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« After December 31, 2022 »

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# State Bar of South Dakota

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## P R E S I D E N T ' S   C O R N E R

*Lisa K. Marso*

**H**appy Holidays everyone! I hope this month you will be able to take some time to reflect on the year past and year ahead and connect with colleagues and loved ones. It can be a difficult time for so many (one of the busiest months for our Lawyers Concerned for Lawyers Program)<sup>1</sup>. You never know what a positive impact you may have simply by reaching out to another attorney, so I hope you are able to do so this month.

In this month of December, I take the time to spotlight Judge Stolenburg, particularly as his Clear Lake, SD hometown brings me fond memories of Christmases long ago spending time with my maternal grandparents up that way. I also spotlight our Board of Regents' attorneys Nathan Lukkes and Holly Farris, as I think about all those December final exams that are being taken and our professor colleagues being busy with grading. Hope you enjoy getting to know these individuals a bit better.

Judge Gregory Stoltenburg: Judge Stoltenburg grew up in a small town in eastern South Dakota. He attended South Dakota State University, putting his agricultural business and commercial economics degrees to use working in the finance and insurance fields for 6 years. He then attended the University of South Dakota to obtain his law degree. Judge Stoltenberg had the privilege of serving as a law clerk for Justice John K. Konenkamp and then returned to his hometown in Clear Lake, SD and joined the Gunderson Law Firm. While he had an active general practice, he concurrently served as either a Deputy States Attorney or as States Attorney for Deuel County for 16 years. Additional public service during these years (for 33 years total), included serving in the South Dakota Army National Guard, with 21 of those years as a JAG officer, retiring in 2017 as a Lieutenant Colonel. In addition to his law practice and military service, he also started a real estate business with his law partners and was the "responsible broker." In 2013, he was appointed to the bench by Governor Dugaard and began his judicial career with his chambers located in Brookings. He has served as the Presiding Judge for the 3rd Circuit since 2015. Judge Stoltenburg sincerely appreciates the attorneys who appear in front of him and the work they do to be well prepared and zealously advocate on their client's behalf. He provides solid advice to attorneys who appear in front of him (as well as his 5 children, whom he and his wife of 35 years have been blessed with): "Make sure you are part of the

---

<sup>1</sup> Please see: <https://www.sdlawyerwellness.com/gethelp>. Or call Becky Porter for more information at (605) 391-5191 (Becky is an LCL member and your communications with her are likewise confidential and privileged) or call Sand Creek Member Assistance Program at (888) 243 5744 which is a service available 24 hours a day, 7 days a week. A trained professional will speak with you about crisis services and/or problem assessment, action planning and follow up.



solution, not part of the problem.” Thank you Judge Stoltenburg, for being part of the solution for our Bar members and the public.

Nathan Lukkes (General Counsel/Chief of Staff) and Holly Farris (Assistant General Counsel):

Nathan Lukkes and Holly Farris both work as public sector attorneys employed by the South Dakota Board of Regents. The SDBOR was created and granted constitutional authority to govern the system of public higher education in the State of South Dakota, and it is instrumental in providing leadership and guidance to the Board that sets policies for the programs and services delivered through its six universities and two special schools.

Nathan Lukkes grew up in southeastern South Dakota where he started punching the clock and learning life lessons at a young age on the farm. He received his law degree (2006) and political science and criminal justice degrees (2003) from the University of South Dakota. After practicing for a period of time in private practice, mainly in business and transactional law, general litigation, and estate planning, he worked for several years for the Department of Labor and Regulation, and then the Governor’s Office of Economic Development, before joining the SDBOR in 2014 (first as the Assistant Vice President for Research & Economic Development and then in 2018 to his current position). Lukkes’ public service also extends to his service as a Judge Advocate with the South Dakota Army National Guard (10 years of service in the Guard), including a deployment to Afghanistan in 2010-2011 in support of Operation Enduring Freedom. Of public service, Lukkes states, “South Dakota has always been home and it’s a state that has given me so much. It’s humbling to have even a small part in helping to shape and maintain all that makes this state great.”

Google Holly Farris and the first thing that pops up is she is the “#1Hillary Clinton Impersonator” who can be hired for events nationwide. Okay, not the same Holly. Rather, South Dakota’s Holly Farris grew up in Woonsocket, South Dakota. She obtained her bachelor’s degree in Journalism from South Dakota State University in 2007. She worked then for a few years at a bookstore before attending and obtaining her law degree in 2012

from the University of South Dakota. Following a clerkship in the Fourth Judicial Circuit, Holly then worked at the May Johnson law firm in Sioux Falls before pivoting back to the public sector. Holly joined the South Dakota Department of Education in 2014, and briefly worked at the South Dakota Attorney General’s Office before joining the SDBOR in 2020. In her SDBOR position, Holly works on numerous issues, including student conduct, employment law matters, federal and state regulatory compliance, and system policy development. Serving in such a public service position is important to Holly, and she notes, “I am a product of the South Dakota educational system and know the importance of the work all our educators undertake on a daily basis. When I realized I could support that work and the system as an attorney, with a challenging workload full of variety, I jumped at the chance. I’ve been able to develop a practice in educational and administrative law from the state’s perspective, which not many lawyers have the opportunity to do, and that has given me great insight into how both state and local government function.”

Our State Bar, and State, are so blessed to have these Bar members devoted to our profession. Best wishes all for a Merry Christmas and amazing New Year.



State Bar of South Dakota  
YOUNG LAWYER SECTION



*Anthony Sutton*  
YLS President

With Thanksgiving having come and gone, it is a good time to reflect on what makes us thankful to be South Dakota lawyers. Over the holiday weekend, I found myself thinking about mentorship and all who have made an impact on my career. One person stood out.

Professor Tom Horton.

For me, Professor Horton was a wonderful mentor and friend. Like many others, he taught trial techniques and antitrust courses and was the advisor for the trial team when I was a student at the University of South Dakota Knudson School of Law. At the end of my first year of school, Professor Horton also served as a professor for summer classes that I took in China as part of a study abroad program, along with other law students from USD, the University of Montana, and Gonzaga University. It was in China where I first got to know Professor Horton. Following that trip and taking his trial techniques course, I had the privilege of working as his research assistant where I saw firsthand his commitment to scholarship, improving the lives of everyone he interacted with, and mentorship. I also had the privilege of sharing many other memories with Professor Horton in his antitrust course and in the process of preparing for and competing in trial team tournaments. Anyone who participated in trial team with Professor Horton saw his dedication to teaching and the time he so generously shared to make his students better lawyers. Those same people may also think of Professor Horton's laugh, which I still hear in my head when I remember how he reacted when he saw that I dressed up as him for Halloween during my third

year of law school, and how he always had a bottle of his favorite iced tea with him whenever he taught.



Even following my graduation, Professor Horton made it a point to check in and see how I was doing. He would also offer advice whenever I had trial questions or wanted to bounce ideas off him. I miss him dearly and send my deepest condolences to his family, colleagues,



and all others who miss him. I will remember him fondly knowing that I am a better lawyer and person for having him as a professor and mentor.

My own experiences with Professor Horton are not unique. Throughout his time at the University of South Dakota Knudson School of Law, Professor Horton impacted the careers of many South Dakota lawyers, including most South Dakota's current young lawyers. One thing I have found very pleasing following Professor Horton's passing—but not the least bit surprising—is to see how many others were also impacted by his mentorship and friendship. This is no more evident than in the many tributes that have been shared via email, social media, or on Professor Horton's obituary page.

All who knew Professor Horton knew that he was a passionate, kind, and genuine man who loved his family, his chosen profession, and his ability to teach and mentor the next generation of lawyers. Professor Horton had many interests outside the law as well, including music, travel, and history. Anyone who had ever been to his office would also be able to tell Professor Horton's love for history by his extensive book collection. As I attempt to address Professor Horton's deep impact on South Dakota's lawyers and the legal profession, I am struck by a quote from Abraham Lincoln that I believe Professor Horton would agree with: "Character is like a tree and reputation like a shadow. The shadow is what we think of it; the tree is the real thing." Given the outpouring of memories and stories of Professor Horton, it is clear that his tree stood tall in our legal community and will continue to stand tall for years to come.

In closing, I want to encourage every member of the bar to take Professor Horton's passing and the Thanksgiving holiday as a reminder to take a moment today and thank the people in our lives who have impacted us and helped us to grow and develop as lawyers and people. And in true Professor Horton style: "Take good care."

---

# SAVE THE DATE

FOR THE

## YOUNG LAWYERS SECTION'S ANNUAL BOOTCAMP

**FRIDAY, FEBRUARY 24, 2023**  
9:00 AM-4:20 PM, MIXER TO FOLLOW

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\*THE AGENDA AND MORE DETAILS WILL BE SHARED IN THE JANUARY NEWSLETTER



# *Fellows of the South Dakota Bar Foundation*

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Hon. Judith K. Meierhenry	Barry R. Vickrey

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# CONGRATULATIONS



**ASHLEY BLAKE**

**2022**  
Young Lawyer of the Year



Bridgeford President and General Counsel, Ashley Blake, Named Young Lawyer of the Year

Bridgeford Trust Company's President and General Counsel, Ashley Blake, was recently presented with the 2022 South Dakota Young Lawyer of the Year Award on behalf of the South Dakota State Bar Association. The award was presented at the 2nd Circuit Young Lawyer Section Fall Mixer and Reception on November 10, 2022, in Sioux Falls.

The South Dakota Young Lawyer of the Year Award recognizes members of the State Bar of South Dakota under the age of 36 or having been admitted to practice for less than 10 years. Nominees must exemplify professional excellence, dedication to serving the legal profession and the Bar, service to their community, and a reputation that advances legal ethics and professional responsibility.

*(Article reposted with permission from Bridgeford Home Trust Company. Read full article [here](#).)*

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



It was with profound sadness that Law School community heard that our colleague, friend, and mentor Tom Horton died on November 15th. While many of you had the pleasure of knowing Professor Horton, many of you did not. He was a giant in our world, and I'd like to devote this month's column to sharing a bit about his life with all of you.

Tom Horton graduated from Harvard in 1977 with a B.A. in biological sciences. Not the standard undergraduate major among lawyers, but it speaks volumes about Tom's eclectic interests and profound capacity intellectually. He earned his law degree in 1981 from Case Western Reserve University.

Like many of the students he would go on to mentor, Tom began his legal career as a judicial law clerk. He clerked for Judge William K. Thomas in the United States District Court for the Northern District of Ohio. He spoke often and fondly of his time as a clerk. Based on his own experience, Tom unfailingly encouraged students to apply for clerkships, learn all that they could in those roles, and always do their very best work. The many Law School graduates who annually begin their careers as judicial law clerks is in no small part a result of Professor Horton's efforts.

After his clerkship, Tom Horton began an accomplished career as an antitrust trial lawyer. He worked for the Federal Trade Commission and the antitrust division of the Department of Justice. In those roles he successfully handled complex antitrust cases across the United States. He was likewise successful in private practice, representing major corporations in and out of the

courtroom. Professor Horton was, in his heart and actions, a lawyer's lawyer. He was especially famous for his vigorous style of cross-examination. In fact, he earned the nickname "The Barracuda," based on his work in a televised antitrust investigation in Rhode Island. That nickname is no surprise to any student or faculty colleague who debated an interesting point of law with him. But Tom's ferocity of demeanor stood on a deep kindness of heart for all his students and colleagues.

In 2009, Professor Horton joined the law school faculty at USD. While he was an exceptional lawyer, the legal academy was really where Tom was at home. He developed a national reputation as one of the foremost scholars around antitrust. He was quoted regularly on antitrust issues ranging from the Microsoft case, to economic competition in China, to the consolidation of the meatpacking industry. Professor Horton published literally dozens of articles in law reviews, other academic journals, and industry periodicals. One thing he was particularly proud of was publishing several articles that he authored jointly with his students. He also facilitated many students turning the papers written in his classes into work that was published.

Although his scholarship alone would make a career, Professor Horton's greatest passion was teaching and advising students. For almost his first full decade at the Law School, he taught trial advocacy and coached the Law School's trial team. The teams Professor Horton led competed successfully and honorably across the nation, often beating much larger and more "prestigious" schools along the way. Alumni from that era regularly



talk to me about how well-prepared they were as advocates based on Professor Horton's guidance. His skill and passion as a teacher were reflected by students selecting him three times as the John Wesley Jackson Award winner as outstanding Law School faculty member. USD recognized him with the Belbas-Larson Award for outstanding faculty from across USD. Because of his contributions to trial advocacy, he was named the inaugural Heidepriem Trial Advocacy Fellow and mentored Professor Laura Rose as she took on that title and the responsibilities as trial team coach. Our students continue to succeed across the nation based on the foundation Professor Horton helped build.

Professor Horton also taught an undergraduate honors seminar for many years. That was a labor of love, above and beyond his many duties at the Law School. He actively recruited students to law school from that seminar. Many students came to think about law school and believe that they could do it based on time with Professor Horton in the honors seminar. Others chose medical school and other graduate programs; Professor Horton was equally proud of them, if slightly confused

why EVERYONE didn't want to be a lawyer. Most of us did when we spent time around him.



There is so much to say about a life as rich and wonderful as Tom Horton's. More than I can say in this column. I struggle to say more succinctly what he meant to the Law School than what I said in my announcement to our community: "Professor Tom Horton was a giant, powerful presence in our lives, the lives of so many students, and the life of the law; we feel the proportionately giant, powerful absence of our beloved friend and colleague."


We are making plans for a celebration of Tom's life at the Sanford Coyote Sports Center at 3 p.m. on the afternoon of Tuesday, January 3rd. We would welcome back anyone, alumni or friends, who would like to honor the life and legacy of Professor Tom Horton. The Law School community he loved so much continues on, lessened by his passing but made richer by his presence.

Thank you, Tom.

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ALL I SAID WAS,

"I DON'T HAVE TIME TO DO PRO-BONO!"

Joel Arends  
Katie Johnson  
Austin Schaefer

## Special Thanks to:


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Jim Taylor  
Linda Lea  
Viken

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# A2J

## HERO



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



# ANNOUNCEMENTS

Redstone Law Firm LLP  
is pleased to announce that

*Jennifer E. Bunkers*  
has joined the firm as a partner,  
effective November 1, 2022.

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

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

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

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

## *Office Sharing Invitation*

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Brad Gordon (605) 716-3040 or  
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206 W. Missouri Ave., Pierre, South Dakota  
(605) 224-0461

is pleased to announce that  
effective October 30, 2022

*Jenna R. Schweiss*

is now known as

*Jenna R. Severyn*

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

Congratulations Jenna and Erin on your marriage!

Colbath and Sperlich Law Office  
is pleased to announce that

*Kyle Beauchamp*  
has joined the firm as an associate.

Colbath and Sperlich Law Office  
428 St. Joseph St  
Rapid City, SD 57701

Telephone: (605) 718-2330  
Facsimile: (605) 342-4740

[kyle@acolbathlaw.com](mailto:kyle@acolbathlaw.com)

JANUARY  
LAW FOR LUNCH



# TAX UPDATE

January 19, 2023 12:30 PM - 1:30 PM (CST)

## Presenters:

Leah Heidler  
Melanie Jobgen  
Lori Larson

- The Ins and Outs of Like-kind exchanges
- Ag Industry Update
- Series LLC vs. Multiple LLCs
- Small Business Tax Issues
- Trust and Estate Update





# SAVE THE DATE

## APRIL 3, 2023

To further the goal of casting a wide net to attract the broadest possible pool of qualified applicants to serve as federal judges, the Judicial Conference Committees on the Administration of the Bankruptcy System and Magistrate Judges System present:

### Roadways to the Bench:

April 3, 2023 at 3:00-4:30 p.m. (CT)

Diana E. Murphy United States Courthouse

300 South Fourth Street, Minneapolis, MN

- Interested lawyers and law students are invited to observe a national panel discussion and participate in local roundtables with bankruptcy, magistrate, district, and appellate judges about pathways to the federal bench.
- The panel will be moderated by Judge Carl E. Stewart (5th Cir.), and it is comprised of Judge Stephanie Dawkins Davis (6th Cir.); Judge Laura Taylor Swain (S.D.N.Y.); Judge Kesha Lynn Tanabe (Bankr. D. Minn.); and Magistrate Judge Mustafa T. Kasubhai (D. Or.).
- Registration may be limited due to space constraints.

