



State Bar of South Dakota



# APRIL

## 2022

NEWSLETTER

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## IN-HOUSE COUNSEL COMMITTEE MEETING

APRIL 21, 2022  
3PM - 4PM  
ZOOM MEETING

Open To All Bar Members

FEATURING

MEGHAN JOYCE  
EMPLOYMENT LAWYER

Employment Law  
Updates for the  
Occasional  
Employment  
Lawyer

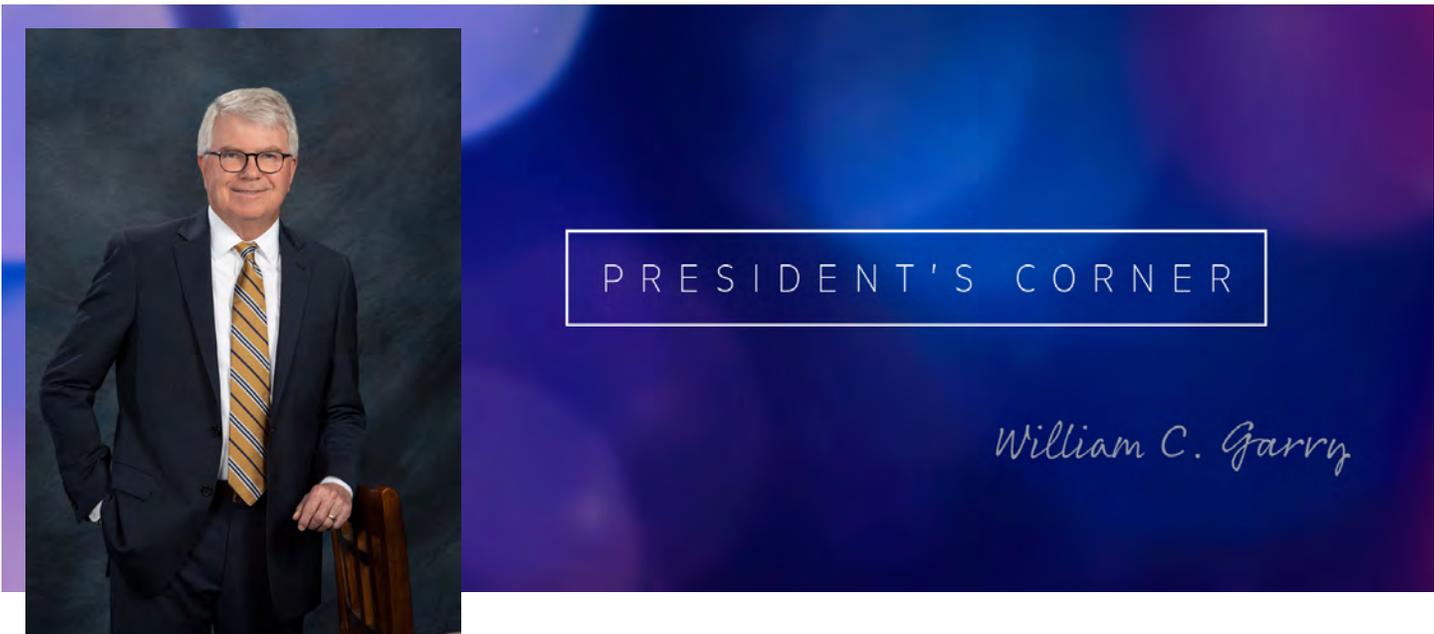
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# State Bar of South Dakota

April 2022 *Newsletter* Issue 4

- 4 President's Corner  
William C. Garry
- 10 Dean's List: News From the Law School  
Neil Fulton
- 26 Why Purchasing Legal Malpractice Insurance Is Always a Good  
Business Decision  
ALPS Risk Manager Mark Bassingthwaite
- 29 ABA Bar Association State Delegate Report  
Dick Travis
- 34 4 Simple Steps to Conquer Paper Paralysis  
Mrg Simon
- 34 The New Parenting Education Rule - What You Need to Know  
Elizabeth A. Rosenbaum

- 
- 8 Fellows of the South Dakota Bar Foundation
  - 12 A2J Superheroes
  - 13 2022 Annual Convention CLE Tentative Agenda
  - 14 General Announcements
  - 21 South Dakota Deposition Academy Registration
  - 23 Request for Committee Appointments
  - 30 In Memoriam
  - 33 Solace News
  - 42 Letter from the Bar Examiners Office
  - 45 Recently Adopted Supreme Court Rules
  - 71 Judgment of Censure
  - 94 Career Center
  - 102 Upcoming Events



Another legislative session is in the books. Once again, we are very fortunate to have several lawyers serving in the Senate and House of Representatives. Here is a rare photograph of them together on the steps of the Capitol.



*Back row left to right: Steven Haugaard, Michael Diedrich, and Ryan Cwach  
Middle Row left to right: Timothy Johns, Arthur Rusch, Lee Schoenbeck, and Scott Odenbach  
Front row left to right: Jon Hansen, David Wheeler, Bethany Soye, Will Mortenson, and Mike Stevens*

These lawyers sacrifice significant time away from their law practices and families to serve the State and the Bar. We are grateful for their dedication, leadership and service.

I also want to recognize Andy Fergel and Beth Overmoe for their lobbying efforts on matters impacting the Bar. The legislative session places additional demands on their primary roles as Executive Director and Strategic Plan Coordinator. Nonetheless, they are to be commended for the great job they do in their “secondary” roles as lobbyists.

This month I introduce you to John Richter, an At Large Bar Commissioner from Pierre.

### **John T. Richter**

To follow-up last month's President's Corner, I was asked to describe what went into the thought process of running for Bar Commissioner. I decided to run for Bar Commissioner around this time last year because it would provide an opportunity to (1) raise the profile of those who have dedicated their careers to public service; (2) recognize outstanding achievements within the Bar; and (3) build camaraderie across our profession.

In relation to these points, I wanted to first mention that the Administrative Law Committee and Public Sector Section have created a forum, called the Public Servant Spotlight, to interact with each other and highlight some of the outstanding individuals within our profession. For the past several months, we've arranged a speaker or a panel of speakers to visit with us on a variety of topics. Past speakers include Justice Mark Salter, Judge Bobbi Rank, Judge Camela Theeler, Judge Larry Long, LRC Executive Director Reed Holwegner, Lisa Marso of the Boyce Law Firm, LLP, Dave Pfeifle of the South Dakota Assurance Alliance, Jean Bender of Davenport, Evans, Hurwitz & Smith, LLP, and Bob Riter of Riter Rogers, LLP. This month's speaker will be U.S. Bankruptcy Judge Charles L. Nail, Jr. Going forward, the Public Servant Spotlight presentations will be open to all members of the Bar and law students.

Next, I'm excited to share that the Public Sector Section is looking to recognize the public servants of the State Bar of South Dakota who have had a distinct impact on the law, governmental entities, or the legal profession in South Dakota in the past year through a Public Sector Attorney of the Year award. Nominations and any supporting materials (i.e., letters) should be submitted to Public Sector President Tracey Dollison Decker no later than April 29, 2022. See flyer in this month's Bar Newsletter.

Finally, over the past several months, we've heard repeatedly from our speakers about the importance of Bar involvement and having a variety of voices at the table. Being in a leadership role with the Administrative Law Committee and the Public Sector Section, I've had an opportunity to see firsthand a

phenomenal level of engagement and commitment by both groups. Moreover, I've been continually impressed by the generosity of the members of our Bar who, as a whole, are willing to donate their time and share their experiences for the betterment of the profession. I cannot thank everyone enough for their contributions! To echo President Garry's comments from last month, I'd encourage everyone to get involved – it's been a very rewarding experience!





## YOUNG LAWYERS SECTION STATE BAR OF SOUTH DAKOTA

### **THE YOUNG LAWYERS SECTION SEEKS NOMIATIONS FOR THE YOUNG LAWYER OF THE YEAR AWARD**

PRESIDENT  
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130 Kansas City Street Ste 310  
Rapid City, SD, 57701  
(605) 394-2181  
Ole.Olesen@pennco.org

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anthony@janklowabdallah.com

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Members of the State Bar of South Dakota are invited to submit nominations for the 2022 South Dakota Young Lawyer of the Year. This award will be presented at the Annual Meeting in June. Please consider nominating a South Dakota Young Lawyer for this prestigious award. To be considered, the nominee must be a member of the State Bar of South Dakota in good standing and must not have reached the age of 36 years by June 24, 2022 or been admitted to practice in South Dakota or any other state for more than 10 years. Lawyers are only eligible to receive the award one time and lawyers serving on the Young Lawyers Board are not eligible for consideration. Nominees should exemplify the following characteristics:

1. Professional excellence.
2. Dedication to serving the legal profession and the Bar.
3. Service to their community.
4. A reputation that advances legal ethics and professional responsibility.

Nominating attorneys should submit a brief letter in support of their nominee to Young Lawyer President-Elect Anthony Sutton at [anthony@janklowabdallah.com](mailto:anthony@janklowabdallah.com) no later than **Monday, May 9, 2022**. The nominating attorney should detail how the nominee meets the above-referenced characteristics.



# State Bar of South Dakota Bar, Section, & Committee Leadership

*We ♥ our volunteers*  
VOLUNTEER APPRECIATION MONTH

## BAR COMMISSION

President - William Garry, Sioux Falls  
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Marso, Sioux Falls  
1st Circuit - Marilyn Trefz  
2nd Circuit - Renee Christensen  
3rd Circuit - Matthew Roby  
4th Circuit - Drew Skjoldal  
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6th Circuit - Brent Kempema  
7th Circuit - Kirsten Aasen  
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John T. Richter  
Tim Dougherty

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N. Bob Pesall, Co-CH, Flandreau

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Gary Thimsen, Co-CH, Sioux Falls

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### WORKERS COMPENSATION

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### REAL PROPERTY, PROBATE, & TRUST

Elliot Bloom, Rapid City

### YOUNG LAWYERS

Ole Olesen, Rapid City

# *Fellows of the South Dakota Bar Foundation*

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

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

Fred & Luella Cozad

## *Life Fellow - \$25,000 plus*

Frank L. Farrar

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

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Robert E. Hayes

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William F. Day, Jr.  
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## *Silver Fellows - \$1,000 (per year)*

Frankianne E. Coulter  
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Timothy J. Rensch

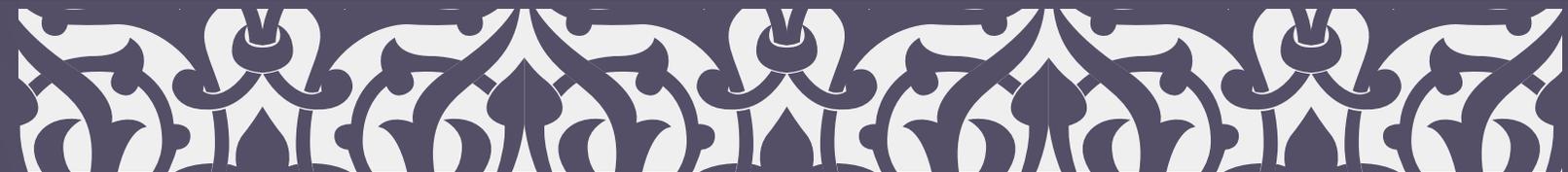
## *Presidential Fellows - \$10,000*

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Richard D. Casey  
Hon. Michael Day  
Robert B. Frieberg  
Thomas H. Frieberg  
William C. Garry  
David A. Gerdes  
Hon. David R. Gienapp  
Patrick G. Goetzinger  
G. Verne Goodsell  
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Carleton R. "Tex" Hoy  
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Hon. Charles B. Kornmann  
Lisa Hansen Marso  
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Jeffrey T. Sveen  
Charles M. Thompson  
Richard L. Travis  
Thomas J. Welk  
Terry G. Westergaard

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

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Hon. John L. Brown	Hon. Bobbi J. Rank
Mary Jane Cleary	Robert C. Riter, Jr.
Andrew L. Fergel	Thomas Eugene Simmons
Neil Fulton	Jason R.F. Sutton
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Craig A. Kennedy	Barry R. Vickrey
Hon. Judith K. Meierhenry	

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



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



Law school curriculum does not strike everyone as a scintillating topic. Many lawyers recall only the adage, “scare you to death, work you to death, bore you to death,” as the three-year arc of curriculum. There is considerably more to it than that, of course. Certain classes like torts and contracts are considered foundational, but there is not perfect agreement on which classes are on that list of being “fundamental” and when they should be presented. For a school our size, curriculum development includes the challenges of a limited number of faculty to teach classes, a limited number of students to take them, and a limited number of rooms in which to fit at times that work for both groups. Accreditation dictates a minimum and maximum number of credits and imposes some distribution within key areas like writing and experiential learning. We try to incorporate classes that meet new developments in the law as well as evergreen legal knowledge. Developing a curriculum that optimizes the Law School’s resources and meets the various needs of lawyers going into many settings as best we can is a difficult but important exercise. Deliberation among faculty about how to build the curriculum is a perpetual effort; it produces significant changes to what we teach and how.

This month I'd like to share some significant changes we are making to our writing curriculum. Everyone realizes that being a skilled writer is invaluable to having success as a lawyer. Words are the stock in trade of lawyers, particularly written words. Teaching law students to write effectively is challenging because of its importance, the variety of settings in which lawyers write, and the increasingly weak base of writing skill and experience that students bring to law school. As a

result, one of the main topics of curricular discussion within the faculty this year has been developing our writing curriculum to maximum impact.

ABA accreditation requires all law schools to require a first-year writing class and an upper-level writing class. The accreditation standards provide little detail other than that those experiences be “rigorous,” as assessed through the number and nature of projects, the number of drafts required, and the form and extent of individual feedback provided to students. There is a lot of room for creativity in meeting the standards, but doing so in a way that meets the spirit of the rule is highly labor intensive for both students and faculty.

We have met the first-year requirement in the traditional way. Students begin with learning issue spotting and analysis, learn and implement the IRAC system, and apply those developing skills into formal products like memos, trial briefs, and an appellate brief. Professor Wendy Hess, Director of the Fundamental Legal Skills and Legal Writing Program, places emphasis on individual student feedback at regular interviews. That feedback is detailed and ranges from substance to basic writing technique as each student needs. By the end of first year, all students have an understanding of legal analysis and how to translate that to written advocacy. We have continued to develop this program with smaller section sizes for more feedback, utilizing computer software that provides training modules and feedback on writing technique, and coordination with other first-year courses to reinforce foundational concepts.

Traditionally, our upper-level requirement has required

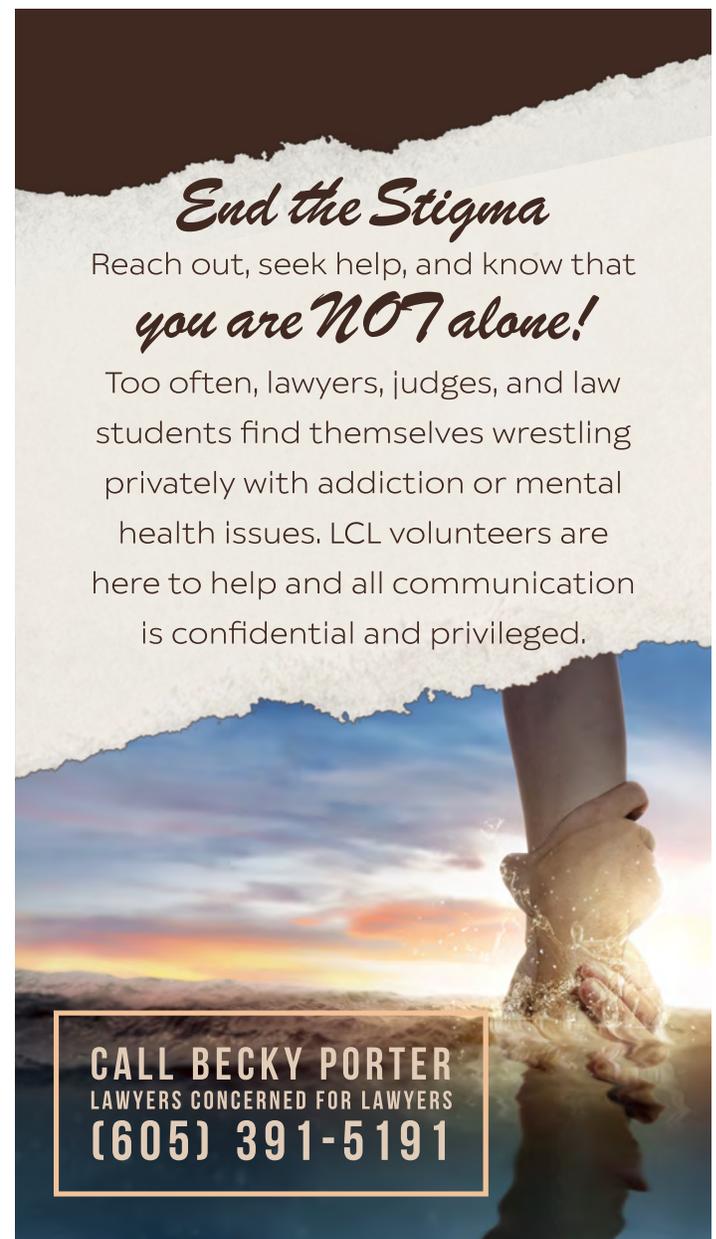
a 25-page academic paper, law school case note, or appellate brief. This year, faculty approved two significant changes to our upper-level requirement. First, the 1L class this fall will be required to take a writing class in all three years. Few law schools require writing in all three years, but I believe that the Law School is right to put that emphasis on developing law students as writers. Second, we are expanding the classes that meet the writing requirement to include more “practical” drafting courses. We are adding a class on contract drafting, moving some currently designated experiential courses to our list of writing courses (which will also get more students out into the world to get those necessary experiential credits), and exploring more classes on both the litigation and transaction side that require significant practical writing with faculty feedback. Our goal is to focus on showing students that excellent writing requires multiple drafts, input from others, and significant planning and care. In short, we’re requiring students to write every year and developing more ways for them to learn how to write well.

Beyond these formal requirements, faculty continue to incorporate more writing across the curriculum. Students will write in a variety of settings when they get into practice, so we are working to provide a variety of writing experiences in law school. The law practice drafting class continues to bring practitioners in to teach students how to draft basic pleadings, findings of fact and conclusions of law, a variety of transactional documents, and other practical writing projects. In evidence, students must draft motions in limine and they prepare pleadings in civil procedure. Students in legislation do drafts of multiple statutes in proper form for the South Dakota Legislature. We are adding a class on writing and editing technique to boost the mechanical writing skills for students who take it.

All these steps have a couple shared purposes. First, they place emphasis on developing our students into fundamentally sound writers. The importance of that cannot be overstated. Nor can the difficulty; graduates need to continue to focus on developing their skills once they get into the world. Second, making legal writing a spine of our curriculum helps create an unbroken line of preparation that integrates skills and doctrine. This is vital to prepare our graduates for practice. It will become more so as the Next Gen Bar Exam shifts to greater emphasis on skills testing in the bar exam itself. We need to keep improving this focus because it produces

better law students, better prepared bar applicants, and better lawyers in practice. We will never have perfectly prepared lawyers, there is too much that experience must teach, but we can keep working to perfect our preparation.

Personally, I think law school curriculum is very interesting and exciting. Legal writing is just one slice of our curriculum, but a crucial one and one that is a focus for faculty. I hope this gives a little insight into how we are trying to do great writing instruction. If it inspires any questions or suggestions for you, please get in touch. If you send a well written email, I might even award some extra credit!



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# 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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### Special Thanks to:

BETH BALOUN  
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MARWIN SMITH  
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For their help on  
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A2J JUSTICE SQUAD?**

PLEASE SEND A MESSAGE TO DENISE LANGLEY AT:  
ACCESS.TO.JUSTICE@SDBAR.NET

# 2022 Annual Convention

## CLE Tentive Agenda

**REGISTRATION  
OPENING SOON**

### Wednesday - June 22nd

- 1:00 PM - ALPS
- 1:00 PM - Election Law Updates
- 3:30 PM - Common Handbook/Company Policy  
Drafting Issues

### Thursday - June 23rd

- 6:30 AM - Early Bird
- 8:00 AM - Legal Writing with Kirsten Davis
- 1:00 PM - Bystander Involvement: A Proactive Approach  
to Resolving Sex-based Harassment  
(Completion of this training meets the requirements of Supreme Court Rule 22-06)
- 3:30 PM - Court Security: What a Lawyer Needs  
To Know

# Stay Tuned for All Social Event Information

# ANNOUNCEMENTS

The South Dakota Department of Human Services  
is pleased to announce that

*Alexa Moeller*

has joined our legal department as deputy counsel  
effective February 28, 2022.

