



State Bar of South Dakota

NEWSLETTER

Inside:

August Law for Lunch:

The Impeachment Process: An Academic
and Functional Review

Problem Clients:

Why It's Worthwhile to Look for the Learning
with Problem Clients

AUGUST
2022

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Important Update Regarding Required Training!

BYSTANDER INVOLVEMENT TRAINING: A Proactive Approach to Resolving Sex-Based Harassment



The State Bar has not received the final version of the sexual harassment prevention training video from the production company. However, we anticipate receiving it on or before August 15, 2022 for upload to the State Bar's Member Hub. Once the training video is successfully uploaded, the State Bar will send an email to all active members with a link to the training. For your convenience, the training will be available online 24 hours a day, seven days a week. Pursuant to SDCL 16-18-1.1, all current members have until February 1, 2024 to complete the training.

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

Following the question of the month format, has anyone ever wondered if the State Bar Commission meetings get the business of the Bar done? I happily answer that question for you with an emphatic “Yes!” How amazing the July meeting was with 5 new Commissioners joining the returning 8 Commissioners. Sure, considered were budgets and financial reports. But also, important work is being done on matters such as the health care plan, the strategic plan, enhancing membership benefits and CLEs, and connecting attorneys with attorneys and judges. Speaking of the latter, with Chief Justice Jensen’s approval, I plan to feature every Presiding Judge this year in this Corner, and thank Judge Houwman for allowing me to start with her. So, adding the Judicial highlight on to connecting you with amazing Public Sector attorneys, I highlight the following individuals this month:

1. My “Judicial Spotlight” features Robin Houwman, the Presiding Judge of the Second Judicial Circuit. Judge Houwman hails from Sioux Falls, then transitioned to Massachusetts for college (also studying abroad at Oxford and Bristol). Much like Dorothy, she found there is “no place like home” and obtained her J.D. at U.S.D School of Law in 1996., dedicating her talents as an editor for its Law Review. After graduation, her initial judicial training then began with her law clerkship for the Second Judicial Circuit (then just 5 Circuit Court Judges and 3 Magistrate Judges). Over 12 years in private practice at the Meierhenry Law Firm followed by 1 ½ years at the US Attorney’s

Office provided a solid foundation for her appointment in 2009 to the Second Circuit. Judge Houwman has been the Circuit’s Presiding Judge since 2018, and she graciously has served on numerous committees including the Board of Pardons and Paroles, the Judicial Training Committee, and the Judicial Qualifications Commission. In 2013, she also established the Circuit’s DUI Court. Judge Houwman and her husband of 25 years have been blessed with their two daughters (who are draining their bank accounts attending universities). I appreciate Judge Houwman’s steadfast willingness to visit with law students and new attorneys sharing with them her journey, and her openness on gaining additional experiences to support her second (and successful) judicial appointment application. In leaving us with a beloved saying, Judge Houwman states, “Make sure you do some of what you love and don’t practice what you hate.” Great advice for us all.

2. My “Public Sector Spotlight” features Attorney Steve Blair. Steve is also a graduate from U.S.D. School of Law (2004). Steve began his career in the Public Sector 20 years ago as a legal intern for the South Dakota Department of Social Services. Following a clerkship in the Fifth Judicial Circuit Court, Steve then joined the South Dakota Attorney General’s Office in 2005, and provides counsel to the Department of Agriculture & Natural Resources. Steve is well known for his Civil Litigation, and Administrative and

Environmental Law work. With his exceptional writing skills, Steve has written far more amicus briefs than any other attorney I know, and he has provided unparalleled assistance with Attorney General opinions. Steve is always willing to help other Public Sector attorneys with questions as well as providing training across our State on open meeting and open record issues, contributing to CLEs on administrative law topics, and presenting at the Young Lawyer Section (YLS) Bootcamp. He ran the Attorney General legal intern program from 2011-2019 providing outstanding guidance to young lawyers. Additionally, he has served on numerous State Bar positions including the Bar Commission (2013-2016), Administrative Law Committee, Public Sector Section, Natural Resources & Environmental Law Committee, Criminal Law Committee, and YLS Board. Steve and his wife reside in Rapid City. When I asked Steve about public service, he stated, “I think public service is one of the highest and most important calls a person can respond to. I believe we are called as citizens to not merely be spectators of government and society but to be servants working in our own small ways to make government and society better for everyone.” How incredibly blessed we are that Steve has dedicated his skills and passion to Public Service and is always answering the call to help the State Bar in any way he can.

And finally, just in case there are some readers who wanted to know the answer to last month’s question--Yes, there are some who read the President’s Corner. More importantly, there are members of the Bar who took the time to connect with a colleague (and I hope you enjoy those gift cards). I’m hoping you all continue to meet that challenge every time you read the President’s Corner—take those few moments to send someone a note, an email, a text, etc. or even a call or personal visit. Maybe with my last Corner you’ll be able to answer the “Is it better to give or receive” question. Regardless of your then answer, what an impact can be made these next 11 months!



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State Bar of South Dakota YOUNG LAWYER SECTION



Anthony Sutton
YLS President

August. A time of change. Summer activities are quieting down, travel plans are nearing completion, and life transitions into fall festivities. For a lot of families, August represents the start of a new school year (including our first child in kindergarten this year!). For others, August can mean sending a child off to college. And for some, August begins the quintessential experiences of a young lawyer: the beginning of law school, the beginning of a new year as a student, or that first job experience after graduation and the bar exam.

No matter which of these fits your situation, I hope that this August fills you and yours with an excitement for what lies ahead.