---

#### Event Locations

Albuquerque, NM	Denver, CO	Nashville, TN	Portland/Eugene, OR
Atlanta, GA	Houston, TX	New Orleans, LA	Raleigh, NC
Austin, TX	Kansas City, MO	New York City, NY	Salt Lake City, UT
Boston, MA	Las Vegas, NV	Oakland, CA	San Juan, PR
Chicago, IL	Los Angeles, CA	Oklahoma City, OK	St. Louis, MO
Cincinnati, OH	Miami, FL	Orlando, FL	Seattle, WA
Cleveland, OH	Milwaukee, WI	Philadelphia, PA	Syracuse, NY
Columbia, SC	Minneapolis, MN	Phoenix/Tucson, AZ	Tampa, FL
Dallas, TX	Morgantown, WV	Pittsburgh, PA	Washington, DC

For more information, please contact Karl Johnson of Taft Stettinius & Hollister LLP, the Minneapolis Attorney Co-Chair, via email: [kjohnson@taftlaw.com](mailto:kjohnson@taftlaw.com)



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ATTENTION!

2023 Member Fees  
are Due by

December 31, 2022

PLEASE INCLUDE YOUR  
INVOICE WITH YOUR CHECK AND ANY  
CONTACT INFO UPDATES.

Pay online by logging in to the  
member hub and click on My Billing Info.

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

# Application for Pro Bono Emeritus Status

I, \_\_\_\_\_, an active member of the State Bar of South Dakota, do hereby apply for Pro Bono Emeritus Status, for the year 2023.

I understand that if approved, rather than pay regular dues for the year 2023, I will only be required to tender the sum of \$125 (same as inactive dues) but I will be entitled to all the rights and privileges of an active member of the State Bar.

Further, I recognize that this status means that I will be requested from time to time to take a referral from East River Legal Services, Dakota Plains Legal Services, or Access to Justice, and I am willing to accept at least one referral in the year 2023.

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

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

Signature\_\_\_\_\_

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

Address\_\_\_\_\_

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

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



# SOUTH DAKOTA BAR FOUNDATION

111 W Capitol Avenue # 1  
Pierre, South Dakota 57501  
605-224-7554

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## Members of the State Bar of South Dakota:

As the holiday season approaches, I write on behalf of the South Dakota Bar Foundation to thank all of you that have generously made monetary gifts to the Foundation and to ask that you continue to remember the Foundation in your 2022 holiday plans. While shopping for gifts and gathering with loved ones, please consider setting aside part of your budget to support the work of the Foundation with a tax-deductible charitable donation.

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

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

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

Our work, however, is not done. The Foundation recently held a strategic planning retreat to establish goals for the upcoming year. One of our goals is to ensure our Bar members are educated about the valuable work of the Foundation and welcome donations of time as well as funds to further the mission of the Foundation. The South Dakota Bar Foundation asks for your continued support. You can help by participating in the opt out when you receive your dues invoice this year or by becoming a fellow of the South Dakota Bar Foundation. Your generosity will have a positive impact on improving our profession, the justice system, and our community. Every gift matters! Please help the South Dakota Bar Foundation in "Raising the Bar". After all, it is "Our Profession" and "Our Responsibility".

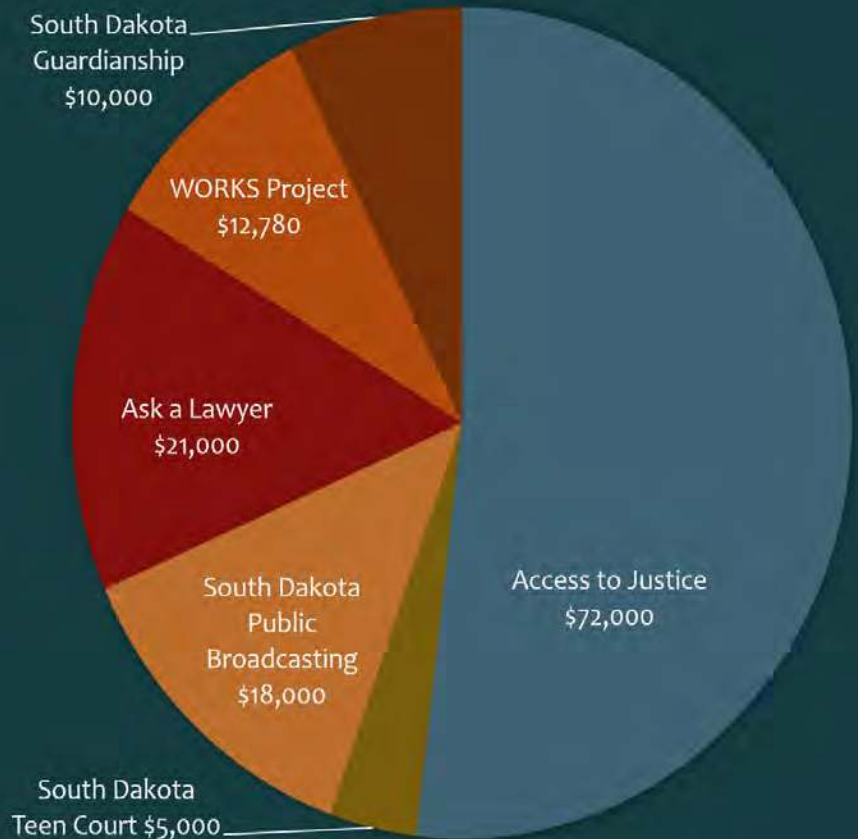
Best regards,

Pamela R. Reiter  
President  
South Dakota Bar Foundation

*Raising the Bar*  
Our Profession. Our Responsibility.

# SOUTH DAKOTA BAR FOUNDATION GRANTS

Awarded for  
22-23



Visit [sdbarfoundation.com](https://sdbarfoundation.com) for more information.

## EVERY GIFT MATTERS



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





## SDVOICES FOR PEACE

We provide the state's only  
**FREE immigration legal** services to  
children in immigration court and victims  
of violent crimes which take place in the  
United States.

If you know of a child under 18 years old  
who recently came to the United States  
without a parent OR

A migrant who is a victim of a crime that  
took place in the United States, please call  
our office at **605.782.9560**  
or email us at

**[info@southdakotavoicesforpeace.org](mailto:info@southdakotavoicesforpeace.org)**

Spanish language access is available.

\*SDVFP is a 501(c)(3) nonprofit and all donations are tax deductible  
EIN# 82-3171574 [www.sdvfpeace.org](http://www.sdvfpeace.org)



# YOU ARE INVITED TO JOIN!

## Fellows of the South Dakota Bar Foundation

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

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.*



# INSURING THE BUSINESS RISKS OF A LAW PRACTICE

Authored by:  
Mark Bassingthwaite  
Risk Manager

While certain business risks can be unpleasant to think about and others are all too easy to minimize; unexpected things can and do happen, even to attorneys. For example, over the years some of our insureds have passed away prematurely from a climbing accident, heart attack, or cancer. Some have had to live with the consequences of a life-changing event such as a stroke or an accident that left them permanently disabled. Others have had to deal with the fallout of an employee stealing firm funds, an office break-in, a car accident, a sexual harassment claim, a ransomware attack, or a client fall. Firms have also reported weathering fires, floods, hurricanes, and lightning strikes.

We all live and work in a world full of risk. Given this reality, it's worth thinking about what would happen if something unexpected ever happened to you. Would you be able to successfully navigate those waters, at least financially? Often the answer would be contingent upon there being an adequate amount of insurance coverage in place for the type of loss sustained. Not having insurance, or not having enough insurance, can result in a financial tipping point in your personal and/or professional life that could be extremely difficult to ever recover from.

One effective way to deal with the unpredictability of the risks we all face is to try and manage the potential consequences by obtaining adequate insurance coverage.

Think about it this way. The failure to appropriately insure any of the above-mentioned risks is in and of itself a risk management decision. Inaction is at its very core a default decision to self-insure. I have a tough time believing this is what many attorneys really intend to do. Unfortunately, it is what far too many end up doing, at least for certain categories of risk.

**In a recent ALPS survey, these are the lines of insurance our malpractice insurance policyholders also carry.**



% = percentage of respondents who carry each coverage

Of course, a decision to insure or not insure any given risk is fine as long as the decision is an intentional and conscious decision. This is how you make sure that there aren't going to be any unplanned for consequences should the unexpected ever happen. To enable you to do so, however, you need to know what the business risks are so that informed risk management decisions can be made. Toward this end, the following list of risks and considerations is set forth for your review as a way to create awareness and to encourage the proactive management of risk because the alternative, which is typically facing the fallout from an unexpected event uninsured, is not a position most of us would ever want to find ourselves in.

### **What would happen if you died next month?**

Could your firm continue on? Would your firm have the financial wherewithal to be able to pay out your stake in the firm? Would your spouse be able to keep your house? Would the kids still be able to go to college? If you have significant wealth, would your beneficiaries have sufficient resources to pay the estate taxes? If the answer to these kinds of questions is no, consider obtaining life insurance. There are a number of options available in the market, but the important thing is to cover both the personal and business side of the equation. By way of example, "Key Person Insurance," which would be a life insurance policy owned by the firm, is designed to help a firm carry on in the event of a partner's death. You might couple this coverage with a fixed-premium term insurance policy in order to address your personal insurance needs.

### **How long could you cover your partner's share of the office overhead were she to become disabled?**

What if you suffered a debilitating injury in a car accident? If your partner became permanently disabled and wanted to sell you her share of the business, could you afford to buy her out? Illness and injury can lead to a partial or total permanent disability that could effectively end an attorney's career and, when significant disabling events do occur, financial disaster often follows if this risk isn't responsibly managed. Again, some of our insured attorneys and their families and partners have had to deal with the likes of cancer, back injuries, stroke, and mental illness with the periods of disability running the gamut from several months to lifelong.

Disability insurance is the appropriate way to manage this risk and remember to keep the following rule of

thumb in mind if and when you decide to move in this direction. If you pay the disability insurance premium with after-tax dollars, the benefits will normally be tax-free. If you use pre-tax dollars or if your firm pays the premium, the benefits will be taxable. In light of such tax consequences, always visit with your tax professional prior to the purchase of disability insurance so that the purchase can be properly structured.

Disability policies also have elimination periods which, after becoming disabled, define the time the insured must wait before the benefits start. Elimination periods can range from 30 days to 1 year. Given this, the proper way to manage this risk is to couple a disability policy with sufficient cash reserves to cover living expenses at least through the selected elimination period. Also, look for a guaranteed renewable policy in case your individual circumstances ever change such that you become a greater risk. This will prevent the insurance company from canceling the policy on that basis. Finally, you might also consider coupling your own individual disability insurance policy with a group disability insurance policy, which would be purchased by the firm, as a way to ensure a larger portion of your income stream.

Finally, if funding a disability-driven buy-out is a concern, your firm might also want to look at purchasing disability buy-out insurance as a way to fund the purchase price of a buy-out driven by a partner's disability. In short, this type of policy would enable either the remaining partners or the firm itself, to buy out the disabled partner's share of the business at an agreeable price. This coverage could be coupled with a business overhead expense policy which would provide coverage for the costs of ongoing overhead expenses (to include malpractice premiums under certain policies) during a period of disability.

### **What if you were at fault in a serious car accident or a guest in your home was seriously injured?**

Accidents happen and the resulting loss could easily exceed the liability limits of your auto or homeowners policy. Any attorney with an established civil practice could share just how common it is to find that damages far surpass the money available to make an injured party whole. Your personal assets are at significant risk in the absence of a personal liability umbrella which typically provides additional coverage over the underlying limits of both your auto and homeowners policy. While many



attorneys would never consider practicing law without having a professional liability policy in place, more than a few are less diligent about obtaining a personal liability umbrella. Again, accidents happen. Don't get caught unprotected.

### **What if a firm employee were to experience a work-related illness or injury?**

The risk is this employee may sue you to try and recover their medical costs and lost wages. Workers' compensation insurance is how you mitigate this risk because an employee who accepts workers' comp benefits typically can't sue you to recover their medical costs and lost wages. While almost all states mandate that any business with employees maintain workers' compensation coverage, each state has its own set of rules which vary widely, so you will need to determine what the rules are your state. If you find that your firm happens to be exempt from your state's workers' compensation rules due to size, this doesn't mean you can't be sued by an employee who experiences a work-related illness or injury. A decision to opt-in anyway is an excellent way to provide an additional benefit for firm employees and add additional protection from liability for your firm.

### **What might the fallout be if your firm experienced a computer network breach?**

The things that come immediately to mind include legal liability to others for the theft, loss, or unauthorized disclosure of personally identifiable non-public information; legal liability for the theft or loss of third-party corporate information; being subject to regulatory action or scrutiny due to the failure to comply with relevant security breach notification laws; having to cover the costs associated with responding to and recovering from the breach to include the costs of finding, notifying, and perhaps providing at least one year of credit monitoring for all who were impacted by the breach; the consequences of any loss or damage to your reputation; and the loss of revenue due to the breach.

Should you ever find that your firm has been a victim of cybercrime, know that most malpractice and general business insurance policies offer little to no coverage for cybercrime losses. The good news is that such risks can be properly covered with the purchase of a standalone cyber liability insurance policy.

### **And finally, what if your office burned down, an employee was at fault in an accident while running a firm errand, or a past employee sued you for wrongful termination?**

Worse yet, what if a serious fire started in your rented office space and this fire caused damage to other units in the building? What if an elderly client fell and broke a hip while walking out your front door? Year after year we hear the stories. Lightning hit the building, an employee running an errand ran a red light and broadsided a car, an employee filed a hostile work environment claim, or an office was burglarized. Again, this list could go on and on.

Most law firms do have a general commercial property insurance policy in place. The problem, if there happens to be one, is that sometimes certain specific exposures were overlooked. However, one brief aside before we go any further. A serious oversight that attorneys who are renting office space sometimes make is practicing without any commercial property insurance coverage at all. If this is the case for you, review your lease post haste. Most leases contain clauses that require the tenant to hold harmless, indemnify, and in some cases, add the property owner to the applicable policy. Here's just one concern. If a fire were to start in your rented space and then spread to and destroy other parts of the building, you could be held financially responsible for the total damage. Just know that general commercial property insurance packages are available to renters that will cover the obligations that can arise under many leases.

If you have a commercial property policy already in place, you might review your policy to see if any of the following coverage options are there. If not, these options are worth serious consideration. Note that several of these options may be available as an endorsement to a commercial package or sold as a separate and distinct policy.

**Business Interruption** - Also called an Extra Expense Policy, this coverage would compensate you for lost income if your firm had to move to temporary quarters due to disaster-related damage such as from a flood or fire. Business interruption insurance would not only cover the profits you would have earned had the disaster not occurred, but it would also cover operating expenses, like electricity, which continue even though your business activities may have come to a temporary halt.