SD Department of Human Services  
Hillsview Plaza  
C/O 500 East Capitol Avenue  
Pierre, SD 57501

Telephone: (605) 773-5990  
Facsimile: (605) 773-5483

[alexa.moeller@state.sd.us](mailto:alexa.moeller@state.sd.us)

Redstone Law Firm LLP  
is pleased to announce that

*Alexander C. Ellman*

has joined the firm as a partner,  
effective April 1, 2022.

Redstone Law Firm LLP  
1300 W. 57th Street, Suite 101  
Sioux Falls, SD 57108

Telephone: (605) 331-2975  
Facsimile: (605) 331-6473

[alex@redstonelawfirm.com](mailto:alex@redstonelawfirm.com)

[www.redstonelawfirm.com](http://www.redstonelawfirm.com)

Goosmann Law Firm, PLC  
is pleased to announce that

*Elle Onisciuc*

has joined the firm as an attorney.

Goosmann Law Firm, PLC  
2101 W 69th St Ste 200  
Sioux Falls, SD 57108

Telephone: (605) 371-2000

[OnisciucE@goosmannlaw.com](mailto:OnisciucE@goosmannlaw.com)

[www.GoosmannLaw.com](http://www.GoosmannLaw.com)

BTC Trust Company of South Dakota  
is pleased to announce that

*Matthew J. Abel*

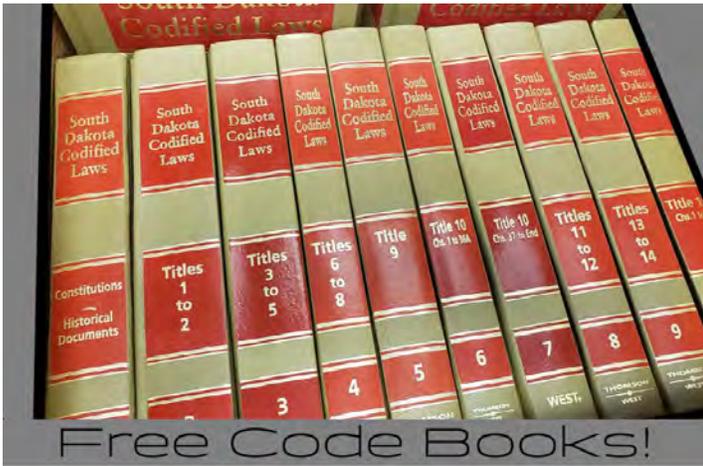
has been named President of the company.

BTC Trust Company of South Dakota  
5032 S. Bur Oak Place, Suite 131A  
Sioux Falls, SD 57108

Telephone: (605) 338-5033  
Facsimile: (605) 338-5116

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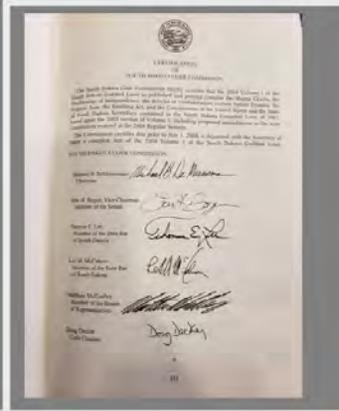
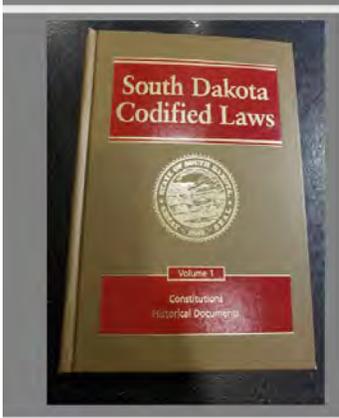
[www.BankersTrust.com/SouthDakota](http://www.BankersTrust.com/SouthDakota)



## Free Code Books!

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Books 1 thru 34 available  
Last updated in 2017

If interested, please contact:  
Jessi Graff 605-331-2975  
Redstone Law Firm – Sioux Falls  
jessi@redstonelawfirm.com



## LEGAL SERVICES CORPORATION Notice of Grant Funds Available for Calendar Year 2023

The Legal Services Corporation (LSC) announces the availability of grant funds to provide civil legal services to eligible clients during calendar year 2023. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. The list of service areas (and their descriptions) where grant opportunities are open are available at <https://www.lsc.gov/grants/basic-field-grant/lsc-service-areas/2023-service-areas-subject-competition>. The Request for Proposals (RFP), which includes instructions for preparing the grant proposal, will be published at <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant> on or around April 11, 2022. Applicants must file a Pre-Application and the grant application through GrantEase: LSC's grants management system.

Please visit <https://www.lsc.gov/grants/basic-field-grant> for filing dates, applicant eligibility, submission requirements, and updates regarding the LSC grants process. Please email inquiries pertaining to the LSC grants process to [LSCGrants@lsc.gov](mailto:LSCGrants@lsc.gov).

## OFFICE SHARING INVITATION

Rapid City attorneys Mitch Johnson and Brad Gordon are searching for attorneys to share their office suite located at 2902 West Main Street, Suite #1, Rapid City, South Dakota. We have 2 large offices available, large conference room, 2 legal assistant stations, sophisticated scanning and copy machine, extensive library, Westlaw, telephone system, postage meter machine and room for storage of files.

If interested, please call either  
Mitch Johnson (605) 381-6464 or  
Brad Gordon (605) 716-3040.



# April Law for Lunch

WEDNESDAY

APRIL 27, 2022

12:00 PM - 1:00 PM CDT

ZOOM

## Best Practices on Abuse & Neglect Cases

The State Bar is partnering with the Center for the Prevention of Child Maltreatment and the South Dakota Unified Judicial System on this monthly Court Improvement Program (CIP) training 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.

| Register  
Here |

# REGISTRATION AND RULES INFORMATION COMING SOON!

- TWO SHOTGUN STARTS AT 8:00 A.M. AND 2:00 P.M.
- 4-PERSON TEAM SCRAMBLE
- LUNCH WILL BE PROVIDED BETWEEN ROUNDS
- TOURNAMENT OPEN TO ALL BAR MEMBERS (WHICH INCLUDES THE JUDICIARY), SPOUSES/PARTNERS, COURT REPORTERS, AND LAW STUDENTS.
- ENTRY FEE IS \$125/PLAYER (\$500/TEAM)

Annual Bar Convention

The Golf Club at Red Rocks



ANNUAL  
**Golf**  
TOURNAMENT

**THURSDAY**  
JUNE 23, 2022  
THE GOLF CLUB AT RED ROCKS  
**RAPID CITY**

# **May CLE - Understanding the Juvenile Brain**

**Register  
Here**

**May 6th  
8 am - noon  
Washington Room  
Ramkota Hotel  
Rapid City, SD**

Dr. Brenna Tindall has been practicing in the field for over 10 years and is a Licensed Psychologist, Certified Addiction Specialist III, and on the Certified Sex Offender Management Board, and the Domestic Violence Management Board. She conducts a variety of evaluations such as psychological, diminished capacity, NGRI, competency, psychosexual, domestic violence, learning disability, cognitive, child contact screens, and trauma assessments. With her comprehensive qualifications and experience, she provides lawyers with the strategies they need to work with their clients.

**Co-Chairs - Alecia Fuller, Victoria Reker**

# MAY CLE

## FAMILY LAW

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REGISTER  
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### TOPICS:

NEW CHILD SUPPORT  
CHANGES & RULES

PARENTING TIME  
AGREEMENTS BEYOND  
NORMAL GUIDELINES

TAXES & STRATEGIES  
FOR DRAFTING  
AGREEMENTS RELATED  
TO TAX DEPENDENCY  
EXEMPTIONS

ADVANCED CUSTODY  
LITIGATION  
STRATEGIES

WASHINGTON  
ROOM

-

RAMKOTA  
HOTEL

-

RAPID CITY  
SOUTH DAKOTA

CHAIR -  
THOMAS  
KELLER

## **SOUTH DAKOTA DEPOSITION ACADEMY**

### **TO ALL MEMBERS OF THE STATE BAR OF SOUTH DAKOTA**

The popular Deposition Academy returns in 2022 for members of the South Dakota Bar. The third Deposition Academy is being held on Wednesday, July 13 through Friday, July 15 at the University of South Dakota Knudson School of Law.

Mastery of the skills needed to gather information, gain admissions, and test theories is essential to a successful trial practice. The Deposition Academy is designed to provide the tools any lawyer needs to confirm facts they know, validate facts they think they know, and learn facts they need to prove their case.

The Deposition Academy is a learning by experience course. Participants in the program will hear about techniques used in taking and defending depositions, see demonstrations by experienced trial lawyers, and then actually practice those skills in a simulated deposition setting. During each workshop, participants will perform and practice skills essential to effective deposition taking or defending and then receive suggestions from experienced members of the faculty that will allow them to enhance their skills. Each workshop adds skills so that by the conclusion of the Academy participants will have built new techniques, enhanced existing skills, and gained confidence.

During the program you will learn a technique that allows you to wring every last bit of information from a witness. You will master techniques developed by The National Institute for Trial Advocacy that include “The Funnel Technique” and “Getting a List.” We will also spend time practicing techniques to defend your client’s interests in a deposition and how to prepare a witness for their deposition.

New to the 2022 version of the Deposition Academy is information and ideas on the process of creating an outline for deposing a witness. There are subtle differences and important additions counsel should consider when the process moves online. This includes additional questions asked during the commitment stage and how exhibits will be distributed and used.

The process of building a top-notch team of instructors is currently underway. The State Bar Trial Academy Committee is working to select a team of women and men who are the best and brightest of the South Dakota Trial Bar. The team will include lawyers who represent plaintiffs and defendants and practice in both large and small firms. The University of South Dakota Knudson School of Law is again providing both space and logistical support for the Academy. The partnership of the Bar Association, the law school, and the South Dakota Chapter of ABOTA, ensures a high-quality course that is open to all.

**DEPOSITION ACADEMY REGISTRATION**  
**JULY 13 – 15, 2022**  
**USD KNUDSON SCHOOL OF LAW, VERMILLION, SD**

**SPONSORED BY THE STATE BAR OF SOUTH DAKOTA, THE SOUTH DAKOTA CHAPTER OF ABOTA  
AND THE UNIVERSITY OF SOUTH DAKOTA KNUDSON SCHOOL OF LAW**

**Name:** \_\_\_\_\_

**Firm or Organization:** \_\_\_\_\_

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

**Phone:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_

Please register me for the 2022 Deposition Academy. I enclose a deposit of \$500 (made payable to SD CLE, Inc.) towards the full tuition of \$1,000. I acknowledge that the deposit, should I be accepted and subsequently am not able to attend, is non-refundable, unless a replacement is found. If I am not accepted, I understand that my deposit will be returned to me. I understand that no interest will be payable on returned deposit. I further understand that I will be responsible for any costs associated with travel, lodging, and meals. If I am accepted, I will pay the balance of \$500 no later than July 1, 2022.

I understand there may be more applicants than available participant spaces and that the Deposition Academy is primarily intended for lawyers with limited litigation experience who desire to further develop his or her skills. The following professional information relative to my professional experience will be used by the admissions committee solely to determine whether I will be accepted for the Deposition Academy and the information will be used for no other purpose nor shared with any other entity. If there are more applicants than available space, I recognize that the admissions committee will accept the earlier application with deposit for similarly situated applicants.

**Size of firm or organization:** \_\_\_\_\_

**Years admitted to practice:** \_\_\_\_\_

**Number of depositions taken:** \_\_\_\_\_

**Number of depositions defended:** \_\_\_\_\_

**Brief description of your current practice:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Mail this completed registration form, together with a check in the amount of \$500, payable to SD CLE, Inc. to:**

**State Bar of South Dakota  
111 W Capitol Avenue #1  
Pierre, SD 57501**



## **PURPOSE**

The Public Sector Attorney of the Year Award recognizes the public servants of the State Bar of South Dakota who have had a distinct impact on the law, governmental entities, or the legal profession in South Dakota in the past year.

## **ELIGIBILITY**

An individual must be a member in good standing of the State Bar of South Dakota.

## **NOMINATIONS**

Nominations and any supporting materials (i.e., letters) should be submitted to Public Sector President Tracey Dollison Decker no later than April 29, 2022. At a minimum, each nomination should include a brief synopsis of the impact made by the nominee on the law, governmental entities, or the legal profession in South Dakota during the past year. The criteria for this award are intentionally broad. The attorney's credentials aren't the focus here; we're most interested in what they did in the past year to leave a mark. Materials received on behalf of a nominee will be reviewed by a subcommittee of the Public Sector Section and an award recipient will be chosen.

The award recipient will be announced at the June 2022 Bar Convention and in the State Bar Newsletter.



# State Bar of South Dakota

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Rory King

Dear State Bar of South Dakota Members:

As President-Elect, it is my privilege to fill vacancies on State Bar Standing and Special Committees for the 2022-2023 Association year. To assist our Appointments Committee with this important process, please complete the following survey to indicate your desire to *join or retain* your appointment to our State Bar Committees.

This survey also provides you the opportunity to join Sections of the Bar. State Bar Sections are self-governing and do not require presidential appointment but indicating your desire to join the Sections through this survey provides us with the information we need in order to add you to the Section's community on the State Bar website and notify Section leadership of your affiliation with the Section.

Requests for appointment should be made electronically, beginning on **March 1, 2022** at:

<https://www.surveymonkey.com/r/WCXLW7N>

Requests must be received by **April 15, 2022** for consideration. In addition to your request, we hope that you will encourage any other interested members to fill out the electronic application.

Thank you in advance for your assistance. Although there are a limited number of vacancies to fill, I will give each application thorough consideration. If you would like to discuss this process or application process, please feel free to contact Elizabeth Overmoe at (605) 929-5980, or [elizabeth.overmoe@sdbar.net](mailto:elizabeth.overmoe@sdbar.net).

The Appointments Committee and I look forward to hearing from you and thank you for your assistance in this important process for our State Bar.

Sincerely,

Lisa K. Marso  
President-Elect  
State Bar of South Dakota

## PUBLIC SERVANT SPOTLIGHT

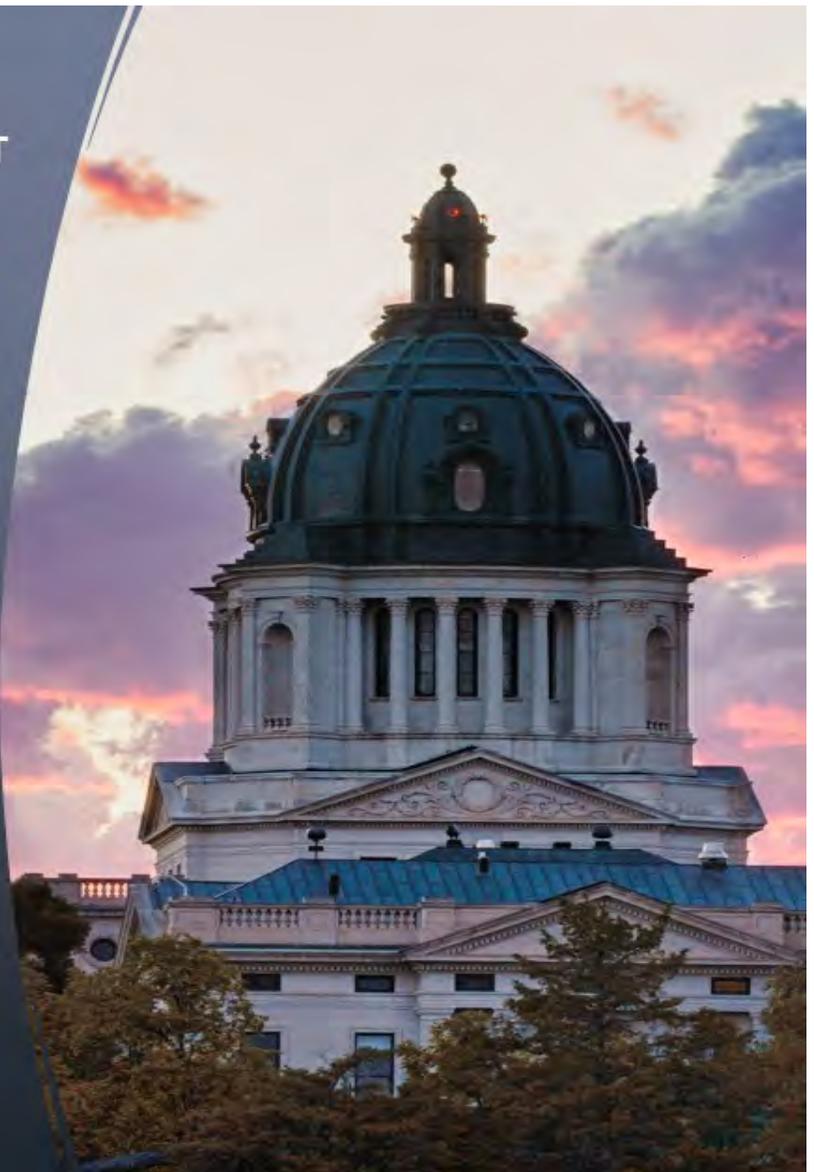
*featuring*

### U.S. Bankruptcy Judge Charles L. Nail, Jr.

The Public Sector Section, the Administrative Law Committee, and the Debtor/Creditor Committee invite you to join us on April 28<sup>th</sup> at 2:00 p.m., CT, via Zoom:

<https://us02web.zoom.us/j/84076348490?pwd=YjdiWlpTUHhuRmF1RE9rdVRic3RVZz09>

Judge Nail has agreed to visit with us and share his wealth of bankruptcy experience. Our goal is to help everyone become more comfortable in the bankruptcy realm - and hopefully more excited about bankruptcy in general!



## JOIN US IN THE FIGHT

Whether it's advocating for criminal legal reform, achieving full equality for the LGBTQ+ and Two Spirit community, defending the rights of Indigenous people and tribes to be free from discrimination, or preserving the right to have an abortion, the ACLU takes up the toughest civil liberties issues to defend all people from government abuse and overreach.

**VOLUNTEER YOUR LEGAL EXPERTISE WITH US OR SEND A CASE REFERRAL OUR WAY.**

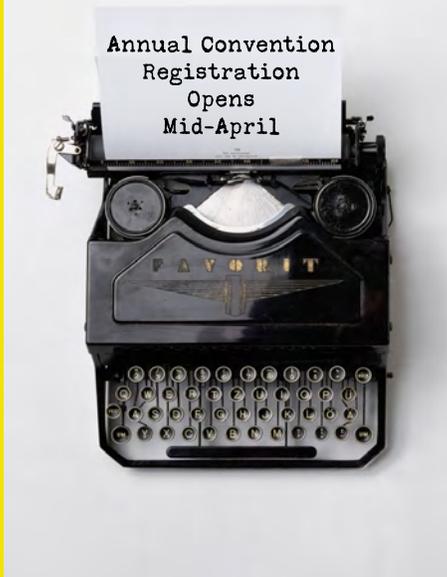
**Stephanie Amiotte, legal director • Andrew Malone, staff attorney**  
southdakota@aclu.org • P.O. Box 91952, Sioux Falls, SD 57109



**ACLU**

# Lawyers write. All. The. Time.

But are you writing as effectively, persuasively, and efficiently as you could? Would you like to improve your skills as a modern legal writer? Then this CLE is for you!



Over 270 bar members responded to a survey asking them to help design a CLE to meet your needs. Based on that survey, the CLE will include a variety of lessons on how to

- Write more persuasively and with greater ability to influence thought and action;
- Write more clearly by making better choices about organization and language;
- Write more effectively for online audiences; and
- Write with more awareness about how your writing shapes how others perceive you.

Kirsten Davis is a Professor of Law at Stetson University College of Law in St. Petersburg, Florida. Dr. Davis has been teaching lawyers and law students the art of legal writing for over twenty years. Drawing upon her expertise in both law and human communication, Dr. Davis will lead a CLE that will help you take your writing to the next level, whether you are a novice or experienced lawyer. This fun, fast moving, and interactive CLE will offer new ideas and practice for better, smarter, and modern legal writing.

June 23, 2022 ~ 8 AM

Ramkota Hotel

Rapid City ~ Annual Convention

Jennifer Williams,  
Chair



## Why Purchasing Legal Malpractice Insurance Is Always a Good Business Decision

As a risk manager for a nationwide legal malpractice insurer, I sure it comes as no surprise that I believe the purchase of legal malpractice insurance is a good business decision. I can also anticipate that at least a few of you reading this would welcome the opportunity to debate with me my claim that it is always a good business decision. In light of this, allow me to make my case; and I will start by sharing the reasons I hear that some lawyers, typically those who practice in the solo and small firm space, decide to go bare.

