class in a way that students typically do in first year. Although it is coming later, students are building those connections and it is gratifying to see that. We have

gotten back to having speakers regularly and events in person. We are getting back to being a connected law school community.

This aspect of getting back to normal is perhaps the most important. Getting back to normal at the Law School means more than just restoring routines. It means reinvigorating ourselves as a community. As I hope you know, the Law School is a community of excellence, service, and leadership; the first word matters as much as the final three. Building and sustaining a community requires engagement and connection. Our return to normal takes more than just reducing the number of Zoom meetings. Instead, it requires thoughtfully putting time and effort into developing connections among law students; between students, faculty, and staff; and connecting the Law School with its community of

alumni and friends outside Vermillion. Doing things in person is a mechanism, but the motive is the long-term work of community building. For us, a return to normal is a return to connection. It means transcending the separation and isolation that COVID-19 has imposed upon all of us. It includes learning lessons of how we harnessed technology to increase our connections while making time for those personal interactions that give a community real life.

This is difficult work. It takes time and energy. It takes contribution from all of us. But it is what is best about the Law School community and it is our focus of "getting back to normal." We all look forward to doing that work with you.

The USD Knudson School of Law will be hosting Spring 2022 On Campus Interviews (OCI) on February 3-4 and March 3-4.

Employers are invited to participate in Spring OCI on the date of your choice to interview 1L and 2L students for internship opportunities, and 3L students for post-graduate positions.

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



SPRING  
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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.



# 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.

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A donation of \$50 will be made in each  
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# ANNOUNCEMENTS

Farrell, Farrell & Ginsbach  
is pleased to announce that

*Cole J. Romey*

has joined the firm as an associate attorney  
effective September 1, 2021.

Farrell, Farrell & Ginsbach  
441 N. River Street  
Hot Springs, SD 57747

Telephone: (605) 745-5161  
Facsimile: (605) 745-3154

[cromey@farrellginsbach.com](mailto:cromey@farrellginsbach.com)

Donahoe Law Firm, P.C.  
is pleased to announce the addition  
of their new associate:

*Jennifer L. Doubledee*

effective as of November 1, 2021.

Donahoe Law Firm, P.C.  
8th & Railroad Center  
401 E. 8th St., Suite 215  
Siouc Falls, SD 57103

Telephone: (605) 367-3310

[jennifer@donahoelawfirm.com](mailto:jennifer@donahoelawfirm.com)

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

*Spencer R. Prosen*

has joined the firm.

Lynn, Jackson, Shultz & Lebrun, P.C.  
311 N. 27th Street, Suite 4  
Spearfish, SD 57783

Telephone: (605) 722-9000

[sprosen@lynnjackson.com](mailto:sprosen@lynnjackson.com)

Costello Porter  
is pleased to announce that

*Garrett J. Keegan*

has joined the firm as an associate attorney.

Costello Porter  
704 St. Joseph St.  
PO Box 290  
Rapid City, SD 57709

Telephone: (605)343-2140  
Facsimile: (605) 343-4262

[gkeegan@costelloporter.com](mailto:gkeegan@costelloporter.com)

Nooney & Soley, LLP  
is pleased to announce that

*Michael J. Smith*

has joined the firm as an associate attorney.

Nooney & Soley, LLP  
2326 Founders Park Drive  
PO Box 8030  
Rapid City, SD 57709-8030

Telephone: (605) 721-5846

[michael@nooneysolay.com](mailto:michael@nooneysolay.com)  
[www.nooneysolay.com](http://www.nooneysolay.com)

Woods, Fuller, Shultz & Smith P.C.  
is pleased to announce that

*Lucas Carr*

has joined the firm as an Associate  
effective August 11, 2021.

Woods, Fuller, Shultz & Smith P.C.  
300 S. Phillips Avenue, Suite 300  
Sioux Falls, SD 57104

Telephone: (605) 336-3890

[Lucas.Carr@woodsfuller.com](mailto:Lucas.Carr@woodsfuller.com)  
[www.woodsfuller.com](http://www.woodsfuller.com)

Woods, Fuller, Shultz & Smith P.C.  
is pleased to announce that

*Justin Bergeson*

has joined the firm as an Associate  
effective August 9, 2021.

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[Justin.Bergeson@woodsfuller.com](mailto:Justin.Bergeson@woodsfuller.com)  
[www.woodsfuller.com](http://www.woodsfuller.com)

Woods, Fuller, Shultz & Smith P.C.  
is pleased to announce that

*Max Donohue*

has joined the firm as an Associate  
effective August 30, 2021.

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[Max.Donohue@woodsfuller.com](mailto:Max.Donohue@woodsfuller.com)  
[www.woodsfuller.com](http://www.woodsfuller.com)

Woods, Fuller, Shultz & Smith P.C.  
is pleased to announce that

*Michael Mabee*

has joined the firm as an Associate  
effective September 1, 2021.

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Sioux Falls, SD 57104

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[Michael.Mabee@woodsfuller.com](mailto:Michael.Mabee@woodsfuller.com)  
[www.woodsfuller.com](http://www.woodsfuller.com)

Woods, Fuller, Shultz & Smith P.C.  
is pleased to announce that

*Andy Damgaard*

has joined the firm  
effective September 1, 2021.

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Sioux Falls, SD 57104

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[Andy.Damgaard@woodsfuller.com](mailto:Andy.Damgaard@woodsfuller.com)  
[www.woodsfuller.com](http://www.woodsfuller.com)

Woods, Fuller, Shultz & Smith P.C.  
is pleased to announce that

*Nicole Tupman*

has joined the firm  
effective October 1, 2021.

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Sioux Falls, SD 57104

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[Nicole.Tupman@woodsfuller.com](mailto:Nicole.Tupman@woodsfuller.com)  
[www.woodsfuller.com](http://www.woodsfuller.com)

May, Adam, Gerdes & Thompson LLP  
is pleased to announce that

*Cash Anderson*

has joined the firm as an associate attorney.

May, Adam, Gerdes & Thompson LLP  
503 South Pierre Street  
PO Box 160  
Pierre, SD 57501

Telephone: (605) 7224-8803  
Facsimile: (605) 224-6289

[cea@mayadam.net](mailto:cea@mayadam.net)

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

*Drew Skjoldal*  
is now a shareholder of the firm.

Lynn, Jackson, Shultz & Lebrun, P.C.  
311 N. 27th Street, Suite 4  
Spearfish, SD 57783

Telephone: (605) 722-9000

[dskjoldal@lynnjackson.com](mailto:dskjoldal@lynnjackson.com)  
[www.lynnjackson.com](http://www.lynnjackson.com)

Hagen, Wilka & Archer, LLP  
is pleased to announce that

*Christopher D. Mathieu*  
has become an associate in the firm.

Hagen, Wilka & Archer, LLP  
PO Box 964  
Sioux Falls, SD 57104

Telephone: (605) 334-0005  
Facsimile: (605) 334-4814

[chris@hwalaw.com](mailto:chris@hwalaw.com)

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

*Dominic F. King*  
*and*  
*Christi M. Weideman*  
have joined the firm as associate attorneys.