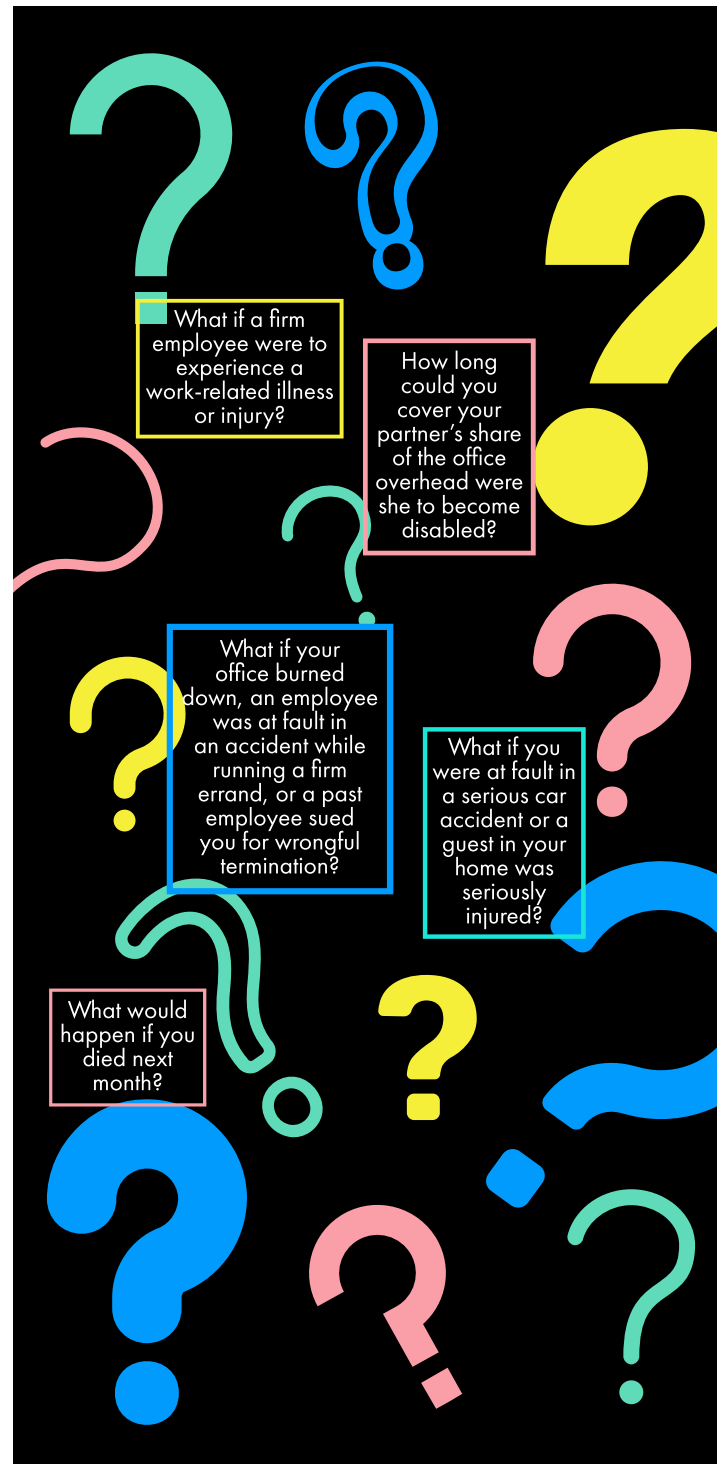
**Employment Practices Liability** - This coverage would protect your firm by covering legal defense expenses and damages resulting from wrongful employment practices including discrimination, sexual harassment, wrongful termination, and other workplace related claims.

**Employee Dishonesty** - This coverage would protect your firm from financial loss due to the fraudulent activities of an employee. The loss could be the result of the employee's theft of money, securities, or other property of the employer. Look for a policy that would also cover the theft of client funds because not all policies do.

**Accounts Receivable Coverage** - This coverage would indemnify your firm for amounts that become uncollectable as a result of the destruction of accounting records. It would also cover the costs of rebuilding these records.

**Non-Owned Auto** - This coverage would protect your firm by covering any injuries or damage that your employees are responsible for if they are ever at fault in an auto accident involving their own vehicle while out of the office on firm business. Note that this coverage may also be available under a commercial auto insurance policy, which would also protect your firm against loss or damage to vehicles your firm owns and the loss or damage your business vehicles may cause to others. Commercial auto insurance policies tend to have higher limits than personal policies because business vehicles typically need more protection.

**Let us make it easy for you to find the right coverage options for your firm!**



Authored by: Mark Bassingthwaight, Risk Manager

Since 1998, Mark Bassingthwaight, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaight 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. Bassingthwaight 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.

# Attorney Health & Wellness Resources

It's okay to ask for help


A CONFIDENTIAL  
**LAWYERS CONCERNED FOR LAWYERS**  
INDEPENDENT RESOURCE

(605) 391-5191

[rebecca.porter@sdlawyersconcerned.org](mailto:rebecca.porter@sdlawyersconcerned.org)

FREE & CONFIDENTIAL  
**SANDCREEK EAP**  
AVAILABLE 24/7





# John R. Justice Student Loan Repayment Program

The John R. Justice (JRJ) Grant Program provides student loan repayment assistance for local, state and federal public defenders and local and state prosecutors who commit to extended service in those roles. All Applications and a Service Agreement along with a recent loan statement must be received or postmarked on or before January 31, 2023. A recent monthly statement from the borrowing agency is preferred over the generic “Loan Details” print out option as the monthly statement contains the pertinent information needed.

[JRJ 2022 Application](#)

[3 JRJ 2022 Service Agreements Options](#)

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

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

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

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

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

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

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

# Organizing Your Year for Productivity and Satisfaction



**Mrs. Simon**  
Certified KonMari® Consultant and  
Professional Organizer  
805-929-1493  
mrs.simon@designed2stick.com

As a professional organizer, I help all sorts of people take control of the physical items that are overwhelming them in their offices and homes so they can find the joy in their surroundings. Equally important for a well-rounded, organized life is managing your time. As lawyers, we know time management doesn't just happen automatically, and most systems focus on efficient use of your time while ignoring whether your career and life is meeting your needs for connection and satisfaction. Focusing solely on productivity and efficiency overlooks the larger picture of organizing your life in exchange for divvying up your busy day-to-day lives.

To achieve satisfaction and even joy in your life – both at work and outside of work – requires a deliberate and intentional effort. Establishing a written roadmap for your year, your months, and your weeks is vital to realizing your ultimate vision for your life. What is the point of being more organized and having more time in your life if you don't use that time to bring more joy into your life? I've developed an annual planning system that helps me get the most out of my life so I can look back on each year with a sense of accomplishment and forward to the next year of adventures of all kinds. It's based on the concept of a "bullet journal," but skips the rules, symbols, and artistry that make it feel like just more work. It's flexible and useful in more ways than I can count.

The basic concept is that your days, weeks, months and years can fly by at the speed of light and if you have taken time to thoughtfully map out that time, it will be well spent and full of memories. What I refer to as My Intentional Year: Organizing My Life for Joy and MeaningSM depends first on writing down your

intentions, commitments, appointments and other events, either electronically or manually in a journal of some sort. For maximum fun and historic value, I use a journal (Leuchtturm brand 1917 or a Moleskin brand 5" x 8.25" with at least 200 pages, available in local bookstores and on Amazon.com) because I do like to draw and use decorative lettering in my book to keep it interesting and to focus my attention. Use whatever works best for you.

As you start each year, you should do so with intention. Establish a theme for your year to keep you inspired month after month. Write your theme on your opening pages to keep it top of mind. For example, in 2022 I adopted the theme "Celebrate more!" At the end of each month, I identified my "wins" and celebrated them. Like a metaphorical pan on the back. Then, at the end of the year, I list them all and demonstrate to myself just how much I have accomplished. That really helps to stave off the end-of-year burnout when I wonder just what I got done in the last 12 months. The beginning of the year is also the perfect place to write down your vision for what you intend to accomplish in your life, on a professional and personal level for the calendar year. Then, be sure to check in with it throughout the year to see how you're doing at achieving your vision for this year.

Next, I take a broad look at big events I anticipate throughout the year. I create what's called a "future log" by bullet journal aficionados. It's a space to write down each month of the upcoming year (February – January) and identify any special things going on during each month. I use mine to record birthdays and anniversaries, annual events and holidays, and I leave space for future

appointments that extend beyond the months laid out in my journal.

Next, for those who are into stress relief through drawing, I have a cover page for the month which I often use to establish my decorative theme for the month. Then, I reproduce the calendar for the month as the next page(s) – I usually use a 2-page spread. I like to write on the calendar the recurring activities and one-offs that are on the docket for the month. I also embellish this page to echo the theme for the month (optional). I find it makes my life a little less pedestrian to have my own designs reflecting back at me as I check my calendar while booking new appointments.

Finally, the meat of My Intentional Year is the weekly spreads. What works best for me is to organize them Monday through Sunday, with the weekend days sharing a space to make for 6 even areas to record my daily commitments and activities. It takes a little getting used to but for me, it mirrors the way I plan my life: my work week first and then my weekends are separate.

My weekly spreads are where I intersperse inspiration quotes and drawings. If I know it's going to be a tough month motivationally speaking, I will find inspirational quotes to hand letter and use cheery colors to decorate them with colored pencils. Then onto where the "bullet" part of the bullet journal got its name. Next to each entry on individual days, there are coded boxes to represent tasks that are started, completed, canceled, moot or rescheduled, along with symbols for appointments and meetings, events, urgent items, email, call, to buy, and just plain notes. These are all items that are fair game for your daily entries, but all those symbols took up more RAM than I had available in my brain. Some days it's all I have to just jot down a few scribbles.

The real secret sauce for My Intentional Year is in the separate lists that I make to keep track of specific things in my life. In my first journal, I even made a List of Lists! Over the course of a month or a year, there are so many things that you could keep track of such as client numbers, depositions taken, trials conducted, CLEs attended, books you've read, movies you've watched, exercise log, gratitude pages – the list goes on and on. One I find particularly useful is "The Last Time I ..." where I can record the last time the bar dues were paid, the certificate of compliance was filed, the mandatory training was completed, employee reviews were conducted, or things like when furnace filter was

changed, the windows were washed, the car had an oil change ... you get the idea. I even leave room for journaling at the end of each month just in case I want to record some specific thoughts about that month's happenings.

The steps I have summarized seem like a lot of work. Why not just use a regular planner? Because it won't prompt you to reach back and look at your goals and your vision. It won't give you time to pause and think about what brings meaning to your career and your life. And your personal and professional satisfaction is key to making your work enjoyable every day – being happy to walk into your office. With such high rates of depression, addiction, and dysfunction in our profession, we must be proactive, deliberate, intentional, if we're going to make this next year count!

P.S. I am creating a focus group to follow the 2023 Intentional YearSM process, complete with printouts for the entire year and occasional Zoom classes to discuss the process and the success. If you'd like to be part of this focus group, email or call me today.



Resolve to give your new year more satisfaction and meaning. Try the single-session called "Now to Wow!" to jump start your year!

In-person and virtual sessions available.  
Contact me today!



*Mrg Simon*

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

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



# CERTIFICATE OF COMPLIANCE

## INSTRUCTIONS

The certificate of compliance for the year 2022 must be submitted to the State Bar of South Dakota by **January 31, 2023**.

IMPORTANT INFORMATION concerning compliance with trust accounting records and procedures, including the reporting form, appear immediately following this notice. All attorneys who were **ACTIVE members of the State Bar of South Dakota in 2022 must file the compliance form** with the State Bar no later than January 31, 2023. **This rule includes retired lawyers, lawyers engaged in teaching, banking, insurance, full-time government employees, etc.** This reporting requirement does NOT include those who were inactive lawyers in 2022, nor does it include Judges (Federal or Unified Judicial System) who are full time and did not have private clients.

Andrew L. Fergel  
Secretary-Treasurer

## TRUST ACCOUNT COMPLIANCE FORM INSTRUCTIONS

Immediately following these instructions, a model form has been reproduced. The form may be modified to accommodate multiple signatures where a number of or all partners in a law firm utilize a single trust account. Please type the name of the sole practitioner or, if using a common firm trust account, the names of all lawyers utilizing the trust account. For the balance of the form, fill in the blanks, check the spaces, or leave blank or mark n/a where appropriate.

1 - check (a), (b), or (c) if applicable

2 - self explanatory (usually appropriate for inactive or retired members)

3 - self explanatory (usually exclusive or full-time corporate, legal aid, or public sector lawyer. Please identify the employer.)

3(a)- self explanatory (usually appropriate for part-time Bankruptcy trustees)

4 - self explanatory (usually appropriate for the employee or associate of a law firm who does not have trust account writing authority.) At this point, inactive, retired, full-time corporate, legal aid, or public sector lawyers, and associates without trust account check writing authority may sign the form and stop.

All others should have trust accounts and must provide the following information:

5 - state the name, address, and account number of trust account financial institution

6 - the blanks should be completed with the most recent monthly trust account reconciliation.

Keep in mind monthly reconciliations are required. For example, if this form were completed on 12-15-10, you would insert the closing date of the most recent bank statement (i.e. 11-30-10).

6(a)-(h), and 7 - type or print yes or no in space provided. If you can answer "yes" to each of these questions, you are in compliance with Supreme Court Rule 91-10. If you must answer any of these in the negative, you need to make changes in your trust accounting system. A negative answer will result in further inquiry.

8 - This question merely requires you to confirm that a monthly reconciliation was performed and if there were errors/inconsistencies in the reconciliation, to explain the same. I remind you that the effective date of this rule was July 1, 1991. It is not too late to perform the monthly reconciliations from and after July 1, 1991, through the date of completion of this form; however, monthly reconciliations must be performed prospectively.

I have heard from a number of lawyers who have said that their trust account has an odd amount, such as \$4.54, which has been in the account for ages and the client has disappeared. The compliance report should so note the amount and reason (lawyer unable to disperse the sum of \$4.54 belonging to a client because client is not able to be located).

Thereafter, if the amount remains constant (\$4.54 as in this example), no further explanation is necessary in subsequent compliance forms.

The rule does not require, nor do we want the amounts held in trust, the identities of clients, or any other confidential information. If all partners in a law firm use a common trust account, one form may be submitted provided all partners sign the form. Please type your name under your signature. This will avoid nuisance phone calls or letters trying to ascertain who signed the forms.

All lawyers must submit the compliance form no later than January 31, 2023. **Please submit compliance forms after reviewing your December bank statements.** If you have questions, please give us a call.

## 2022 CERTIFICATE OF COMPLIANCE

TO: The Secretary-Treasurer, **The State Bar of South Dakota, 111 West Capitol Avenue, Suite 1, Pierre, SD 57501**

Dear Sir: I/we (Please list all persons signing the form here) \_\_\_\_\_

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

member(s) of the State Bar of South Dakota certify that during the 12-month period preceding the date of this report:

**(Check the following items where applicable and/or fill in the blanks.)**

1. I (we) have engaged in the private practice of law in South Dakota as:

\_\_\_\_ (a) a sole practitioner;

\_\_\_\_ (b) a partner or shareholder of a firm practicing under the name of;

\_\_\_\_ (c) an associate of a sole practitioner or of a firm, as the case may be, practicing under the name of \_\_\_\_\_;

and I maintain separate books, records and accounts showing all legal business performed by me.

\_\_\_\_ 2. I have not engaged in the practice of law in South Dakota, and I have neither handled nor been responsible for either clients' trust funds or clients' trust property in South Dakota.

\_\_\_\_ 3. I have practiced law in South Dakota exclusively as an employee of (designate name of government agency, corporation, or other non-member of the Bar) \_\_\_\_\_

and I do not handle or become responsible for money or property in a lawyer-client relationship, other than money or property received in the course of official duties and disposed of in accordance with regulations and practices of (designate name of government agency).

\_\_\_\_ a. I have served as a trustee in one or more cases under Title 11 of the United States Code, and I am accountable for all funds I handled in connection therewith to the Office of the United States Trustee, which office is statutorily charged with the responsibility for reviewing and supervising my trust operations; therefore, my handling of such funds is not separately accounted for herein in connection with my private practice of law, and I further certify that I am in compliance with all such accounting requirements of said Office.

\_\_\_\_ 4. I have engaged in the practice of law in South Dakota as an employee or as an associate of a sole practitioner or of a firm, as the case may be, practicing under the name of \_\_\_\_\_

and to the best of my knowledge all legal business performed by me is shown in the books, records and accounts of such sole practitioner or firm.

**(Only lawyers checking categories 2, 3, 3a, or 4 may sign below. See instructions.)**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Full Name (Print or Type)

\_\_\_\_\_  
Business Address

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

Date \_\_\_\_\_, 2023

**Please state the total number of hours of pro bono service, as defined by the South Dakota Rules of Professional Conduct 6.1, that you (or the whole firm) provided in 2022. Enter 0 if none. Total Hours: \_\_\_\_\_.**

Rule 6.1. Voluntary Pro Bono Public Service

A lawyer should render public interest legal service.