### Why would anyone decide to go bare?

The rationalizations run the gamut. Some try to justify the decision by declaring that malpractice premiums are beyond affordable. I'll hear "just look at what doctors

have to pay." Others decide that if they ever get sued, they'll just declare bankruptcy in order to avoid having to cover any resulting loss. Then there are those who choose to self-insure thinking the premium savings will more than offset any possible loss. I've even had lawyers tell me they've chosen to protect their assets in other ways. And then there's this one. "Having a malpractice policy simply invites claims. No insurance means no one will ever sue me because there's no deep pocket." I just shake my head over the naivety of that belief because it simply isn't true.

### What's wrong with that line of thinking?

My response to the any of above rationalizations always starts with this question. Knowing that lawyers and

those in their employ can and will make a mistake from time to time, what might the fallout be should a significant misstep ever occur on one of your client matters?

I encourage you to think about the answer as a member of our learned and honorable profession. Clearly, should a significant misstep ever occur, your client will be harmed in some fashion. Now put yourself in your client's shoes and ask yourself who should be held responsible, particularly if a financial loss is part of the equation? You know darn well what the answer is. After all, if a lawyer representing you on a personal injury matter blew a statute that resulted in a lost opportunity for any kind of recovery, you would expect to be made whole and you know it. You see, insuring for malpractice isn't about protecting yourself. It's about protecting your clients should something go wrong and that's the way it's supposed to be.

Next, I'll pass along the following information as another thought provoker. While numbers will vary between the states and over time, approximately 4% of lawyers practicing in the U.S. will face an allegation of malpractice in any given year. I will admit that a significant number of those allegations will resolve without any loss being paid; but I will also suggest this doesn't mean those claims have no impact. Time and money are going to be in play. Claims can easily take 6 to 24 months to resolve and defense costs on a claim with any merit at all can break that \$25,000 mark before you know it.

But that's not all. Lawyers who are sued can find that their income will drop for a period of time, particularly if they're self-insured and forced into devoting precious time and money defending themselves. It might also be the result of new business dropping off in light of the situation making it into the local news. Making matters worse, if the claim becomes something of a topic among the local bar and part of the story is that the involved lawyer was bare, it's pretty much a given that good referrals from other lawyers are going to drop off. All of this helps explain why legal malpractice claims for uninsured lawyers actually are a leading cause of lawyer bankruptcy.

Then, if pertinent, I'll address the affordability issue; and while I get the term "expensive" is relative to one's financial reality, legal malpractice insurance

premiums are nowhere near as expensive as some medical malpractice insurance premiums. Nor are they as expensive as defense costs and subsequent loss payments can be in non-frivolous claims. In addition, understand that the initial premium is going to be much lower than what lawyers who have been in practice and insured for a number of years are charged. This is due to the fact that coverage will start from the date a policy is first purchased. In other words, newly insured lawyers have limited exposure because they don't yet have a substantial amount of covered legal work under their belts. Thus, the odds of a covered claim arising from a newly insured practitioner are going to be much lower than those for a lawyer who has been insured and in practice for ten years or more. Yes, premiums will rise for a period of years as a newly insured lawyer does more and more work; but all things being equal, it should stabilize about six years in and will still be affordable for most lawyers.

Finally, if I need to focus on the financial risks and realities in order to address those who buy into the de facto self-insure approach, I'll ask this question. Are you religiously setting aside whatever you would have spent on premiums to deal with an allegation of malpractice? In terms of an answer, all I can say is that I've never come across a situation where that was happening; and truth be told, unless that pool is well into the six digits it's not going to be enough to put on a good defense, let alone cover a sizeable loss in any non-frivolous claim.

### **Okay, but why is it always a good decision?**

By addressing the reasons that I often hear for going bare, I feel I've presented a rather strong case that the purchase of a malpractice policy is a good business decision; but I recognize that for some I still need to go a bit further in light of my claim that it is "always" a good decision. Hopefully, the following list of a few additional benefits that come with putting coverage in place with the right insurer will help me convince those of you who still see it otherwise.

**1) It is a cost-effective way to protect your assets.** Think if you were to try to self-insure your entire exposure. Most firms, regardless of size, will never be able to build a pool of funds that would come close to the amount of coverage that a smaller percentage of those same dollars could buy.

**2) It can help with client acquisition.** When asked if you are covered, you certainly want to be able to answer in the affirmative. And know this, certain potential clients will not hire a firm unless the firm is able to document that they have an acceptable level of malpractice coverage in place.

**3) Coverage includes ready access to professionals who handle malpractice claims each and every day,** particularly if you purchase coverage from an insurer who staffs the claims department with licensed attorneys, as opposed to claims adjusters. Besides, the idiom “Doctors make the worst patients” holds true for lawyers as well. Deciding to try and represent yourself in response to a malpractice claim simply isn’t a good idea.

**4) In some of the states that require lawyers to disclose whether they are insured or not, other lawyers can and will check to see if a lawyer they wish to refer a client to or co-counsel with is insured.** If the answer is no, that’s a lost

business opportunity an uninsured lawyer will never know about.

**5) Even good lawyers and the competent staff in their employ make mistakes.** It happens; and when it does, well, all I can say is I’ve never been told the peace of mind the lawyer had knowing coverage was in place wasn’t worth the expense. In fact, I often hear quite the opposite.

With one caveat, all of the above is why I always view the purchase of a malpractice policy as good business decision. Just make sure that the insurer you ultimately purchase a policy from is financially stable and doesn’t have a history of going in and out of various geographic markets. There is value in working with an insurance company you can trust to have your back for the long haul.



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.



AMERICAN BAR ASSOCIATION  
STATE DELEGATE REPORT  
SOUTH DAKOTA  
Dick Travis  
dtravis@mayjohnson.com

2022 Virtual Midyear Meeting

The American Bar Association held its 83rd Midyear Meeting virtually on February 9 - 14, 2022. The conference had 2,400+ virtual registrants that included association members, law students, and state and local bar leaders from across the country. There were interactive sessions, networking opportunities, and dynamic speakers and presentations which allowed for discussion regarding the important issues facing our profession, country, and system of justice.

Highlights included the Nominating Committee Meeting which featured the [candidates](#) seeking office of the Association. The candidates provided remarks and answered questions from the membership. In addition, the Spirit of Excellence Luncheon provided an all-star event that celebrated the efforts, leadership, and accomplishments of lawyers for their outstanding achievements in the practice of law, and for their contributions and commitment to promoting a more racially and ethnically diverse legal profession. The biographies of each of the 2022 honorees is available via the [Commission on Racial and Ethnic Diversity in the Profession's webpage](#).

The House met on Valentine's Day, Monday, February 14<sup>th</sup>, 2022. [Nomination results](#) for Officer positions and Board of Governors members were announced. The Association President Reginald M. Turner, President-Elect nominee Mary L. Smith of Illinois, and the Honorable Paul A. Suttell, Chief Justice of the Supreme Court of Rhode Island and President of the Conference of Chief Justices, each gave compelling remarks to the House. The House voted on a variety of important current and trending topics and issues including, aging; civil rights and social justice; criminal justice; disability rights; domestic and sexual violence; election law (gerrymandering/redistricting/voting rights); health law; human rights; homelessness and poverty; immigration law; international law, intellectual property law; legal aid & indigent defense; legal education and admissions to the bar; military law; racial and ethnic justice; science and technology law; state and local government law; uniform state law; and the well-being of the legal profession. In addition, the House Committee on Issues of Concern to the Legal Profession presented a well-received panel presentation entitled: ["Does Partisan Gerrymandering Pose a Threat to OUR Democracy?" "Can we afford to be indifferent?"](#)

The [Daily Journal](#) of actions of the House, and the [Select Committee Report](#) which provides you with video links to the remarks of Association Officers, as well as a more comprehensive summary of the newly adopted polices and all other activities and issues that were addressed at the House meeting can be found on the [House of Delegates' webpage](#).

In addition, you may also find helpful information regarding the work of the ABA Coordinating Group on Practice Forward. The ABA Practice Forward [website](#) provides a clearinghouse of ABA resources and information to assist legal professionals and legal employers as they adjust their practice and work amid changes triggered by the COVID-19 pandemic. On the website you will also find a survey report, [Practicing Law in the Pandemic and Moving Forward](#), which tracks current and future expectations of practicing lawyers during the pandemic and gathers information about lawyer concerns, needs and goals moving forward. We encourage you to help get the word out in your state about data-driven findings and recommendations in the survey report and the valuable resources available on the Practice Forward website. We hope you will reach out to your state and local bars to request that they link to the Practice Forward website from their websites and offer to have presentations on the survey findings at their bar meetings. Anyone interested in a presentation should contact the [ABA Office of the President](#).

Your commitment to the Association really does make a difference. The ABA greatly [values your membership](#) and involvement. All ABA Members are encouraged to advocate for the Association and help increase awareness about the value of membership. Become an ABA Ambassador by using these [tools and resources](#) and help grow our community.

Thank you and I hope you will join us for the 2022 Annual Meeting in Chicago, IL, August 3-9th. If you have any questions or comments, or if you would like any assistance, please contact any of the members of the South Dakota delegation (Sarah Theophilus, Tamara Nash, Pat Goetzinger and me).

Best Regards,

Dick Travis  
ABA South Dakota State Delegate

# *In Memoriam*



Lee R, Burd  
January 11, 1946 -  
March 3, 2022

Lee R. Burd passed away March 3, 2022. Lee was born January 11, 1946, in Sioux Falls, to Vint and Belva Crusinberry. She had two older siblings (Robert and Mary Hope). Lee was the unexpected baby born 13 years after Hope. She had a full childhood, enjoying summers with her dear sister Hope in Michigan. Lee was a very good student and received a scholarship to Yankton College (yes, now a penitentiary). There she met Richard A. Burd, a good-looking senior who was working at the student union as a short order cook. She ordered a tuna sandwich which Dick declined to make, and she challenged him to a game of checkers. After Lee beating him too many times, Dick decided he must know this spunky girl more. So, clearly, after six weeks of dating, they did the responsible thing and got married in Laredo, Texas. Unfortunately, the private school didn't take a shine to not being notified in advance of the marriage and they were given the boot and expelled from school. At that point, they enrolled at USD in Vermillion. Nearing graduation, it wasn't clear what Lee would do with her life, and Dick had started building houses in the Vermillion area. On a whim, she decided to enroll in Law School at USD since Dick suggested that might be an option since she 'had a mouth on her'. She was accepted there. She was the first 'big' class of women having 7 in her entering class. She had many fond memories of law school, including being named "Smut Mouth of the Year" by upperclassmen which she proudly held at least two years running, probably more, but they weren't running the contest her entire life.

Lee paved the way for women in the law and everywhere. She was the first woman in South Dakota to be hired by a large private firm, Christopherson, Bailin and Anderson. Marv Bailin was a terrific mentor to Lee, and she spoke of him fondly, even continuing to visit with him in recent years. It was uncommon in 1971 to see women in private practice, much less as a trial lawyer. She had a case that was granted Certiorari to the United States Supreme Court, a very large honor

since typically fewer than 125 cases per year are granted Cert. Her case won.

In 1976 Lee and Dick became parents to their only daughter, who they named after Lee's beloved sister: Mary Hope Burd. The joke was she had only a 2-month pregnancy because she didn't realize she was pregnant until about two months before she gave birth. Unfortunately, at the time, and even now to some extent, the law practice doesn't seem to be very accepting of women having children. At the firm they did not ask if she was ok, if the baby was ok, or even what kind of baby she had. No, the question was: "When will you be returning to work?" Lee flatly said "Monday". And she did. And she vowed to start her own firm, which she did promptly. While Lee was deciding whether to have an office or work out of their home, Dick said that it was no different than him buying tools for his work. An office was her tool. Lee was concerned of the cost. Dick said "It doesn't matter if you jump off a 50' cliff or a 500' cliff, if the parachute doesn't open, you're dead at the bottom. Go all in." Dick always supported Lee and believed 100% in her and championed for women alongside Lee in his quiet way. Lee also had a faithful legal assistant, Karen Jaqua, that joined her in 1977 and stuck through well past Lee's retirement after working with Mary.

Lee retired from her private practice in 2009 although she still kept a few oars in the water. She had many wonderful friends in the law over the years. In 2021 she received her 50 years of service award in the State Bar of South Dakota. She was still advocating for women commenting (while banging her bedazzled cane on the podium) "There's no women on this stage!".

Lee and Dick went through many phases and hobbies in their life. They had a motorcycle phase (well a few of those), chinchilla phase (a sore subject to this day for Dick but a delight to many who remember the hilarious stories), landlord stage (both in Vermillion and Sioux Falls), sailboat phase, gardening phase, a fast car phase (Lee held the land speed record in our family with the 1923 T Bucket with 550 horse power at 110 mph as well as having her Toyota Supra), a steam engine phase, various travel trailer\motor home\Class C and B RV phases, snowmobile phase, ATV phase (hello broken wrist!), an ocean-going motor yacht phase, a living abroad in Mexico phase, embroidery phase, genealogy phase, scrapbooking phase, and enjoyed photography. She and

Dick enjoyed their home in Rochford, South Dakota as a getaway to enjoy many of the above endeavors as well. Lee loved her pets, and most recently became a Pom Mom. Lee was an adventurous person and always loved travel. Lee enjoyed going to a state park nearby almost as much as going to far flung places such as the Galapagos, Europe and Syria. She also loved adventure travel including a llama trek, and white water rafting in the Grand Canyon (Class V rapids and outrunning a flood, yippee!). Lee, however, loved returning home to Sioux Falls and would surround herself with her friends and family here.

Lee was active. She was always engaged with people and described by many as a “character”. She was gracious and kind (well, most of the time, but she could be pretty salty as well). She loved her law practice and the rewarding feeling of helping others, being involved with women’s issues, and included helping to make sure that other loved ones in her life received an education as well. She was loyal and dedicated. Those virtues were most important to her. Hard work and grit got Dick and Lee far in life. She had a great ride and always enjoyed the adventure. She often would look over her life and say that regardless of when the ride ended, she was satisfied because she had an extraordinary life full of great people and experiences. Her favorite movie was the Wizard of Oz. While she always loved an adventure, for Lee, there was no place like home. We know Lee was welcomed home following her health struggles of the last six months.

Lee is survived by her husband of 57 years Dick, daughter Mary (Abel), and grandchildren by marriage Estela (Marcos), Jorge and Geraldine and her great grandchildren, Samantha and Hope Lee. She is survived by nieces and sister-in-law Linda (Bob). She’s also survived by so many wonderful and caring friends and the family is grateful for their support during these difficult times.

A Celebration of Life party is being planned with details to follow. The family requests that any memorials be directed to Feeding South Dakota.



## Vernon C. “Skip” VanDerhule 1947 - 2022

Vernon C. (Skip) VanDerhule, 74, passed away Friday, March 11, at Avera Sister James Care Center in Yankton following a battle with MDS cancer that spanned nearly three years.

Memorial services will be 10:30 am, Monday, March 21, 2022, at the United Church of Christ (Congregational), Yankton, SD with Rev. Jacqueline Hickox-Morgan officiating. Visitations will be 5 to 7 pm, Sunday, March 20, 2022, at the Opsahl-Kostel Funeral Home & Onsite Crematory, Yankton, SD with a Masonic service presented by the St. John's Lodge #1 A.F. & A.M. and memory sharing to follow. Online condolences may be sent at: [www.opsahl-kostelfuneralhome.com](http://www.opsahl-kostelfuneralhome.com).

The son of Milford and Donelda (Helm) VanDerhule, Skip was born May 31, 1947 and attended Beadle Grade School, Yankton High School, and the University of South Dakota School of Business. In 1974 he received his Juris Doctorate from the University School of Law and opened a private practice in Yankton.

On September 28, 1974, he married Judy (Lutterman) VanDerhule in Yankton and their children, Grant and Sandi, soon joined the family.

Skip became CEO of the family business, VanDerhule Moving & Storage, in the mid 1970's when his parents retired. Under his leadership, the business grew to include federal mail contracts in the states of Colorado, Iowa, Illinois, Nebraska, South Dakota and Wyoming.

An active member of his community, Skip served on the Chamber of Commerce's Governmental Affairs Committee and was instrumental in developing the Chamber's annual trip to Washington D.C. He also served on the Chamber's Board of Directors and was it's President in 1998. Skip was a lifetime member of the United Church of Christ in Yankton and a member of the South Dakota Bar Association.



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An enthusiastic supporter of all things regarding aviation, Skip owned a Mooney aircraft with friend Jim Cox for over 50 years and accumulated over 1,050 flying hours. A few years ago both he and Jim received The Wright Brothers Master Pilot Award from the Federal Aviation Administration (FAA) recognizing pilots who have contributed and maintained safe flight operation for 50 or more consecutive years of aircraft piloting. Skip served on the South Dakota Aeronautics Commission for 13 years, and three of those years acted as chairperson. While on that commission, he advocated for improvements in airport infrastructure such as lighting and pavement planning. He enjoyed bringing people together and facilitating communications between South Dakota leaders and officials in Washington D.C. to help secure funding for several airports. He enjoyed encouraging and mentoring the younger generation, piloting over 100 Young Eagle flights which offered many kids their first experience in an airplane.

He was a Mason and served as Past Master of St. John's Lodge #1, Yankton Scottish Rite and the Yankton Shrine Club and held offices in each. Skip was awarded the Honorary 33rd Degree Scottish Rite Masons. He served as District Master for the SD Grand Lodge, and in recent years served as their photographer. As a Shriner, Skip sponsored several young patients to the Shriner's

Children's Hospitals and volunteered at many Shrine Circuses.

Skip had an inquisitive mind and researched many topics that interested him including his MDS. He thoroughly enjoyed a good conversation and would engage anyone, anywhere and at anytime to discuss any substantive topic that interested them from aviation and weather patterns to the economy or wind turbines. Everyone may have walked away from one of those conversations a bit exhausted, but they all usually walked away having learned something new.

He was preceded in death by his parents, sister-in-law, Billie Greenfield and brother-in-law, Gordon Brown, and is survived by his wife, Judy, son Grant, Sioux Falls, daughter Sandi (Chris) Haeuszer, Sioux Falls, two grandsons, Walker and Topher Haeuszer, sister, Jane Brown, brother, Ross and sister-in-law Brooke VanDerhule, all of Yankton, and several nieces and nephews.

Memorial gifts can be made to the Shriner's Children's Hospital of the Twin Cities, 215 Radio Drive, Suite 101, Woodbury, MN 55125, or USD Scottish Rite Children's Clinic for Speech & Language Disorders, 520 S 1st Ave., Sioux Falls, SD 57104, or any charitable organization of your choice.



**Our confidential resource and referrals are available at no cost to you. Services with referral sources are optional and fees may exist.**

**GET HELP WITH:**

-  Family Conflict
-  Couples/Relationships
-  Substance Abuse
-  Work/Life Balance
-  Stress
-  Depression/Anxiety
-  Grief
-  Parenting



**YOU HAVE ACCESS TO MENTAL HEALTH COUNSELING**

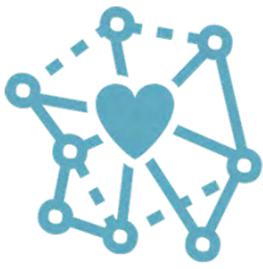
*Short-term counseling by licensed, Master's-level counselors via phone, mobile app, chat, and video. Available to you and your household members 24/7.*



**EVERYDAY ASSISTANCE:**

Overwhelmed and scared about her teen's active substance misuse, Gina called in looking for assistance. She received an appointment with a counselor, and during their sessions, she learned parenting strategies and boundary-setting to help manage the situation. Gina also received information about local treatment programs for her son and family support groups.

**ACCESS VIA:**  [sandcreekeap.com](http://sandcreekeap.com)  **888-243-5744**



# SOLACE

Support of Lawyers/Legal Personnel All Concern Encouraged

## NEWS

Susan Rose, Diana Boni's mother, reports that Diana was released from the hospital on Wednesday, March 9, after about a month in Avera McKennan Hospital in Sioux Falls. Her physical abilities are improving but her cognitive recovery is much slower. She will have rehab in Phillip (about an hour's drive each way) three times a week for the foreseeable future. (Okaton is too small to have any in-home or outpatient health care services.)

Fortunately, one of the couple's children is a CNA who lives in Tampa, FL. She has traveled up to be with her mother these first two weeks right out of the hospital but will have to leave soon. Diana's mother Susan and her husband will drive from Colorado to take over for a few weeks after that.