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

Telephone: (605) 225-6310

[dking@rwwsh.com](mailto:dking@rwwsh.com)  
[cweideman@rwwsh.com](mailto:cweideman@rwwsh.com)

South Dakota Bureau of Information  
and Technology  
is pleased to announce that

*Abigail Schindler*  
has joined their legal department.

SD Bureau of Information and Technology  
700 Governors Drive  
Pierre, SD 57501

Telephone: (605) 773-4357

[Abigail.Schindler@state.sd.us](mailto:Abigail.Schindler@state.sd.us)

# Best Lawyers® 2022 Announced

Davenport, Evans, Hurwitz & Smith, LLP in Sioux Falls, SD is pleased to announce that three Davenport Evans lawyers were named 2022 Best Lawyers® Lawyers of the Year, and two were named 2022 Best Lawyers®: Ones to Watch.

The following Davenport Evans lawyers were named 2022 Best Lawyers® Lawyers of the Year:



Mary A. Akkerman  
Trusts and Estates



Thomas M. Frankman  
Personal Injury Litigation – Defendants



Eric C. Schulte  
Litigation – Insurance

The following Davenport Evans lawyers were named 2022 Best Lawyers®: Ones to Watch:



Elizabeth S. Hertz  
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### 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.*

# SOUTH DAKOTA BAR FOUNDATION

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Andrew L. Fergel, Secretary -Treasurer

Members of the State Bar of South Dakota:

As the holiday season approaches, I write on behalf of the South Dakota Bar Foundation to thank all of you that have generously made monetary gifts to the Foundation. I also write to ask that you remember the South Dakota Bar Foundation in your holiday plans. While shopping for gifts and gathering with loved ones, please consider setting aside part of your budget to support the work of the Foundation with a tax-deductible charitable donation.

By offering an effective means for the legal community to come together to engage in law related philanthropy, the South Dakota Bar Foundation strengthens the profession by providing lawyers the opportunity to give back in a way that is uniquely important and rewarding for us as lawyers.

Just as the State Bar of South Dakota brings lawyers together to address issues that are common to the profession, the South Dakota Bar Foundation complements those efforts by giving the legal community an effective means to focus on charitable initiatives that lawyers are uniquely positioned to take a leadership role in addressing. In that spirit, the South Dakota Bar Foundation works in close partnership with the State Bar to improve the profession, the justice system and the community.

Over the past several years, the generosity of many State Bar members has enabled the South Dakota Bar Foundation to assist in ensuring equal access to justice, promoting pro bono work in the legal community, improving public understanding of the law and the justice system, ensuring that the legal profession remains open to people from all walks of life, and helping lawyers who are experiencing difficulties. The work the South Dakota Bar Foundation has been able to do through its granting program is depicted on the graphs and charts that follow this letter. Please review the charts and be proud of what you have accomplished through your giving.

However, our work is not done, and the South Dakota Bar Foundation asks for your continued support. You can help by participating in the opt out when you receive your dues invoice this Fall or by becoming a fellow of the South Dakota Bar Foundation. Your generosity will have a positive impact on improving our profession, the justice system and our community. Every gift matters! Please help the South Dakota Bar Foundation in "Raising the Bar". After all, it is "Our Profession" and "Our Responsibility".

Best regards,

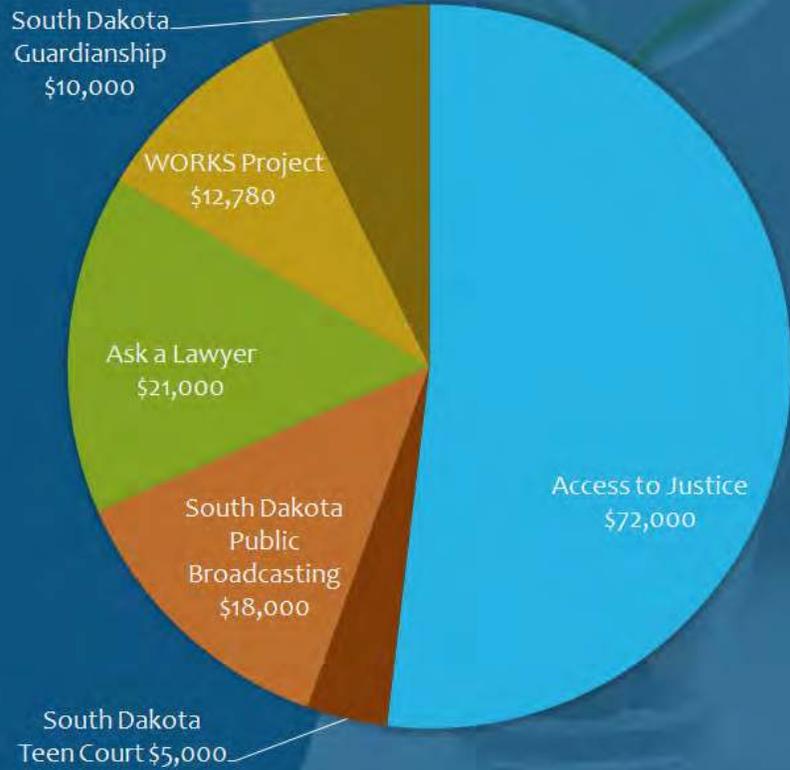


Stephanie E. Pochop  
President  
South Dakota Bar Foundation

*Raising the Bar*  
Our Profession. Our Responsibility.

# SOUTH DAKOTA BAR FOUNDATION GRANTS

Awarded for 21-22



## EVERY GIFT MATTERS



Please help the South Dakota Bar Foundation in  
“RAISING THE BAR”



## AMERICAN BAR ASSOCIATION

### STATE DELEGATE REPORT

South Dakota

Dick Travis

dtravis@mayjohnson.com

### Post 2021 Hybrid Annual Meeting

The American Bar Association convened for its 144th and first ever hybrid Annual Meeting on **August 4 – 10, 2021** in Chicago, Illinois. The hybrid platform for the conference provided members the opportunity to participate and engage with each other both virtually and in person. Members from across the country participated in the various forums, conversations, CLE Sessions, and award events that took place. Highlights from the hybrid conference included:

- *The General Assembly:* At the 2021 General Assembly, John Kerry, the U.S. Special Presidential Envoy for Climate, was the keynote speaker at the virtual gathering. He told the General Assembly “You are all climate lawyers now.” Also, President Refo joined seven of nine past female presidents of the association to discuss progress in the advancement of women in law and the obstacles that still remain.
- *Special Guests & Acknowledgements* – President Refo gave remarks to the House of Delegates which included an introduction of and welcome to Brad Regehr, the President of the Canadian Bar Association and the first indigenous person to ever hold this role. She also acknowledged Presidential Citation recipients Emily Benfer and Elliot H. Scherker. President Refo proudly stated that “the ABA is and will always be a steadfast and active leader in diversity, equity and inclusion for all.” She thanked and acknowledged those lawyers in the United States and around the globe who are “heroes of justice.”
- *Excellent Programming:* Eight extraordinary CLE Showcase Programs were available during the Hybrid Annual Meeting that covered the following topics: 1) Advocacy Before the Court - Federalism, Diversity, and Rule of Law; 2) Voting Rights Discussion on Legislation, Strategy and Developments in the Movement for Voting Justice; 3) The Era of Environmental Justice - Prioritizing Protection and Remedies for Underrepresented Communities; 4) Beyond the Schoolhouse Gate - Student Speech Rights After Mahanoy School District v. B.L.; 5) Cryptocurrency Law - The Wild West or the Financing of the Future; 6) The Future of Policing – Ending Senseless Violence and Igniting Transformative Reform; 7) The Roberts Court 202-2021 – ACB for RBG and the Alliance Forming Around the C.J.; and 8) Constitutional Long Haulers – The Undiagnosed Long-Term Impact of Judicial Review on Emergency Public Health Orders. Each of the (8) CLE Showcase Programs are now available for on-demand viewing through the ABA MCLE Library for the next 4 months.
- *Honors and Awards:* In addition to the awarding of the 2021 ABA Medal to Lawrence J. Fox, several other honors and awards were bestowed virtually throughout the week including the Section on Civil Rights and Social Justice who hosted a virtual event in honor of Clarence B. Jones, recipient of the Thurgood Marshall Award; and five trailblazing women were honored with the 2021 Margaret Brent Women Lawyers of Achievement Award.
- *The Membership Meeting:* The Nominating Committee convened the meeting of the Membership and hosted a Candidates Forum on Sunday, August 8, 2021. The following candidates seeking nomination at the 2022 Midyear Meeting provided speeches to the Nominating Committee and to the members of the Association present, as well as answered questions from the Steering Committee of the Nominating Committee: Lucian E. Pera of Tennessee and Mary L. Smith of Illinois, candidates for President-Elect for the 2022-2023 term; Palmer Gene Vance II of Kentucky candidate for Chair of the House of Delegates for the 2022-2024 term; and Frank H. “Fritz” Langrock of Vermont, candidate for Treasurer for the 2023-2026 term; to also serve as Treasurer-Elect for 2022-2023.

- *House of Delegates Proceedings:* The House met for a day and a half during the 2021 Hybrid Annual Meeting. The Daily Journal of the actions of the House and the Select Committee Report, can be found on the House of Delegates Webpage. The gavel was passed to incoming President, Reginald M. Turner of Michigan [../AppData/Local/Microsoft/2020 Annual/Meeting Video Clips/Special Order - Passing of the Presidents Gavel.mp4](#) and the House welcomed its newly elected President-Elect, Deborah Enix-Ross of New York, as well as the new Board of Governors. For the first time during the House of Delegates Meeting, Lawrence J. Fox of New York was presented with the ABA Medal for his longtime championship of legal ethics, professional responsibility, and pro bono work, through which he has given decades of service to the association and the legal profession. The House also voted on amendments to the Association's Constitution, Bylaws and House Rules of Procedure, as well as considered many resolutions on various topics and issues of law including, but not limited to: civil rights and social justice, legal education, legal services, diversity, equity, and inclusion, disability rights, judges and the judiciary, COVID-19 return to work practices, the American justice system, public education, criminal justice, human rights, international law, labor law, sexual orientation and gender identity, bankruptcy, environment, energy and resources law, etc.

A special "shout out" goes to Tamara Nash on her election as Secretary of the ABA Young Lawyers Division. Tamara is the first member of the SD State Bar Association to attain the prestigious position, and she is now in line to be Chair of the ABA Young Lawyers Division. Her election is a testament to the respect that Tamara has earned among her peers. If you cross paths with Tamara, be sure to congratulate her on her outstanding achievement.

Please visit the [ABA Home page](#) to see the most current news on issues impacting our profession and how you can help make a difference, and be sure to view [ABA Member Advantage](#), the benefits discount program exclusively for ABA members, where you can find products and services of value for your practice, your home and your leisure time.

I hope you will be able to join us for the **ABA 2022 Midyear Meeting which will be held February 9 – 14, 2021 in Seattle, Washington**. More information on this will be provided in the coming months.

As always, if you have any questions or comments, or if I or any of the other members of the SD delegation (Sarah Theophilus, Pat Goetzinger and Tamara Nash) can be of assistance helping you navigate the many programs and benefits of our Association, please email any of us.

Regards,  
Dick Travis  
ABA South Dakota State Delegate

# YOU ARE INVITED TO JOIN!

## Fellows of the South Dakota Bar Foundation

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

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Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

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in Lump Sum    Annually    Semi-Annually    Quarterly    Monthly

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

### In Memoriam

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

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

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

Or you can email this form to:  
[tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net) or call 605-224-7554 to set up a payment.

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

# 2021 John R. Justice Student Loan Repayment Program 2021

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

The John R. Justice (JRJ) Grant Program provides student loan repayment assistance for local, state and federal public defenders and local and state prosecutors who commit to extended service in those roles. All Applications and a Service Agreement along with a recent loan statement must be received or postmarked on or before January 31, 2022. A recent monthly statement from the borrowing agency is preferred over the generic "Loan Details" print out option as the monthly statement contains the pertinent information needed.

[2021 John R. Justice \(JRJ\) Grant Application](#)

[2021 JRJ Grant Service Agreements: Please select one of the 3 agreements that best fits your situation.](#)

**Eligibility:** For the purposes of the JRJ Program, the following beneficiaries shall be considered eligible:

**Prosecutor:** full-time employee of a state or unit of local government (including tribal government) who is continually licensed to practice law and prosecutes criminal or juvenile delinquency cases at the state or local government level (including supervision, education, or training of other persons prosecuting such cases); prosecutors who are employees of the federal government are not eligible.

**Public defender:** an attorney who is continually licensed to practice law and is a full-time employee of a state or unit of local government (including tribal government) who provides legal representation to indigent persons in criminal or juvenile delinquency cases, including supervision, education, or training of other persons providing such representation.

**A full-time employee of a nonprofit organization** operating under a contract with a state or unit of local government who devotes substantially all of the employee's full-time employment to provide legal representation to indigent persons in criminal or juvenile delinquency cases including supervision, education, or training of other personnel providing such representations.

**A full-time federal defender attorney in a defender organization** pursuant to subsection (g) of section 3006A of Title 18, United States Code, that provides legal representation to indigent persons in criminal or juvenile delinquency cases.

Application and a service agreement with original signatures must be submitted to the address below. A recent loan STATEMENT must be included that provides the following: (1) account number; (2) your name on the account; and (3) bank payment mailing address.