A lawyer may discharge this responsibility by: (a) providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations; or (b) by service without compensation in public interest activities that improve the law, the legal system or the legal profession; or (c) by financial support for organizations that provide legal services to persons of limited means.

(Attorneys checking categories 1a, 1b, or 1c must answer the following questions. See instructions.)

5. My (our) trust account(s) or the trust account(s) of the firm or association of which I am a partner or shareholder is (are) at the (name and address of banking institution) \_\_\_\_\_

(and bears the following name(s) and number(s)) \_\_\_\_\_

6. During the fiscal period ended \_December 31, 2022,\_ to the best of my (our) knowledge I (we), or the firm of which I am a member, as the case may be, maintained books, records and accounts to record all money and trust property received and disbursed in connection with my/our practice, and as a minimum I/we maintained:

- a. A separate bank account or accounts located in South Dakota, in the name of the lawyer or law firm and clearly labeled and designated a "trust account." \_\_\_\_\_(Yes or No) *(An out of state member may strike "South Dakota" and insert the state where his/her trust account is located.)*
- b. Original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received, and specific identification of the client or matter for whom the funds were received. \_\_\_\_\_(Yes or No)
- c. Original canceled checks or copies of both sides of the original checks produced through truncation or check imaging or the equivalent, for all trust disbursements. \_\_\_\_\_(Yes or No)
- d. Other documentary support for all disbursements and transfers from the trust account. \_\_\_\_\_(Yes or No)
- e. A separate trust account receipts and disbursements journal, including columns for receipts, disbursements, and the account balance, disclosing the client, check number, and reason for which the funds were received, disbursed or transferred. \_\_\_\_\_(Yes or No)
- f. A separate file or ledger, with an individual card or page for each client and matter, showing all individual receipts, disbursements and any unexpended balance. \_\_\_\_\_(Yes or No)
- g. All bank statements for all trust accounts. \_\_\_\_\_(Yes or No)
- h. Complete records of all funds, securities and other properties of a client coming into my/our possession, and rendered appropriate accounts to my/our clients regarding them. \_\_\_\_\_(Yes or No)

7. During the same fiscal period identified in section 6 above, I, or the firm of which I am a member, complied with the required trust accounting procedures, and as a minimum I/we prepared monthly trust comparisons, including bank reconciliations and an annual detailed listing identifying the balance of the unexpended trust money held for each client or matter. \_\_\_\_\_(Yes or No)

8. In connection with section 7 above, I or the firm of which I am a member, have completed the following procedures during the fiscal period herein: compared each month the total of trust liabilities and the total of each trust bank reconciliation, and there were (check one of the following)

- \_\_\_\_\_no differences between the totals, excepting those determined to be the result of bank error;
- \_\_\_\_\_differences. (Give full particulars below, identifying the months in which there were differences, the amounts involved, and the reason for each item contributing to a difference. Attach additional pages if necessary.)

9. a. \_\_\_\_\_The undersigned lawyer(s) do not have professional liability insurance; ***(If you checked box 9(A), you must attach a representative copy of the letterhead you used to disclose the lack of insurance to your clients.)*** or

b. \_\_\_\_\_The undersigned lawyer(s) have professional liability insurance, the name of the insurance carrier, policy number and limits are as follows: \_\_\_\_\_

10. If you are a solo practitioner, have you made arrangements with another lawyer to secure your files and trust account and protect your clients in the event of your death or disability? Yes \_\_\_\_\_ No \_\_\_\_\_

*(This is not currently a requirement, but very much encouraged. Please check out the state bar website for checklists and forms for solo practitioners planning for unexpected death or disability.)*

I am a member of the State Bar of South Dakota filing this report, and to the best of my knowledge and belief the facts as reported herein are accurate, and I certify that I have at all material times been in compliance with Rule 1.15 of the Rules of Professional Conduct entitled Safekeeping Property and SDCL 16-18-20.1 and 16-18-20.2.

(All partners, shareholders, or associates checking categories 1a, 1b, or 1c must sign here. Attach additional signature pages if necessary.)

(Signatures)

(Printed Name)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_, 2023  
Date

*Additional signature and attachment is needed if responding lawyer checked box 9(A) : The undersigned lawyer(s) not having insurance, do hereby certify that pursuant to Rule 1.4(c), I have advised my clients of the lack of professional liability insurance during the reporting period and I have attached hereto a copy of my law office letterhead disclosing the lack of insurance, in the required format, pursuant to Rule 7.5 of the Rules of Professional Responsibility.*

All Responding Lawyer Signatures:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_, 2023  
Date





# State of South Dakota Unified Judicial System



## Office of the State Court Administrator

Telephone: (605) 773-3474  
FAX: (605) 773-8437

500 East Capitol Avenue  
Pierre, SD 57501-5070

November 15, 2022

Mr. Andrew Fergel  
State Bar of South Dakota  
111 W. Capitol Avenue, #1  
Pierre, South Dakota 57501

### RE: **2023 Court-Appointed Attorney Fees and Mileage**

Dear Mr. Fergel:

Please publish the following announcement in the December 2022 issue of the State Bar Newsletter:

**“Court-appointed attorney fees for 2023 will be \$107 per hour pursuant to UJS policy which provides that these fees increase in an amount equal to any cost of living increase approved for state employees by the Legislature. Mileage for court-appointed attorneys will be paid at the rate of \$1.00 per mile.”**

If you have any additional questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sattizahn".

Greg Sattizahn  
State Court Administrator

***Our Mission:** Justice for All  
**Our Vision:** We are stewards of an open, effective, and accessible court system, worthy of the Public's trust and confidence.*

## Ethics Opinion 2022-06

Question Presented: May a lawyer who has and is providing legal services to a client provide non-legal services as the client's agent for compensation?

Short Answer: Yes, but the lawyer must clearly define the scope of the services as separate and distinct from the legal services, as well as the practical implications of the fact the services are not "legal," including the potential impact on the duty of loyalty, the attorney-client privilege, and how the lawyer's position as a licensed attorney may further limit what the lawyer may do in this extra-legal role. The lawyer must also comply with the rule applicable to business transactions between lawyers and their clients.

Rules Implicated: 1.2(c) and 1.8(a).

### **FACTS**

Lawyer has two Clients whom Lawyer aided in forming an Entity, which Lawyer also represents. Clients now want Lawyer to open a bank account with a bank in the name of one of the Clients (not in the name of Lawyer or Lawyer's firm, and not a trust account), with Lawyer as an authorized agent and signer. Clients would like Lawyer to be responsible for managing the account, including keeping track of the funds deposited and making payments and disbursements to third parties as the Clients direct. Lawyer asks whether Lawyer may provide these separate services for the Clients for compensation.

### **ANALYSIS**

Lawyer's proposed non-legal services for the Clients and Entity still implicate the Rules of Professional Conduct, because they present issues related to the scope of Lawyer's representation and Lawyer's duties concerning business transactions with clients.

Rule 1.2(c) requires that Lawyer communicate any limitations on the scope of representation and obtain the Clients' informed consent to those limitations. In this instance, the Lawyer must convey several limitations and clarifications to the Clients in writing and get the Clients' written consent.

Lawyer must communicate that in providing the agent services, Lawyer is not providing legal services and that there are several practical consequences. The Lawyer's malpractice insurance may not provide coverage for any errors or omissions the Lawyer makes in providing the agent services. The attorney-client privilege is unlikely to cover communications between the Lawyer and the Clients regarding those services. If there is a future dispute about ownership of the funds in the account, such as a claim asserted by a third-party creditor, the Lawyer's duty of loyalty as an attorney could be trumped by whatever obligation the Lawyer has as agent.

This list of practical consequences is exemplary not exhaustive. The Lawyer should consider any other possible ways that providing non-legal services as an agent for the Clients will impact

the ability of Lawyer to provide legal services to the Clients, particularly with regard to potentially conflicting duties.

In addition, because Lawyer is going to be paid for non-legal services by a Client or Clients, this constitutes a “business transaction” outside the scope of legal services and is therefore subject to Rule 1.8(a), applicable to business transactions with Clients, instead of Rule 1.5, applicable to fees for legal services. Under that Rule, Lawyer may not enter into this or any other business transaction with the Clients unless (1) the transaction and the terms of the transaction are fair and reasonable to the Clients, and fully disclosed and transmitted in writing in a manner that is reasonably understandable; (2) the Clients are advised of the desirability of seeking independent legal counsel’s review of the transaction and allowed time to do so; and (3) the Clients give informed consent in writing to the essential terms of the agreement and the Lawyer’s role in the arrangement.

### **CONCLUSION**

A lawyer may provide non-legal services to a client or clients and be paid for doing so, but only if the lawyer explains in writing any limitations the lawyer’s performance of those services places on the lawyer’s ability to provide legal representatives. The lawyer must also satisfy the Rule applicable to business transactions between lawyers and their clients including ensuring the terms of the compensation are reasonable, encouraging the clients to seek independent legal review of the transactions, and obtaining the clients’ written consent.



## Ethics Opinion 2022-07

Question Presented: If a lawyer is representing a client suing the client's former entity-employer, and an attorney represents the entity, may the lawyer contact another former employee of the entity-employer about the lawsuit without the consent of the entity-employer's attorney?

Short Answer: Yes, with certain caveats, such as the possibility that the other former employee possesses privileged information, is independently represented, or has obtained representation from the entity-employer's attorney.

Rules Implicated: 4.2, 4.3, and 4.4

### FACTS

Lawyer's Client is suing Client's former Employer (an entity) for wrongful termination. Employer is represented by an attorney. The Lawyer and Client believe another Former Employee has information helpful to Client's claim. Former Employee was a department-head level employee of Employer, but worked in a different department and was not Client's supervisor. Lawyer would like to speak directly with the other Former Employee.

Lawyer is concerned that Rule 4.2 of the South Dakota Rules of Professional Conduct may prohibit this communication. The Rule prohibits the Lawyer from communicating about the subject matter of the representation (i.e., the facts giving rise to Client's lawsuit) with a person the Lawyer knows to be represented by another lawyer without that Lawyer's consent, and Lawyer is concerned this prohibition extends to Former Employee.

### ANALYSIS

Comment [7] to South Dakota's Rule 4.2 addresses communications with former employees of represented entities and states, "[c]onsent of the organization's lawyer is not required for communication with a former constituent." SDCL Ch. 16-18, Appx. A, Rule 4.2, cmt. [7]. Even communications with current employees of an entity are only strictly proscribed when the current employee (1) supervises, directs, or regularly consults with the entity's lawyer concerning the matter; or (2) has the authority to obligate the entity concerning the matter or whose act or omission in connection with the matter may be imputed to the entity for purposes of civil liability. (*Id.*) Neither of those conditions appears to apply here. Consequently, Lawyer's proposed communication with Employer's Former Employee is not strictly prohibited. This is consistent with the approach of the ABA Committee on Ethics and Professional Responsibility in its Formal Opinion 91-359, which stated that former employees of an entity may be contacted without consulting with the entity's attorney because the former employees are no longer in positions of authority and cannot bind the entity.

However, Comment [7] also states that "[i]n communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4." (*Id.*) Rule 4.4, in turn, provides that a lawyer must not

use means of obtaining evidence that violate the legal rights of a third person. SDCL Ch. 16-18, Appx. A, Rule 4.4. The comments to Rule 4.4 specifically identify “unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.” *Id.* at cmt. [1]. ABA Formal Opinion 91-359 indicated this means that the lawyer communicating with a former employee of a represented entity “must be careful not to seek to induce the former employee to violate the privilege attaching to attorney-client communications to the extent his or her communications as former employee with his or her former employer’s counsel are protected by the privilege . . . Such an attempt could violate Rule 4.4.” ABA Formal Opinion 91-359.

Consequently, if Lawyer contacts the Former Employee, Lawyer must not try to elicit information from Former Employee that would be subject to the attorney-client privilege between the Employer and its attorneys, such as communications between Former Employee and the Employer’s attorneys.

Finally, even if Former Employee is not automatically “represented” by the Former Employer’s attorneys, it is possible the Former Employee has sought separate representation from Former Employer’s attorneys or completely independent representation from another attorney. Comment [8] to Rule 4.2 indicates that if the Former Employee makes statements during the Lawyer’s communication with Former Employee suggesting that Former Employee has independent representation, Lawyer cannot ignore these statements but instead should confirm whether the Former Employee is represented. In fact, the Committee believes that in this situation, where there is pending litigation, Lawyer should avoid any doubt by affirmatively inquiring whether Former Employee has spoken with or obtained separate representation from another attorney before having a substantive discussion with the Former Employee.

Assuming none of these conditions apply, the Former Employee is an unrepresented person, and the Lawyer must adhere to the requirements of Rule 4.3. That Rule, and its comment [1], indicate that a lawyer should ordinarily tell any person believed to be unrepresented who the lawyer represents, and what interest the lawyer’s client has that is prompting the lawyer’s contact. In this case, if Lawyer contacts Former Employee, Lawyer should tell Former Employee who Lawyer represents, and further explain the reason for the contact, i.e., the Lawyer’s Client’s lawsuit against Client’s and Former Employee’s previous employer.

### CONCLUSION

A lawyer may communicate with a represented organization’s former employee so long as the former employee has not obtained independent representation, either from the organization’s attorneys or a different attorney and so long as the lawyer does not try to elicit privileged information from the former employee.

# 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 INVIOLEATE 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 Memoriam*



Brad Bonynge  
November 11, 1942 -  
October 10, 2022

Brad Bonynge, age 79, passed away October 10, 2022, at Good Samaritan in Pipestone, MN, with his wife and sons by his side.

Brad was born November 11, 1942 in Elgin, Illinois to Eugene (Gene) and Opal (Schultz) Bonynge. The family moved back to Lester, IA after the death of his father in 1952. Brad attended elementary schools in Elgin and Lester, IA. In 1959 the high school in Lester closed and he graduated in 1960 from West Lyon High School, Larchwood, IA. He attended the University of South Dakota at Vermillion and earned his Juris Doctorate Degree in 1966. Upon graduation, he was an associate at John Theodeson's Law Office in Garretson.

He was united in marriage to Marlys Quall on October 27, 1967. In January of 1968, they moved to Pierre, SD where he was an associate in the law office of Joseph H. Bottum, III. In 1970, Brad accepted the position of States Attorney for Jerauld County, Wessington Springs, SD and remained in that capacity until 1979 when he opened his own law practice in Sioux Falls, SD.

Brad was a member of the South Dakota State Bar Assn., the U.S. Court of Appeals and the Trail Lawyers Assn. He retired from the practice of law in December, 2013. In June of 2016, he received his 50 year pin. Brad enjoyed spending time with his family and friends, having fun with the grandchildren and great grandchildren, bowling, golfing, fishing, and reading.

He is survived by his wife, Marlys; two sons, Craig (Judy) Bonynge and Todd (Angela) Bonynge, three grandchildren, Tyler (Melissa) Bonynge, Kole and Ashtyn Bonynge; five great grandsons, Hudson, Kingston, Bennett and twins, Myles and Elias Bonynge; one sister, Deborah (Thomas) Denevan; sisters-in-law, Jane Bonynge, Marlene Johnson; numerous cousins, nieces, nephews and friends.

He was preceded in death by his parents, daughter, Lisa; brother Gene; nephew, Nicholas Bonynge; brothers-in-law, Leon Johnson and Ronald Quall.

A celebration of his life was held November 11, 2022, which would have been his 80th birthday. [www.heritagesfsd.com](http://www.heritagesfsd.com)



Thomas Jeffrey Horton  
May 9, 1955 -  
November 15, 2022

Thomas Jeffrey Horton, aged 67, passed away surrounded by his family on Tuesday, November 15, 2022.

In addition to Karen, his beloved wife of 39 years, Tom is survived by: four children: Allison (Jeffrey) Piedmont, Betsey, Robert, and Caroline; two grandchildren: Ryan and Andrew; and siblings Robert, Jr. (Lori Lowrimore), William (Sandra), and Nancy (John Mudry). Tom was preceded in death by his parents Robert and Lillian.