Susan wants to thank the members of the State Bar of South Dakota for their support in small ways and large, as a result of SOLACE. She is blown away by the compassion that has been shown to the family.

Susan posts short updates on Diana's condition on their [GoFundMe](#) page. Although she didn't make a specific request, with gas prices alone, the cost of going to rehab is going to be a significant continuing expense, as are the costs for family members to come home to care for Diana because she cannot be left alone. They are hopeful for her recovery and the first six months of rehab are very important and intense.

*What is SOLACE?* If you are aware of anyone within the South Dakota Legal Community (this includes lawyers, law office personnel, judges, courthouse employees, or law students) who has suffered a sudden or catastrophic loss due to an unexpected event, illness, or injury, the South Dakota SOLACE Program may be able to assist.

**Please contact [info@sdbar.net](mailto:info@sdbar.net) with the subject SOLACE if you, or someone you know, could benefit from this program.** We have a nationwide network of generous South Dakota attorneys willing to get involved and help. The SOLACE program includes contributions of clothing, housing, transportation, medical community contacts, and a myriad of other possible solutions through the thousands of contacts available through the State Bar of South Dakota and its membership.



## 4 Simple Steps to Conquer Paper Paralysis

*by Mrg Simon*

The modern law office is a far cry from the days of typewriters and carbon paper. But the “electronic age” has yet to deliver on the promise of the “paperless office” for most lawyers. Granted, there’s a certain amount of documentation that is prudent and/or required to keep in original, written form; there’s a whole lot more that is duplicative or without genuine value. Those many stacks of papers and files piled along every horizontal surface in some offices are a testament to the paper paralysis. And if that describes your office or a friend’s, take heart: that paralysis can be cured if you’re ready for some simple work that will pay dividends well into the future.

There are many emotional reasons we hold on to paper: we’re afraid we’ll forget, we know “responsible people” hold onto paper, that little voice in our heads warns “you may need that someday,” or the volume is just so overwhelming that we don’t even know where to start. At the same time, we fear that we may be missing a hearing

date or a filing deadline, a valuable piece of discovery, that one key piece of authority that will persuade both judge and jury, or an overdue bill we can’t seem to find. Put that stress behind you and tackle your paper now with four steps: 1) Big Purge, 2) Sort, 3) Action, and 4) Maintenance.

Set aside a few hours after work or on a weekend to start tackling this problem. Begin with the “Big Purge.” Go through every paper in your office and discard the ones that are not needed and sort the ones that are. (Mind any strict office policies and document retention rules and shred any document bearing confidential information.) It’s very helpful to first gather seven bankers’ boxes for your sort and label them: Recycle, Shred, Pending (action items for this week), Save, File, and Scan (and maybe another one for Business/Admin).

Then, start your Sort with the most current piles. When determining whether a paper is needed, ask yourself a)

Is it still useful? b) Did I ask for this document and if so, why? c) Can I find this information elsewhere – in my electronic files, on the internet, etc.?, and d) What's the worst thing that could happen if I get rid of this paper? Your aim should be to discard as much paper as possible. Sort quickly and thoroughly. Don't try to deal with each item as you go along; you'll get sidetracked. If something needs to be scanned first, put it in the Scan box – but don't use that to avoid making hard decisions. Don't let your emotions get in the way, or you'll be wasting a lot of time (or a lot of someone else's time) scanning things you really don't need.

Once you've made it through the piles around your office, schedule time to go through the files in your desk and cabinets. Touch every single piece of paper. Get rid of as much as possible. All the while, keep using your bankers' boxes. Keep a close eye on the one labeled "Pending," and assign one day each week to go through that box and act on each item that needs to be done. When completed, get rid of the paper if you can, or assign it to one of the other boxes.

Once the Big Purge and Sort are completed and you are minding your Pending box every week, you can then take Action on each of the items in the labeled boxes. Set a schedule for the time to get this done. Enlist the help of an assistant if you can – completing this step is important. If you take too long for this step, you will slip back into your old habits.

After the Big Purge, the Sort, and Action, then it's a matter of Maintenance. You'll find you now have a healthy amount of skepticism about paper and whether to print something. It's okay to do so, just be sure to dispense with it appropriately as soon as its usefulness has passed. With your paper paralysis now cured, you'll find a sense of relief having regained control of your physical space, and so many distractions will be eliminated. And you'll also find that you have a better grasp on what's in all your essential paper files. The steps are simple, the payoff is huge. Just make the commitment and do it!

Mrg Simon is a South Dakota lawyer, Professional Organizer and KonMari Certified Consultant.

## Take it from someone who's been there: when you start losing things in your office, it's time to call in help!

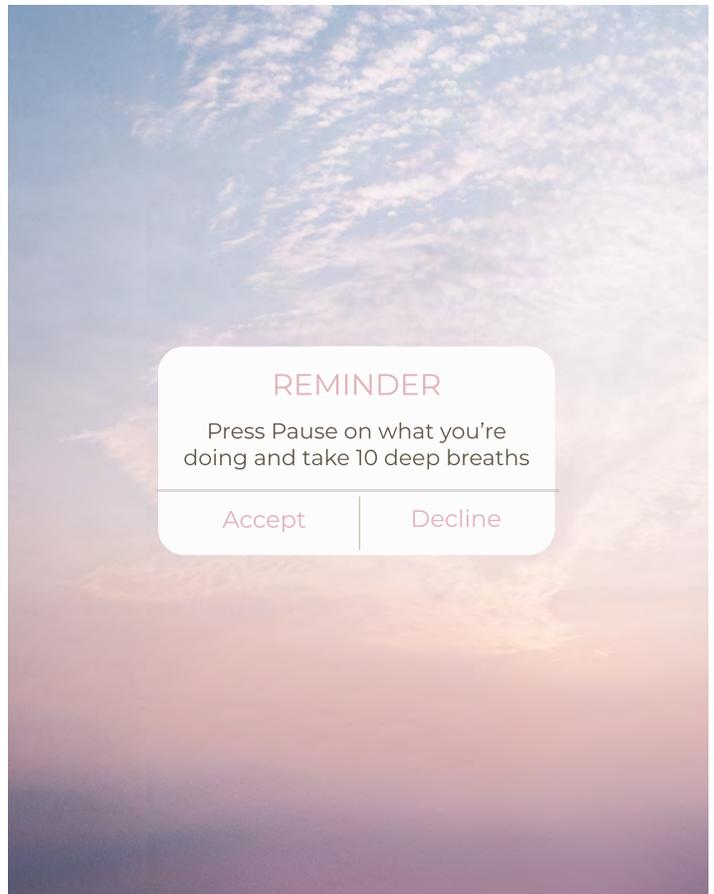
Clear your cluttered office with an experienced and professional organizer, who's also a fellow lawyer.



*Mrg Simon*

Mrg Simon, J.D.  
Certified KonMari™ Consultant  
mrg.simon@designed2stick.com

Contact Mrg for a free consultation at 605-929-1493





# Jackrabbit Bar Conference 2022

Deadwood, SD

Thursday, June 2nd -  
Saturday, June 4th



## State Wide Swearing-In Ceremony

Please  
Join  
Us!

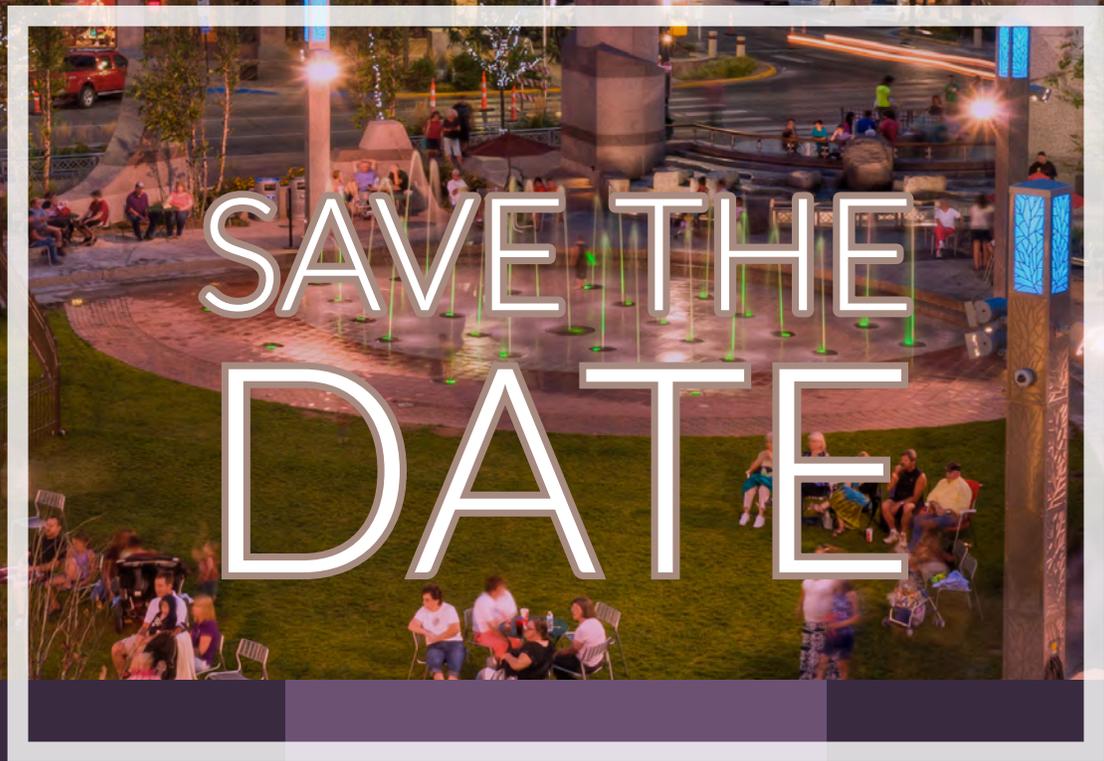
October 21, 2022  
3:00PM CST

CAPITOL ROTUNDA  
PIERRE SD

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

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

# 2022 Annual Meeting



*RAMKOTA  
HOTEL*

*JUNE  
22-24, 2022*

*RAPID CITY  
SOUTH DAKOTA*

# United States District Court

## District of South Dakota

Office of the Clerk  
Room 128, Federal Building & U.S. Courthouse  
400 South Phillips Avenue  
Sioux Falls, South Dakota 57104

Matthew W. Thelen  
Clerk of Court

Telephone  
605.330.6600

**PUBLIC NOTICE**  
**FOR REAPPOINTMENT OF INCUMBENT MAGISTRATE**  
**JUDGE**  
**March 16, 2022**

The current term of office of United States Magistrate Veronica L. Duffy, in Sioux Falls, South Dakota, expires on October 15, 2022. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of Magistrate Judge Duffy to a new eight-year term.

The duties of a magistrate judge in this court include the following:

(1) conducting most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conducting various pretrial matters and evidentiary proceedings on delegation from a district judge; and (4) trial and disposition of civil cases upon consent of the litigants.

Comments from members of the bar and the public are invited as to whether Magistrate Judge Veronica L. Duffy should be recommended by the panel for reappointment by the court. Please mail comments by May 14, 2022 to:

Matthew W. Thelen,  
Clerk of Court  
United States District Court  
400 South Phillips Ave.  
Sioux Falls, South Dakota 57104  
[Matt\\_Thelen@sdd.uscourts.gov](mailto:Matt_Thelen@sdd.uscourts.gov)

# YOU ARE INVITED TO JOIN!

## Fellows of the South Dakota Bar Foundation

---

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

Full Name \_\_\_\_\_

Address \_\_\_\_\_

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

*I would like to contribute:*

in Lump Sum    Annually    Semi-Annually    Quarterly    Monthly

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

### In Memoriam

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

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

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

Or you can email this form to:

[tracie.bradford@sdbar.net](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.*



March 14, 2022

Mr. Andrew Fergel  
Secretary-Treasurer  
South Dakota Bar Foundation  
111 Capitol Avenue #1  
Pierre, SD 57501

Dear Mr. Fergel,

On behalf of the members of the South Dakota Teen Court Association, thank you for the recent grant award of \$5,000 to the Association. The continued generosity of the Bar Foundation in making this grant is greatly appreciated. The Bar Foundation's support is greatly appreciated.

Teen court programs continue to operate in all judicial circuits on the State. These programs provide options and alternatives for states' attorneys, defense attorneys and judges when dealing with juvenile defendants. We appreciate the support of lawyers from across the state in making these programs possible, and in allowing teen courts to play a role in this important effort to address juvenile offenders.

Thank you for your continued partnership with the South Dakota Teen Court Association to help provide additional opportunities for youth to be held accountable for their actions, while at the same time contributing in a positive way to the community where they live.

For the Association,

A handwritten signature in blue ink, appearing to read "Jennifer L. Stalley".

Jennifer L. Stalley  
Statewide Coordinator

Post Office Box 116 ♦ Pierre, SD 57501

*The South Dakota Teen Court Association encourages development of new teen courts in South Dakota, seeks to enhance and sustain existing teen court programs and promotes interagency cooperation and information sharing among state and national teen courts.*



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To: Members of the South Dakota Bar Association

Recently, retired Professor Roger Baron penned an op-ed which was published in the Rapid City Journal and asserted claims that the current bar examination in South Dakota does not measure competency and is being kept in place to ensure that "white privilege" is maintained within the membership of the South Dakota bar. I have served on the South Dakota Bar Examiners for almost twenty years and, in my opinion, Professor Baron's editorial makes assertions that are both unfounded and cast improper aspersions on the Supreme Court of South Dakota and those of us who work in the area of licensure.

While Professor Baron claims that the Supreme Court has consistently been "moving the goal line for licensure by raising the minimum score needed", he fails to acknowledge that the most recent actions taken by the Court regarding licensure actually reduced the minimum score needed and provided additional compensatory measures to make it easier for applicants to pass the exam. Furthermore, he cites statistics about failure rates, but fails to acknowledge that pass rates in South Dakota have actually been trending up significantly and, in the most recent years, pass rates in South Dakota for first time takers actually exceed those in most jurisdictions.

The reality is, today's South Dakota bar examination is a hybrid which covers legal principles that are common to almost all jurisdictions. The hybrid nature of the examination reflects the realities of today's legal practice: attorneys in South Dakota or any jurisdiction may find themselves practicing in State, Federal or Tribal courts, and are required to be able to research and understand the laws of not only the jurisdiction in which they are practicing, but other jurisdictions as well. To that end, the current exam does not simply test an applicant's knowledge of "South Dakota law"; rather, it tests knowledge that relates to the interlocking nature of the legal system. This is not unique to South Dakota and virtually every jurisdiction employs a similar method of testing competence.

Pg. 2

To: SD Bar Association

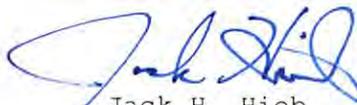
Date: 3/30/22

The multiple choice portion of the examination, which has drawn the greatest amount of criticism from Professor Baron, is developed by a national non-profit organization, the National Conference of Bar Examiners (NCBE). The NCBE works with a diverse group of volunteer drafters and reviewers who are practicing judges, lawyers, and law faculty from across the country. NCBE's testing experts adhere to best practices in test development and scoring as set forth in the Standards for Educational and Psychological Testing. Among these best practices are specific steps to eliminate bias in the drafting and administration of the exam. Because of these efforts to ensure fairness, virtually every jurisdiction conducting bar examinations in the United States and its territories uses this examination as part of its testing efforts.

Though I speak for myself in writing this letter, I firmly believe those of us involved in the process of testing to ensure competence in South Dakota have the primary goal of protecting the interests of South Dakota residents. The only way to do that is to ensure competence in the legal profession.

In February, Professor Baron and others promoted legislation to reinstate the "diploma privilege" for graduates of the University of South Dakota's Knudsen School of Law. Under that proposal, anyone who has ever graduated from that institution would have been licensed to practice in South Dakota with no additional indicia of competence required. Tellingly, numerous stakeholders, including the Dean of the law school, the Chief Justice of the Supreme Court, and representatives of numerous organizations involved with the legal profession, testified against this bill which was ultimately killed in the House committee where it was heard. The objections to Professor Baron's proposal for diploma privilege had nothing to do with trying to ensure minorities would not get licensed; rather, they were concerned with ensuring that those seeking legal services in South Dakota would receive competent assistance. In fact, the Knudsen School of Law has worked very hard to increase diversity within its student body. Further, unlike most jurisdictions, the South Dakota Supreme Court has insisted on maintaining a requirement that applicants show proficiency in the area of Indian Law as part of the exam process. Both the Supreme Court and those involved in educating law students and testing their competence have tried to take an active role in promoting and supporting diversity in our bench and bar. In sum, the people of South Dakota deserve to be protected and served by an attorney admissions program that ensures legal competence. At present, the bar examination is the best way to accomplish this goal.

Sincerely,



Jack H. Hieb

JHH/kkt

# The New Parenting Education Rule – What you need to know

by *Elizabeth A. Rosenbaum, Attorney at Law*  
[elizabeth@rosenbaumlawfirm.net](mailto:elizabeth@rosenbaumlawfirm.net)

A new South Dakota Supreme Court rule will become effective on September 1, 2022 that will have an impact on all South Dakota parents seeking a divorce decree or custody order. Rule 22-09 will require the parties in all divorce and custody cases to participate in a court-approved course to educate them about the impact of their action on the child or children. The course will need to be completed within sixty days of the service of the summons and complaint, petition or motion in any action involving child custody or parenting time. A final decree will not be granted or a final order will not be entered until both parties have complied with this new requirement, unless participation in the course is waived or delayed for good cause or is otherwise not required.

Each party will be responsible for arranging their participation in the course and for payment of the costs of participation in the course. Each party must then file a certificate showing their participation in the course prior to the granting of a final decree or the entry of an order.

Current research indicates that about 50% of all marriages will eventually end in divorce. Almost 60% of all remarriages eventually end in divorce, often within the first 5 years. Additionally, almost half of today's parents with children are not married. These relationships are statistically four times more likely to split up than married couples. This leads to the logical conclusion that the classes should be not just for divorcing parents, but also parents seeking custody orders.

This Rule was generated by the observation that some areas of South Dakota required parenting classes, while the majority did not. Parent education programs are adopted to increase parental cooperation, promote healthy relationships with both parents, and help parents to learn to share in the responsibilities for their children. Key results from long-term studies of these programs show a significant decrease in conflict between parents, improvement in parenting skills, decrease in the need to litigate, decrease in post-decree contempt of court

hearings, and increases in children's healthy adjustment. All of South Dakota's children deserve this protection.

These courses will teach better communication and conflict resolution skills, help parents better understand their child's needs, teach skills to work with a coparenting partner and help parents recognize how their own actions might help or hurt the co-parenting relationship.

The courses will be certified and approved by the State Court Administrator's Office so that there is uniformity of content and guidelines throughout the state. The courses may be offered by public and private entities. Each parent will be responsible for arranging their participation in the course and for payment of the costs of participation in the course. Details regarding approved courses will become available this summer.

With the adoption of Rule 22-09, parents who otherwise would not avail themselves of the service will now benefit from the knowledge, strategies, and tools taught by a mandatory class. Children from Belle Fourche to Dakota Dunes will now have the same protection. These classes will improve the quality of life for South Dakota's children whose parents are separating and improve their own chances for successful relationships in their future.

**DeRouche Agricultural & Legal Consulting, LLC**

Roger DeRouche  
700 Broad Street Alexandria, SD 57311  
605-770-8080  
[derouche.agconsulting@triotel.net](mailto:derouche.agconsulting@triotel.net)

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- 4 years of Ag Lending
- 9 years Research, Deposition, Testifying
- Expert witness on agricultural issues

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STATE OF SOUTH DAKOTA  
In the Supreme Court

I, Shirley A. Jamison-Fergal, 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

28<sup>th</sup> day of Feb, 20 22  
Shirley A. Jamison-Fergal  
Clerk of Supreme Court

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

FEB 28 2022

Shirley A. Jamison-Fergal  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE ADOPTION OF )  
A RULE REQUIRING COURT-APPROVED )  
PARENTING EDUCATION FOR ACTIONS )  
INVOLVING ISSUES OF CHILD CUSTODY )  
OR VISITATION )  
-----  
RULE 22-09

A hearing was held on February 15, 2022, at Pierre, South Dakota, relating to the adoption of a new rule relating to requiring court-approved parenting education for actions involving issues of child custody or visitation and the Court having considered the proposed adoption, oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule requiring court-approved parenting education for actions involving issues of child custody or visitation be and it is hereby adopted to read in its entirety as follows:

Court-approved parenting education for actions involving issues of child custody or visitation.