The Young Lawyers Section is also taking August as a chance for a new beginning. At the end of July, we held our Board retreat and had productive conversations

about the future direction of our Board and the role the YLS and young lawyers play in the future of the State Bar. As part of our re-evaluation process, the YLS Board is looking forward to continuing our conversations throughout this year about our vision and mission, how we can better serve the needs of young lawyers and law students, and how we can continue providing services to the public as part of the State Bar.

Please help us serve the needs of South Dakota's young lawyers and the State Bar by sharing your thoughts on the role that you envision the YLS playing or by sharing your experiences with us to help inform our conversations this year. Feel free to contact me or any member of our Board. We look forward to continuing to do our best to support the needs of young lawyers and the State Bar as a whole!

Here is a list of our board members for this year:

President	Anthony Sutton,	anthony@janklowabdallah.com
President-Elect	Kelsey Blair	kelsey.blair@usdoj.gov
Secretary/Treasurer	Chelsea Wenzel	chelsea.wenzel@state.sd.us
1st Circuit Rep.	Mallory Schulte	mallory@birmcwachlaw.com
2nd Circuit Rep.	Brooke Schmidt	bschmidt@dehs.com
3rd Circuit Rep.	Tony Teesdale	tony@teesdalelaw.com
4th Circuit Rep.	Spencer Prosen	sprosen@lynnjackson.com
5th Circuit Rep.	Rebecca Ronayne	rebecca@ronaynelawoffice.com
6th Circuit Rep.	Rachelle Norberg	rachelle@ggnlawfirm.com
7th Circuit Rep.	Katie Cook	katie@gpna.com
At-Large Rep.	Mae Pochop	mae@meierhenrylaw.com
USD SBA President	Alex Hoffman	alex.j.hoffman@coyotes.usd.edu

Statewide Swearing-In Ceremony

Please Join Us!

October 21, 2022
3:00PM CST

CAPITOL ROTUNDA
PIERRE SD

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

*Reception to follow at the
Missouri Avenue Event Center*

Fellows of the South Dakota Bar Foundation

Sustaining Life Fellow - \$50,000 plus

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Frank L. Farrar

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Robert E. Hayes

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Melissa Nicholson Breit
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Richard A. Cutler
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Robert B. Frieberg
Thomas H. Frieberg
William C. Garry
David A. Gerdes
Hon. David R. Gienapp
Patrick G. Goetzinger
G. Verne Goodsell
Robert E. Hayes
Terry L. Hofer
Carleton R. "Tex" Hoy
Steven K. Huff
Hon. Charles B. Kornmann
Lisa Hansen Marso
Bob Morris
Thomas J. Nicholson
Gary J. Pashby
Stephanie E. Pochop
Reed A. Rasmussen
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Neil Fulton	Jason R.F. Sutton
Tom E. Geu	Sarah L. Thorne
Craig A. Kennedy	Barry R. Vickrey
Hon. Judith K. Meierhenry	

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

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- ☐ 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:
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Or you can email this form to:

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

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

DEAN'S LIST : NEWS FROM THE LAW SCHOOL



I vividly remember the Y2K panic. As the year 2000 approached, there was widespread fear that computer systems were not prepared to handle a conversion to a four-digit year. The possible breakdown of computer systems across the world had many of us nervously watching the minutes count down on New Year's Eve in 1999. Turns out there wasn't a problem and we all survived. At the time, however, the millennial turnover was tough to imagine. So was the year 2025—one quarter of the first century of that new millennium. Why do I bring this up? Because as you read this, the Law School Class of 2025 is arriving on campus. To begin framing them in your mind, most were not born prior to Y2K. But there is a lot more to say about the Class of 2025 than the fact that they didn't stay up nervously waiting for their computers to explode.

The Class of 2025 has more than 80 students. The final number always moves at the last minute due to some late decisions by applicants, but that is the ballpark. It is a larger class than our average of just over 70 since that epochal year of 2000. That is a testament to the great recruiting work done by Katy Ulrich and Matthew Colbert in the face of a national double-digit decline in law school applications. We bucked that trend, increasing our total applications, admitted applicants, and matriculated students from last year. Class sizes will inevitably ebb and flow, but we have sustainable strategies in place that have improved our recruiting. The trend over time is more important than any individual year and our trend is in the right direction.

The Class of 2025 is another class with strong entering credentials. The median LSAT has held at 151 and the

undergraduate grade point average at 3.4. The increased credentials overall are demonstrated by a 25th percentile LSAT at 148. That is up two points from only a few years ago. We have done this while still accepting about five students into our conditional admission program. We target students whose objective credentials like LSAT and undergraduate grade point average are lower, but who have other indicia of potential academic success. Their admission is conditioned on participation in our academic success workshops and other targeted resources to help them succeed in law school. We have also expanded our student support through a partnership with AccessLex. That partnership offers deferred admission and a scholarship to students who participate in a new law school preparatory class offered by AccessLex. We will welcome our first two students through that program next fall. All these efforts seek to strike the right balance between building a class of students with great measurable credentials and the reality that numbers alone cannot tell the story of any student.

The Class of 2025 comes from all over. It has members from half the states in the Union. Other than South Dakota, most students continue to come from states that touch South Dakota: Nebraska, Minnesota, and Iowa. Our targeted grant of in-state tuition to students above a 150 LSAT continues to be effective, yielding 27 students this year. This has increased our recruiting success from other states and 57% of the class comes from outside South Dakota. We are simply attracting more qualified students from outside South Dakota; no South Dakota student who meets our admissions standards is denied a spot.

The Class of 2025 graduated from 50 undergraduate institutions. USD remains the largest feeder with SDSU close behind. Augustana sent the third largest group this year. The School of Mines, Nebraska, Wyoming, and Mankato also sent multiple students.