Tom was always passionate about academics – both learning and teaching. Prior to graduating from West Geauga High School in Chesterland, OH, he spent time in Lebanon as an exchange student. He earned his B.A. from Harvard University in 1977, majoring in biological sciences. Following a year teaching in Puerto Rico, he earned his J.D. from the Case Western Reserve University School of Law in 1981 and his MALS in American Studies from Georgetown University in 2007.

During his 28-year career as an antitrust attorney and complex litigator, Tom served as a law clerk for Judge William K. Thomas, U.S. District Court Northern District of Ohio, and Assistant Special Counsel for the State of Rhode Island. He held partnerships at international law firms Howrey & Simon and Orrick, Herrington & Sutcliffe and served as a Trial Attorney at the Federal Trade Commission and the Antitrust Division of the Department of Justice. In 2009, Tom transitioned to a full-time academic career as a Professor of Law at the University of South Dakota. He held visiting professorships at the Chinese Youth University for Political Science in Beijing, China, the National Institute of Trial Advocacy, and the South Dakota

Trial Academy. His more notable achievements and awards include: the Johnson, Heidepriem & Abdallah Trial Advocacy Fellow; the Belbas-Larson Award for Excellence in Teaching; and 3-time John Wesley Jackson Award for Outstanding Professor of Law. Tom was loved and admired by his students, colleagues, and peers, and will be dearly missed.

When not at work or school, Tom was an avid nature lover, dedicated Cleveland sports fan, patron of the arts, and active in the local community. He loved attending movies, plays, musicals, concerts, sporting events, museums, and historical places of interest with his family. He enjoyed reading history books, running, and playing the drums, at one time taking drum lessons with the legendary Joe Morello.

Tom's greatest love was spending time with his family and pets. He was an ardent supporter of his children's artistic, educational, and athletic pursuits and loved their summer vacations to Montauk, NY or traveling by train to explore new destinations. He was their greatest teacher and cheerleader and loved them very much.

There will be a celebration of Tom's life at the Historic Congregational Church on Tallmadge Circle in Tallmadge, OH, on Saturday, November 26 at 11:00 a.m. with a reception in the Old Town Hall to follow. A celebration at the University of South Dakota in Vermillion, SD will be announced at a later date. Contributions in Tom's memory can be made to the Knudson School of Law at the University of South Dakota or any charity of your choice.



Thomas H. Harmon  
May 26, 1943 -  
November 22, 2022

Thomas Henley Harmon, age 79, passed on to his heavenly home on November 22, 2022. The funeral service will be on Wednesday, November 30, at 11:00 at Community Bible Church in Pierre, with visitation starting at 10:00. Burial will be at 4:00 at Bethel Church Cemetery of Carpenter SD.

Tom was born to Eugene and Hazel Harmon on May 26, 1943, in Madison SD, the third of their eight children. He accepted Jesus as his Savior at an early age. The family

moved to Doland SD, where Tom attended the lower grades. When they moved to the Byron Bible Camp near Huron, Tom and his siblings attended country school. He graduated from James Valley Christian High School in 1961, then studied at Grace Bible Institute for one year. He graduated from Northern State College in 1972.

Tom married Esther Lutes in 1970, and they were teachers for several years. Tom started Law School the same month his first son Erin Byron Harmon was born. In 1978 Tom received his Juris Doctor from the University of South Dakota and also completed a Masters in Education Administration.

Tom moved his family to Pierre, where he clerked for Chief Justice Roger Wollman, followed by twelve years in the SD Attorney General's staff. Son Elliot Thomas Harmon was born during this time. In 1991 Tom became a partner in the Tieszen Law Office in Pierre, and in 2006 he opened his own practice. Having his office in their home, he and Esther did well with the 24/7 togetherness. Tom devoted much of his professional time representing school districts from one corner of the state to the other.

Tom was a member of Community Bible Church, the SD State Fair Commission and the Elks Lodge as well as other boards. He loved to read, and he enjoyed woodworking, though he excelled in the law more than carpentry. Tom had a gregarious personality, and he always had a friendly greeting or a joke to share.

Tom is survived by his wife Esther Harmon, his son Erin (Susanne) Harmon of Sioux Falls, granddaughter Hannah Harmon, daughter-in-law Kat Cornelius of San Francisco, brothers Craig (Dorothy) Harmon of Huron, Philip (Connie) Harmon of Whitewater WI, Joel (Bobbie) Harmon of Elkhorn WI, sisters Rebecca (Don) Donalson of Tomball TX, Rachel (Ken) Ediger of Wichita KS, and Sally (David) Lott of Newport News VA; his sisters-in-law Inez Fattig, Phoebe (Frank) Martin and Olive (Stan) Gurney, brother-in-law Loren Lutes (Janis Stout), and many nieces and nephews.

Preceding him in death were his son Elliot, granddaughter Darlene, his parents and parents-in-law, his brother Daniel and a nephew David. Also preceding him were several of Esther's siblings.

A memorial fund has been established by the family.



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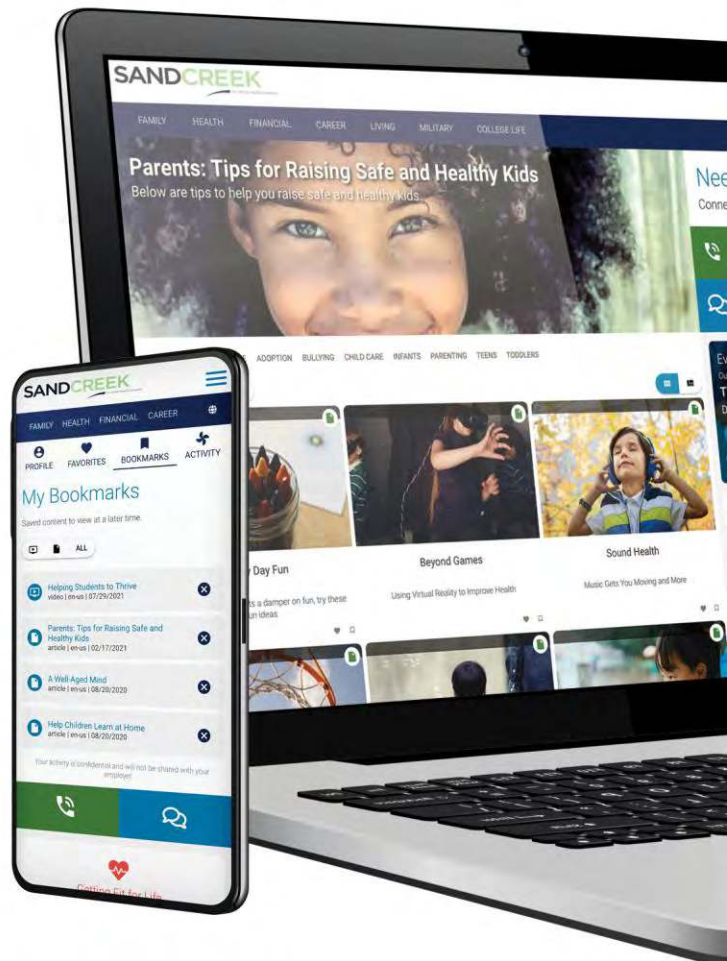
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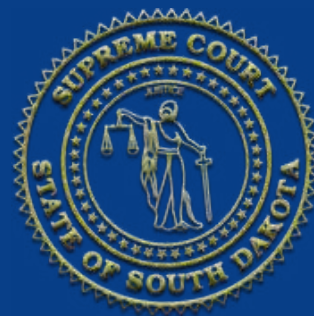


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# Court



# Improvement Program

# Training



## TRAUMA-INFORMED COURT SYSTEM

The Center for the Prevention of Child Maltreatment and the South Dakota Unified Judicial System are hosting monthly trainings on best practices and unique approaches to working with children and families for attorneys, judges, and other multidisciplinary professionals.

These trainings are supported by the [UJS Court Improvement Program](#) which assesses and improves handling of court proceedings related to child abuse and neglect in South Dakota.

## LEARNING MORE CAN KEEP KIDS SAFE

Trainings are held the last Wednesday of the month, with some variation based on holidays and other events, from 12-1 CST via Zoom.

## UPCOMING TRAININGS

[Wed Oct 26: Multidisciplinary Teams \(MDTs\) in South Dakota](#)

[Wed Nov 30: TBD](#)

[Wed Dec 28: TBD](#)

[Wed Jan 25: Mandatory Reporting](#)

[Wed Feb 22: Independent Living & Young Voices](#)

[Wed March 29: TBD](#)

[Wed Apr 26: Child Abuse Awareness Month, training in conjunction with the State Bar](#)

For more information or to suggest future training topics, email [cpcm@usd.edu](mailto:cpcm@usd.edu) or visit [www.sdcpcm.com/ciptraining](http://www.sdcpcm.com/ciptraining)



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## ASSOCIATION HEALTHCARE PLAN

ENROLLMENT INFORMATION COMING SOON!



PLEASE LOOK FOR MORE INFORMATION ABOUT THE ASSOCIATION HEALTHCARE PLAN FOR THE STATE BAR OF SOUTH DAKOTA IN UPCOMING BAR NEWSLETTERS AND EMAILS.

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE DISCIPLINE	)	JUDGMENT OF PUBLIC CENSURE
OF ALAFIA S. WRIGHT, AS AN	)	
ATTORNEY AT LAW.	)	#30144
	)	
	)	

-----

Based upon a self-report of a judgment of conviction entered against respondent by the Circuit Court of the First Judicial Circuit within and for the County of Clay, South Dakota, in an action titled: "State of South Dakota, Plaintiff, vs. Alafia Wright, Defendant," (13CRI21-342) said judgment being entered upon respondent's pleas of guilty to Class 1 Misdemeanors of Domestic Abuse Simple Assault Intentionally Causing Bodily Injury pursuant to SDCL 22-18-1(5) and Contributing to the Abuse, neglect or Delinquency of a minor pursuant to SDCL 26-9-1, and

On October 21, 2022, the Disciplinary Board of the State Bar of South Dakota filed findings of fact, conclusions of law and a recommendation that Respondent Alafia S. Wright be publicly censured, for his conduct as authorized under SDCL 16-19-35(4) and that said filing constitutes a formal accusation against Respondent pursuant to SDCL 16-19-67(2).

The Board further recommended that no costs be imposed against Respondent in that he is not financially able to pay costs associated with the Board's proceedings.

On November 4, 2022, Respondent filed an answer to the formal accusation, admitting to the allegations in the formal accusation of the Board.

#30144, Public Censure

The Court now having thoroughly considered the Board's findings of fact, conclusions of law and recommendation, and Respondent's answer thereto, and the Court having determined that public censure is an appropriate discipline to be imposed upon Respondent, it is therefore

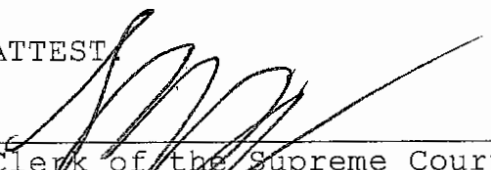
ORDERED, ADJUDGED and DECREED that Alfafia S. Wright be and he is hereby publicly censured for his conduct as authorized under SDCL 16-19-35(4).

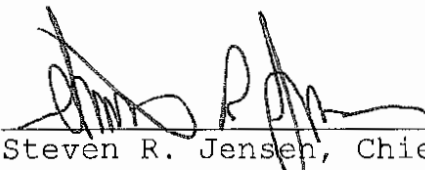
IT IS FURTHER ORDERED that Respondent not be required to reimburse the State Bar of South Dakota for expenses incurred by the Board as allowed under SDCL 16-19-70.2.

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

BY THE COURT:

ATTEST

  
Clerk of the Supreme Court  
(SEAL)

  
Steven R. Jensen, Chief Justice

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

(Justice Janine M. Kern dissents.)

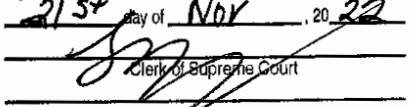
SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

NOV 21 2022

STATE OF SOUTH DAKOTA

In the Supreme Court

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

21<sup>st</sup> day of Nov, 2022  
  
Deputy

  
Clerk



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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT                    )  
SDCL 1-26-33.2                                        )  
-----

RULE 22-11

A hearing was held on November 9, 2022, at Pierre, South Dakota, relating to the amendment of SDCL 1-26-33.2 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 1-26-33.2 be and it is hereby amended to read in its entirety as follows:

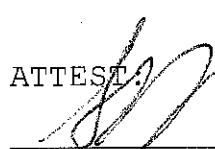
**SDCL to 1-26-33.2. Time for serving briefs.** Unless otherwise ordered by the circuit court, the appellant shall serve a brief within thirty days after the delivery of the transcript of the contested case hearing to counsel for the parties or to the parties if unrepresented by counsel or within thirty days after the agency record is transmitted to the circuit court pursuant to § 1-26-33, whichever event occurs later. The appellee shall serve a brief within thirty days after the service of the brief of appellant, or in the case of multiple appellants, within thirty days after service of the last appellant's brief. The appellant may serve a reply brief within ten days after service of appellee's brief, or in the case of multiple appellees, within ten days after service of the last appellee's brief. ~~Pursuant to § 15-6-5(d), briefs may not be made a part of the record.~~


IT IS FURTHER ORDERED that this rule shall become effective January 1, 2023.

DATED at Pierre, South Dakota, this 17th day of November, 2022.

BY THE COURT:

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

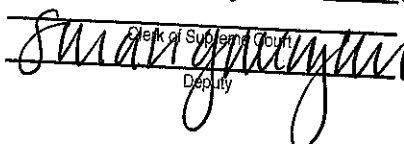
  
Steven R. Jensen, Chief Justice

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

NOV 17 2022

  
Clerk

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of  
South Dakota, hereby certify that the within instrument is a true  
and correct copy of the original thereof as the same appears  
on record in my office. In witness whereof, I have hereunto set  
my hand and affixed the seal of said court at Pierre, S.D. this  
17 day of NOV, 2022.

  
Clerk of Supreme Court  
Deputy

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT                    )  
SDCL 15-6-5(a) through (j)                        )  
-----

RULE 22-12

A hearing was held on November 9, 2022, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-5(a) through (j) 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 15-5A-1 be and it is hereby amended to read in its entirety as follows:

**SDCL 15-6-5 (15-6-5(a) through (j)) - Service and Filing of Pleadings and Other Papers.**

**15-6-5(a). Service--When required.**

Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written brief, notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in § 15-6-4.

**15-6-5(b). Service--How made--Proof.**

(1) Unless otherwise ordered by the court or provided by rule,  
~~Whenever under whenever~~ this chapter ~~service is required~~ requires  
~~or permitted~~ permits service to be made upon a party represented by an attorney, the service shall be made upon the attorney. ~~unless~~

~~service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Service upon a party represented by an attorney may also be made by facsimile transmission as provided in § 15-6-5(f). Delivery of a copy within § 15-6-5 means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person over the age of fourteen years then residing therein. Service by mail shall be by first class mail and is complete upon mailing. Service by facsimile transmission is complete upon receipt by the attorney receiving service. An attorney's certificate of service, the written admission of service by the party or his attorney or an affidavit shall be sufficient proof of service. In the case of service by facsimile transmission, proof of service shall state the date and time of service and the facsimile telephone number or identifying symbol of the receiving attorney. The provisions of § 15-6-5 shall not apply to the service of a summons or other process or of any paper to bring a party into contempt.~~

(2) Unless otherwise ordered by the court, all documents filed with the court electronically through the Odyssey® system or served electronically through the Odyssey® system are presumed served upon all attorneys of record at the time of submission.

(3) Documents not filed with the court may be served upon an attorney by any of the following methods:

- A. electronically through the Odyssey® system;
- B. by electronic mail, using the email address designated by the attorney or law firm for service, or if none, the email address published in the



Membership Directory of the State Bar of South  
Dakota;

- C. by first class mail to the attorney's last known  
address, which is complete upon mailing;
- D. by facsimile transmission subject to the following  
conditions:
  - (i) the attorney upon whom service is made has the  
necessary equipment to receive such transmission;
  - (ii) the attorney has agreed to accept service by  
facsimile transmission, or has served the serving  
party in the same case by facsimile transmission;  
and
  - (iii) the time and manner of transmission comply  
with the requirements of § 15-6-6(a), unless  
otherwise established by the Court; or
- E. by delivery to the attorney, or an employee of the  
attorney, at the attorney's office.