The parties to any action which involves the issues of child custody or parenting time will be required to participate in a court-approved course to educate the parties concerning the impact of the action on the child or children. The course shall be completed within sixty days of the service of the summons and complaint, petition or motion in any action involving child custody or parenting time. Participation in the course may only be waived or delayed by the judge presiding over the action for good cause shown. Good cause includes but is not limited to a default by one of the parties or a showing that the parties have previously participated in a court-approved course or its equivalent within the past five years.

Participation in the course is not required for a protection order proceeding or if the proceeding involves termination of parental rights of any of the parties. A final decree shall not be granted or a final order shall not be

entered until both parties have complied with this requirement, unless participation in the course is waived or delayed for good cause or is otherwise not required. Each party shall be responsible for arranging their participation in the course and for payment of the costs of participation in the course.

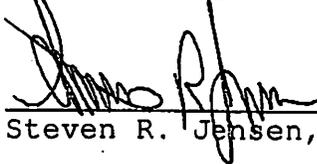
Each party shall submit certification of completion of the course to the court prior to the granting of a final decree or the entry of an order, unless participation in the course is waived or delayed for good cause or is otherwise not required as set forth herein. If participation in the court-approved course is waived or delayed for good cause or is otherwise not required under this section, the judge presiding over the action may order that the parties receive the information in an alternative format.

The State Court Administrator's Office shall certify approved courses for parties required to participate in a course. Approved courses may include those provided by a public or private entity. At a minimum and as appropriate, an approved course shall include information related to the effects of separation or divorce on children, co-parenting skills and responsibilities, children's needs and coping techniques, the options for conflict resolution for parenting time and custodial disputes and the financial responsibilities of parents.

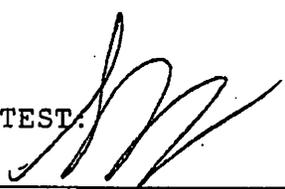
IT IS FURTHER ORDERED that this rule shall become effective September 1, 2022.

DATED at Pierre, South Dakota, this 28th day of February, 2022.

BY THE COURT:

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

ATTEST.

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

STATE OF SOUTH DAKOTA

In the Supreme Court

I, Shirley A. Jameson-Forgal, 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

28th day of Feb, 2022  
Shirley A. Jameson-Forgal  
Clerk of Supreme Court

Deputy

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

FEB 28 2022

Shirley A. Jameson-Forgal  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT ) RULE 22-07  
OF SDCL 15-12-30 )

-----  
A hearing was held on February 15, 2022, at Pierre, South Dakota, relating to the amendment of SDCL 15-12-30 and the Court having considered the proposed amendment, oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-12-30 be and it is hereby amended to read in its entirety as follows:

**SDCL 15-12-30. Filing of affidavit-Number of copies-Statement by clerk of courts.**

Section 1.

The affidavit for change of circuit judge or magistrate shall be filed with the clerk of the circuit court of the county in which the action is pending. The clerk shall deliver a copy of such affidavit to the presiding judge of the circuit. Unless the presiding judge of the circuit court involved has otherwise provided by order or rule to the contrary, the clerk shall forthwith prepare and cause to be delivered to the presiding judge of his circuit a statement complying with subdivision 15-12-34(3) together with a copy of such affidavit. Such clerk shall also forthwith deliver a copy of such affidavit to the judge or magistrate referred to in said affidavit.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2022.

DATED at Pierre, South Dakota, this 28th day of February, 2022.

BY THE COURT:

  
Steven R. Jensen, Chief Justice

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jameson-Fergal, 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  
28th day of Feb, 2022  
\_\_\_\_\_  
Shirley A. Jameson-Fergal  
Clerk of Supreme Court

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

FEB 28 2022

*Shirley A. Jameson-Fergal*  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE ADOPTION )                    RULE 22-08  
OF A NEW SECTION TO SDCL CHAPTER )  
15-15A )

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A hearing was held on February 15, 2022, at Pierre,  
South Dakota, relating to the adoption of a new section to SDCL  
Ch. 15-15A and the Court having considered the proposed adoption,  
oral presentation relating thereto and being fully advised in the  
premises, now, therefore, it is

ORDERED that the new section be added to SDCL Ch.  
15-15A, Unified Judicial System Court Record Rule, it is hereby  
adopted to read in its entirety as follows:

Section 1.

Any information maintained by the Unified Judicial System for  
safeguarding and enhancing court security is not accessible to the  
public unless authorized by an order of the court. This includes  
information pertaining to the protection of the public, court staff  
and public property such as:

- a. Any vulnerability or threat assessments;
- b. Response plans intended to prevent or mitigate criminal  
acts;
- c. Emergency management or response protocols or standards;
- d. Training materials or after-action reports for courthouse  
security training and assessment;
- e. Intelligence information, complaints, and incident or threat  
reporting forms; and
- f. Security manuals, standards, procedures, policies, or plans.

IT IS FURTHER ORDERED that this rule shall become  
effective immediately.

DATED at Pierre, South Dakota, this 28th day of February,  
2022.

BY THE COURT:

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

ATTEST:

*[Signature]*  
\_\_\_\_\_  
Clerk of the Supreme Court  
(SEAL)

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jamason-Fergol, 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 seal of said court at Pierre, S.D. this  
22 day of March 20 22

*Shirley A. Jamason-Fergol*  
Clerk of Supreme Court

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAR 22 2022

*Shirley A. Jamason-Fergol*  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA  
\* \* \* \*

IN THE MATTER OF THE REVISIONS ) RULE 22-10  
TO APPENDIX A TO CHAPTER 25-4A )  
SOUTH DAKOTA PARENTING GUIDELINES. )  
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A hearing was held on February 15, 2022, at Pierre, South Dakota, relating to the proposed revisions to Appendix A to Chapter 25-4a, South Dakota Parenting Guidelines and the Court having considered the proposed adoption, oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the proposed revisions to Appendix A to Chapter 25-4a, South Dakota Parenting Guidelines, be and they are hereby adopted to read in their entirety as hereto attached.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2022.

DATED at Pierre, South Dakota, this 22<sup>nd</sup> day of March, 2022.

BY THE COURT:

ATTEST:  
*[Signature]*  
Clerk of the Supreme Court  
(SEAL)

*[Signature]*  
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.

(Justice Janine M. Kern dissents.)

# SOUTH DAKOTA PARENTING GUIDELINES



Prepared by the 2021 South Dakota  
Commission on Parenting Guidelines

**The South Dakota Parenting Guidelines are located on the  
South Dakota Legal Self-Help Center found at [www.ujslawhelp.sd.gov](http://www.ujslawhelp.sd.gov)**

**For more information, contact:**  
South Dakota Unified Judicial System  
State Court Administrator's Office  
500 E. Capitol Avenue  
Pierre, SD 57501  
605-773-3474

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# SOUTH DAKOTA PARENTING GUIDELINES

## **Enforcement.**

These Guidelines are required to be served with the Summons and Complaint in a divorce, paternity action or any other custody action or proceeding. See <https://ujslawhelp.sd.gov/onlineforms.aspx> under divorce or paternity actions for instructions on how to initiate an action (service of summons).

If the parents are able to agree to a schedule other than the guidelines, these Guidelines should be used as a *minimum* direction in creating the parenting time plan. Parents should agree to parenting times that they find reasonable and in the best interest of their children and the Parenting Guidelines are not intended to prevent such agreements.

**If the parents are unable to agree on a parenting plan, these Guidelines become mandatory as the parenting plan and are enforceable as a court order upon initiation of a divorce or court action involving custody.** SDCL 25-4A-11. If you disagree with the use of these Guidelines as your parenting time plan, either parent has the right to object. Your written objection shall be filed with the Clerk. After it is filed, a hearing will be held and the Judge will determine your parenting time schedule. Instructions and this objection form can be found at <https://ujslawhelp.sd.gov/defendants.aspx>.

Instructions and forms regarding enforcement can be found at <https://ujslawhelp.sd.gov/enforcement.aspx>.

## **Guideline 1. For Parents Who Have Children Under Age 5.**

### **1.1. Children Under Age 5 Generally.**

- O Newborns (birth to 3 months) and infants (3 – 6 months) have a great need for continuous contact with their primary caregiver, but also frequent contact with both parents who provide a sense of security, nurturing and predictability.
- O Generally, overnights for very young children is not recommended unless the parents are both very closely attached to the children, are able to personally provide primary care, the children are adaptable, and the parents are cooperative.
- O Older children are able to tolerate more and longer separations from one parent or the other.

The following Guidelines for children under age 5 are designed to take into account childhood developmental milestones. Since children mature at different rates, these may need to be adjusted to fit the children's individual circumstances.

**1.2. Birth until 3 Months.** Three, 2-hour parenting time periods per week and one weekend parenting time period for 6 hours. In situations where both parents have been engaged in an ongoing caregiving

## SOUTH DAKOTA PARENTING GUIDELINES

routine with a nursing child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the child and maintain stability for the child. If applicable, breastfeeding shall be accommodated, but the parents must cooperate in working out alternatives. See 1.8 below.

**1.3. 3 – 6 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting plans are recommended:

- (1) Three, 3-hour custodial periods per week and one weekend day for 6 hours. If applicable, breast feeding shall be accommodated but the parents must cooperate in working out alternatives; or
- (2) Three, 3-hour custodial periods per week and one overnight on a weekend not to exceed 18 hours, if the parent is capable of personally providing primary care. See exceptions in Section 1.8 below; or
- (3) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.4. 6 – 12 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) Three, 4-hour parenting time periods per week and one weekend day for 6 hours; or
- (2) Three, 4-hour parenting time periods per week and one overnight on a weekend not to exceed 18 hours, if the child is not breastfeeding and the parent is capable of personally providing primary care; or
- (3) Children spend time in alternate homes, but spends significantly more time in one parent's home and no more than 1-2 overnights spaced regularly throughout the week at the other parent's home; or
- (4) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.5. 12 – 36 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) Three, 8-hour parenting time periods per week on a predictable schedule; or
- (2) Three, 8-hour parenting time periods per week on a predictable schedule and one overnight per week not to exceed 18 hours; or

## SOUTH DAKOTA PARENTING GUIDELINES

- (3) Children spends time in alternate homes, but with significantly more time in one parent's home with 1-2 overnights spaced regularly throughout the week. This arrangement requires adaptable children; or
- (4) In situations where both parents have been engaged in an ongoing caregiving routine with the children (nursing or otherwise), overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.6. 3 Years – 5 Years.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) One overnight parenting time period not to exceed 24 hours and two additional 8-hour parenting time periods each week, separate from the overnight, with the children returning to the other parent's home at least 1 hour before bedtime; or
- (2) Two to three overnights at one home, spaced throughout the week, the remaining time at the other parent's home. This arrangement requires adaptable children; or
- (3) In situations where both parents have been engaged in an ongoing caregiving routine with the children, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

If the parents cannot agree on which provision shall apply in sections 1.2 through 1.6, the parties shall use option 1 until further order of the court. Absent special circumstances as determined by the court, parenting time shall not decrease from one age category to the next.

**1.7. Children in Day Care.** In families where children are in day care before and/or after parental separation, the children may be able to tolerate more time with each parent earlier than their specific age group indicates above because the children are accustomed to separations from both parents.

**1.8. Breastfeeding Children.** – Parents must be sensitive to the special needs of breastfeeding children. Children's basic sleeping, feeding, and waking cycles should be maintained to limit disruption in the children's routine. Forcibly changing these routines due to the upheaval of parental disagreement is detrimental to the physical health and emotional well-being of the children. On the other hand, it is important that the children be able to bond with both parents.

- a. For children being exclusively breastfed, the nursing child can still have frequent parenting time with the other parent. The amount of time will be guided by/subject to the infant's feeding schedule, progressing to more time as the child grows older. Both parents should be mindful that a feeding may occur, and the child may return to time with the other parent after the feeding.

## SOUTH DAKOTA PARENTING GUIDELINES

- b. Where both parents have been engaged in an ongoing caregiving routine with a nursing child, the same caregiving arrangement should be continued as much as possible to maintain stability for the children.
- c. If the other parent has been caring for the children overnight or for twenty-four hour periods while the nursing mother sleeps or works, that arrangement should/shall continue.
- d. A mother may not use breastfeeding to deprive the other parent of time with the children. If, for example, a nursing mother uses day care or a babysitter for the children, the same accommodations (i.e., bottle feeding with breast milk or formula, or increased time between breast feeding sessions) used with the day care provider or babysitter will be used with the other parent, if the other parent is capable of personally providing the same caregiving.

**1.9. Holidays.** For children aged 0-5 years, when the parents live and/or celebrate the holiday in the same or a nearby community, the parents shall alternate the following holidays in the chart below. Prior to a child's 5th birthday, holiday parenting time shall not exceed the longest period of parenting time currently being exercised and shall be scheduled by the parent exercising holiday time. If the parents cannot otherwise agree, the holiday time shall be exercised within the time frames provided in the chart below not to exceed the longest period of parenting time currently being exercised. It is recommended that the parents communicate two weeks in advance about who is exercising what time period for the holidays set forth below. Parenting time, however, shall not be withheld solely for failure to abide by this two-week recommendation.

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Martin Luther King, Jr. Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
President's Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Easter weekend	8:00 a.m. Friday – 8:00 a.m. Monday	Parent 2	Parent 1
Mother's Day	8:00 a.m. – 8:00 a.m. the following day	Parent 1	Parent 1
Memorial Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Juneteenth (6/19)	8:00 a.m. – 8:00 a.m. the following day	Parent 1	Parent 2
Father's Day	8:00 a.m. – 8:00 a.m. the following day	Parent 2	Parent 2
4 <sup>th</sup> of July	5:00 p.m. July 3 <sup>rd</sup> – 5:00 p.m. July 5 <sup>th</sup>	Parent 1	Parent 2
Labor Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Native American Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Halloween	3:00 p.m. – 8:00 p.m.	Parent 1	Parent 2
Thanksgiving	8:00 a.m. Thursday – 5:00 p.m. Sunday	Parent 2	Parent 1

## SOUTH DAKOTA PARENTING GUIDELINES

Christmas Eve	8:00 a.m. Christmas Eve – 8:00 a.m. Christmas Day	Parent 2	Parent 1
Christmas Day	8:00 a.m. Christmas Day – 8:00 a.m. December 26th	Parent 1	Parent 2
Child's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 2	Parent 1
Parent 2's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 2	Parent 2
Parent 1's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 1	Parent 1

**1.10. Vacation With Children 3 – 5 Years Old.** Upon 30 days advance written notice (by mail, email or text message), each parent is entitled to two separate periods of uninterrupted time for up to 5 days each with their children each year, not to conflict with the other parent's holiday parenting time. Parents are encouraged to coordinate vacation plans. The parents shall consider extending the 5 day time periods to 7 days if the children are adaptable and accustomed to spending time with both parents.

**1.11. Long-Distance Parenting.** When substantial distance between the parents exists, the ability to exercise these Guidelines is compromised. The parents will need to create a developmentally appropriate parenting plan for their unique situation. When parenting time is unable to be frequent, parents are encouraged to use video/audio contact to build and/or maintain the bond between the children and parent who lives afar.

### **Guideline 2. For Parents Who Have Children Age 5 and Older And Reside No More Than 200 Miles Apart.**

**2.1. Weekends.** In most cases, it is a positive experience for the children to have both parents involved in taking the children to and from school. Parenting time shall consist of alternate weekends starting Friday upon the release of school or 3:15 p.m., whichever is applicable, and continuing until the return to school Monday or 8:00 a.m., whichever is applicable. Parenting time shall be an equivalent period of time if a parent is unavailable on weekends and the children do not miss school.

## SOUTH DAKOTA PARENTING GUIDELINES

**2.2. Mid-Week.** If time and distance allow, parenting time shall include one mid-week overnight every week, in addition to the weekends in 2.1 above, with the children. If the parents cannot otherwise agree, this mid-week time shall be on Wednesdays and shall start when the children are released from school or at 3:15 p.m., whichever is applicable, and concludes when the children are returned to school the next day or at 8:00 a.m., whichever is applicable. All transportation for the midweek parenting time is the responsibility of the parent exercising the parenting time.

**2.3. Summer Break.** The children shall be with each parent for one-half of the school summer break. Summer break begins the day after school is released and ends the day before school commences. The parent with whom the children reside the majority of the time during the school year has priority to have the children the week before school resumes, which counts as part of that parent's summer break. At the option of the other parent, his/her parenting time during summer break may be consecutive or it may be split into 2 or more blocks of time. This parent shall provide a minimum of 30 days advance notice of the dates selected.

If the children go to summer school and it is impossible for a parent to schedule time other than during summer school, the parent may elect to take the time when the children are in summer school and transport the children to the summer school sessions at the children's school or an equivalent summer school session in that parent's community.

The parent with whom the children reside for the majority of the school year shall have the weekend before the beginning and the weekend after the end of the other parent's summer period, regardless of whose weekend it may be. This weekend time will not be made up.

During any summer vacation parenting times of three or more consecutive weeks, the parent exercising parenting time shall arrange for a mutually convenient 48-hour continuous period of time for the other parent to spend with the children.

**2.4. Holidays.** The following chart shows the allocation of the holidays between parents. School breaks and release times may be different from school to school and district to district. The school calendar is published on your children's school's website before each school year starts. It is important to know these dates / times as they pertain to your children.

Holiday / Special Event	Details / Times	Even-Numbered Years	Odd-Numbered Years
Martin Luther King Jr. Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
President's Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2

## SOUTH DAKOTA PARENTING GUIDELINES

Easter weekend	Starts when school is released for the holiday weekend and ends at 8:00 a.m. on the day school recommences after the holiday weekend.	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break. If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Mother's Day	Starts at 8:00 a.m. on Mother's Day and ends at 8:00 a.m. on Monday; one overnight.	Parent 1	Parent 1
Memorial Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
Juneteenth	Starts at 8:00 a.m. on 6/19 and ends at 8:00 a.m. on 6/20	Parent 1	Parent 2
Father's Day	Starts at 8:00 a.m. on Father's Day and ends at 8:00 a.m. on Monday; one overnight.	Parent 2	Parent 2
4 <sup>th</sup> of July	Begins July 3 at 5:00 p.m. and ends July 5 at 5:00 p.m.	Parent 1	Parent 2
Labor Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2
Native American Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
Halloween	Starts on 10/31 when school releases for the day or 3:15 p.m., whichever is applicable, and concludes on 11/01 when school resumes or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2
Thanksgiving weekend	Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m.	Parent 2	Parent 1
Christmas Eve	Starts on 12/23 at 8:00 a.m. and concludes on 12/25 at 8:00 a.m.	Parent 2	Parent 1
Christmas Day	Starts on 12/25 at 8:00 a.m. and concludes on 12/27 at 8:00 a.m.	Parent 1	Parent 2
1 <sup>st</sup> half of winter break	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 1	Parent 2
2 <sup>nd</sup> half of winter break, including New Year's holiday	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 2	Parent 1

## SOUTH DAKOTA PARENTING GUIDELINES

Children's Birthdays	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before); parenting time shall be with all of the children not just the one who has the birthday.	Parent 2	Parent 1
Parent 2's Birthday	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before).	Parent 2	Parent 2
Parent 1's Birthday	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before).	Parent 1	Parent 1

**2.5. Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and the regularly scheduled weekend time, the holiday takes precedence. Unless mutually agreed in writing, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time. This may result in one parent having the children for three weekends in a row; however, neither parent shall have the children for more than 3 weekends in a row.

**2.6. Parent's Vacation with Children Age 5 and Older.** Each parent is entitled to a vacation with the children totaling up to 14 days, with 7 days being the most that may be exercised at one time. When possible, each parent shall provide the other with 30 days advance notice of their intent to utilize their vacation time. Parents are encouraged to coordinate vacation plans. In the event there is a dispute, the mother gets priority in choosing her vacation periods first in even-numbered years and the father gets priority in choosing his vacation periods first in odd-numbered years.

**2.8. Precedence.** The allocation of holidays listed in the above chart shall take precedence over vacations. In other words, a parent cannot exercise their vacation with the children when it is the other parent's holiday. But vacations shall take precedence over the regular parenting time schedule.

**2.9. Notice of Canceled Time With the Children.** Whenever possible, each parent shall give a minimum of three days' notice of intent not to exercise all or part of the scheduled time with the children. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the explanation, shall be provided to the other parent.