**Lynell Erickson**  
**Office of Attorney General**  
1302 E Hwy 14 Suite 1  
Pierre SD 57501

BOARD OF BAR COMMISSIONERS  
Minutes, August 18, 2021  
Meeting Held by ZOOM

President Bill Garry called the meeting to order at 9:00 a.m. on Thursday, August 18, 2021. Present were President Garry, President Elect Lisa Marso, Commissioners Aasen, Dougherty, Foral, Johnson, Kempema, Pickar, Richter, Roby, Skjoldal, Tiede, and Trefz. Also, present were Secretary-Treasurer Andrew Fergel and Strategic Plan Coordinator Beth Overmoe.

Minutes of July 23, 2021, Bar Commission Meeting: Commissioner Pickar made a motion to approve the minutes of the July 23, 2021, Bar Commission meeting. The motion was seconded by President Elect Marso. Motion passed.

Executive Director's Report: Executive Director Fergel gave report on the items he and staff have been working on since the July 23, 2021, Bar Commission meeting.

Contract/Spending Authority: A motion was made by Commissioner Trefz that capital expenditures and contractual agreements in excess of \$10,000.00 receive prior approval of the Bar Commission. The motion was seconded by Commissioner Pickar. Motion passed.

Proposed Rules Recommended in Report by the Supreme Court's Commission on Sexual Harassment in the Legal Profession: A motion was made by Commissioner Foral for the Bar Commission and Bar to support Court rules mandating sexual harassment training for lawyers and judges as proposed in the March 18, 2021, report by the Supreme Court Commission on Sexual Harassment when the rules are proposed by the Commission on Sexual Harassment and noticed for hearing by the Supreme Court and to have the Bar and Bar Staff work toward implementation of all the other recommendations in the report. The motion was seconded by Commissioner Pickar. After discussion, the motion passed.

There being no other business before the Commission, President Garry adjourned the meeting.

Respectfully submitted,

Andrew L. Fergel  
Secretary-Treasurer

BOARD OF BAR COMMISSIONERS  
Minutes, September 14, 2021  
Meeting Held by ZOOM

President Bill Garry called the meeting to order at 9:00 a.m. on Tuesday, September 14, 2021. Present were President Garry, President Elect Lisa Marso, Commissioners Christensen, Dougherty, Johnson, Kempema, Pickar, Richter, Roby, and Trefz. Also, present were Secretary-Treasurer Andrew Fergel and Strategic Plan Coordinator Beth Overmoe.

Minutes of August 18, 2021, Bar Commission Meeting: Commissioner Pickar made a motion to approve the minutes of the August 18, 2021, Bar Commission meeting. The motion was seconded by Commissioner Johnson. Motion passed.

Executive Director's Report: Executive Director Fergel gave report on the items he and staff have been working on since the August 18, 2021, Bar Commission meeting. Items mentioned in the report were the post launch work on the new bar website and member management system, the Estate Planning and Cryptocurrency CLEs to be held in Sioux Falls, preparation for the 2022 Legislative Session, drafting a RFP for a statewide legal needs survey, and planning for the October 22, 2021, Bar Commission meeting along with the swearing-in ceremony for new admits.

List Serves and Discussion Platforms for Member Hub: A discussion was held about possible ways the new website and member hub may be used for members to collaborate or discuss specific practice areas. In addition to the member hub, utilization of group specific Facebook pages was also discussed. Executive Director Fergel informed the Commission that he would take the comments presented during the discussion and explore available options.

There being no other business before the Commission, President Garry adjourned the meeting.

Respectfully submitted,

Andrew L. Fergel  
Secretary-Treasurer

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

In re: Resignation of  
JOHN M. WILKA, as an  
Attorney at Law.

)  
)  
)  
)  
)

JUDGMENT OF DISBARMENT

#29776

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The Disciplinary Board of the State Bar having filed with the Court a resignation executed by respondent John M. Wilka, consenting to disbarment pursuant to the provisions of SDCL 16-19-65, now, therefore, in compliance with the provisions of SDCL 16-19-66, it is

ORDERED that John M. Wilka be and he is hereby disbarred from practicing as an attorney and counselor at law in all of the courts of this state, and the license to practice law heretofore granted by this Court to said attorney is hereby canceled and revoked and the Clerk of the Court is authorized and directed to strike the name of from the roll of licensed attorneys and counselors at law on file in the office of the Clerk.

IT IS FURTHER ORDERED that respondent shall comply with the provisions of SDCL 16-19-77 through 16-19-81 and that noncompliance shall constitute contempt. SDCL 16-19-82.

IT IS FURTHER ORDERED that pursuant to SDCL 16-19-77, the disbarment of respondent shall become effective November 29, 2021.

#29776, Judgment of Disbarment

IT IS FURTHER ORDERED that John M. Wilka shall on or before December 29, 2021, pay to the State Bar of South Dakota \$4,368.87 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 December 28, 2022.

DATED at Pierre, South Dakota, this 29th day of October 2021.

BY THE COURT:

ATTEST:

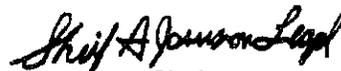
  
\_\_\_\_\_  
Clerk of the Supreme Court  
(SEAL)

  
\_\_\_\_\_  
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

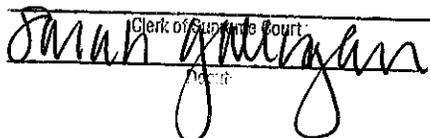
OCT 29 2021

  
Clerk

STATE OF SOUTH DAKOTA  
In the Supreme Court

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

29 day of Oct, 2021

  
\_\_\_\_\_  
Clerk of Supreme Court



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A person wearing a plaid shirt and dark pants is holding a large, yellow, plush teddy bear. The scene is outdoors with dry leaves on the ground. The text is overlaid on a semi-transparent dark grey box.

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:

----

USE THE LINKED SESSION TITLES BELOW TO REGISTER.

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

COURT IMPROVEMENT PROGRAM SESSIONS SPONSORED BY UJS AND CPCMC



## Why It's Important To Keep Your Emotions In Check After Learning a Malpractice Claim Is In The Works

It's quite normal for an attorney to have an emotional response after learning a malpractice claim is on the way. Problems arise, however, if the emotional response happens to be an irrational response that doesn't get worked through. Sometimes the situation is viewed as a personal affront. "How dare my client do this" or "How dare someone question my abilities!" Sometimes the response is one of dismay. "I can't believe this is happening" or "Surely my client must be misinformed." Others respond with an outright denial of the situation, perhaps out of a fear of the unknown. "This will never go anywhere" or "To even acknowledge it

would give it unwarranted credence so I'm going to completely ignore it." There are even those whose response is one of extreme embarrassment. These folks do everything they can to hide the situation from everyone including their partners and those who could be of great help in trying to fix the problem, for example, their malpractice insurer. "What are you talking about?" or "What claim? There is no claim." If you ever fear you are about to find yourself on the receiving end of a malpractice claim, it's in your best interest to do all that you can to work through your emotions or at least keep any unwarranted ones in check.