(4) An attorney's certificate of service, the written  
admission of service by the party or his attorney, or an affidavit  
of service are sufficient proof of service.

(5) Unless otherwise ordered by the court, service upon a  
party not represented by counsel must be made using one of the  
following methods:

- A. by delivery to the party or leaving it at the  
party's dwelling house or usual place of abode with  
some person over the age of fourteen years then  
residing therein;
- B. by first class mail to the party's last known  
address, which is complete upon mailing; or
- C. if no address is known, by leaving it with the clerk  
of the court.

(6) The provisions of § 15-6-5 do not apply to the service of  
a summons or other process or of any paper to bring a party into  
contempt.

**15-6-5(c) . Service on numerous defendants .**

In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

**15-6-5(d) . Filing of papers--Originals--Copies .**

The original of all papers served upon a party or presented to any court or judge in support of any application or motion and including the summons, all pleadings, notices, demands, offers, stipulations, affidavits, written motions, briefs, memorandums of law, and orders shall, if not filed before service, be filed with the court, together with proof of such service, forthwith upon such service. The foregoing requirement of filing applies to the notice of filing of an order and the notice of entry of a judgment together with proof of service thereof, both of which shall be filed forthwith; if not filed within ten days after service thereof, the time of service shall be deemed to be the date of filing of the notice and proof of service. If papers are not to be served, they must be filed with the court at the time of their presentation to the court for any action or consideration.

Any electronic version of any paper or document shall have the same force and effect as the original. A certified copy of an original made by electronic transmission shall have the same force and effect as a certified copy of an original.

**15-6-5(e). Definition--Filing with the court.**

Except as specifically exempted by these rules or court order, The the filing of pleadings and other papers with the court as required by this chapter shall must be made through the Odyssey® electronic filing system by filing them with the clerk of the court. Self-represented parties may file electronically, but are not required to file electronically. Upon leave of court, an attorney required to file electronically may be granted leave of court to file paper documents with the clerk of the court., except that the The judge may permit a party the papers to be filed file papers with him or her, in which event he shall the judge must note thereon the filing date and forthwith transmit them to the office of the clerk.

**~~15-6-5(f). Service by facsimile transmission (fax) to parties represented by attorney.~~**

~~Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, such service may be made by faesimile transmission pursuant to the following conditions:~~

- ~~(1) The attorney upon whom service is made has the necessary equipment to receive such transmission;~~
- ~~(2) The attorney has agreed to accept service by facsimile transmission, or has served the serving party in the same case by faesimile transmission; and~~
- ~~(3) The time and manner of transmission comply with the requirements of § 15-6-6(a), unless otherwise established by the Court.~~

~~The signature on the facsimile shall constitute a signature under § 15-6-11(a).~~

**15-6-5(g). Documents not to be filed--Depositions.**

No depositions (except notices to take depositions), interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall be filed with the clerk of the court except as provided in this section. Any such filing shall be made electronically in full-size print unless otherwise ordered

by the court. Any exhibits to such documents shall be clearly identified and included as a separate electronic file or hyperlinked within the transcript file.

Any discovery materials necessary for the disposition of any motion filed with the court or referenced in any filing with the court shall be attached as an exhibit to and filed with the party's motion in its entirety or as an exhibit to a declaration, affidavit, or other similar filing. Financial account information filed with the court as an exhibit under this section shall be confidential pursuant to §§ 15-15A-8 and 15-15A-9, and shall remain confidential unless and until access is granted by the court under § 15-15A-10.

If any party designated any or all of any deposition as evidence to be offered in the trial of any case, such deposition shall be filed in electronic format in its entirety with the clerk of the court at the same time as that party's designation.

Depositions used by a party only for the purpose of contradicting or impeaching the testimony of deponent as a witness, pursuant to subdivision 15-6-32(a)(1), shall not be filed unless otherwise ordered by the judge presiding at the hearing or trial.

All depositions which have been read or offered into Evidence by agreement of parties, or at the trial or submission of the case to the court, shall become a permanent part of the file.

**15-6-5(h). Civil Case Filing Statements.**

Whenever a party or an attorney representing a party commences a civil action, files a notice of appearance, or files an answer or first responsive pleading in a civil action, the party or attorney representing the party shall file a completed civil case filing statement containing identifying information available to that party or attorney regarding all parties, including the adverse party, with the clerk of the court. A statement must also be filed whenever a new party is added to the action. The statement shall be available from the clerk or online at the Unified Judicial System's



website. The identifying information for the filing party must be submitted on the filing statement. If the party or attorney representing a party is unable to provide the required information for the filing party, he or she may seek a waiver from the judge assigned to the action. After the information is recorded in the Unified Judicial System docketing system, the filing statement may be destroyed or kept by the clerk of the court in a nonpublic file for internal record management use by the Unified Judicial System. Access to the filed statement will only be available to court personnel or by court order.

**15-6-5(i). Service of discovery requests by electronic mail or portable storage media device ~~computer diskette~~--Costs.**

Any party or attorney serving discovery requests pursuant to § 15-6-31, § 15-6-33, § 15-6-34 or § 15-6-36 shall also, upon receipt of a written request, serve those items on the opposing party or attorney by electronic mail or on a portable storage media device ~~computer diskette~~. Failure to comply with such a request shall not make service invalid or extend the time to file a response, but the court shall order payment of the actual costs of reproducing the item and may award such other terms as it deems proper under § 15-6-37 unless good cause for failure to comply with the request is shown.

**~~15-6-5(j). Service by electronic mail (email) to parties represented by attorney.~~**

~~Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, such service may be made by email transmission pursuant to the following conditions:~~

- ~~(1) The attorney upon whom service is made has the necessary equipment to receive such transmission;~~
- ~~(2) Prior to the service, the attorney upon whom service is made has agreed in writing to accept service by email, or has served the serving party in the same case by email;~~

~~(3) The time and manner of transmission comply with the requirements of § 15-6-6(a), unless otherwise established by the court; and~~

~~(4) The sending attorney by facsimile or mail sends a certificate of service specifying the items electronically served.~~

~~The signature or electronic signature on the email shall constitute a signature under § 15-6-11(a). If within two days after the certificate of service is received, the attorney upon whom service is made attests in writing that he or she did not receive the electronic mail submission, then service shall not have been deemed to have been made.~~

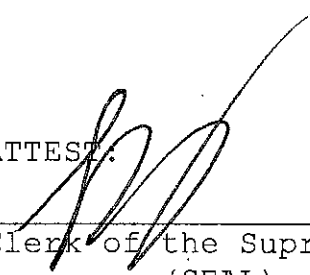
IT IS FURTHER ORDERED that this rule shall become effective January 1, 2023.

DATED at Pierre, South Dakota, this 17th day of November, 2022.

BY THE COURT:

  
Steven R. Jensen, Chief Justice

ATTEST:

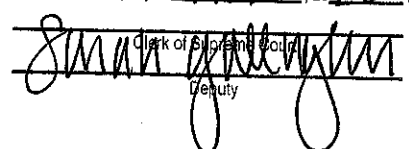
  
Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

NOV 17 2022

  
Clerk

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this 17 day of Nov, 2022.

  
Clerk of Supreme Court  
Deputy

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT       )  
SDCL 15-6-45(a)                        )  
  )

RULE 22-13

-----  
A hearing was held on November 9, 2022, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-45(a) 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 15-6-45(a) be and it is hereby amended to read in its entirety as follows:

**SDCL 15-6-45(a). Subpoena for attendance of witnesses and for production of documentary evidence--Form--Issuance.**

Clerks of courts, judges, magistrates, notaries public, referees, and any other public officer or agency so empowered by § 1-26-19.1 or otherwise authorized by law in any matter pending before them, upon application of any person having a cause or any matter pending in court or before such agency, officer or tribunal, may issue a subpoena for a witness or witnesses, or for the production of books, papers, documents or tangible things designated therein pursuant to the provisions of § 15-6-45(b).

Any attorney of record who has been duly admitted to practice in this state and is in good standing upon the active list of attorneys of the State Bar of South Dakota may issue a subpoena for a witness or witnesses, and for production, inspection and copying of records and exhibits, in any action or proceeding, or collateral hearing, civil or criminal, in which the attorney is the attorney of record for any party. When an attorney issues a

subpoena, the attorney must contemporaneously transmit a copy thereof to the clerk of the court, or to the secretary or other filing officer of the board or tribunal in which the matter is pending, for filing. Such officer shall file such copy as one of the public records of the action or proceeding.

A subpoena shall state the name of the court, or tribunal, the title of the action or proceeding, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. It shall state the name of the person or party for whom the testimony of the witness is required. The seal of the court or officer, or tribunal, shall be affixed to the original and all copies, if issued by a court or officer having a seal. If the subpoena is issued by an attorney, it shall be issued in the name of the presiding officer of the court, or tribunal in which the matter is pending and shall be attested and signed by the attorney, designating the party for whom the attorney is attorney of record. A subpoena shall also include the following text in bold, capitalized type immediately above the signature of the individual signing the subpoena:

YOU SHOULD TREAT THIS DOCUMENT AS YOU WOULD A COURT ORDER. IF YOU FAIL TO COMPLY WITH THE COMMAND(S) IN THIS DOCUMENT WITHOUT ADEQUATE EXCUSE, THE COURT MAY FIND YOU IN CONTEMPT AND ASSESS MONETARY OR OTHER SANCTIONS AGAINST YOU.

YOU HAVE CERTAIN OBLIGATIONS AND RIGHTS AS IT CONCERNS THIS DOCUMENT, INCLUDING THOSE SET FORTH IN SDCL § 15-6-45(b)-(g).

YOU SHOULD CONSIDER CONTACTING AN ATTORNEY REGARDING YOUR OBLIGATIONS AND RIGHTS.

IT IS FURTHER ORDERED that this rule shall become effective January 1, 2023.

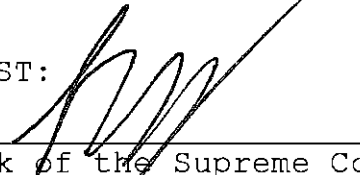
DATED at Pierre, South Dakota, this 17th day of November, 2022.

BY THE COURT:



Steven R. Jensen, Chief Justice

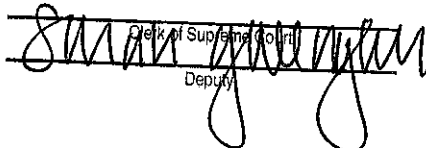
ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

NOV 17 2022

  
Clerk

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this  
17 day of NOV, 2022.  
  
Shirley A. Jameson-Fergel  
Clerk of Supreme Court  
Deputy



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENTS )                    RULE 22-14  
OF THE APPENDIX OF FORMS TO )  
SDCL CHAPTER 15-6 TO INCLUDE )  
FORMS 8, 9, 14, 17, 19, 20 and 21 )  
-----

A hearing was held on November 9, 2022, at Pierre, South Dakota, relating to the amendments of the Appendix of Forms to SDCL Chapter 15-6 to Include Forms 8, 9, 14, 17, 19, 20 and 21 and the Court having considered the proposed amendments, oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the amendments of the Appendix of Forms to SDCL Chapter 15-6 to Include Forms 8, 9, 14, 17, 19, 20 and 21 be and they are hereby amended to read in their entirety as follows:

**Forms 8, 9, 14, 17, 19, 20, AND 21 OF THE APPENDIX OF FORMS TO SDCL CHAPTER 15-6.**

**Form 8. Complaint for negligence**

1. On June 1, 1956, in a public highway called Phillips Avenue in Sioux Falls, South Dakota, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in ~~the sum of \_\_\_\_\_ dollars and costs~~ an amount to be determined by the trier of fact.

Note:

Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

**Form 9. Complaint for negligence where plaintiff is unable to determine definitely whether the person responsible is C.D. or E.F. or whether both are responsible and where his evidence may justify a finding of willfulness or of recklessness or of negligence**

A.B., Plaintiff

vs. COMPLAINT

C.D. and E.F., Defendants

1. On June 1, 1956, in a public highway called Phillips Avenue in Sioux Falls, South Dakota, defendant, C.D. or defendant E.F., or both defendants, C.D. and E.F. ~~willfully or recklessly or negligently~~ drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C.D. or against E.F. or against both in the sum of \_\_\_\_\_ dollars and costs.

**Form 14. Motion to dismiss, presenting defenses of failure to state a claim, of lack of service of process, and of lack of jurisdiction under § 15-6-12(b)**

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the state of South Dakota, and (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M.N. and X.Y. hereto annexed as Exhibit A and Exhibit B respectively.

Signed:

\_\_\_\_\_  
Attorney for Defendant

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

~~Notice of Motion~~

To: \_\_\_\_\_

~~Attorney for Plaintiff~~  
\_\_\_\_\_  
\_\_\_\_\_

~~Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the courtroom at the Court House in the City of Sioux Falls, South Dakota on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.~~

~~Signed:~~

\_\_\_\_\_  
~~Attorney for Defendant~~

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

**Form 17. Motion to bring in third-party defendant**

Defendant moves for leave to make E.F. a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A hereto attached.

Signed:

\_\_\_\_\_  
Attorney for Defendant C.D.

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

~~Notice of Motion~~

~~\_\_\_\_\_ (Contents the same as in Form 14. No notice is necessary if the motion is made before the moving defendant has served his answer).~~

~~\_\_\_\_\_ Exhibit A~~

~~\_\_\_\_\_ STATE OF SOUTH DAKOTA IN CIRCUIT COURT~~

~~\_\_\_\_\_ COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT~~

~~\_\_\_\_\_ A.B., Plaintiff~~

~~\_\_\_\_\_ vs.~~

~~\_\_\_\_\_ C.D., Defendant and Third-Party SUMMONS~~

~~\_\_\_\_\_ Plaintiff~~

~~\_\_\_\_\_ vs.~~

~~\_\_\_\_\_ E.F., Third-Party Defendant~~

~~\_\_\_\_\_ To the above-named Third-Party Defendant:~~

~~\_\_\_\_\_ You are hereby summoned and required to serve upon \_\_\_\_\_, plaintiff's attorney whose address is \_\_\_\_\_, and upon \_\_\_\_\_, who is attorney for C.D., defendant and third-party plaintiff, and whose address is \_\_\_\_\_, an answer to the third-party complaint which is herewith served upon you and an answer to the complaint of the plaintiff, a copy of which is herewith served upon you, within 30 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.~~

\_\_\_\_\_  
~~Attorney for C.D.~~

~~\_\_\_\_\_ Third-Party Plaintiff~~

~~\_\_\_\_\_ STATE OF SOUTH DAKOTA IN CIRCUIT COURT~~

~~\_\_\_\_\_ COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT A.B., Plaintiff~~

~~\_\_\_\_\_ vs. THIRD-PARTY~~

~~\_\_\_\_\_ C.D., Defendant and Third-Party COMPLAINT~~

~~Plaintiff~~

~~vs.~~

~~E.F., Third-Party Defendant~~

~~1. Plaintiff A.B. has filed against defendant C.D. a complaint, a copy of which is hereto attached as "Exhibit C."~~

~~2. (Here state the grounds upon which C.D. is entitled to recover from E.F., all or part of what A.B. may recover from C.D. The statement should be framed as in an original complaint.) Wherefore C.D. demands judgment against third-party defendant E.F. for all sums that may be adjudged against defendant C.D. in favor of plaintiff A.B.~~

~~Signed:~~

~~Attorney for C.D.~~

~~Third-Party Plaintiff~~

~~Address:~~

~~Source: SD RCP, Form 17.~~

**Form 19. ~~Motion to bring in third-party defendant~~ Notice of Hearing**

~~Defendant moves for leave, as third-party plaintiff, to cause to be served upon E.F. a summons and third-party complaint, copies of which are hereto attached to Exhibit X.~~

~~Signed:~~

~~Attorney for Defendant C.D.~~

~~Address:~~

~~Notice of Motion~~

~~(Contents the same as in Form 14. The notice shall be addressed to all parties to the action.)~~

~~Exhibit X~~

~~(Contents the same as in Form 18.)~~

~~Note:~~

~~Form 19 is intended for use when, under § 15-6-14(a), leave of court is required to bring in a third-party defendant.~~

~~To: [adverse party] and [his/her/its] attorney[s], [attorney's[s']] address]:~~

~~PLEASE TAKE NOTICE that [moving party]'s [name of motion] will be brought on for hearing before the Honorable [name of judge], Circuit Court Judge, in the [name of County] County Courthouse, [City], South Dakota, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ .m., or as soon thereafter as counsel can be heard.~~

**Form 20. Motion to intervene as a defendant under § 15-6-24**

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT  
A.B., Plaintiff  
vs. MOTION TO INTERVENE  
C.D., Defendant AS A DEFENDANT  
E.F., Inc., Applicant for  
Intervention

E.F., Inc., moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in its proposed answer, of which a copy is hereto attached, on the ground that it is the manufacturer and vendor to the defendant of the automobile described in plaintiff's complaint, the brakes of which are alleged to have been defectively manufactured; and as such, if the allegations of plaintiff's complaint be true, would be the one ultimately liable to the plaintiff, and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action. Signed:

---

Attorney for E.F., Inc.,  
Applicant for Intervention  
Address: \_\_\_\_\_

~~Notice of Motion~~

~~(Contents the same as in Form 14)~~

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT  
A.B., Plaintiff  
vs. INTERVENER'S ANSWER  
C.D., Defendant  
E.F., Inc., Intervener  
First Defense

Intervener admits the allegations stated in paragraphs 1 and 4 of the complaint; denies the allegations in paragraph 3, and denies the allegations in paragraph 2 in so far as they assert that the brakes of the automobile described in plaintiff's complaint were defectively manufactured.