**2.10. Pick Up and Return of Children.** When the parents live in the same area/community, the responsibility for picking up and returning the children shall be shared. The parent who receives the children for his/her parenting time will pick the children up from the other parent. Both parents have an obligation to be punctual and to arrive at the agreed upon time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

# SOUTH DAKOTA PARENTING GUIDELINES

## Guideline 3. For Parents Who Have Children Age 5 and Older and Reside More Than 200 Miles Apart.

**3.1. Holidays.** Parents who reside more than 200 miles apart shall exercise the following holidays as follows:

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Easter weekend	Starts when school is released for the holiday weekend and ends at 8:00 a.m. on the day school recommences after the holiday weekend.	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break. If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Thanksgiving	Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m.	Parent 2	Parent 1
Winter Break	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school.	Parent 1	Parent 2

**3.2. Summer Break.** The parent with whom the children do not reside during the school year shall have the children for the children's summer break as follows: summer break begins 3 days after school is released and ends 7 days before school recommences. This allows 10 days of parenting time during the summer with the parent with whom the children reside during the school year. Additionally, the parent with whom the children reside during the school year shall be entitled to exercise a 48 hour period of parenting time with the children every three weeks during the summer break; to be exercised at the sole expense of the parent with whom the children reside during the school year.

**3.3. Priority of Summer Time With Parent.** Parenting time in the summer with the parent who lives more than 200 miles away takes precedence over summer activities (such as sports) when the parent's time cannot be reasonably scheduled around such events. Even so, the conscientious parent will often be able to enroll the children in a similar activity in the parent's community. When each child reaches an age and maturity where activities are very important to them, the parents should reach an agreement that works best for the child.

**3.4. Notice.** At least sixty (60) days' notice (recommended to be by mail, email, or text message) shall be given by the parent who lives more than 200 miles away from the children of the date for commencing extended summer parenting time with the children so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to

## SOUTH DAKOTA PARENTING GUIDELINES

give the precise number of days' notice does not entitle the parent with primary residence of the children the right to deny the other parent parenting time with the children.

**3.5. Additional Time With the Parent Who Lives More Than 200 Miles Away.** The parent who resides more than 200 miles away from the children shall have the following parenting time:

- o If the parent who lives more than 200 miles away wants to travel, at his/her sole expense, to visit with his/her children, this parenting time shall be accommodated for a reasonable time period of no less than 48 hours. However, this is not intended to be exercised more than every other weekend;
- o Where distance and finances permit, additional parenting time for the parent residing more than 200 miles away from the children, such as holiday weekends or special events, is encouraged. Parents are encouraged to reference the holiday schedules set forth in Section 2.4 when determining the allocation and duration of other holidays; and
- o When the parent who lives 200 miles away is in the area where the children reside, or the children are in the area where this parent resides, liberal time with the children based on the circumstances must be allowed. Circumstances will vary and may only allow for a quick visit or may allow for overnight parenting time.

The children may miss some school to spend time with the parent who lives 200 miles away, so long as it does not substantially impair the children's academic progress. However, additional time with the parent who lives more than 200 miles away from the child shall not interfere with the alternating holiday schedule set forth in Section 3.1 herein.

Parents are encouraged to communicate with each other and cooperate in creating additional parenting times for the children. If the additional parenting time exceeds 4 hours, the parent who lives more than 200 miles away shall provide as much advance notice as possible, preferably 30 days. Failure to provide notice shall not be the sole reason for denial of additional parenting time.

### **Guideline 4. General Rules Applicable to All Parents**

**4.1. Rules of Conduct.** A parent shall always avoid speaking negatively about the other parent and must firmly discourage such conduct by relatives or friends. Each parent should speak in positive terms about the other parent in the presence of the children. Each parent shall encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other parent.

**4.2. Relatives.** Children will usually benefit from continued contact with all relatives on both sides of the family. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. Usually the children will visit the paternal relatives

## SOUTH DAKOTA PARENTING GUIDELINES

during times when the children are with their father and the maternal relatives during times when they are with their mother. This may include allowing the children to spend time with these relatives even when the parent is not present.

**4.3. Relocation.** Relocation is governed by South Dakota state law. See SDCL 25-4A-17. Instructions and forms on how to comply with the requirements surrounding relocation, as well as how to object to a parent's notice of relocation, can be found at [www.ujslawhelp.sd.gov](http://www.ujslawhelp.sd.gov).

**4.4. Communication between Parents.** Parents must always keep each other advised of their home and work addresses and telephone numbers. Whenever possible and unless otherwise stated herein, all communication concerning the children must be conducted directly between the parents (i.e., in person, by telephone, email, text message, communication notebook, a designated third party or co-parenting tool). Absent an emergency, communication should not occur at a parent's place of employment.

**4.5. School and Medical Information.** Both parents shall keep the other parent informed with the name, address and telephone number of the school where each of their children attends and each parent is authorized to communicate concerning the children directly with the school and with the children's doctors and other professionals, outside the presence of the other parent. Each parent has an obligation to contact the school to ensure receipt of class schedules, school report cards, notices, etc. so that they can remain involved with their children's education. Both parents shall be listed as a parent and emergency contact on all of the children's records, forms, registrations, etc. Attendance at academic or disciplinary meetings pertaining to the minor children shall be limited to the parents and the respective school professional(s). Others may not attend such meetings without advance mutual parental agreement or court order.

Each parent shall immediately notify the other parent of any medical emergencies or serious illnesses of the children. Access to records and information pertaining to minor children, including, but not limited to, medical, dental, therapy, counseling, orthodontia and similar health care and school records must be made equally available to both parents. The parents must make reasonable efforts to ensure that the name and address of the other parent is listed on all such records. If children are taking medications, both parents shall have access to a sufficient amount for their parenting time as well as the instructions.

The parent who has medical insurance coverage on the children shall supply to the other parent an insurance card or copy thereof and, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. Except in emergencies, the parent taking the children to a doctor, dentist or other provider not so approved or qualified may be required to pay the additional cost for that provider. However, when there is a change in insurance, which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration shall be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or the economic consequences of changing carriers. When there is an obligation to pay medical expenses, the parent responsible for paying shall be promptly furnished with the bill, and where applicable, the explanation of benefits, by the other parent. The parents shall

## SOUTH DAKOTA PARENTING GUIDELINES

cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements unless previously paid by the other parent. Insurance refunds shall be promptly turned over to the parent who paid the bill for which the refund was received.

**4.6. Extracurricular Activities.** Both parents shall consult the other parent prior to enrolling the children in any event that may affect the other parent's parenting time. Both parents shall be listed as a parent and emergency contact on all of the children's records, forms, registrations, etc. Both parents shall be provided access to the name of the coach, director, and organization providing the activity for each child along with their contact information. Both parents shall have the obligation to contact the activity director to ensure receipt of information such as practice schedules, games, parental participation, etc.

**4.7. Clothing.** In situations where the children reside primarily with one parent, that parent shall send an appropriate supply of children's clothing with the children for the other parent's parenting time. At the conclusion of his/her parenting time, this clothing shall be returned clean (when reasonably possible). Parents must advise, as far in advance as possible, of any special activities so that appropriate clothing for the children may be sent. It is recommended that both parents have some basic clothing available in their home to ensure that all of the children's basic needs are met.

**4.8. Withholding Support or Time with the Children.** Neither time with the children nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children generally have a right both to support and, time with both parents, neither of which is dependent upon the other. In other words, if the parent ordered to pay child support fails to do so, he/she is still entitled to their parenting time. Likewise, if one parent denies the other parent parenting time, child support payments must still be made.

**Forms and instructions on how to enforce your parenting time can be found on the South Dakota Legal Self-Help Center at <https://ujslawhelp.sd.gov/onlineforms.aspx>.**

**4.9. Adjustments in Parenting Plan.** Parents are expected to fairly modify the parenting plan as family necessities, illnesses, weather or commitments reasonably so require. The parents must work together in good faith to get any missed parenting time rescheduled to occur within a reasonable period of time, usually within 30 days. When possible, each parent must timely advise the other when scheduled parenting time with the children cannot be exercised.

**4.10. Children of Different Ages.** It usually makes sense for all the children to share the same schedule of parenting time. Having brothers or sisters along can be an important support for children. Because it is intended that parenting time with the children be a shared experience between siblings and, unless these Guidelines or a court order provides otherwise, all the children shall enjoy parenting time together. Parents shall consider the children's best interests when scheduling parenting time especially for newborns and infants who may have developmental needs that may prevent them from immediately experiencing the same schedule as their older siblings. Additionally, older teenagers' special needs for

## SOUTH DAKOTA PARENTING GUIDELINES

peer involvement and for some control of their own lives may place them on different schedules from their younger brothers and sisters.

**4.11. Communication with Children.** Unless prohibited by a court order, either parent may mail, call, text, email, FaceTime or skype (or use similar technology) to communicate with the children at reasonable times and with reasonable frequency during those periods the children are with the other parent. The children may, of course, mail, call, text, email, FaceTime or skype (or use similar technology) to communicate with either parent, at reasonable hours or with reasonable frequency.

- Parents are cautioned that communication between the parent and the children should not be so excessive as to interfere with the other parent's time, nor used to undermine the other parent's authority.
- During long vacations, the parent with whom the children are on vacation is required to make the children available for telephone calls with the other parent at least every three days.
- At all other times, the parent the children are with must not refuse to answer the other parents telephone calls or turn off their telephone in order to deny the other parent telephone contact.
- If a parent uses an answering machine or cell phone voicemail, messages left should be returned to that person as soon as possible.
- Parents should agree on a specified time for calls to the children so that the children will be made available no less than three days a week.
- Either parent may provide the children with a cell phone subject to each parent's ability to set restrictions in their home. A parent shall not prohibit contact between the children and the other parent; nor shall they impede the children's ability to contact the other parent during reasonable times and at a reasonable frequency.
- Communication between a parent and the children must not be censored, recorded, or monitored, absent a court order.
- Each parent shall have an unrestricted right to send cards, letters and/or packages to their children. The children shall also have the same right to receive and send items to their parents.

**4.12. Social Media.** Each parent shall have full access to monitor the social media accounts of the children, but neither shall open or read communications between the children and the other parent.

**4.13. Privacy of Residence.** A parent shall not enter the residence of the other parent except by express invitation, regardless of whether a parent retains a property interest in the residence. Unless otherwise indicated herein, the children shall be picked up and returned to the front entrance of the other parent's residence. The parent dropping off the children shall not leave until the children are safely inside the other parent's residence. Parents must refrain from surprise visits to the other parent's home.

**4.14. Refusal / Hesitation by Children.** Parents should always encourage the children to attend parenting time with the other parent absent circumstances outlined in the "Scope of Application" provision on page 3. Parents shall not deny parenting time with the other parent solely based on the refusal of the children.

## SOUTH DAKOTA PARENTING GUIDELINES

**4.15. Special Considerations for Adolescents.** While children never get to choose where they live, the parents should honestly and fairly consider their teenager's wishes regarding time with a parent. Neither parent shall attempt to influence their teenager's wishes on parenting time. Teenagers should explain the reason for their wishes directly to the affected parent, without intervention by the other parent.

**4.16. Daycare Providers.** When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

**4.17. Parents in the Armed Services.** When one or both parents are serving in the military, it is important to create a parenting time schedule that focuses on sharing the children when the parents live close to each other and allowing for temporary duty assignment (TDY) possibilities. Military families should also consider what parenting time would look like if TDY's or overseas commitments were engaged requiring one parent to live more than 200 miles from the children. The residential parent shall support the children's relationship with the other parent by having a consistent plan of communication with the military parent.

### **Legal Notice.**

These Guidelines do not provide legal opinions or legal advice and are not intended to serve as a substitute for the advice of licensed, legal professionals.

Laws and interpretations of laws change frequently, and the material contained in these Guidelines have important legal consequences. In using these Guidelines, parents are responsible for determining the applicability of any information contained in this document to their situation and are strongly encouraged to seek professional legal and other expert assistance in resolving their parenting time issues. Parents will often benefit from getting advice from mediators, counselors, therapists, parenting coordinators and lawyers to help them make a parenting time schedule.

### **Definitions.**

Any custody proceeding involving children is going to involve a determination of both legal and physical custody.

"Legal Custody" refers to the legal authority to make major decisions for your children. There are 2 options when it comes to legal custody:

Joint Legal Custody – "[B]oth parents retain full parental rights and responsibilities with respect to their child[ren] and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child[ren]." See SDCL 25-5-7.1.

Sole Legal Custody – one parent shall have the right and responsibility to make the decisions related to health, education and welfare of the children.

# SOUTH DAKOTA PARENTING GUIDELINES

“Physical Custody” refers to how parenting time is divided between 2 parties. Parents may agree on the amount of time the children spend with each parent. If parents do not agree, the parenting time schedule set forth herein shall remain in place until a court orders otherwise.

## **Shared Parenting.**

These Guidelines do not address shared parenting, which is defined as “a detailed shared parenting plan which provides that the children will reside no less than 180 nights per calendar year in each parent’s home and that the parents will share the duties and responsibilities of parenting the children and the expenses of the children in proportion to their incomes[.]” SDCL 25-7-6.27. If you are interested in this arrangement, you are strongly encouraged to consult with an attorney of your choosing. More information and sample schedules can be found at <https://ujslawhelp.sd.gov/>.

## **Scope of Application.**

**General.** These Guidelines are applicable to all custody situations, including divorces with minor children, paternity actions and cases involving joint legal custody where one parent has primary physical custody. These Guidelines are not applicable to situations where the court reasonably believes the children’s physical health or safety is in danger or the children’s emotional development could be significantly impaired. These situations may include, but are not limited to, the following:

- Family Violence (physical, verbal or otherwise);
- Substance Abuse;
- Mental Illness of Parent or Child;
- Risk of Flight with Children;
- Long Interruption of Contact Between Parent and Children;
- A Parent’s New Relationship;
- Religious & Cultural Holidays; or
- An Incarcerated Parent.

In such cases one or both parents may have legal, psychological, substance abuse or emotional problems that may need to be addressed before these Guidelines can be used. The type of help that is needed in such cases is beyond the scope of these Guidelines.

A parent who believes one or more of the above situations exists should file an Objection to the Implementation of the South Dakota Parenting Guidelines (UJS Form 372). This form can be found at <https://ujslawhelp.sd.gov/defendants.aspx>. The opposing parent should also file a response to this Objection and should appear at the hearing.

**Existing Parenting Time Orders.** Existing parenting time orders on the date of adoption of these revised Guidelines shall be enforced according to the parenting time guidelines that were in effect on the date the parenting time order was issued. Changes to the South Dakota Parenting Time Guidelines do not alone constitute good cause for modifying an existing parenting time order; however, a court or parties

## SOUTH DAKOTA PARENTING GUIDELINES

to a proceeding may refer to these Guidelines in requesting changes to their parenting time order after the effective date of the Guidelines.

**Protection Orders.** If a protection order has been established regarding the minor children, that order would prevail over these Guidelines, until a court specifically orders otherwise. If an active protection order prohibits contact between the parents or between one parent and the children, parents are cautioned that the parent who is the subject of the protection order will violate the order if he/she has contact with the other parent and makes agreements as suggested in these Guidelines without permission for contact from the court that issued the protection order.

### Additional Resources

There are several resources available to parents who need help in creating, enforcing or improving their parenting plan. Visit <https://ujslawhelp.sd.gov/> (under the "Parenting" tab) for additional information on mediators, parenting coordinators, co-parenting tools and counseling options.

Additional tips that parents should consider in order to keep the children the focus of the parenting time arrangements can be found in Appendix A.

## Tips to Stay Focused on the Children

A powerful cause of stress, suffering, and maladjustment in children of divorce or separation is not simply the divorce or separation itself, but rather continuing conflict between their parents before, during and after the divorce and/or separation. To minimize harm to the children, parents must agree on some basic rules to keep the children the focus of their parenting time arrangement.

Parents need to keep in mind that it is generally accepted that in most cases of divorce or separation:

1. Children of separated parents do best in both the short-term and the long-run when they feel loved and cared for by both parents;
2. Children generally do better when both parents have stable and meaningful involvement in their children's lives;
3. The strength of a parent's relationship to a child is affected more by parental commitment, warmth and the ability to meet the child's needs than it is by time spent with the child (i.e. quality vs. quantity);
4. Each parent has different and valuable contributions to make to their children's development;
5. Children should have structured routine time (such as bedtime and doing homework) with each parent, as well as unstructured time (such as playing in the park);
6. Parents should help their children maintain positive existing relationships, routines and activities;
7. Children may find security in personal possessions, like a favorite stuffed animal or blanket. Children should be permitted to bring personal possessions back and forth between homes, regardless of which parent purchased them; and
8. Parenting plans may need to be adjusted over time as the needs and circumstances of parents and children change.

Children are harmed by exposure to conflict between their parents. High conflict between parents increases children's anxiety and negatively impacts healthy child development. The following are guidelines to help you navigate your role in co-parenting your children:

1. Children shall not be put in a position to "choose" between the parents. Children must not be made to feel guilty about having a good time with the other parent;
2. Each parent should strive to show respect for the other parent;
3. Each parent must support the child's relationship with the other parent and encourage them to enjoy themselves with the other parent;

4. Children shall not be expected to communicate messages between parents, regarding parenting time, financial matters or issues about which parents disagree;
5. Parents should exchange the children in a respectful manner;
6. A parent should consider allowing their children to attend important family celebrations and events with both sides of their family, even when the events occur on the other parent's parenting time;
7. Differences between the parent's homes may occur (i.e. daily routines, activities, and diet). Parents should remember these are merely "differences" and are not necessarily a "better" or "worse" practice;
8. Children need consistency in both homes (i.e. bed times, meal times, medications etc.);
9. If one parent has been significantly more involved with the care of the child before separation, that parent may need to help the other parent gain the skills and knowledge to care appropriately for the child and support the development of a positive relationship between the child and the other parent, unless there are legitimate concerns about the other parent's capacity to care for their child. Both parents will need to approach this transition in a cooperative manner.

Parenting plans made for infants and young children may need to change as children get older and start to attend school. Parenting plans designed to accommodate a parent's employment may need to be modified if parents change their employment or work schedule. It is important for parents to communicate effectively, discuss changes that they observe in their children with one another and be prepared to modify the plans consistent with the best interests of the children.

Each family needs to consider the age, temperament, previous caretaking arrangements and the child's relationship with each parent, as well as whether the child has special needs. It is important that parents are able to communicate about their children on a regular basis, whether that communication is written or verbal. Parents shall share information so that a child's experience, as he/she transitions between parents, is as smooth as possible.

## Tips to Stay Focused on the Children

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAR 09 2022

*Shirley A. Johnson-Lopez*  
Clerk

\* \* \* \*

In the Matter of the Discipline of ) JUDGMENT OF CENSURE  
MARY R. ASH, as an Attorney at Law. )  
) #29841  
)

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PRESENT: Acting Chief Justice Janine M. Kern and Justices Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

DISQUALIFIED: Chief Justice Steven R. Jensen.

On December 13, 2021, the Disciplinary Board of the State Bar of South Dakota (the Board) filed its findings of fact, conclusions of law, and a recommendation that Mary R. Ash (Ash) be publicly censured, which documentation, pursuant to SDCL 16-19-67(1) constitutes a formal accusation. On December 23, 2021, Ash filed an answer to the formal accusation pursuant to SDCL 16-19-67(3), admitting its allegations and accepting its recommendation.

The Board's uncontested findings establish that Ash is an eleven-year member of the State Bar. Upon graduation and passage of the South Dakota Bar Examination in 2010, Ash went to work for the Sioux Falls law firm Wilka and Welter, formed in 2004 by John Wilka (Wilka) and Mark J. Welter (Welter). Ash initially worked as an assistant to Welter and transitioned over time to her own practice. She joined the firm as an equal partner in 2017.

In 2020, the Board received a complaint about Ash from one of her clients concerning communication and billing. During the Board's hearing on the complaint in early 2021, Ash answered questions about billing practices and the firm's trust account by stating that she had no involvement in trust account transactions and that they were handled exclusively by Wilka. Yet, Ash signed the firm's annual trust account certificates of compliance filed with the State Bar of South Dakota as required under SDCL 16-18-20.2. Ash trusted that Wilka was complying with the trust accounting rules.

The complaint against Ash was dismissed with a letter of caution sent to her by the Board indicating that she should become more familiar with the firm's trust account transactions. Ash, accordingly, approached Wilka and Welter, as well as the firm's bank, requesting access to the firm's financial records and a written partnership agreement that would give her access to the trust account. These efforts were unsuccessful, and Wilka continued to exercise control over the firm's finances. Frustrated, Ash took steps in late September 2021 to establish her own law office.