**Can you give an example of how an emotional response can cause problems?**

Sure, here is a great example. On occasion, an attorney is well aware that a mistake has been made but the client has no idea that something has gone wrong. Think blowing a statute of limitations date or the trial court granting summary judgment against your client due to procedural failures that were your fault. When something like this happens, sometimes an attorney will ignore or try to hide the situation out of a problematic emotional response like fear or embarrassment. Should you ever find yourself in a similar situation, don't go there. Just as an infection can wreck physical havoc if left unattended or not properly treated, a known incident you completely ignore or try to hide will only make things worse.

**And why is that?**

For starters, any significant delay in informing the client and/or in failing to timely and responsibly address the situation can all too easily be spun as you putting your own interests above the interests of your client. Trust me, juries can have field days with that one. Making matters worse, serious coverage concerns can also come into play due to a failure to timely report in accordance with your malpractice policy provisions. The best option will always be to immediately report the situation to your malpractice carrier, even before talking with your client. Let them do what you've paid them to do, which is handle these kinds of matters.

*Continued on page 36*

# GOOD COVERAGE. REASONABLE RATES.

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▶ Thomas J. Welk, Boyce Law Firm, Sioux Falls, SD

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Endorsed by



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



## What's the better course of action?

Once you become aware that a misstep has occurred or are informed that a claim is headed your way, stop and take a few moments to just process and feel whatever it is you feel. This isn't the time to start making decisions about how to deal with it. If you feel pulling and reviewing the subject file would be helpful, have at it. Just don't go any further. For example, hoping to strengthen your position by adding or removing something from the file would be a bad idea. Just report the situation to your malpractice carrier and wait for their guidance or the guidance of defense counsel if one is retained. Listen to whatever advice is shared and let these folks do their job.

We all have heard the saying "attorneys make the worst clients." This is the time to really take that advice to heart. You are now a client. Don't try to be your own lawyer if for no other reason than your judgment may be impaired due to all the emotions that are now coming into play. You are simply too close, too involved. You wouldn't have your clients handle their own lawsuits, would you? Follow your own advice and don't try to handle your own. Yes, this does mean that regardless of the merits of any allegations, you shouldn't even take it upon yourself to respond to a demand letter or a complaint because doing so could do more harm than good. This is not to say that you shouldn't meaningfully participate in your defense. Of course you should, just do so as the client.

Unfortunately, some attorneys will continue to want to act as their own lawyer and ultimately ignore the legal advice they are receiving. This often happens with attorneys who suffer from that debilitating

illness otherwise known as an inflated ego. Others will sometimes allow their emotions to spin out of control which will only exacerbate the entire situation. I can't say this enough. Don't go there.

My best advice is for you to respond as the professional you are. I can share that not all incidents turn into claims and, for those that do, many are resolved without a loss being paid. Remember that. With any luck, the problem may be something that can be addressed and resolved favorably for all involved through claims repair.

A final thought is to encourage you to view all malpractice claims and incidents as a learning opportunity when you are emotionally able to do so. No one is a bad attorney or a bad person simply because they made a mistake. True professionals respond by looking critically at all aspects of the incident or claim in order to consider how the situation might have been avoided or handled differently. Look for it. It's there. The purpose is to understand what happened and learn from it if for no other reason than to make sure something similar won't ever happen again. You might ask the following. What could have prevented the problem? What procedural changes could be made? What might I have done differently? Asking and answering these kinds of questions can lead to very positive results going forward if you take advantage of the opportunity. Don't miss it. Personally, I believe that no one is defined by the mistakes that he or she makes in life. Rather, we each are defined by how we respond to the mistakes we make. Seek to be better for the experience. After all, isn't that part of what it means to be a professional? I certainly think so.



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.

# *In Memoriam*



David Gerdes  
August 10, 1942 -  
September 29, 2021

David A. Gerdes was born in Aberdeen, SD on August 10, 1942 to Cyril, “Bud”, and Lorraine (Boyle) Gerdes. He grew up in Lemmon, graduating in 1960. While in high school, he was an AFS Foreign Exchange Student to Turkey. Dave was a lieutenant in the South Dakota National Guard. His signal corps unit was called up and sent to Seattle, WA during the Berlin Crisis.

He graduated from Northern in 1965 and entered USD Law School. He was Managing Editor of the South Dakota Law Review and graduated with honors in 1968. While in law school, he met Karen Hassinger on a blind date to the Barrister’s Ball. They were married on August 3rd 1968 in Aberdeen.

Dave practiced law for forty years. When he ended his career with May, Adam, Gerdes and Thompson, he had created a legacy of excellence. Dave was a skilled litigator and tried over 70 jury trials. He was a tremendous lobbyist as well; he was proud to represent the State Medical Association, the investor owned Electric Utilities and General Motors among many others over the years. Dave knew as much about South Dakota law in the areas of medicine, utilities and insurance as there was to know.

Dave led a life of service and giving back to his community and state, using his experience and talents on behalf of the bar, the USD law school, and his church. He led the state bar of South Dakota serving as its President in 1992. He was on the Disciplinary Board and the Professionalism Committee, serving as Chairman of both. He spent many years on the board of the USD Law School Foundation, and was on several advisory committees for the 8th Circuit. He was a member of the National Conference of Bar Presidents, the Jackrabbit Bar Association, the American Judicature Society, Energy Bar Association, American Board of Trial Advocates and the Lawyer-Pilots Bar Association. He was president of the Pierre Chamber of Commerce,

and sang in the First United Methodist Church choir. He was also in Kiwanis and Rotary.

Dave enjoyed golf, his yellow Corvette, poker, hunting, and boating with his family. He also loved to play pool and enjoyed “schooling” his children in a game or two. Dave was a private pilot with an instrument rating and was proud that Karen was a pilot also. He loved gadgets and technology and was often trying out his latest find.

Dave had a wonderful sense of humor. He also loved to travel. Whether by plane, train, or automobile, the family took many trips to visit friends, family or simply to create memories of new places, and adventures.

Dave’s professional life was always balanced with family time. Often a work obligation would be combined with a family vacation. One of the most memorable was a trip to London for an ABA meeting. The family spent 3 weeks overseas visiting friends and exploring the many sites in London, Paris, Geneva, and Norway. Those memories are priceless.

He is survived by his wife Karen of Pierre, his son Jim (Gretchen) of Spearfish and daughter Amy (Mike) Thelen of Sioux Falls; brother Karl (Pam) Gerdes of Davis, CA, and his Norwegian AFS brother Bjorn (Sissel) Opjordsmoen. He is also survived by his three grand cats and one grand dog.

He was preceded in death by his parents and infant son John.

In lieu of flowers, memorials can be designated to Countryside Hospice and Memory Care, Pierre/Ft. Pierre Boys and Girls Club or First United Methodist Church.

There will be a gathering of family and friends at 7:00 p.m. on Monday, October 11, at Drifters in Ft. Pierre. Please join us in celebrating David’s life.



James E. McCulloch

James E. McCulloch, 74, of Vermillion, South Dakota, passed away peacefully on September 25, 2021. He was preceded in death by his parents, Charles W. McCulloch and Florence B. McCulloch (Dorn) and his beloved black lab, Maggie.