Second Defense

Plaintiff was guilty of contributory negligence which proximately caused or contributed to the accident and to the personal injuries which he sustained therein, if any, in that he drove said automobile at a high rate of speed in a negligent and careless manner after the discovery of the defective condition of the brakes which contributory negligence on the part of the plaintiff was greatly more than slight in comparison to the negligence, if any, of this intervener.



Signed:

\_\_\_\_\_  
Attorney for E.F., Inc.,  
Intervener  
Address: \_\_\_\_\_

Note:

Under § 15-6-24 the motion to intervene must be served upon all parties as provided in § 15-6-5.

**Form 21. Motion for ~~production of documents etc.~~ Compel under § 15-6-34 15-6-37.**

~~Plaintiff A.B. moves the court for an order requiring defendant C.D.~~

~~\_\_\_\_\_ (1) To produce and to permit plaintiff to inspect and to copy each of the following documents: (Here list the documents and describe each of them.)~~

~~\_\_\_\_\_ (2) To produce and permit plaintiff to inspect and to photograph each of the following objects: (Here list the objects and describe each of them.)~~

~~\_\_\_\_\_ (3) To permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph (here describe the portion of the real property and the objects to be inspected and photographed).~~

~~\_\_\_\_\_ Defendant C.D. has the possession, custody, or control of each of the foregoing documents and objects and of the above-mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.~~

~~Signed:~~

\_\_\_\_\_  
~~Attorney for Plaintiff~~  
~~Address:~~ \_\_\_\_\_

~~Notice of Motion~~

~~(Contents the same as in Form 14)~~

~~Exhibit A State of South Dakota~~

~~County of \_\_\_\_\_~~

~~A.B., being first duly sworn says:~~

~~\_\_\_\_\_ (1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control).~~

~~\_\_\_\_\_ (2) (Here set forth all that plaintiff knows which shows that each of the above-mentioned items is relevant to some issue in the action).~~

~~Signed: A.B.~~

~~(Jurat)~~

[Movant], pursuant to SDCL 15-6-37(a), respectfully moves the Court for an order compelling [opposing party] to [specific relief sought]. The Court should enter the requested order because:

1. The discovery was properly served;
2. [Opposing party] has failed to respond to the discovery;
3. Counsel for [movant] certifies that he has, in good faith, conferred or attempted to confer with [opposing party] in an effort to secure the information or material without court action;

all as set forth in the accompanying Brief in Support of [movant]'s Motion to Compel Discovery.

Attach the following certification:

**Certification of Good Faith Efforts to Resolve**

Counsel for [movant] hereby certifies, pursuant to SDCL 15-6-37(a)(2), that counsel attempted, in good faith, to resolve this discovery dispute without involving the Court.

On [date], the undersigned communicated to [opposing party] that [opposing party's] responses to outstanding discovery requests were inadequate because [explain what you believe you are entitled to.]

[list each successive communication, including:

- a. who participated,
- b. the date, and, if relevant, the time of each communication, and
- c. the manner of each communication.]

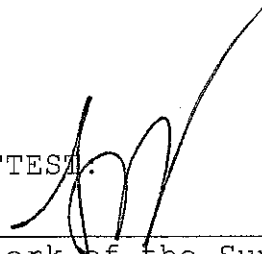
Summarize the outcome of these communications, identifying the substantive dispute that has stalemated the parties' discussions, and which the Court must resolve.

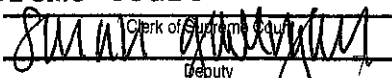
IT IS FURTHER ORDERED that this rule shall become effective January 1, 2023.


DATED at Pierre, South Dakota, this 17th day of November, 2022.

BY THE COURT:

ATTEST:

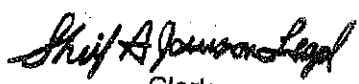
  
Clerk of the Supreme Court  
(SEAL)

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this 17 day of NOV, 2022.  
  
Clerk of Supreme Court  
Deputy

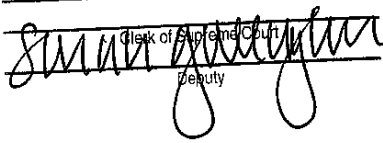
  
Steven R. Jensen, Chief Justice

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

NOV 17 2022

  
Clerk

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of  
South Dakota, hereby certify that the within instrument is a true  
and correct copy of the original thereof as the same appears  
on record in my office. In witness whereof, I have hereunto set  
my hand and affixed the seal of said court at Pierre, SD, this  
11 day of Nov, 2022.

  
Shirley A. Jameson-Fergel  
Clerk of Supreme Court  
Deputy

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

NOV 17 2022

  
Clerk

IN THE MATTER OF THE AMENDMENT )  
SDCL 15-12-37 )

RULE 22-15

-----  
A hearing was held on November 9, 2022, at Pierre,  
South Dakota, relating to the amendment to SDCL 15-12-37 and  
the Court having considered the proposed amendments, oral  
presentation relating thereto and being fully advised in the  
premises, now, therefore, it is

ORDERED that SDCL 15-12-37 be and it is hereby amended  
to read in its entirety as follows:

**SDCL 15-12-37. Disqualification on court's own motion.**

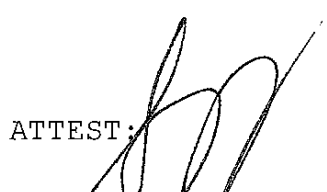
A judge or magistrate having knowledge of a ground for self-  
disqualification under the guidelines established by Canon 3E &  
shall not, unless Canon 3F D is utilized, await the filing of an  
affidavit but shall remove himself on written motion to be filed in  
duplicate by the judge or magistrate with the clerk of courts of  
the county wherein the action is pending. The clerk of courts shall  
notify the presiding judge, and the parties or their attorneys in  
the manner provided by this chapter for notification on filing of  
an affidavit for change of judge or magistrate.


IT IS FURTHER ORDERED that this rule shall become  
effective January 1, 2023.

DATED at Pierre, South Dakota, this 17th day of  
November, 2022.

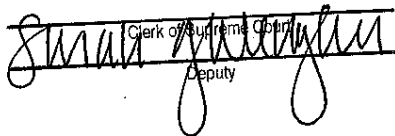
BY THE COURT:

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

  
Steven R. Jensen, Chief Justice

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of  
South Dakota, hereby certify that the within instrument is a true  
and correct copy of the original thereof as the same appears  
on record in my office. In witness whereof, I have hereunto set  
my hand and affixed the seal of said court at Pierre, S.D. this  
11 day of NOV, 2022.

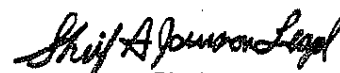
  
Clerk of Supreme Court  
Deputy

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

NOV 17 2022

  
Clerk

IN THE MATTER OF THE ADOPTION )                      RULE 22-16  
OF A NEW RULE CONCERNING COURT )  
REPORTER TRANSCRIPT FEES . )  
-----

A hearing was held on November 9, 2022, at Pierre,  
South Dakota, relating to the adoption of a new rule concerning  
court reporter transcript fees 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 concerning court  
reporter transcript fees be and it is hereby adopted to read in its  
entirety as follows:

**Court Reporter Transcript Fees.**

Section 1. The fee for the preparation of a transcript from a  
court reporter's notes of evidence is three dollars and sixty cents  
per page for the original. The fee for a copy, furnished on  
request, is sixty-five cents per page, to be paid to the officer of  
the court who prepared the transcript.

Section 2. Implementation Date:

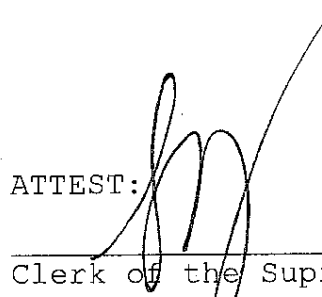
This rule change shall become effective January 1, 2023.

DATED at Pierre, South Dakota, this 17th day of  
November, 2022.

BY THE COURT:

  
Steven R. Jensen, Chief Justice

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

# BOARD OF BAR COMMISSIONERS

Minutes, October 21, 2022

GPNA Conference Room, Hyde Building

Pierre, South Dakota

President Lisa Marso called the meeting to order at 9:50 a.m. Central Time on Friday, October 21, 2022, in Pierre, South Dakota. Present at the meeting were Marso, President Elect Heather Bogard, Commissioners Bell, Dougherty, Foral, Johnson, King, Matson, Pickar, Richter, Skjoldal (via Zoom), Srstka, Strait, and Tiede. Also, present during all or part of the meeting were Executive Director/Secretary-Treasurer Andrew Fergel, Strategic Plan Coordinator Elizabeth Overmoe, Assistant Director Nicole Ogan, Access to Justice, Inc. Coordinator Denise Langley, LAP Director Rebecca Porter, YLS President Anthony Sutton, Chief Justice Steven Jensen, and State Court Administrator Greg Sattizahn.

Discussion with Chief Justice Jensen and State Court Administrator Greg Sattizahn: After a tour of the Supreme Court's Chambers, Courtroom, and the UJS's facilities in the Capitol Building, Chief Justice Jensen and State Court Administrator Greg Sattizahn met with the Bar Commission at the Hyde Building to discuss several topics. Topics discussed were:

- The Pro Se Commission
- Court Appointed Attorneys Fees
- The Bar Exam/Alternative Pathways to Admission and the Study Group the Court Plans to Establish
- Rural Attorney Recruitment Program
- Ombuds for Sexual Harassment Prevention Program
- Affidavits for Change of Judge

Minutes of September 21, 2022 Meeting: Commissioner Bell moved to approve the minutes of the September 21, 2022, meeting held via Zoom. Commissioner Pickar seconded the motion. Motion passed.

Lawyers Assistance Program Report: Lawyers Assistance Program Director Rebecca Porter reported on the activities of the LAP program and her work for the program since her last report. Ms. Porter's oral report was supplemented with a detailed written report that was included in the Commission's meeting materials.

Strategic Plan Update: Strategic Plan Coordinator Elizabeth Overmoe provided a short update on activities related to legal pathways goals in the plan and informed the Commission that the next annual Strategic Plan Committee Meeting/Retreat is scheduled for May 12, 2023.

SD CLE, Inc. Discussion: A discussion was held about the possibility of winding



down SD CLE, Inc. with the State Bar of South Dakota absorbing the educational mission of SD CLE. Representatives from the accounting firm that performs the audits for the State Bar of South Dakota, SD CLE, Inc., and Access to Justice, Inc. had been scheduled to meet with the Commission to provide their opinion on the propriety of dissolving SD CLE; however, due to unforeseen circumstance they were unable to attend. Fergel informed the Commission that he and Nicole Ogan had met with the accountants the week prior where they were informed that the accounting firm would no longer be able to service the Bar's accounts as the firm was discontinuing its audit practice. After learning that a new audit and tax preparation firm will need to be retained, it was the consensus of the Commission that the Bar seek a recommendation from the new firm that is retained about whether to unwind SD CLE.

#### Young Lawyers Section Report and Report on September 30<sup>th</sup> Project

Destination/Cheyenne River Event: Anthony Sutton, President of the Young Lawyers Section reported on his and the YLS Board's work thus far this fiscal year. He also discussed upcoming projects and plans for the section. After completing his report on the Young Lawyers Section, Mr. Sutton gave a report to the Commission about his experience collaborating with other members of the Bar presenting mock trials to elementary and high school students at the Cheyenne River School District in Eagle Butte. He stated that participating in the project was a meaningful experience and encouraged everyone to participate in such an event in the future if possible. He noted that the purpose of holding these types of events is to start to sow the seeds of interest in legal careers for students that might not otherwise think about the possibility.

Financial Report: Fergel and Ogan presented a financial report to the Commission that included information about fund balances in all the operational accounts for the State Bar of South Dakota and SD CLE, Inc. Commissioner King made a motion to accept the financial report as presented. Commissioner Pickar seconded the motion. Motion passed.

Renewal of Health Plan for State Bar Employees: Fergel ask the Commission to approve renewing the State Bar's Health Plan for employees with Avera. Fergel informed the Commission that to renew the current plan, monthly premium would increase from \$1,660.42 per month to \$1,795.91 per month. Commissioner Matson made a motion to authorize the Executive Director to renew the State Bar Employee Health Plan with Avera pursuant to the terms presented. Commissioner Pickar seconded the motion. Motion passed with Commissioner Dougherty abstaining.

Employment Practices Liability Insurance and Officers and Directors Insurance: The Commission discussed the need for employment practices insurance and officers and directors insurance after a presentation about protections that may

exist under state law for the Commission/State Bar of South Dakota. Commissioner Bell made a motion to authorize the Executive Director to bind coverage for employment practices liability insurance and officers and directors insurance that listed the State Bar of South Dakota, SD CLE, Inc. and Access to Justice, Inc. as insureds with an annual premium not to exceed \$10,000.00. President Elect Bogard seconded the motion. Motion passed.

Association Healthcare Plan Update: Executive Director Fergel informed the Commission that the State Bar of South Dakota Association Healthcare Plan is on track now to launch in January of 2023.

2023 Legislative Session: Fergel informed the Commission about legislation he thought would be submitted during the 2023 Legislative Session that may be of interest to the State Bar. A brief discussion by the Commission followed.

Bylaws Change for Nominating President Elect: The Commission reviewed the requirements for nomination and election of commission candidates and president elect candidates of the State Bar of South Dakota. It was noted that there is a petition requirement for commissioner candidates in the State Bar bylaws but not for president elect candidates. It was suggested that a president elect candidate should be required to meet the same petition requirements that an at-large commission candidate has to meet. Thereafter, the Commission asked Fergel to draft an amendment to the bylaws that would require a nominating petition process for president elect candidates like that required of at-large commission candidates for the Commission's consideration at its next meeting.

ENABLER's Act Amendment to National Defense Authorization Act: Fergel informed the Commission about a new ENABLER's Act amendment to the FY 2023 National Defense Authorization Act (H.R. 7900 and S. 4543). He explained that the ABA has expressed concerns about the amendment and was urging bar organizations to oppose it. The concerns about the amendment are that it would regulate lawyers as "financial institutions" under the Bank Secrecy Act and could require lawyers to report privileged and other protected client information and thus would jeopardize lawyers' ability to consult candidly with their clients and weaken lawyers' ability to prevent money laundering and other illicit activities. Other concerns about the amendment are that it would undermine the attorney-client privilege, a lawyer's ethical duty to protect client confidentiality, the right to effective assistance of counsel, and the authority of state supreme courts. Commissioner Tiede made a motion that the State Bar of South Dakota oppose the amendment. Commissioner Dougherty seconded the motion. After discussion, the motion passed.