Meanwhile, an unrelated disciplinary investigation involving Wilka revealed that his management of the trust account did not comply with the Supreme Court Rules governing the trust account record-keeping and accounting procedures. He regularly transferred funds from the firm's trust account to its general account without noting the client for whom the funds were being transferred. For

several years, Wilka completed transfers from the firm's trust account to its general account via online bank transfers and without issuing checks or proper record-keeping. This mismanagement was uncovered by the Board in the fall of 2021 while investigating an unrelated complaint received from one of Wilka's clients. Wilka subsequently resigned from membership in the South Dakota Bar and consented to disbarment, which was effectuated by order of this Court on October 29, 2021. See SDCL 16-19-65.

As a result of the Wilka investigation, a complaint was generated by the Board against Welter and Ash, both of whom had previously completed annual certifications attesting that the firm's trust account met the minimum standards described in SDCL 16-18-20.2. On September 29, 2021, the Board's counsel met with Welter and Ash concerning the problems with the firm's trust account. Although Welter did not know the amount of funds that should be in the account for each of his clients, Ash produced a report showing the balances that should be in the account for each of her clients. Welter and Ash were given until October 31, 2021, to clarify the allocation of the funds in the trust account. Based upon their review of billing and accounting records, Welter and Ash reported to the Board that there was a "significant shortfall" in the trust account in the amount of \$182,655.85.

With the Board's authorization and using their personal funds, Welter and Ash reimbursed the trust account for the amount

necessary to make up the shortfall. As a result of their prompt remedial action, the account is fully funded, and all funds are identifiable to individual clients. No complaints were received from clients alleging that they were harmed by the inappropriate actions involving the firm's trust account.

During the disciplinary proceedings, Welter further reported that in addition to the trust account issues, the firm was delinquent in its payment of payroll taxes in the approximate amount of \$20,000. Ash also notified the Board of her intention to pursue her own practice as a solo practitioner with the Ash Law Office, PLLC.

Pursuant to notice duly given, these matters were heard by the Board on November 19, 2021. The Board was represented by its counsel, Thomas H. Frieberg and Robert B. Frieberg. Ash was represented by William P. Fuller.

The Board concluded that Ash's actions reflect a lack of understanding of her obligations under the Rules of Professional Conduct and violate Rule 1.15 by failing to properly safeguard and account for clients' funds held in trust. Further, by signing and submitting annual trust account compliance certificates to the State Bar of South Dakota, Ash falsely certified that the firm was in compliance with the record-keeping requirements of SDCL 16-18-20.1 concerning client funds. Ash's actions also constitute misconduct in violation of Rule 8.4 of the Rules of Professional Conduct.

The Board has recommended:

1. That formal discipline be imposed upon Ash in the form of a public censure with conditions as follows:
  - a. That Ash provide the Board with monthly trust account records for a period of twelve months and thereafter as deemed necessary by the Board.
  - b. That Ash be responsible for reimbursing any of the firm's clients who are later discovered to have funds that should be held in the firm's trust account.
  - c. That Ash report to the Board when the firm's payroll tax debt issue with the IRS is resolved.
2. That Ash reimburse the State Bar of South Dakota for its expenses in investigating and prosecuting this matter as permitted under SDCL 16-19-70.2.

In his separate, related disciplinary proceeding, Welter explained his and Ash's efforts to resolve the payroll tax issue with the IRS and the payments that they have made toward that end. Welter has indicated he will report resolution of the issue to the Board upon written confirmation from the IRS that the matter is resolved.

The Court has considered the Board's findings of fact, conclusions of law, and recommendation. While we give careful consideration to the Board's findings, we do not rotely defer to its recommended sanction because the ultimate decision for discipline of members of the Bar rests with this Court. "The appropriate discipline in a particular case depends on the seriousness of the

attorney's misconduct and the likelihood that it or similar misconduct will be repeated. We take the action necessary to protect the public from future harm at the hands of an attorney whose conduct is under question." *In re Discipline of Light*, 2000 S.D. 100, ¶ 12, 615 N.W.2d 164, 167-68 (citations omitted).

"SDCL 16-19-35 provides that misconduct may serve as the grounds for disbarment, suspension, probation, public censure, or private reprimand." *Id.* ¶ 13, 615 N.W.2d at 168. In determining the appropriate sanction here, we emphasize the duty of attorneys to their clients, the public, the legal system, and their profession to maintain trust accounts and protect client funds in a manner beyond question or reproach and that promotes public confidence in the legal profession.

Ash failed to learn about trust accounts and trust account procedures herself until cautioned to do so because of an earlier disciplinary proceeding. However, her misconduct related to this belated failure to learn is mitigated by Wilka and Welter's failure to assist her in her later attempts to learn more about the management of the firm and the trust account. There is no indication that any client suffered a loss because of the mismanagement of the trust account, and any potential in this regard has been neutralized by the fact that Welter and Ash reimbursed the trust account from their own personal resources.

Also mitigating Ash's misconduct are the following: the absence of a dishonest or selfish motive; her prompt admission of her misconduct; her extraordinary remedial actions, her timely good faith efforts to make restitution and to rectify the consequences of her misconduct; her full and free disclosures to the Board; her cooperative attitude toward the proceedings; and her expressions of remorse. Balancing these mitigating factors with the seriousness of an attorney's uncompromising obligation to comply with professional rules relating to trust accounts, we agree with the Board's recommendation that a public censure is the appropriate discipline to be imposed for Ash's violations.

Having determined that public censure is the appropriate discipline to be imposed, it is

ORDERED, ADJUDGED AND DECREED that Mary R. Ash be and she is hereby publicly CENSURED.

IT IS FURTHER ORDERED that the additional recommendations of the Board are adopted as follows:

- 1) That Ash provide the Disciplinary Board with monthly trust account records for a period of twelve months and thereafter as deemed necessary by the Board; and
- 2) That Ash be responsible for reimbursing any of the firm's clients who are later discovered to have funds that should be held in the firm's trust account; and
- 3) That Ash report to the Board when the firm's payroll tax debt issue with the IRS is resolved.

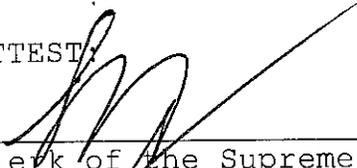
IT IS FURTHER ORDERED that Ash shall on or before April 4, 2022 pay \$4,219.13 to the State Bar of South Dakota as reimbursement of its itemized expenses, allowed under SDCL 16-19-70.2.

IT IS FURTHER ORDERED that proof of the payment be filed with the Clerk of this Court on or before May 4, 2022.

DATED at Pierre, South Dakota this 9th day of March, 2022.

BY THE COURT:

ATTEST:

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

  
\_\_\_\_\_  
Janine M. Kern, Acting Chief Justice

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

MAR 09 2022

*Shirley A. Johnson Lepp*  
Clerk

\* \* \* \*

In the Matter of the Discipline	)	JUDGMENT OF CENSURE
of MARK J. WELTER, as an Attorney	)	
at Law.	)	#29842
	)	

PRESENT: Acting Chief Justice Janine M. Kern and Justices Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

DISQUALIFIED: Chief Justice Steven R. Jensen.

On December 13, 2021, the Disciplinary Board of the State Bar of South Dakota (the Board) filed its findings of fact, conclusions of law, and a recommendation that Mark J. Welter (Welter) be publicly censured, which documentation, pursuant to SDCL 16-19-67(1), constitutes a formal accusation. On January 10, 2022, Welter filed an answer to the formal accusation pursuant to SDCL 16-19-67(3), admitting its allegations and accepting its recommendation.

The Board's uncontested findings establish that Welter is a thirty-five-year member of the State Bar with service as a clerk for the United States District Court for South Dakota and as a partner in two different Sioux Falls law firms. His second partnership endeavor was with the Sioux Falls law firm Wilka, Welter and Ash, LLP. Welter and John Wilka (Wilka) formed the partnership in 2004 and were joined in 2017 by Mary Ash (Ash) who became an equal partner at that time.

In none of his partnership experiences did Welter have significant involvement or knowledge of the firms' trust accounts, and he relied upon other partners to ensure that trust account funds were properly accounted for and managed. He followed this pattern with Wilka and relied upon Wilka to manage the deposits and disbursements from the firm's trust account. Yet, despite his lack of personal knowledge, Welter continued to sign the firm's annual trust account certificates of compliance filed with the State Bar of South Dakota as required under SDCL 16-18-20.2. Welter trusted that Wilka was complying with the trust accounting rules.

However, an unrelated disciplinary investigation revealed that Wilka's management of the trust account did not comply with the Supreme Court Rules governing the trust account record-keeping and accounting procedures. He regularly transferred funds from the firm's trust account to its general account without proper record-keeping. For several years, Wilka completed transfers from the firm's trust account to its general account via online bank transfers and without issuing checks. As a result of the Board's investigation, Wilka subsequently resigned from membership in the South Dakota Bar and consented to disbarment, which was effectuated by order of this Court on October 29, 2021. See SDCL 16-19-65.

The information derived from the Wilka investigation resulted in a complaint generated by the Board against Welter and Ash, both of whom had previously completed annual certifications

attesting that the firm's trust account met the minimum standards described in SDCL 16-18-20.2. On September 29, 2021, the Board's counsel met with Welter and Ash concerning the problems with the firm's trust account. Welter did not know the amount of funds that should be in the account for each of his clients. Welter and Ash were given until October 31, 2021, to clarify the allocation of the funds in the trust account. Based upon their review of billing and accounting records, Welter and Ash reported to the Board that there was a "significant shortfall" in the trust account in the amount of \$182,655.85.

With the Board's authorization and using their personal funds, Welter and Ash reimbursed the trust account for the amount necessary to make up the shortfall. As a result of their prompt remedial action, the account is fully funded, and all funds are identifiable to individual clients. No complaints were received from clients alleging that they were harmed by the inappropriate actions involving the firm's trust account.

During the disciplinary proceedings, Welter further reported that in addition to the trust account issue, the firm was delinquent in its payment of payroll taxes in the approximate amount of \$20,000. Welter also notified the Board of his intention to join another Sioux Falls law firm.

Pursuant to notice duly given, these matters were heard by the Board on November 19, 2021. The Board was represented by its

counsel, Thomas H. Frieberg and Robert B. Frieberg. Welter was represented by Thomas J. Nicholson.

The Board concluded that Welter's actions reflect a lack of understanding of his obligations under the Rules of Professional Conduct and violate Rule 1.15 by failing to properly safeguard and account for clients' funds held in trust. Further, by signing and submitting annual trust account compliance certificates to the State Bar of South Dakota, Welter falsely certified that the firm was in compliance with the record-keeping requirements of SDCL 16-18-20.1 concerning client funds. Welter's actions also constitute misconduct in violation of Rule 8.4 of the Rules of Professional Conduct.

The Board has recommended:

1. That formal discipline be imposed upon Welter in the form of a public censure with conditions as follows:
  - a. That Welter not be permitted to have access to or signature authority over client funds held in trust without permission of the Board or Court.
  - b. That Welter be responsible for reimbursing any of the firm's clients who are later discovered to have funds that should be held in the firm's trust account.
  - c. That Welter report to the Board when the firm's payroll tax debt issue with the IRS is resolved.
2. That Welter reimburse the State Bar of South Dakota for its expenses in investigating and prosecuting this matter as permitted under SDCL 16-19-70.2.

In his answer to the Board's formal accusation filed subsequent to the Board's findings of fact, conclusions of law, and recommendation, Welter expresses his understanding and appreciation of the seriousness of his violations and pledges not to repeat them. He summarizes the restrictions and checks put in place by his new law firm to monitor his access to and signature authority over client funds. He also explains his and Ash's efforts to resolve the payroll tax issue with the IRS and the payments that they have made toward that end. Welter will report resolution of the issue to the Board upon written confirmation from the IRS that the matter is resolved.

The Court has considered the Board's findings of fact, conclusions of law, and recommendation, as well as Welter's answer. While we give careful consideration to the Board's findings, we do not rotely defer to its recommended sanction because the ultimate decision for discipline of members of the Bar rests with this Court. "The appropriate discipline in a particular case depends on the seriousness of the attorney's misconduct and the likelihood that it or similar misconduct will be repeated. We take the action necessary to protect the public from future harm at the hands of an attorney whose conduct is under question." *In re Discipline of Light*, 2000 S.D. 100, ¶ 12, 615 N.W.2d 164, 167-68 (citations omitted).

"SDCL 16-19-35 provides that misconduct may serve as the grounds for disbarment, suspension, probation, public censure, or private reprimand." *Id.* ¶ 13, 615 N.W.2d at 168. In determining the

appropriate sanction here, we emphasize the duty of attorneys to their clients, the public, the legal system, and their profession to maintain trust accounts and protect client funds in a manner beyond question or reproach and that promotes public confidence in the legal profession.

Welter is an experienced attorney who failed to learn about trust accounts and trust account procedures himself. Moreover, Welter failed to assist Ash in her attempts to learn more about the management of the firm and the trust account. There is no indication that any client suffered a loss because of the mismanagement of the trust account, and any potential in this regard has been neutralized by the fact that Welter and Ash reimbursed the trust account from their own personal resources. Further mitigating Welter's misconduct are the following: the absence of a dishonest or selfish motive; his prompt admission of his misconduct; his timely good faith efforts to make restitution and to rectify the consequences of his misconduct; his full and free disclosures to the Board; his cooperative attitude toward the proceedings; and his expressions of regret and remorse. Balancing these mitigating factors with the seriousness of an attorney's uncompromising obligation to comply with professional rules relating to trust accounts, we agree with the Board's recommendation that a public censure is the appropriate discipline to be imposed for Welter's violations.

Having determined that public censure is the appropriate discipline to be imposed, it is

ORDERED, ADJUDGED AND DECREED that Mark J. Welter be and he is hereby publicly CENSURED.

IT IS FURTHER ORDERED that the additional recommendations of the Board are adopted as follows:

- 1) That Welter not be permitted to have access to or signature authority over client funds held in trust without permission of the Board or Court; and
- 2) That Welter be responsible for reimbursing any of the firm's clients who are later discovered to have funds that should be held in the firm's trust account; and
- 3) That Welter report to the Board when the firm's payroll tax debt issue with the IRS is resolved.

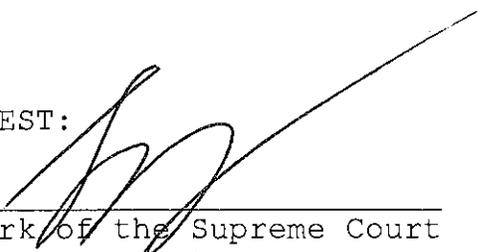
IT IS FURTHER ORDERED that Welter shall on or before April 4, 2022 pay \$4,255.56 to the State Bar of South Dakota as reimbursement of its itemized expenses, allowed under SDCL 16-19-70.2.

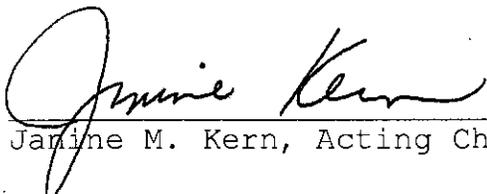
IT IS FURTHER ORDERED that proof of the payment be filed with the Clerk of this Court on or before May 4, 2022.

DATED at Pierre, South Dakota this 9th day of March, 2022.

BY THE COURT:

ATTEST:

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

  
\_\_\_\_\_  
Janine M. Kern, Acting Chief Justice



**ATTORNEYS - OATH OF ATTORNEY**

I do solemnly swear, or affirm, that:  
I will support the Constitution of the United States and the Constitution of the State of South Dakota;  
I will maintain the respect due to courts of justice and judicial officers;  
I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;  
I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;  
I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from that client or with the client's knowledge or approval;  
I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;  
I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

In the Matter of the Discipline	)	JUDGMENT OF PUBLIC CENSURE
of Steven R. Bowers,	)	
as an Attorney at Law.	)	#29863
	)	
	)	
	)	

-----

WHEREAS on January 5, 2022, there was filed with this Court a certified copy of an opinion of the Supreme Court of the State of Nebraska in an attorney disciplinary action (S-21-000079) titled: "STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, v. STEVE R. BOWERS, RESPONDENT," hereto attached, wherein said attorney was publicly reprimanded, and

WHEREAS by order of January 21, 2022, respondent was ordered to show cause pursuant to the provisions of SDCL 16-19-72 and 16-19-74 why identical discipline or such other discipline as the Court would deem appropriate should not be imposed in the State of South Dakota, and

WHEREAS respondent filed a written showing to said order on February 22, 2022, and

WHEREAS the Court has considered the decision of the Supreme Court of Nebraska and respondent's answer to the show cause order, and

WHEREAS the Court has determined that identical discipline should be imposed, now, therefore, it is

#29863, Judgment of Public Censure

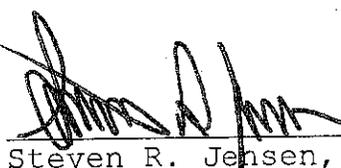
ORDERED, ADJUDGED and DECREED that Steven R. Bowers that  
be and he is hereby publicly censured.

DATED at Pierre, South Dakota, this 21st day of March,  
2022.

BY THE COURT:

ATTEST:

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

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

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

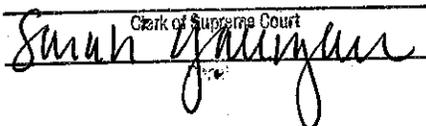
SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAR 21 2022

  
Clerk

STATE OF SOUTH DAKOTA  
in the Supreme Court

I, Shirley A. Jameson-Fergal, 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  
21 day of March, 2022.

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


FILED

June 04, 2021

IMAGE ID N21165GB9NSC, FILING ID 0000010242

CLERK

NEBRASKA SUPREME COURT  
COURT OF APPEALS

- 423 -

NEBRASKA SUPREME COURT ADVANCE SHEETS  
309 NEBRASKA REPORTS  
STATE EX REL. COUNSEL FOR DIS. v. BOWERS  
Cite as 309 Neb. 423

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

JAN - 5 2022

*Shel A. Johnson-Lepel*  
Clerk

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE  
OF THE NEBRASKA SUPREME COURT, RELATOR,  
V. STEVEN R. BOWERS, RESPONDENT.

     N.W.2d     

Filed June 4, 2021. No. S-21-079.

Original action. Judgment of public reprimand.

HEAVICAN, C.J., MILLER-LERMAN, CASSEL, STACY, FUNKE,  
PAPIK, and FREUDENBERG, JJ.

PER CURIAM.

### INTRODUCTION

This case is before the court on the conditional admission filed by Steven R. Bowers, the respondent, on April 15, 2021. The court accepts the respondent's conditional admission and enters an order of public reprimand.

### FACTS

The respondent was admitted to the practice of law in the State of Nebraska on March 5, 2008. At all times relevant to these proceedings, the respondent was engaged in the practice of law in Broken Bow, Nebraska. The respondent served as the county attorney of Custer County, Nebraska.

On February 1, 2021, the Counsel for Discipline of the Nebraska Supreme Court, the relator, filed formal charges against the respondent. The formal charges consisted of two counts. Pursuant to Neb. Ct. R. § 3-302, the respondent is under the jurisdiction of the Committee on Inquiry of the Sixth Judicial District (Committee).

NEBRASKA SUPREME COURT ADVANCE SHEETS  
309 NEBRASKA REPORTS

STATE EX REL. COUNSEL FOR DIS. v. BOWERS

Cite as 309 Neb. 423

The matters alleged in the formal charges were reviewed by the Committee pursuant to Neb. Ct. R. § 3-309(H) (rev. 2011). The Committee determined that there are reasonable grounds for discipline of the respondent and that the public interest would be served by the filing of formal charges.

The formal charges generally allege violations stemming from the respondent's prosecution of criminal defendants, who had extensive criminal records and faced felony charges. The respondent wanted the defendants "out of Custer County" so they would not engage in further illegal conduct. The respondent agreed that if the defendants would plead guilty or no contest to the pending charges, he would assist in getting their bonds reduced so the defendants could be released from jail before their sentencing. The respondent agreed that if the defendants left the State of Nebraska and failed to appear at their respective sentencing hearings and a bench warrant were issued, the respondent would direct the sheriff of Custer County not to seek to extradite the defendants. The respondent did not inform the court that he had agreed not to seek extradition of the defendants if they agreed to plead guilty or no contest to the pending charges. The defendants ultimately posted bail. One of the defendants fled the jurisdiction, and although he was later arrested in Douglas County, the respondent did not attempt to seek extradition and the defendant was released.

The formal charges allege that by his actions, the respondent violated his oath of office as an attorney licensed to practice law in the State of Nebraska, as provided by Neb. Rev. Stat. § 7-104 (Reissue 2012), and violated Neb. Ct. R. of Prof. Cond. §§ 3-503.3(a)(1) and (b) (rev. 2016) (candor toward tribunal) and 3-508.4(c) and (d) (misconduct).