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SHEILA WOODWARD

Special Thanks to:

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THANKS TO EVERYONE WHO PARTICIPATED IN THE GOLF TOURNAMENT FUNDRAISER FOR A2J!



CONGRATULATIONS TO THE CHAMPIONS!

**Judge Daneta Wollmann, Troy Ward,
Gavin Pochop, and Mae Pochop!**

The State Bar of South Dakota and Access to Justice would like to congratulate Mr. Ian Hause - the recipient of the 2022 William F. Day Jr. Law Student Pro Bono Award!

The William F. Day Jr. award, known by many as the Bill Day award, was created in 2008 in honor of Mr. William F. Day Jr., the state's first pro bono coordinator. The award recognizes a U.S.D. Law Student whose pro bono work has made a significant impact on the community and reflects the following characteristics:

- A passion for advocating for underserved populations
- Substantial performance of pro bono legal service
- AND, involvement in public service focused law student associations

Mr. Hause has been involved with both the WORKS Clinic and The Innocence Project practicums over the past two years, and he has earned over 50 pro bono service hours through his pro bono participation. This past spring, he also took on the role of Student Supervisor for the WORKS Clinic, earning an additional 70 hours of pro bono service hours.

Mr. Hause's nominators described him as: a Law Student that "regularly goes above and beyond what his asked of him"; and "a person of integrity with a deep and demonstrated commitment to justice."



Congratulations to Mr. Ian Hause! 2022 Bill Day Award Recipient!

A special THANK YOU to our generous Bill Day Award sponsors:

*Lynn, Jackson, Schultz & LeBrun, The Honorable Mike Day and Bob Morris of the Morris Law Firm.
Thank you all for your continued support of this annual Law Student award!*

ANNOUNCEMENTS

Nooney & Solay, LLP
is pleased to announce that

Sarah L. Svoboda
has joined the firm as an associate attorney.

Nooney & Solay, LLP
326 Founders Park Drive
P.O. Box 8030
Rapid City, SD 57709-8030

Telephone: (605) 721-5846

sarah@nooneysolay.com

Goosmann Law Firm, PLC
is pleased to announce that

Andy Grocott
has joined the firm as an attorney.

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

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There are two offices, a large conference room, an assistant station, scanning and copy machine, telephone system, and a room for storage. All furniture, equipment, and office supplies are included.

If interested, please contact:
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August Law for Lunch

PRESENTS:

The Impeachment Process: An Academic & Functional Review

Separation of powers is not absolute, and its system of checks and balances is designed to allow each branch to restrain abuse by another branch. As a result, legislatures often are granted the ability to oversee official government conduct and to remove executive or judicial public officers from their positions, called "impeachment." Over the past several months, South Dakota has witnessed the process firsthand on both a state and federal level. Learn about it from legal scholars and practitioners as they discuss the process generally and from a practical perspective.

Presenters

Alexis Tracy
Professor Tyler Moore
Attorney General Mark Vargo

Webinar
August 26, 2022
12:30 PM - 1:30 PM (CDT)

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Newsletter to Continue as Online Only

Beginning in December of 2017, the State Bar's monthly newsletter went solely to an online publication, effectuating a savings of over \$80,000 per year. Members periodically have requested consideration to provide a mailing option to those who request the mailing. At the Commissioners' July 2022 meeting, this issue was again discussed. Staff provided cost estimates, which demonstrated a minimum of 225 copies would need to be produced with a production/mailing cost of those 225 copies of nearly **\$30 per issue**. After significant discussion, the Commission decision was to not provide a printed/mailed option.

While this cost estimate may seem high, information was obtained that the third party printer set up costs are significant, the labor involved in formatting a paper newsletter are also significant (the paper newsletter would be done far differently than the online version), the mailing costs are considerable and variable depending on edition size and mailing location, etc.

Your elected leadership is certainly aware that the that Members recently approved a dues increase. We note, however, the increased amount requested already took into consideration the cost savings related to previously ending the mailed newsletter. While there is recognition that it is not necessarily as easy to print a paper copy from the pdf or to read it online, given the substantial costs and Members' willingness to do so, we are hopeful Members will continue to read the online version to keep current on new rules, resources, and happenings, and to stay connected to each other and our legal community.

Certainly please reach out to your Commissioners, President-Elect Heather Lammers Bogard or me for any more questions related to this issue and/or other matters you would like the Commissioners to consider.

Lisa Marso, State of South Dakota Bar President

ATTORNEYS - OATH OF ATTORNEY

I do solemnly swear, or affirm, that:

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

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

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

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

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

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

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



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DELANEY | NIELSEN | SANNES P.C.

Kent Delaney
Gordon P. Nielsen
Thomas L. Sannes
David A. Geyer

Glacial Lakes Bar Social

- DATE:** Tuesday, August 30, 2022
- FROM:** Thomas L. Sannes
- RE:** 24th Annual GLACIAL LAKES BAR ASSOCIATION SOCIAL
SAVE THE DATE - AUGUST 30, 2022
- WHO:** All members of the Glacial Lakes Bar Association (Day, Marshall and Roberts counties)
- Honorary and retired members of the Glacial Lakes Bar Association (e.g. Judges) Officials and personnel of the State Bar of SD and USD Law School
- Spouses and significant others are welcome*
- WHAT:** Please join us for conversation, food, and refreshments. Feel free to bring food and snacks. Drinks will be provided by Tom's firm. Please call Tom Sannes at 605-345-3321 if you have any questions about what to bring.
- WHEN:** Tuesday evening, August 30, 2022, from 6:30 P.M. - 9:00 P.M.
- WHERE:** At Tom Sannes' Pickeral Lake cabin, 1548 Webster Boulevard, Grenville, SD:
- Parking is available at the cabin.
 - If parking is full at the cabin, please park near the resort / lodge at the south end of Pickeral Lake.
 - Walk up the road / trail on the east side of the lake.
 - Tom's cabin is the 5th one on the left (lake) side. The cabin is dark colored. There are two, stone / brick pillars guarding the sidewalk entry. You will walk down several steps to the yard, then up a couple of steps to the house.