He is survived by his two brothers, Douglas C. McCulloch (Barbara Nelson) and Scott A. McCulloch (Jennifer), his sister, Linda J. McCulloch (James Holt), and greatly missed by his energetic puppy, Ellie.

After graduating from Sioux Falls Washington High School in 1965, Jim received a Degree in Journalism in 1969 from the University of South Dakota as well as a Law Degree from USD Law School in 1977. He was a staff writer and later the State Editor for the Argus Leader in the mid-1970s. He started his law career in Vermillion, South Dakota and practiced there ever since. During the Vietnam War, Jim served in the U. S. Army in the 7th Psychological Operations Group. He was stationed in Okinawa as a radio script writer for the Voice of the United Nations Command and was instrumental in producing news analyses and commentaries for broadcasting. He finished his tour in Korea along the demilitarized zone.

Jim loved all outdoor activities especially those on and along the Missouri River. His photographic memory always came in handy when playing trivia games and you were on his team!

A Memorial Visitation will be held on Friday, November 5, 2021 from 5:00-7:00 p.m. at Hansen Funeral Home, 1120 East Main, Vermillion, South Dakota 57069.

In lieu of flowers, memorial contributions may be made to the Vermillion Public School Foundation <https://vermillionpsf.org/> or the Heartland Humane Society <https://heartlandhumanesociety.net/>



William L. Severns

William L. Severns of Spearfish, SD passed away peacefully on October 13, 2021, with loving family at his side after a long journey struggling from the effects of Parkinson's Disease with Lewy Body Dementia.

Born May 24, 1944, in Chicago, Illinois to Roger L. Severns, Sr. and Margaret Lauritzen Severns. Will grew up and attended school in Chicago. In 1949 the family purchased a log cabin home on Strawberry Hill outside of the city of Deadwood, SD where they spent every summer.

After graduation from high school, Will received a full scholarship to Trinity College in Hartford, Connecticut. He graduated with a B.A. in History in 1966 and earned his Juris Doctor degree in 1969 from the University of Chicago Law School.

He was admitted to the South Dakota Bar Association and U.S. District Court in 1969 and decided to move to the family cabin and begin his career in Deadwood. Will practiced law in Deadwood and served as City Attorney of both Deadwood and Central City. He was appointed as a Magistrate Judge and served in Deadwood, Sturgis, Custer, Hot Springs, and finally in Rapid City where he retired in 2009. In 2019 Will was recognized by the State Bar of South Dakota for fifty years of valuable and meritorious service and was a life-long member of the SD Bar Association.

Will had a variety of interesting hobbies. He was an actor in The Trial of Jack McCall in Deadwood, SD. He played every role except for Calamity Jane and Alkali Ike. He was a jazz music enthusiast. He loved listening to live jazz during his time in Chicago and he would also visit New Orleans to listen to live jazz played by his childhood friend George Finola. He had an extensive collection of jazz records from the 20s, 30s, and 40s. Will also enjoyed photography. He was almost always behind the camera taking photos or videos at family gatherings, at events for his children and grandchildren, and on family vacations. He loved to document and organize the special memories for his children and grandchildren.

He was involved in many civic and church activities. He was a past Exalted Ruler and lifelong member of the Deadwood Elks Club, a member of the State Historical Society, Past-President of the Deadwood Chamber of Commerce, a member of the Deadwood Jaycees and supported Deadwood History, Inc. Will was baptized and raised in the Episcopal faith. He served on the Vestry of St. John's Episcopal in Deadwood and taught Sunday School. After his marriage, he joined the Catholic Church and served as a Lector, Eucharistic Minister and Greeter/Usher. He was a member of the Knights of Columbus at St. Patrick's in Lead.

Will was introduced to Linda Weiers Hanken by her brother and sister-in-law at the Deadwood Elks Club. Linda and Will married in 1980 and he became a loving and dedicated father to Karie. In 1985 Kathryn (Katie) was born. He loved his family and was filled with pride and joy whenever he spoke of his girls and his six grandchildren.

Will is deeply loved and will be greatly missed by his surviving family; wife, Linda; daughters, Karie Hanken Kinney, Kathryn and her husband Erik Simonyak, and six grandchildren; Jordyn Sacrison, Jesse Sacrison, AJ Kinney, Ava Kinney, Charles Simonyak and William Simonyak all of Spearfish; brother-in-law; Larry and his wife Ruthie Weiers, Spearfish, and nieces and nephews. He is also survived by his special family friends Douglas and Patricia Braidwood and family of Virginia Beach, VA. He was preceded in death by his parents; Roger L. Severns, Sr. and Margaret L. Severns; brother, Roger L. Severns, Jr. and infant son, Michael Severns.

Mass of Christian Burial will be held at St. Joseph's Catholic Church in Spearfish on Tuesday October 19th at 2:00PM with visitation beginning at 12:30PM. Burial in Lead, SD at Holy Cross/Mountain Lawn Cemetery will be at 11AM on Wednesday, October 20th.

Arrangements are under the care of the Fidler-Isburg Funeral Chapels and Isburg Crematory of Spearfish. Online condolences may be written at [www.fidler-isburgfuneralchapels.com](http://www.fidler-isburgfuneralchapels.com).



Henry Eugene (Gene)  
Sechser

2/27/1937 - 9/28/2021

Gene passed away unexpectedly at his home in Mill Valley on September 28, 2021.

He was born in Sioux Falls, SD on February 27, 1937 and grew up on a farm with his parents, Henry Joseph Sechser and Lilian (Harmon) Sechser, his siblings, Sam, Catherine and Carole, and his beloved dog, Butch.

He attended Washington High School and graduated in 1955. After high school, he spent several years with the National Guard, and then he attended the University of South Dakota, receiving a Bachelor of Business Degree in 1961. He continued his education at University of South Dakota and received his law degree in 1963. After law school he resided in Indianapolis, working for the U.S. Department of the Treasury as an Estate and Gift Tax Attorney. In 1966 he moved to San Francisco and continued working for the Treasury Department until he retired in 2002.

He met the future love of his life, Mary Karen (Thalman) Sechser, in Washington, DC in 1966. After a brief courtship, they married in Wheeling, WV in 1967 and in 1968, their daughter, Lisa, was born.

Gene was an amazing husband, father and friend. He enjoyed family time, nurturing orchids, reading multiple newspapers a day, breezing through his daily Sudoku, road trips, lunches with his wife and friends, movies, and attending the weekly Marin Farmer's Market to pick up flowers for Karen.

He was a passionate Raider, A's and Lakers fan, and also enjoyed spending time watching NASCAR and a good tennis match. Gene always took the time to stop and pet a friendly dog.

Gene will be remembered for so many things, but ultimately, for his kindness, his sense of humor, his generosity and his practical advice. He was a loved man by all who knew him and he will truly be missed.

Gene is survived by his wife Karen; daughter Lisa and son-in-law Johnny Fort; his sister Catherine Larson and her husband Jim Dieli; sister Carole Baumgardner; and his multiple nieces and nephews; his granddog and his many friends.