On April 15, 2021, the respondent filed a conditional admission pursuant to Neb. Ct. R. § 3-313(B) of the disciplinary rules, in which he conditionally admitted that he violated his oath of office as an attorney and §§ 3-503.3(a)(1) and (b) (candor toward tribunal) and 3-508.4(c) and (d) (misconduct) of the professional conduct rules. In the conditional admission,

NEBRASKA SUPREME COURT ADVANCE SHEETS  
309 NEBRASKA REPORTS  
STATE EX REL. COUNSEL FOR DIS. v. BOWERS  
Cite as 309 Neb. 423

the respondent admits that his conduct violated the identified rules of professional conduct. The respondent knowingly does not challenge or contest the truth of the matters conditionally asserted and waived all proceedings against him in exchange for a public reprimand.

The proposed conditional admission included a declaration by the Counsel for Discipline, stating that the respondent's proposed discipline is appropriate under the facts of this case.

### ANALYSIS

Section 3-313, which is a component of our rules governing procedures regarding attorney discipline, provides in pertinent part:

(B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange for a stated form of consent judgment of discipline as to all or part of the Formal Charge pending against him or her as determined to be appropriate by the Counsel for Discipline or any member appointed to prosecute on behalf of the Counsel for Discipline; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

Pursuant to § 3-313, and given the conditional admission, we find that the respondent knowingly does not challenge or contest the matters conditionally admitted. We further determine that by his conduct, the respondent violated §§ 3-503.3(a)(1) and (b) (candor toward tribunal) and 3-508.4(c) and (d) (misconduct) of the professional conduct rules and his oath of

NEBRASKA SUPREME COURT ADVANCE SHEETS  
309 NEBRASKA REPORTS  
STATE EX REL. COUNSEL FOR DIS. v. BOWERS  
Cite as 309 Neb. 423

office as an attorney licensed in the State of Nebraska. The respondent has waived all additional proceedings against him in connection herewith. Upon due consideration, the court approves the conditional admission and enters the orders as indicated below.

**CONCLUSION**

The respondent is publicly reprimanded. If the respondent applies to appear pro hac vice, he must disclose this discipline. The Respondent is directed to pay costs and expenses in accordance with Neb. Ct. R. §§ 3-310(P) (rev. 2019) and 3-323 of the disciplinary rules within 60 days after an order imposing costs and expenses, if any, is entered by the court.

JUDGMENT OF PUBLIC REPRIMAND.

SUPREME COURT  
STATE OF NEBRASKA

)  
)  
)

ss.

I hereby certify that I have compared the foregoing copy of the opinion in case no. S-21-0079, State ex rel. Counsel for Discipline v. Bowers, with the original on file in my office. The same is a correct copy of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of this Court, in the City of Lincoln, on January 5, 2022.

Wendy A. Wussow

Clerk



Jody Schmidt

Deputy Clerk

# Career Center

STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

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



## Litigation Paralegal - Watertown

Schoenbeck & Erickson, PC is seeking a highly motivated and organized paralegal who is certified by one of the national paralegal associations and/or has a minimum of 5 years paralegal experience.

### Duties Include

- Handle all aspects of civil litigation case file management.
- Transcribe dictation.
- Correspondence with clients, attorneys, medical providers, insurance companies, court staff, court reporters, county offices, and other legal and business entities.
- Draft pleadings.
- Handle electronic filings in state, federal, and appellate courts.
- Conduct and summarize legal research.
- Organize and index production of documents.
- Calculate and manage deadlines and scheduling.
- Order and summarize medical records and medical bills.
- Work on subrogation claims.
- Assist with trial preparations and trials.

### Skills Required

- Knowledge of professional code of conduct for attorneys and paralegals.
- Knowledge of common legal principles and practices.
- Strong organization and prioritization skills.
- Ability to work independently, but also as part of a team.
- Strong interpersonal skills.
- Attention to detail.

Job Type

- Full time, M-F, 8am-5pm, Occasional overtime

### Benefits

- 401(k), matching, profit-sharing
- Health insurance
- Paid vacation
- Paid sick leave

### Education

- Bachelor's or Paralegal Certification/Degree (preferred), but not required

### Application Information

- Cover letter and resume to: [donna@schoenbecklaw.com](mailto:donna@schoenbecklaw.com)

## Staff Attorney – Rapid City

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

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

**SALARY:** Competitive, depending on experience. DPLS

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

CLOSING DATE: Open until filled.

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

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

### **Governor's Office-Deputy General Counsel, Pierre**

#### Job Description:

The Governor's Office of the General Counsel is seeking a deputy general counsel to work closely with the General Counsel and policy advisors to provide legal assistance on a wide variety of topics from communicating legal advice to staff, public records, assist with managing litigation, and contract review, to legislative action items and crafting internal policies. The deputy general counsel conducts a great deal of research and writing, including preparing legal and staffing memorandums, and interacts with general counsels of the various state agencies. Candidates must be self-starters and able to handle a fast-paced work environment. Candidates must also manage their time efficiently, write concisely, and communicate effectively. This is a paid position located in Pierre, South Dakota. Interested candidates may submit resume and cover letter to [Katie.Hruska@state.sd.us](mailto:Katie.Hruska@state.sd.us).

### **Associate Estate and Business Succession Planning Attorney**

(South Dakota License)

As an Estate and Business Succession Planning Attorney, you will be responsible for guiding clients through the estate planning, business succession planning, and estate / trust administration process. Working with the region's largest estate and business succession planning and administration team of experts, you will have the opportunity to work directly with clients on day one

with our firm. You will be at the center of helping clients navigate the process of designing and implementing estate plans and guiding them through the sometimes challenging process of settling the estates of their loved ones. You will have access to the resources of a large firm, but also have the opportunity to learn and grow with sophisticated and challenging work.

#### Who we want:

- A focused and organized professional with precise attention to detail, particularly in drafting documents, and a desire to deliver impeccable service for clients
- A critical thinker with exceptional written and oral communication skills and the ability to simplify and explain complex topics to clients in an understandable manner
- An organized project manager who can balance multiple projects at various stages, while ensuring timely completion of work and meeting all deadlines
- A dedicated and driven attorney who wants to be a part of a larger team while guiding clients through the estate / trust administration process

#### What you need:

- At least five years of estate planning and estate / trust administration experience in the state of South Dakota, with meaningful exposure to sophisticated estate, business succession, and tax planning strategies for high net worth clientele
- A license to practice law in the state of South Dakota
- A license to practice law in the state of Nebraska or eligibility to waive in
- Excellent academic and professional credentials
- Accounting degree, finance degree, or LLM preferred, but not required
- Portable business is not required

Koley Jessen is an Equal Opportunity Employer. It is our policy to provide an equal opportunity to all individuals without regard to race, color, ethnicity, religion, gender, age, gender expression and identity, national origin, ancestry, disability, transgender or sexual orientation, marital status, protected veteran status, or any other classification protected by law.

**MAGISTRATE JUDGE  
Seventh Judicial Circuit  
Rapid City, South Dakota**

**Requisition #:** J22-10

**Agency:** Unified Judicial System

**Salary:** \$111,796.79/annually

**Closing Date:** April 14, 2022

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

Duties may include:

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

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

*To qualify for Veterans' Preference, a veteran must have been separated or discharged honorably or under honorable conditions. To be considered for Veterans' Preference, please attach a copy of the DD214, DD214R or NGB22 indicating qualifications per SDCL 33A-2-1.*

**To Apply:** Applicants must complete a letter of interest and a magistrate judge applicant/personal data questionnaire. This document can be obtained by accessing the following link <http://ujis.sd.gov/uploads/hr/MagistratePDQ.pdf> or contacting the Human Resources office. If the applicant has completed a circuit court judge judicial application/personal data questionnaire within the last six months, it may be submitted in lieu of the magistrate application, provided it is updated to the date of application. All personal data questionnaires must be submitted by the closing date to:

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

## **Associate Attorney – Sturgis**

Strain Morman Law Firm offers a complete general practice opportunity, and is seeking candidates for an associate staff attorney. The firm handles all types of civil and criminal matters, and covers many areas of non-litigation civil practice.

### Qualifications:

Applicants must be licensed to practice law in South Dakota. The ideal candidate will possess excellent organizational, writing, and research skills, and be willing to work in most general practice areas with an emphasis on contracts, estate planning and trust, and probate areas. Opportunities for civil and criminal litigation are also available.

Salary: Competitive, depending on experience.

### To Apply:

Interested applicants should send their cover letter, resume, and references to:

Strain Morman Law Firm  
C/o Michael Strain  
1134 Main Street  
Sturgis, SD 57785

### Or Email to:

[mike@mormanlaw.com](mailto:mike@mormanlaw.com) (All applications will be kept confidential)

## **Deputy Public Defender - Deadwood**

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

Applicant must possess a J.D. degree and be admitted by the Supreme Court of South Dakota to practice law in the state; 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. Criminal trial experience or clinical program experience in criminal law are

preferred.

Applicant must be a resident or Lawrence County or willing to become a resident within eleven months or start date. Applications will be reviewed until position is filled with a start date dependent upon availability. Salary will be a range of \$66,394.64-\$79,054.82 annually (DOE). Lawrence County offers health, dental and life insurance, paid vacation and sick leave and retirement benefits and is an equal opportunity employer. Please contact the Lawrence County Public Defender's Office for more information at (605)578-3000.

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

## **Legislative Attorney - Pierre**

South Dakota Legislative Research Council

The Legislative Research Council, which is the nonpartisan research and support staff to the South Dakota State Legislature, is accepting applications for a permanent, full-time Legislative Attorney. An applicant must have an interest in the democratic process and be results oriented, honest, discrete, trustworthy, and articulate.

Duties and Responsibilities: A Legislative Attorney will assist legislators by providing accurate, objective, and relevant research information, informed by a professional understanding of the law. The significant duties include the following:

- 1) Compile data and conduct general and legal research for legislative committees and individual legislators and present alternative solutions for their consideration;
- 2) Confer with and advise legislators on legislative legal questions;
- 3) Draft and edit bills, resolutions, and amendments to implement legislators' ideas;
- 4) Staff standing committees of the South Dakota Legislature during legislative sessions, consult with committee chairs to develop agendas and obtain testimony, prepare committee reports, and draft amendments to committee bills;
- 5) Staff interim committees of the Legislative Research Council, consult with committee chairs to develop agendas, assist with meeting arrangements, prepare

background materials, and prepare final reports;  
6) Review administrative rules for form, style, clarity, and compliance with statutory authority;  
7) Research and write issue memoranda and develop other resources on selected topics for review and use by the Legislature, Legislative Research Council staff, and the public; and  
8) Help develop prison and jail population cost estimates for legislation impacting prison and jail populations.

**Minimum Qualifications:**

- 1) A Juris Doctorate from an ABA-accredited law school; and
- 2) An active license in good standing with the State Bar of South Dakota, or the ability to become eligible for and become admitted to the State Bar of South Dakota within one (1) year after employment.

**Preferred Qualifications:**

- 1) Very strong writing skills;
- 2) Strong research and analytical skills;
- 3) A willingness to expand expertise into various subject areas;
- 4) The ability to communicate, both orally and in writing, in a manner which can clearly and efficiently convey information to legislators and the public;
- 5) Proficiency in word processing and spreadsheet development; and
- 6) The ability to work under tight deadlines and extended hours during the legislative session.

**Salary Range:** For an entry level Legislative Attorney, the annual salary will range from \$61,114 to \$91,670, with a midpoint goal of \$76,392. For a Senior Legislative Attorney with previous related experience, the annual salary will range from \$74,262 to \$111,394, with a midpoint goal of \$92,828. The successful candidate may be eligible for an increase of up to 6% beginning July 1, 2022. Actual starting salary will depend on qualifications and experience.

**Application Process:** This position will remain open through Friday, April 22, 2022. This position is exempt from the Career Service Act and is employed at will. Any application or resume submitted for consideration will be kept confidential. Applications (consisting of a letter of interest and resume) should be submitted via hard copy or e-mail to:

Reed Holwegner, Director  
South Dakota Legislative Research Council

500 East Capitol Avenue, Pierre, SD 57501

E-Mail: [Legis.Resume@sdlegislature.gov](mailto:Legis.Resume@sdlegislature.gov) | Phone: 605-773-3251

**Bank Examiner – Sioux Falls or Pierre**

Job ID: 18248

Agency: Department of Labor & Regulation - Division of Banking

Salary: \$47,500 annually

Pay Grade: GZ-H

Closing Date: Open Until Filled

This is a Full-Time 40 Hours Weekly position with the Department of Labor & Regulation. For more information on the Department of Labor & Regulation, please visit <http://dlr.sd.gov>. This position is exempt from the Civil Service Act.

The South Dakota Division of Banking regulates the state's banking, trust, and financial services industries to assure that our citizens have confidence in our state's financial markets and services. We are seeking an inquisitive individual with analytical and communication skills to join our team of professional Financial Institution Examiners in either Pierre or Sioux Falls.

Examiners at the Division of Banking enjoy: Training– Effective on-the-job training is combined with annual off-site training at locations such as Hilton Head, SC; Arlington, VA; and Boston, MA. Pay Advancements– Salary increases are offered for successful work performance and completion of formal trainings. Positive working environments– Enjoy having your own office while still working as part of a knowledgeable and supportive team. Personal growth– Develop comprehensive knowledge of the financial industry while developing leadership and communication skills. Advancement– Successful examiners will receive numerous certifications with internal promotional opportunities available.

As part of a team, you will: determine the financial condition of state-chartered banks, trust companies, and licensed financial institutions; evaluate adequacy of financial institutions' internal control procedures; determine compliance with State and Federal

statutes related to banking, trust, licensing, and consumer protection; evaluate loan and investment portfolios to determine quality and suitability; make recommendations on findings; investigate consumer complaints related to supervised financial institutions.

Bachelor's Degree required. The ideal candidate will have a bachelor's degree in banking, finance, accounting, or a related field with an advanced degree preferred. Professional experience that leads to mastery of the following knowledge and abilities will be considered.

Knowledge of accounting and auditing principles and procedures; the organization of banks and other financial institutions; banking work environments; fiduciary principles; • consumer protection statutes and regulations; Microsoft Office products and management information systems.

Skill to communicate concisely and effectively with co-workers, financial institution staff and officials, and examiners from other agencies; gather, interpret, report, and use financial information; understand and interpret federal and state banking regulations.

Additional Requirements: To be considered, attach your resume, letter of interest, writing sample & post-secondary transcripts

#### VETERANS' PREFERENCE ELIGIBLE

Successful applicant(s) will be required to undergo a background investigation. An arrest/conviction record will not necessarily bar employment.

The State of South Dakota offers employer paid health insurance plus ten paid holidays, generous vacation and sick leave accrual, dental, vision, and other insurance options, and retirement benefits. You can view our benefits information at <https://bhr.sd.gov/job-seekers/work-for-state-government/>. This position is a member of Class A retirement under SDRS.

Must apply online: <https://sodakprod-lm01.cloud.infor.com:1443/lmg/hr/xmlhttp/shorturl.do?key=GNX>

You must apply online, emailed resumes or submissions will not be accepted.

#### South Dakota Code Counsel - Pierre

South Dakota Legislative Research Council, Pierre, South Dakota

The Legislative Research Council (LRC), the nonpartisan research and support staff to the South Dakota Legislature, is accepting applications for the position of Code Counsel. The Code Counsel position was created in 1970 when the Revisor of Statutes was transferred from the Supreme Court to the Legislative Branch. The Code Counsel is appointed by the Executive Board of the LRC, in the same manner as the LRC Director, and serves as a key member of the LRC's senior staff team.

Duties and Responsibilities: Significant duties and responsibilities of the Code Counsel include the following: 1) Provides staff support to the South Dakota Code Commission; 2) Edits South Dakota Codified Laws, including catchlines, assigning statute numbers, resolving conflicts between statutes, and writing Code Commission notes to explain how conflicts are resolved and how nonstatutory material may affect the Code; 3) Works with a team of editorial professionals at the publisher of South Dakota Codified Laws (Thomson Reuters) to edit and publish the Code; 4) Edits Session Laws by establishing the subject index for bills, assigning chapter numbers, and preparing the Session Laws for publication; 5) Administers, as delegated by the LRC Director, the statutory administrative rules review function, which entails coordinating with other LRC staff and executive branch personnel on the review and editing of administrative rules for legality, clarity, style, and form, and coordinating with LRC support staff on the publication of the South Dakota Register and the Administrative Rules of South Dakota; 6) Takes primary responsibility for review and editing of all administrative rules filed during the legislative session; 7) Serves as principal legal counsel to the LRC Director; and 8) Functions as a legislative attorney as time permits, providing staff support to legislative committees, drafting legislation, researching legal and general questions, and advising on legislative procedures.

Minimum Qualifications: 1) ) A law degree from an accredited postsecondary institution; and 2) Admitted to the practice of law in the State of South Dakota or eligible to and becomes admitted within one year after employment.

Preferred Qualifications: 1) Substantial general legal practice experience in South Dakota or substantial varied legal practice experience in federal, state, or local government work in South Dakota; 2) Specific experience serving as an in-house counsel for a private entity or a government, assisting in a policymaking role; or 3) Specific experience in drafting and organizing statutes, administrative rules, or ordinances.

Salary Range: The Code Counsel salary range is \$101,904 to \$152,856 for FY 2023.

Application Process: This position announcement will remain open until April 29, 2022. Applications (consisting of a letter of interest, resume, and up to 5 references) should be submitted via hard copy or e-mail to:

Reed Holwegner, Director  
South Dakota Legislative Research Council  
500 East Capitol Avenue, Pierre, SD 57501  
E-Mail: [Legis.Resume@sdlegislature.gov](mailto:Legis.Resume@sdlegislature.gov) | Phone: 605-773-3251

### **STAFF ATTORNEY – RAPID CITY**

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

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

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

CLOSING DATE: Open until filled.

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

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

### **STAFF ATTORNEY – FT. YATES, NORTH DAKOTA**

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Ft. Yates, North Dakota office. The Ft. Yates office serves Campbell, Corson and Walworth counties in South Dakota and the Standing Rock Indian Reservation.

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

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

CLOSING DATE: Open until filled.

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

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

## Law Clerks for 2023-2024

The South Dakota Supreme Court and seven Circuit Courts are recruiting for 2023-2024 Law Clerk applicants. If you are aware of any law students either in-state or out-of-state that may be interested in a one-year law clerk opening, please have them view the law clerk announcements on line at <https://ujis.sd.gov/Careers/WorkForUs.aspx>. There are currently law clerk openings in various locations such as Pierre, Sioux Falls, Mitchell, Yankton, Aberdeen, Brookings, Deadwood or Rapid City. The deadline to apply for the clerkships is July 8, 2022. This is a great opportunity to work for the South Dakota Supreme Court or South Dakota Circuit Courts. If you have any questions, please contact the Unified Judicial System Human Resources office at 605-773-4867.

## Secretary/Receptionist - Eagle Butte

DAKOTA PLAINS LEGAL SERVICES has a vacancy for a Secretary/Receptionist at its Eagle Butte, South Dakota, branch office. This full-time position is responsible for secretarial support for branch office personnel and administrative duties as directed by DPLS administration.

Qualifications for the position are:

1. Must be a graduate of an accredited high school, or its equivalent;
3. Must have computer experience and be able to type 60 word per minute;
4. Must have two years' experience working in an office, or its equivalent, and be familiar with legal terms and be able to maintain client confidentiality.
5. Must be able to maintain good working relationships with DPLS staff and the client community.

CLOSING DATE: Open until filled.

For further information, contact Kendra Mulder, Managing Attorney, Dakota Plains Legal Services, Eagle Butte, SD 57625 (605) 964-2175.

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



DO YOU HAVE A JOB ANNOUNCEMENT?

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



# UPCOMING EVENTS

*April 7-8 | Discipline Board Meeting | Aberdeen*

*April 22 | Bar Commission Meeting | Deadwood*

*April 28, 2 pm | Public Servant Spotlight Featuring Judge Nail | Zoom*

*May 6 | Criminal Law AM & Family Law PM CLE's | Ramkota, Rapid City*

*May 18 | Bar Commission Meeting | Teleconference*

*June 2 - 4 | Jackrabbit Bar | SpringHill Suites, Deadwood*

*June 22 - 24 | Annual Meeting & Convention | Ramkota, Rapid City*

*September 8 | September Bankruptcy CLE | The Country Club of Sioux Falls*

*September 9 | Estate Planning CLE | The Country Club of Sioux Falls*

**For more events go to  
[www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com)**

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