Glacial Lakes Bar Business may or may not be conducted. Stories / tales / truth will be told.

2022 ESTATE PLANNING CLE

with Read M. Moore

- **The Secret Life of Powers of Appointment.** This presentation revisits tax law and property law basics of powers of appointment and addresses some lesser-known tax and property law rules related to powers of appointment.
- **Estate Planning for GST Nonexempt Trusts.** Most GST tax-related presentations, however, focus on how to ensure trusts are exempt from the GST tax whether by grandfathering or the application of GST exemption. Presentations on the GST tax, however, rarely cover how the GST tax on nonexempt trusts works. Since the GST tax was implemented in 1986, however, clients have set up thousands of trusts that are not exempt from the GST tax. This presentation describes how the GST tax applies to nonexempt trust and covers planning opportunities. Although the GST exemption has increased substantially in the last 20 years, there are lots of trusts out there with inclusion ratios of one created when the GST exemption was much smaller. Those trusts now will soon face GST tax-related issues even though the trust's assets may be less than the current GST exemption for a living person.
- **Estate Planning for QTIP Trust Assets.** Since 1981 clients have created a very large number of QTIP trusts in the name of estate tax deferral. However, all deferral comes to an end, so often estate tax-related planning is necessary for assets held in QTIP trusts. Planning of this kind, however, is considerably different than when an individual deals with estate planning for individually owned assets. Planning for assets in QTIP trusts involve considerations of fiduciary duties of the trustees to all beneficiaries as well as complicated tax issues related to how section 2044 and 2519 work. This presentation will address how these issues play out.

SEPTEMBER 9, 2022 - 8 AM - NOON

The Country Club of Sioux Falls

**Register
HERE!**



The In-House Committee
invites you to an **advanced
transactional negotiations
CLE** on the afternoon
of September 9 from
1-4 pm. Woods Fuller
will host a social for all
attendees after the CLE.

This event will be held at
Missouri River Energy Services
3724 W Avera Dr., Sioux Falls

STATE BAR BANKRUPTCY SEMINAR

Brought to you by the United States Bankruptcy Court for the District of South Dakota,
the State Bar of South Dakota and the Committee on Continuing Legal Education

September 8, 2022

Frederick M. Entwistle & Stanton A. Anker, Co-Chairs

The Country Club of Sioux Falls

3400 W. 22nd St., Sioux Falls

9:00 a.m. to 9:15 a.m.

Welcome

by the **Hon. Charles L. Nail, Jr.**, Chief Judge for the Bankruptcy Appellate Panel for the Eighth Circuit and Chief Judge for the United States Bankruptcy Court for the District of South Dakota.

9:15 a.m. to 9:45 a.m.

Smart moves for debtors' and creditors' attorneys in chapter 13 cases

by Trustee **Dale A. Wein**.

9:45 a.m. to 10:15 a.m.

Ideal intake procedures and dealing with difficult clients

by **Stan H. Anker**, Anker Law Group, P.C. of Rapid City.

10:15 a.m. to 10:30 a.m.

Morning break.

10:30 a.m. to 11:00 a.m.

Emerging issues in debtor/creditor law

by **Timothy M. Engel**, May, Adam, Gerdes & Thompson LLP of Pierre.

11:00 a.m. to 11:30 a.m.

Getting started as a debtors' attorney and how to fill the knowledge gaps

by **Stanton A. Anker**, Anker Law Group, P.C. of Rapid City.

11:30 a.m. to 12:00 noon

Maximizing creditors' returns in Sub V Chapter 11s and Chapter 12s

by **Anthony M. Hohn**, Davenport, Evans, Hurwitz & Smith, LLP of Sioux Falls.

12:00 noon to 1:00 p.m.

Bankruptcy Bar Lunch.

1:00 p.m. to 1:45 p.m.

How to succeed in front of the BAP

by the **Hon. Charles L. Nail, Jr.** and the **Hon. Anita L. Shodeen**, Chief Judge for the United States Bankruptcy Court for the Southern District of Iowa.

1:45 p.m. to 2:15 p.m.

What the Office of the United States Trustee cares about and why

by **Mary R. Jensen**, Acting United States Trustee for Region 12.

2:15 p.m. to 2:30 p.m.

Retirement farewell cake and coffee for Scheduling and Courtroom Deputy Nita L. Sarvis.

2:30 p.m. to 3:00 p.m.

How to keep your chapter 7 trustee happy

by Trustee **Lee Ann Pierce**.

3:00 p.m. to 3:30 p.m.

New Bankruptcy Judge time.

3:30 p.m. to 3:45 p.m.

Looking to the future—near and far—of electronic filing

by Clerk **Frederick M. Entwistle**.

3:45 p.m. to 4:00 p.m.

Closing remarks

from the **Hon. Charles L. Nail, Jr.**

Register online at www.statebarofsouthdakota.com > Events & Education.