A memorial Mass will be held at Mt. Carmel in Mill Valley on October 21, 2021 at 2:30 p.m.

In lieu of flowers, the family suggests donations to one of Gene's chosen charities: MALT (Marin Agricultural Land Trust), or The California State Park Foundation.

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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.

-----  
**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.

-----  
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 Rules Hearing No. 146 - November 9, 2021

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:

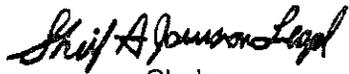
ATTEST:

  
\_\_\_\_\_  
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 Cheryl Gering, Circuit Judge, Yankton  
Honorable Jon Sogn, Circuit Judge, Sioux Falls  
Andrew Fergel, State Bar of South Dakota, Executive Director, Pierre  
Reed Rasmussen, Attorney, Aberdeen  
Bill Garry, Attorney, Sioux Falls  
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

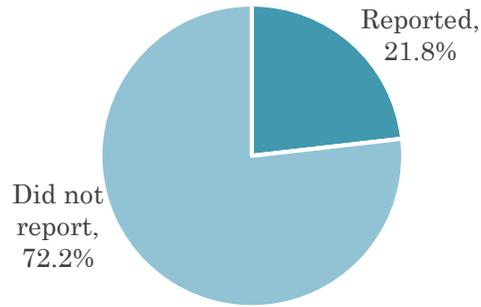
In February 2020, the State Bar submitted a proposed amendment to Rule 8.4 of the South Dakota Rules of Professional Conduct for lawyers. The proposed amendment sought to add a section to Rule 8.4 prohibiting certain harassing or discriminatory conduct. The proposal generated significant input from State 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

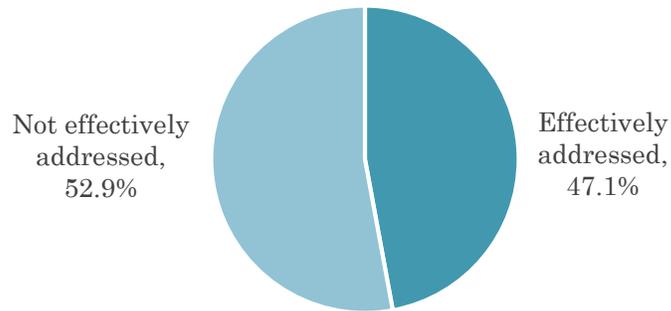


- I have experienced sexual harassment while working in the profession
- I have experienced sexual assault while working in the profession
- I have not experienced sexual assault or harassment while working in the profession

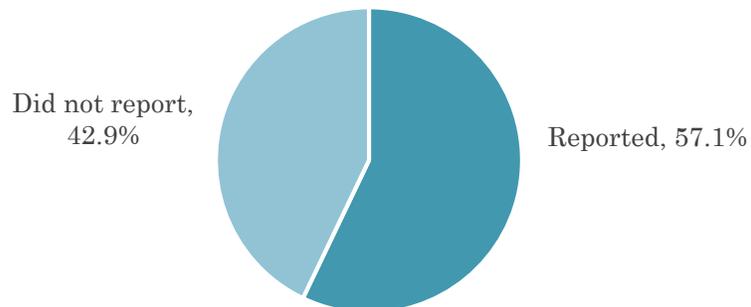
Only 21.8% of those who responded “yes” to experiencing sexual harassment reported it to someone they believed could effectively address the issue  
(N=78)



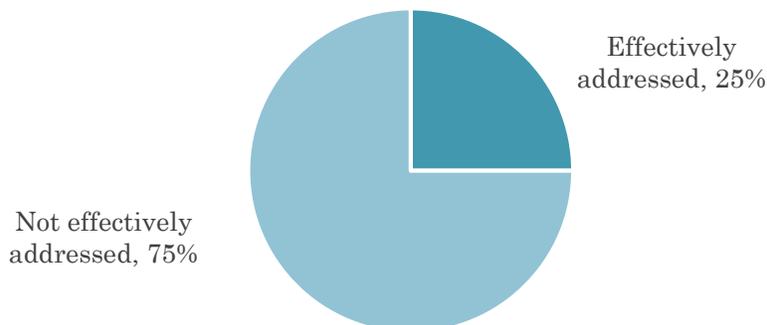
52.9% of those who reported their harassment felt that the issue was not effectively addressed  
(N=17)



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)~~ (e) 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

# Career Center

STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

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

## Attorney - Sioux Falls

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

## 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 only.

Closing date: Open Until Filled

For more information on the Unified Judicial System, please visit <http://ujls.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:**

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

"An Equal Opportunity Employer"

**Deputy State's Attorney - Yankton**

Department: Yankton County State's Attorney

Reports to: Yankton County State's Attorney

FLSA Status: Exempt

Grade: 13

Probationary Period: 180 days

**Position Description**

- The Deputy State's Attorney performs routine legal work in the prosecution of civil and criminal crimes, juvenile crimes, and juvenile abuse and neglect cases in Yankton County as well as representing the State in mental illness proceedings.

**Key Responsibilities (may not include all of the functions performed)**

- Reviewing offenses and evidence to make determination on charges and prosecuting violations of state law.
- Reviewing requests for subpoenas, petitions and other legal documents.
- Advising county offices and commissions on legal issues.
- Attending legal proceedings.

**Supervisory Responsibilities**

- Supervise support staff and interns.
- Represent the State's Attorney Office at public, private, and inter-governmental programs and events.
- Train and educate volunteers, law enforcement, and social workers on their roles and duties on legal issues and the court process duties.

**Qualifications**

**Required Knowledge, Skills and Abilities**

- Working knowledge of civil and criminal law and methods and practices of pleadings, court procedures, and rules of evidence.
- Working knowledge of principles, methods,

materials, and practices utilized in legal research.

- ☒ Working knowledge of general law and established precedents.
- ☒ Ability to prosecute cases.
- ☒ 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.

#### Education

- ☒ 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.

#### Experience

- ☒ 0-1 year

#### Other Requirements

- ☒ Ability to draft and use computer programs

Interested applicants can send a cover letter and resume to Rob Klimisch at [rob@co.yankton.sd.us](mailto:rob@co.yankton.sd.us) or Yankton County State's Attorney 410 Walnut #100 Yankton, SD 57078.

### **Associate Attorney – Rapid City**

Gunderson, Palmer, Nelson & Ashmore, LLP, an AV-Rated 20+ lawyer firm located in Rapid City and Pierre, South Dakota, is looking for an associate attorney for the firm's litigation section in our Rapid City office. The ideal candidate must be in good standing with the South Dakota State Bar and have strong legal research and writing skills.

The firm offers a comprehensive benefit plan, a competitive salary structure and the opportunity for professional development in the legal business work environment. You can learn more about our firm by

visiting our website at [gpna.com](http://gpna.com).