Executive Session: At 1:56 p.m. Central Time, Commissioner Matson made a motion to go into executive session to discuss the executive director position and

personnel. Commissioner Johnson seconded the motion. The motion passed and the Commission went into executive session. The Commission came out of executive session at 2:26 p.m.

Adjourn: After coming out of executive session Commissioner Johnson made a motion to adjourn the meeting. Commissioner Matson seconded the motion. The motion passed and President Marso adjourned the meeting.

Respectfully submitted,

Andrew L. Fergel  
Executive Director/Secretary-Treasurer



# 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)



### Attorney – Rapid City

Bangs McCullen Law Firm has an immediate opening for a LITIGATION ATTORNEY in its Rapid City office. Candidates should have three to five years of legal experience. Excellent academic credentials and writing skills are required. Confidential inquiries, including a resume and cover letter should be directed to Barb Dreyer, Bangs McCullen Law Firm, P.O. Box 2670, Rapid City, SD 57709 or [bdreyer@bangsmccullen.com](mailto:bdreyer@bangsmccullen.com). We offer a competitive salary and benefit package. For more information please visit [www.bangsmccullen.com](http://www.bangsmccullen.com).

### Litigation Associate – Rapid City

Goodsell + Oviatt Law Firm is seeking a Litigation Associate, as either lateral or new associate, in Rapid City, SD. Primary work will be personal injury, construction, insurance law, with some business law/commercial matters. This position also requires research, brief writing, trial preparation and complex litigation before state and federal courts in South Dakota and North Dakota. Strong academic credentials and excellent communication skills (both oral and written) required. The firm offers a comprehensive benefit plan and an opportunity for professional development and growth. Competitive salary DOE.

Confidential inquiries, including résumé and cover letter detailing experience, should be directed to Nathan Oviatt, Attorney or Sherry Dwyer, Business Manager, Goodsell + Oviatt Law Firm, 246 Founders Park Drive, Suite 201, Rapid City, SD 57701 or by email at [nate@goodselloviatt.com](mailto:nate@goodselloviatt.com) or [sherry@goodselloviatt.com](mailto:sherry@goodselloviatt.com).

### Associate Attorney – Sioux Falls

Griese Law Firm, P.C., is seeking a full time associate attorney to join the growing law office. Applicant must be a strong advocate, motivated and organized. Seeking an attorney with at least 2 years experience licensed to practice law in South Dakota.

Position is paid salary commensurate with experience. Also offer an incentive bonus structure based on revenue earned for the firm annually. Benefits included.

Please send Resume, cover letter, and 2 attorney references to [Nicole@grieselawfirm.com](mailto:Nicole@grieselawfirm.com).

All applications will be held confidential within the firm.

**DeRouchey Agricultural & Legal Consulting, LLC**

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

- 34 years Farm Business Instructor at Mitchell Tech
- 4 years of Ag Lending
- 9 years Research, Deposition, Testifying
- Expert witness on agricultural issues

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



## **Financial Examiner– Sioux Falls or Pierre**

Division of Banking Financial Institution Examiner

Job ID: 20584

Salary: \$50,000 annually

Closing Date: Open Until Filled

This is a Full-Time 40 Hours Weekly position with the South Dakota Division of Banking, part of the Department of Labor & Regulation. For more information on the Division of Banking, please visit <https://dlr.sd.gov/banking>. The 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.

### **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; and 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**

This position is exempt from the Civil Service Act.

This position is eligible for Veterans' Preference per ARSD 55:10:02:08.

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

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/lmgshr/xmlhttp/shorturl.do?key=JST>

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



## Youth Diversion Coordinator – Pierre

Title: Youth Diversion Coordinator

Reports To: Hughes County State's Attorney

Status: Full-time

The Hughes County State's Office hiring a Youth Diversion Coordinator who will be responsible for the coordination, management, and expansion of the local Juvenile Detention Alternatives Initiative (JDAI), a juvenile justice improvement and detention alternative program. The Youth Diversion Coordinator is a grant funded position.

### JDAI Responsibilities

Plan and coordinate regular meetings of the JDAI collaborative, including the Steering/Executive Committee and all JDAI workgroups, as necessary. Facilitate the development of a JDAI work plan and complete plan tasks in a timely manner. Meet, as necessary, with various parties and key stakeholders on an individual or small group basis. Review and request relevant data and data analysis from stakeholders and consult with state JDAI Coordinator on such analyses. Prepare and review various written documents, procedures, and agreements, formal position statements, action plans, and other assignments as needed. Represent the JDAI collaborative at meetings with other local groups and boards. In consultation with the state JDAI coordinator, participate in state JDAI meetings, JDAI training seminars; JDAI model site visits to other states; and the national JDAI conference. Participate in regular conference calls with other South Dakota JDAI sites. Keep the JDAI collaborative and other South Dakota JDAI partners informed of the progress and challenges with regular reports/communications summarizing recent issues, policy/procedure changes, significant developments, and other activities.

### Diversion Responsibilities

Assist in the development of policies and procedures for diversion programming. Publicize and communicate program activities. Provide regular reports on the success of diversion to key stakeholders. Perform public speaking to groups and individuals to explain the program. Ensure program quality through definable program outcome measurements and objectives. Gather and report statistical information about client caseload. Complete grant and contract reports per the requirements of the funding sources. Complete screening and assessment for youth and families

referred to the diversion program. Gather information from youth, parents, schools and social service agencies. Explore all likely sources of information regarding the home and family life. Provide case management services as needed. Meet with family and/or youth in the diversion program as needed for guidance, education, and motivation. Attend court as needed for testimony, information sharing and receipt of referrals. Complete all forms and reports necessary to maintain accurate case documentation and statistics. Maintain an awareness of available community resources. Advocate for families and youth when necessary. The Youth Diversion Coordinator may also have to manage a number of projects at one time, and may be interrupted frequently to meet the needs of youth and organizations. The Youth Diversion Coordinator must remain patient and committed to the activities, and may have to engage in conflict resolution or crisis management at times. Periodic travel will be necessary.

### Job Requirements

Applicant must: possess a valid driver's license and valid proof of insurance with reliable method of transportation; have the ability to pass a background check; have strong analytical, writing, and verbal presentation skills, must possess excellent organization and time and stress management skills; and be proficient in the use of technology.

Prior work history in the area of criminal justice, social services, or experience with juveniles is preferred but not required.

Starting Salary: \$41,700-\$47,000/year.

Pay is commensurate with experience and competitive with other local agencies and includes health insurances, participation in South Dakota Retirement System, and paid time off.

Closing Date: Open until filled

Please send resume and cover letter to:

Jessica LaMie

Hughes County State's Attorney

104 E. Capitol, Pierre, SD 57501

Resumes and cover letters will also be accepted via facsimile at 605-773-7460 and email at [Jessica.lamie@co.hughes.sd.us](mailto:Jessica.lamie@co.hughes.sd.us)

## **Attorney – Pierre**

Position: Attorney

Agency: South Dakota Public Utilities Commission

Location: Pierre

Salary: \$90,000 or more dependent upon qualifications and relevant experience

Closing: Open Until Filled

### **Position Purpose**

Represent the South Dakota Public Utilities Commission in proceedings before the commission and the regulated industry. Research, analyze, write, and provide legal guidance regarding dockets such as utility tariff filings, transmission siting permit requests, contested cases, and other commission administrative proceedings. Present legal findings in writing and orally before the commission in meetings and hearings. Position represents the commission at various meetings and events involving utility industry, government representatives and constituents. Position reports to the commission's executive director. To learn more about the Public Utilities Commission, its authority and its work, visit [PUC.sd.gov](http://PUC.sd.gov).

### **Qualifications**

Must be a graduate from an ABA accredited law school and possess a Juris Doctorate. Must be licensed by the South Dakota State Bar to practice law in South Dakota, with experience as an attorney.

### **Knowledge and Skills**

- the law;
- the legislative process;
- Proper English usage;
- excellent legal research, critical thinking and analytical capabilities;
- grasp of accounting and economic principles;
- professional legal writing experience;
- excellent oral presentation and written communication skills;
- utility background or knowledge preferred; and
- must be qualified to practice law in South Dakota pursuant to SDCL 16-16-12.1.

### **Ability to**

- research and interpret federal laws, state statutes and administrative rules;
- research and comprehend technical matters;
- prepare data requests and discovery materials;
- write concise briefs, direct testimony, legal notices,

orders, rules and statutes;

- cross examine expert witnesses;

- participate in negotiated settlement agreements on behalf of commission;

- be proficient in the use of applicable office computer software programs;

- effectively organize and prioritize multiple projects and responsibilities with overlapping deadlines;

- be diplomatic, decisive, self-motivated, and trustworthy in dealing with confidential matters;

- work effectively and efficiently within procedural schedules, project timelines, and in preparation for regular commission meetings as well as commission hearings;

- travel and work evenings and weekends as needed; and

- lift at least 40 pounds to load and unload materials and equipment for meetings and events.

### **Additional Comments**

- In and out-of-state travel (by auto and airplane) and overnights are occasionally required to attend meetings, training sessions, conferences, and other events. A valid driver's license is required.

- The State of South Dakota provides employer-paid health insurance plus 11 paid holidays, generous vacation and sick leave accrual, dental, vision, and other insurance options and retirement benefits. Access South Dakota's benefit information at <https://bhr.sd.gov/job-seekers/work-for-state-government/>.

- This position is exempt from the Civil Service Act.

- Equal Opportunity Employer.

### **To Apply**

Interested candidates shall submit a resume, cover letter and contact information for three work-related references via email to [puc@state.sd.us](mailto:puc@state.sd.us)

South Dakota Public Utilities Commission

500 East Capitol Avenue

Pierre, South Dakota 57501

[PUC.sd.gov](http://PUC.sd.gov)

### **Associate Attorney – Custer**

Associate Attorney - Custer The Custer, SD law firm of Southern Hills Law PLLC is seeking to hire an attorney for its growing regional criminal and civil practice. This position is open to any level of experience who is right for training. Salary negotiable depending on experience. Applicant may also qualify for Rural Attorney Recruitment loan forgiveness program. Work will include preparation of criminal and civil litigation documents and some appearances in local state courts. Interested persons should send cover letter and resume to [southernhillslaw@gmail.com](mailto:southernhillslaw@gmail.com)

### **Attorney – Pierre**

Great Opportunity!

We have a position opening due to a staff retirement that may interest you.

If you hold a Juris Doctorate and are licensed by the South Dakota State Bar to practice law in South Dakota, you should check out this attorney position.

We are seeking a professional, intelligent, motivated, and dedicated attorney to represent the South Dakota Public Utilities Commission in proceedings before the commission and in working with the regulated industry.

This position pays \$100,000 per year or more depending on your qualifications or relevant experience. This position works in an office in our state's beautiful Capitol building, and works with other attorneys and professional staff.

The State of South Dakota provides excellent benefits. These include employer-paid health insurance, 11 paid holidays, generous vacation and sick leave accrual, dental, vision, and other insurance options and retirement benefits. Access South Dakota's benefit information at [BHR.SD.Gov/job-seekers/work-for-state-government/](http://BHR.SD.Gov/job-seekers/work-for-state-government/). This position is exempt from the Civil Service Act. Equal Opportunity Employer.

Visit [PUC.sd.gov](http://PUC.sd.gov) and click on Employment Opportunity for more details.

If this sounds intriguing, please email your resume, cover letter and contact information for three work-related references to [PUC@state.sd.us](mailto:PUC@state.sd.us) before Dec. 30, 2022.

### **Lateral Attorney – Sioux Falls**

BOYCE LAW FIRM, LLP, in Sioux Falls, South Dakota has an opening in its TRUSTS & ESTATES practice area for a lateral attorney with 3-10 years of experience in private practice or relevant experience in the trust industry. Qualified candidates will have a background in advanced estate planning and/or trust administration, superior communication skills, and be highly self-motivated. Ideal candidates will have an existing book of transferable business and LLM in Taxation. Boyce Law Firm LLP is a top-rated, multi-specialty law firm.

Compensation will be commensurate with education and experience. Benefits include generous 401K, health insurance, annual CLE tuition, professional dues and memberships and numerous incidentals.

Confidential inquiries, including resume and cover letter should be directed to Paul Tschetter, Boyce Law Firm, LLP, PO Box 5015, Sioux Falls, SD 57117-5015 or to [pwtschetter@boycelaw.com](mailto:pwtschetter@boycelaw.com).

For more information about Boyce Law Firm, please visit [www.boycelaw.com](http://www.boycelaw.com).

### **Staff Attorney – Ft. Yates, ND**

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.

### **Staff Attorney – Pine Ridge**

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

### **Deputy State's Attorney – Deadwood**

JOB TITLE: DEPUTY STATE'S ATTORNEY

OFFICE/DEPARTMENT: STATE'S ATTORNEY'S OFFICE

CONTACT PERSON: SHELLY BAUMANN  
[sbaumann@lawrence.sd.us](mailto:sbaumann@lawrence.sd.us)

CLOSING DATE: TO BE DETERMINED

STARTING PAY: DEPENDING ON EXPERIENCE

RESUMES TO BE SUBMITTED TO:

LAWRENCE COUNTY STATE'S ATTORNEYS  
OFFICE

90 Sherman Street

Deadwood, South Dakota 57732

FAX: 605-578-1468

PHONE: 605-578-1707

GENERAL DESCRIPTION OF WORK TO BE PERFORMED: CRIMINAL PROSECUTION

EXPERIENCE EDUCATION: Graduation from a college of law and attainment of a Juris Doctorate degree.

LAWRENCE COUNTY IS AN EQUAL  
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### **Deputy State's Attorney – Lincoln County**

The Deputy State's Attorney performs routine professional legal work in the prosecution of civil and criminal crimes, juvenile crimes, and juvenile abuse and neglect cases in Lincoln County.

Actual responsibilities of the Deputy State's Attorney vary dependent upon vacant position but may include reviewing offenses and evidence to make determination on charges and prosecuting violations of state law, reviewing requests for petitions and determining appropriate course of action, communicating with victims, law enforcement officials, and other individuals about cases, making recommendations for child custody and parental rights, and attending legal proceedings.

<https://www.governmentjobs.com/careers/lincolncountysd/>



### Staff Attorney – Mission

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Mission, South Dakota office. The Mission office serves the counties Gregory, Jones, Mellette, Todd and Tripp, along with the Rosebud 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 an emphasis on family law. Additionally, the applicant should expect to make regular appearances in state and tribal court. Applicants 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.



Send your job announcement to  
Tracie Bradford

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

*Submit your job announcement by the 26th of the month  
preceding publication in a Word Document.*



# UPCOMING EVENTS

DECEMBER 15 | LAW FOR LUNCH - CYBERSECURITY

DECEMBER 21 | BAR COMMISSION MEETING | TELECONFERENCE

JANUARY 5, 2023 | BAR COMMISSION MEETING | PIERRE

JANUARY 5-6, 2023 | DISCIPLINARY BOARD MEETING | CHAMBERLAIN

JANUARY 19, 2023 | LAW FOR LUNCH - TAX UPDATE

FEBRUARY 15, 2023 | BAR COMMISSION MEETING | TELECONFERENCE

FEBRUARY 16, 2023 | LAW FOR LUNCH - ADMINISTRATIVE LAW PROCESS

MARCH 15, 2023 | BAR COMMISSION MEETING | TELECONFERENCE

MARCH 16, 2023 | LAW FOR LUNCH - APPELLATE PROCESS DO'S & DON'TS

APRIL 12, 2023 | BAR COMMISSION MEETING | SIOUX FALLS

MAY 5 | CRIMINAL LAW & FAMILY LAW CLE'S | SIOUX FALLS

MAY 17, 2023 | BAR COMMISSION MEETING | TELECONFERENCE

MAY 18, 2023 | LAW FOR LUNCH - 2023 LEGISLATIVE UPDATES

JUNE 23, 2023 | BAR COMMISSION MEETING | RAMKOTA, SIOUX FALLS

# PEACE OUT 2022!



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