LEADERSHIP SUMMIT

featuring

Stephanie Herseth Sandlin

Mayor Paul TenHaken

Attorney General Mark Vargo

Stacy Kooistra

**More Guests to
be Announced!**

The Public Sector Section and the Administrative Law Committee invite you to join us for a day of leadership development on September 28, 2022 in Sioux Falls from 8:15 a.m. to 3:30 p.m.

This summit will focus on professional development with an emphasis on servant leadership and team building. **MARK YOUR CALENDARS** – a full agenda will be forthcoming!



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Access to Justice would like to thank all participating Ride for Justice Riders and a special thank-you goes to Brad Schreiber for organizing this inaugural event and choosing A2J as the donation recipient! What a fun opportunity to join fellow South Dakota Bar members on a beautiful ride through the Black Hills of South Dakota, all while raising money for the State Bar's Access to Justice program!



2022 INAUGURAL RIDE FOR JUSTICE RIDERS WERE:

"The Honorable Bob Pesall and his wife Megan, Tony Teesdale, Kasen Lambeth, Christal Schreiber and Brad Schreiber. "Kasen was riding a white Indian Chieftan, Tony was riding a Harley Dyna, Judge Bob and Megan were on a Voyager as I recall, Christal was riding the pearl white Harely Freewheeler and I was on the black Harley Ultra. We rode for about 2 hours, had lunch at the Loud American Roadhouse in Sturgis. Great ride, beautiful weather, and great fellowship. It was a fantastic way to get to know my fellow lawyers and judges better."

**BRAD SCHREIBER
SCHREIBER LAW FIRM**

2022 DEPOSITION ACADEMY

STATE BAR MEMBERS:

The third Deposition Academy was held at the Knudson School of Law in Vermillion on July 13 to 15, 2022. COVID had paused the trial programs since 2019. This program is sponsored by the State Bar, the Law School and the South Dakota chapter of the American Board of Trial Advocates. I am pleased to report the program had a full attendance with 24 participants taught by six of our best trial lawyers under the tutelage of Mark Caldwell, a seasoned instructor and program director of the National Institute of Trial Advocacy and who also has been a consultant to the South Dakota programs since 2007.

The participants learned and demonstrated skills in taking and defending depositions, as well as forging relationships with fellow participants and South Dakota faculty.

Special thanks to the six faculty members who donated their time and experience: Scott Abdallah (Sioux Falls), James Moore (Sioux Falls), Renee Christensen (Sioux Falls), Jack Hieb (Aberdeen), Brad Lee (Rapid City), and Professor Laura Rose (Vermillion). They touched the lives of 24 young lawyers with their expertise. Attending were:

Mariah Bloom (Aberdeen)
Jacquelyn Bouwman (Sioux Falls)
Jason Erickson (Aberdeen)
Carla J. Glynn (Aberdeen)
David Hieb (Sioux Falls)
William Hustead (Hot Springs)
Stacia Jackson (Brookings)
Garrett Keegan (Rapid City)
Gabe Langner (Sioux Falls)
Anna M. Limoges (Sioux Falls)
Sam Nelson (Beresford)
Gavin D. Pochop (Sioux Falls)
Mae Pochop (Sioux Falls)
Spencer Prosen (Spearfish)
Nick Ramos (Sioux Falls)
Cole Romey (Hot Springs)
Austin Schaefer (Hot Springs)
Jacob Schneider (Sioux Falls)
Catherine Seeley (Pierre)
Anthony Toscana (Gillette, WY)
Shane Vogt (Sioux Falls)
Sarah Waeckerle (Rapid City)
Christi M. Weideman (Aberdeen)
Erin Willadsen (Sioux Falls)

In addition, the steering committee of the South Dakota ABOTA chapter, consisting of Melanie Carpenter (Sioux Falls), Stephanie Pochop (Gregory), Reed Rasmussen (Aberdeen), Clint Sargent (Sioux Falls), and Heather Lammers Bogard (Rapid City) was instrumental in the planning of this program.

The staff of the State Bar and Dean Fulton and his able assistant, Saumbra Hall, also should be acknowledged for their assistance in the registration, budgeting and administration of this program.

The participants now join the over 200 lawyers who have attended the jury trial and deposition programs that have been offered since 2007.

Thomas J. Welk
(Sioux Falls)



UNIVERSITY OF
SOUTH DAKOTA
KNUDSON SCHOOL OF LAW

USD Knudson School of Law 2022 Fall On-Campus Interviews (OCI) Information


We are looking forward to on campus interviews this Fall. As a reminder, we invite 2L and 3L students to participate in the Fall OCI process. Our 1L students will participate beginning Spring 2023. We will be sending out employer registration information later this summer, but please see the dates below, so you can plan accordingly for what works best in your schedule!

Fall 2022 OCI:

- Round 1: August 18 and 19
- Round 2: September 8 and 9
- Round 3: September 29 and 30

SIGN UP HERE

If you would like to receive information regarding OCI and other opportunities through Career Services, please email LawCareerServices@usd.edu to be added to our contact list.



WHY IT'S WORTHWHILE TO LOOK FOR THE LEARNING WITH PROBLEM CLIENTS

Mark Bassingthwaighe, Esq.
Risk Manager, Alps

When it comes to problem clients, we all have a story or two to share; but what if it becomes more than that? What if a lawyer comes to realize that he or she is dealing with a problem client far more than once in a blue moon? It can happen, and if and when it does, it's time to stop and do a little problem solving. It's time to look for the learning.

Wait, how are you defining the term “problem client?”

A problem client is what you end up with when you fail to establish or fail to maintain a productive attorney-client relationship. Problem clients are often described as having several of the following characteristics. They can be demanding, confrontational, disrespectful, angry, unreasonable, needy, highly emotional, entitled, vengeful and the list goes on. They may have unrealistic expectations, have a personal agenda, be difficult to stay in touch with, and they are often problem payors at a minimum.