All inquiries will be kept confidential. Please send your cover letter, resume, unofficial transcript and references to [solsen@gpna.com](mailto:solsen@gpna.com) or 506 6th Street, Rapid City, SD 57701. Position opened until filled.

### **Associate Judge - Lower Brule**

LOWER BRULE SIOUX TRIBAL COURT  
ASSOCIATE JUDGE POSITION

#### Job Summary:

The Associate Judge is responsible for fairly and impartially hearing and deciding cases and matters within the jurisdiction of the Lower Brule Sioux Tribal Court pursuant to the LBST Tribal Code of Justice.

#### Duties & Functions:

1. Adjudicates criminal, civil, and juvenile cases as assigned by the Chief Judge.
2. Hears cases, makes evidentiary rulings, reviews pleadings and issues final orders, judgments, and decisions. Conducts legal research and issues timely decisions.
3. Prepares, issues and/or submits reports, letters, memorandum, and similar types of correspondence and communications with the Chief Judge, court personnel, litigants, parties to cases, attorneys, and LBST tribal administration personnel.
4. Issues orders, judgments, decrees, minute entries, summonses, subpoenas, search warrants, bench/arrest warrants arrest and other lawful orders of the court.
5. Assist with the development and implementation of appropriate policies, procedures, court forms and grant applications as directed and/or authorized by the Chief Judge.
6. Performs other duties that may be assigned by the Chief Judge.
7. The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level.

#### Required Skills and Abilities:

1. Ability to read and analyze, interpret and apply in written form the LBST Tribal laws.
2. Use Microsoft Windows operating system, Microsoft Office Suite and other computer software.
3. Conduct effective legal research.
4. Exercise sound legal judgment in rendering legal

opinions, reports and interpretation of facts and law.

Qualifications:

1. Must be a graduate of ABA accredited law school and a member in good standing of the South Dakota Bar Association.
2. Must possess knowledge of LBST laws, court rules and procedures, and applicable federal statutes such as the Indian Civil Rights Act (ICRA), Indian Child Welfare Act (ICWA), Violence Against Women Act (VAWA), Tribal Law and Order Act.
3. Must have the ability to understand and apply the laws and rules of the LBST Tribe with impartiality; excellent verbal and written communication skills.
4. Excellent interpersonal skills with demonstrated patience, tact and respect.
5. Ability to effectively establish priorities and meet deadlines.

Education & Experience Requirements:

1. Law degree from ABA accredited law school.
2. Member in good standing of the South Dakota State Bar Association.
3. Knowledge or experience with Indian Law and/or working with tribal communities.

Salary: Negotiable, depending on experience

Closing Date: Open until filled

Applications shall be in writing, to include a professional resume, legal qualifications and any other submissions at the option of the applicant. Contact Chief Judge Lorrie Miner at Lower Brule Tribal Court (605-473-2010) if you have any questions. Please submit application materials to [lorrieminer@lowerbrule.net](mailto:lorrieminer@lowerbrule.net)

**Senior Assistant City Attorney - Sioux Falls**

HIRING RANGE DOQ: \$3,476.80 - \$3,886.40 bi-weekly

DEADLINE FOR FILING: Wednesday, November 10, 2021

THE POSITION

Perform advanced professional legal services representing serious and complicated aspects of the law that require extensive research. Provide legal assistance, advice, counsel to, and representation

of City government, elected officials, officers, and employees regarding complex legal matters across various disciplines as assigned.

The current vacancy will have primary responsibilities for the City's compliance with the ADA.

QUALIFICATION STANDARDS

Graduation from an accredited school of law and a minimum of six (6) years' experience in the practice of law, preferably in public sector law, regulatory compliance work experience, or diversified program management experience including conducting research and/or investigations and analyzing data; or any such combination of education, experience, and training as may be acceptable to the hiring authority.

Admission in good standing to the State Bar of South Dakota.

APPLICATION AND SELECTION

Apply online at [www.siouxfalls.org/careers](http://www.siouxfalls.org/careers). Most qualified will be invited for testing. If an ADA accommodation is needed, please contact, 72 hours prior to closing date, 605-367-8740 or [recruiter@siouxfalls.org](mailto:recruiter@siouxfalls.org).

**Federal Public Defender - Pierre**

Districts of South Dakota and North Dakota  
101 South Main Avenue, Suite 400  
Sioux Falls, SD 57104  
Jason J. Tupman  
Federal Public Defender Telephone: (605) 330-4489  
Fax: (605) 330-4499

POSITION ANNOUNCEMENT

ASSISTANT FEDERAL PUBLIC DEFENDER

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

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

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

Qualifications: Required: (1) graduation from an accredited law school; (2) admission to practice in good standing before the highest court of a state or the District of Columbia; (3) admission to practice to the state bar of South Dakota Bar within a year of beginning employment; and (4) US citizenship or work authorization.

Above all we are looking for applicants with a demonstrated commitment to indigent defense, and an ability to work well in a team environment. We value court experience, creativity, and superior research and writing skills. We are willing to train the right candidate and are flexible as to start date.

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

How to Apply: Apply by emailing a letter of interest, resume, three references, and a recent writing sample in a single pdf document to SDX\_JOBS@fd.org. The position is open until filled.

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

Email: SDX\_JOBS@fd.org

Vacancy Announcement: September 21, 2021

### **Assistant General Counsel - Brookings**

South Dakota State University is seeking applicants for the position of an Assistant General Counsel. Under, and at the direction of, the SDSU Vice President and General Counsel, the SDSU Assistant General Counsel – Litigation and Employment supports the SDSU Vice President and General Counsel by: attending and representing the University in assigned administrative and legal proceedings, serving as lead or supporting litigation counsel as assigned; interfacing with clients and keeping them advised of developments and status of all matters regarding assigned pre-litigation and litigation matters; handling subpoenas, public records, and other document requests; providing guidance to SDSU Human Resources on labor and employment matters, including grievance support on behalf of SDSU as the employer; supporting the SDSU General Counsel interaction with EEOC, DOL, DOJ, including response and defense of inquiries and investigations; developing legal and factual research, analysis, and writing including but not limited to legal and factual research and analysis; drafting accurate and succinct contracts, legal, and non-legal documents; gathering, organizing, reviewing, and preparing materials related to legal services and proceedings; assisting with and/or performing assigned interviews and investigations; drafting and maintaining policies and procedures; and performing other duties as assigned. For a summary of the minimum and preferred qualifications, the application deadline, contact information for questions on position, and to apply, visit <https://YourFuture.sdbor.edu>, search for the position, and follow the electronic application process. For questions on the electronic employment process, contact SDSU Human Resources at (605) 688-4128.

SDSU is an AA/EEO employer. SDSU actively seeks to increase social and intellectual diversity among its faculty and staff. Women, minorities, veterans, and persons with disabilities are especially encouraged to apply.



# Upcoming Events

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*November 17 | Bar Commission Meeting | Teleconference*

*December 15 | Bar Commission Meeting | Teleconference*

*Go to*

*[www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com)  
for more upcoming events.*