Don't get me wrong, taking on a client who is needy and highly emotional as an example, doesn't in and of itself make that client a problem client. If you are unable, unwilling, or simply don't have the skill set to productively work with such an individual, however, don't be surprised if that's what you eventually end up with.

Are you saying problem clients are the fault of the lawyer?

Yes and no. Think about it this way. At the end of representation of a problem client, be it riding things out to the bitter end or deciding to withdraw because life is just too short, a typical response is to put it behind you and move on. If a lawyer does so and thereby misses the opportunity for learning, then yes the problem clients that follow are the fault of the lawyer. On the other hand, if a lawyer takes the time to explore the evolution of the problem client looking for ways to

prevent the situation from ever happening again, then no. Sometimes, in spite of one's best efforts, something is missed, and the occasional problem client ensues.

What am I to look for?

Start by reviewing your intake process. This is where the "fail to establish" problem arises. While I believe most lawyers have learned to effectively screen potential new matters, not as many are quite as effective when it comes to screening potential new clients. Every new matter comes with a client and taking the time to try and determine if the potential new client is someone you can create a productive attorney-client relationship with is going to be time well spent. Understand that relationships that start out on the wrong foot rarely improve over time and accept the fact that no one is able to work well with everyone that walks through the office door. Look for and learn to recognize when it simply isn't a match. That's when you should be thinking about to saying thanks but no.

To help you get started, always try to determine if the prospective can truly afford your services because the bill is often an issue with problem clients. Look for any warning signs. For example, does the social media presence of the individual jive with how he or she presented to you? Ask what the expectations of you and your staff are in order to determine if you can meet them. In short, it's all about trying to get to know who the prospective is as an individual and allowing a little time for your gut to weigh in as well.

In order to address the "failure to maintain" problem one needs to go a bit further. Step back and ask yourself whether your own actions throughout the representation helped create the problem client. Perhaps the client had some legitimate emotional needs (e.g., recently received some devastating news such as a cancer diagnosis) and you're not one who relates well to highly emotional

individuals. In other words, could your own inability to meet your client's legitimate, yet non-legal needs have caused the client to be dissatisfied enough to become a highly volatile problem client? Have this discussion with everyone at your firm that interacted with the problem client. Be open to identifying communication shortfalls. Try to determine how the relationship went south. Take any learning that's to be had from the experience and use it to improve your skills in successfully managing effective attorney-client relationships.

Why take the time?

It's pretty much a given in the practice of law. Stress is part of the equation. And while I get that, as a risk manager I also appreciate that the likelihood of a misstep occurring rises the higher a lawyer's stress level rises. Even one problem client typically demands a disproportionate amount of time and can come at a cost to the amount of remaining time available to other clients. Problem clients are unpleasant to interact with, difficult to satisfy, and often are collection problems. Problem clients are also more likely to file a malpractice suit or disciplinary complaint. These are high stress, low reward relationships. It seems obvious to me. One clearly effective way to reduce stress is to do all you can to avoid taking on problem clients.

I'm simply suggesting that it is worthwhile to take time to look for the learning when an attorney-client relationship doesn't play out as expected. Is there not value in taking some time now and again to ask, "What can I learn from this" when an opportunity presents itself? I believe it's especially wise to ask that question about those parts of our professional lives that aren't as satisfactory as we'd like. As I see it, learning from the problems we find ourselves in is the only way to avoid making the same mistake over and over.



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.



Books are cherished items and highly revered by attorneys and other professionals, whether they are for work or pleasure. One of the most frequent phrases I hear from lawyers during a consultation is “Don’t expect me to get rid of any of my books.”

I get it. For some of us, books are akin to trophies. Holding on to the hornbooks, study guides, and “important” books gives us a sense of security. When told that a lawyer won’t be giving up any books if they work with me, my response is that you won’t have to give up a single thing you don’t want to discard. But hear me out.

Look around your office at all of the books, binders, and CLE materials that have accumulated over the years. They keep expanding, taking up valuable shelf space in your office or your firm’s library. The CLE materials are often outdated after a few years, and you’ll find that many of the books haven’t been opened for years (statutes and reporters, notwithstanding). Yet they continue to take up the space: they crowd your shelves and tables; they create walls of visual clutter. Could it be that just a few of those things are only taking up

room and gathering dust, like high school trophies and diplomas? Stick with me and see if you could lighten your load by discarding (rehoming, donating, tossing) a few titles and experience the way people feel “lighter” after letting go of the things that take up space without giving you joy.

I recommend going through CLE materials and ditching anything that’s outdated or hasn’t been referred to in the past 2 years. Next, when it comes to books, ask yourself whether you could find the same information on the internet or in your electronic files. If so, it’s unlikely you need a hard copy. Now, having said that, I realize that many of us are not digital natives and we are in the habit of referring to a book, a physical item, when we’re researching. I’m only suggesting you consider whether you need that volume. Also, if you’ve been “meaning to read” a book for over a year, pass it on to someone who will make the time for the book. Your “books to read” pile should match the pace at which you actually read books.

The next standard I apply to the remaining books is based on my goal to curate a collection of my version

of the greatest books I've read or used. As much as I adore Harper Lee's "To Kill a Mockingbird," I've read it a number of times and want to use my time going forward for newer material. My constitutional law horn book by Lawrence Tribe? That's a keeper and no one's going to pry it out of my hands. Neither will they get "The Day of the Jackal" and a number of other titles and reference books. My personal collection of books is at 33, with about 3 to be read. What's your magic number? 70? 289? Maybe you want to keep only as much as will comfortably fit in a designated space, like a bookcase. Only you will know. So take the plunge to reconnect with your books and curate your own collection.

You'll feel lighter, you'll have more space, and you (and your children) will thank yourself the next time you move! You will have the peace of knowing that you are moving only those books that truly bring you joy!

Mrg Simon is a South Dakota attorney and professional organizer, certified in the KonMari Method® of tidying and decluttering.



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Mrg Simon

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2023 ANNUAL MEETING & CONVENTION

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2023 ANNUAL MEETING & CONVENTION



Supreme Court of South Dakota

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(605) 773-3511

Shirley A. Jameson-Fergel
Clerk

Laura J. Graves
Chief Deputy

Amy Hudson
Deputy Clerk

Sarah L. Gallagher
Deputy Clerk

July 27, 2022

Mr. Andrew L. Fergel
Executive Director
State Bar of South Dakota
111 West Capitol Ave #1
Pierre SD 57501-2596

Re: November 2022 Special Rules Hearing

Dear Mr. Fergel:

A Supreme Court Rules Hearing will be held Wednesday, November 9, 2022, at 11:00 a.m., CT in the Courtroom of the Supreme Court, Capitol Building, Pierre, South Dakota.

An original and five copies of proposals for amendment or adoption of rules should be filed with the Clerk of the Court no later than September 12, 2022. Please comply with SDCL 16-3-5.1 when submitting proposals.

Please publish this letter in the August and September 2022 editions of the State Bar Newsletter.

Very truly yours,


Shirley A. Jameson-Fergel



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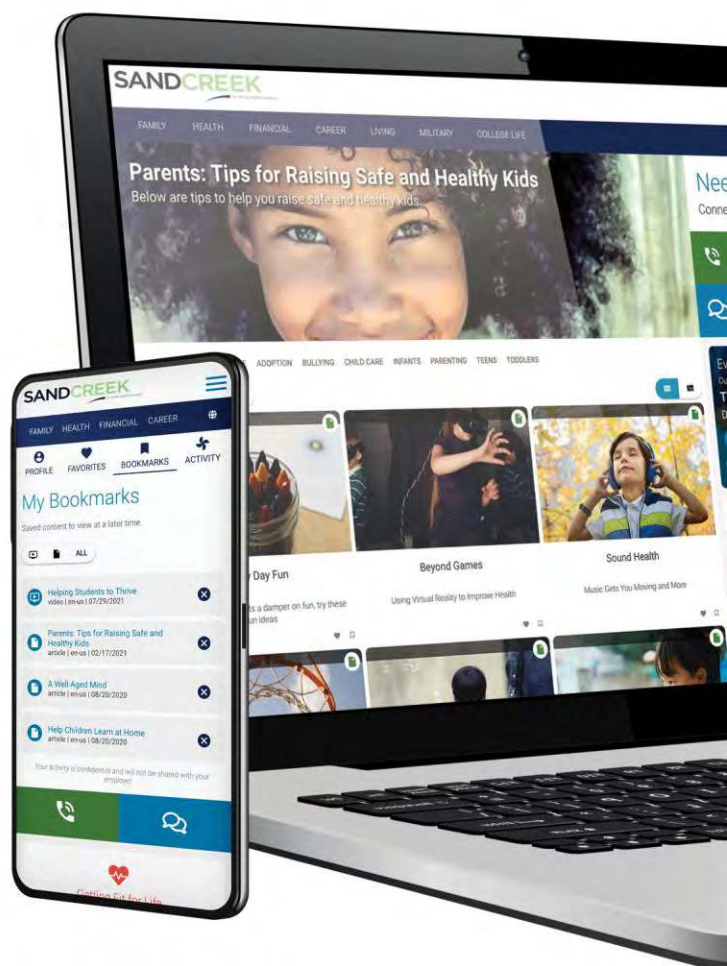
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In Memoriam



Thomas Michael Issenhuth

Thomas Michael Issenhuth, 79, Sioux Falls, and formerly Madison, SD, passed away at his home on Wednesday, June 29, 2022.

A Celebration of Life will be held at a later date. Memorials may be sent in care of the family to Heartland Funeral Home, PO Box 451, Brandon, SD 57005.

The thing about Tom was that he really was a true South Dakota boy. He was born in Sioux Falls on October 24, 1942 to Edward and Luella (Wangness) Issenhuth. Although he graduated from the University of Nebraska and was a lifelong Huskers fan (the family dog is Husker!), he attended law school at the University of South Dakota and had a fifty-two-year career as an attorney in Madison. It didn't matter if you were a first-time client or a frequent-flier client – destitute or wealthy, Tom treated everyone equally. He knew people from all walks of life and made friends wherever he went. A common sight in Madison was seeing him walk a half block from his office on Egan Avenue to the Stadium for his daily lunch.

He and Monie often traveled here and abroad, and their adventures were definitely a highlight of their life together. Because they loved meeting new people and both were born storytellers, their friends adored hearing about their experiences. In the last years of Tom's life, they had a very supportive circle of friends who always made certain, despite Tom's deteriorating condition, that they were included in everything. Monie remains so grateful for the love and support they received during these difficult last years.

Tom is survived by his wife, Monie Issenhuth; his son, Tom (Meghan) Issenhuth, of Bozeman, MT; two daughters, Tracey (Jim) Tomassetti, of Appleton, WI, and Amy (Ryan) Gienapp of Brandon, SD; ten grandchildren; as well as four stepdaughters and their families.



Marlene Loretta Zieser Blackburn

Long time South Dakota Bar Association (wife) – well known within the Bar for over fifty years –

Marlene Zieser Blackburn -- died of ALS Friday, July 22, 2022. She loved attending Bar functions and seeing, visiting with everyone!

John P. Blackburn

Marlene Loretta Zieser Blackburn was born June 19, 1934, in Alcester, South Dakota, to Stanley and Gladys (Miller) Anderson and died peacefully on July 22, 2022. A faith-filled, fashionable, and active wife and mother, she gave her heart to her family and the Catholic Church.

Mass of Christian Burial is 10:30 AM, on Saturday, July 30, 2022 at St. Leo's Catholic Church in Tyndall with Reverend Mark Lichter officiating. Burial will be in St. Leo's Cemetery in Tyndall. Visitation is from 5:00 to 7:00 PM, on Friday, July 29 at St. Leo's Catholic Church with a rosary at 7:00 PM. Visitation will continue one hour prior to the funeral at the church. Arrangements are under the direction of the Wintz & Ray Funeral Home and Cremation Service in Yankton.

Marlene graduated from the University of South Dakota and married R. James "Jim" Zieser on August 17, 1955. They resided in Tyndall, South Dakota, where Marlene began her teaching career. She started in a one-room country schoolhouse, then on to Tabor High School, and eventually to Tyndall High School, where she was well respected by both faculty and students and had the 1968 Panther Yearbook dedicated to her.

Governor Bill Janklow appointed Marlene to the South Dakota Board of Education where she served from 1980 to 1988. She was also appointed by Governor Janklow to serve on the South Dakota/Nebraska Boundary Commission in 1979. Marlene took great pride in both appointments and serving the citizens of South Dakota.

When Marlene was not in the classroom teaching the fundamentals of the English language, she could be found scouring cookbooks, planning detailed menus for dinner parties, or walking one of her beloved golden retrievers.

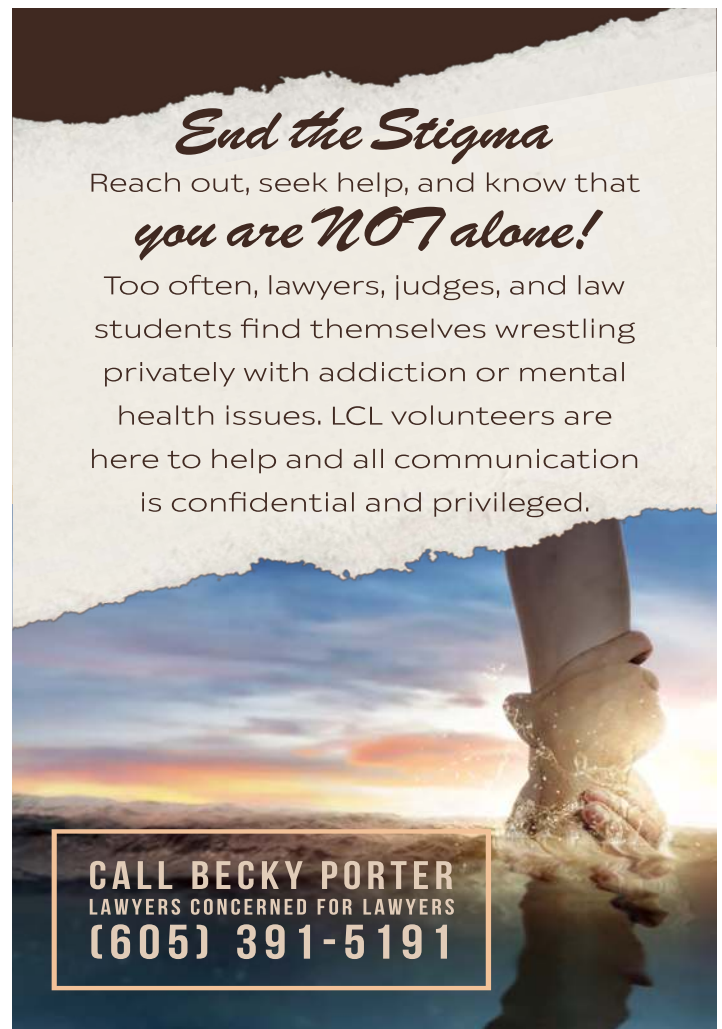
Lifelong learning led her to seek adventures beyond the classroom, as well: everything from the simplicity of camping in her Airstream along a creek in the Black Hills to the rich history of the Vatican in Rome.

She was widowed at age 61 and blessed to begin a new chapter in life with John Blackburn. They married November 30, 2002.

She is survived by her husband, John Blackburn, her sister Mildred (Robert) Johnson, her four children, her nine grandchildren and one great-grandchild.

Marlene will be remembered as an elegant woman who lived with grace, but her greatest legacy consists of her four children: Nick (Jan) Zieser, Denver, CO; Lisa (Dan) Rothschadl, Tyndall, SD; Jana (Chris) Thomas, Grand Junction, CO; Mary Kay (Tom) Ireland, Sioux Falls, SD; as well as her beautiful grandchildren: Rick Zieser, Cincinnati, OH; Kirk Zieser, London, England; Kiaja (Austin) Walter, Denver, CO; MiKealy Thomas, Chicago, IL; Brielle Thomas, Grand Junction, CO; Andrew Thomas, Grand Junction, CO; Taylor Pfaff, Phoenix, AZ; Blake Pfaff, Sioux Falls, SD; Ally (Alex) Mack and their son, Graham, Kranzburg, SD.

In lieu of flowers, memorials may be directed to the Tyndall Community Foundation, Tyndall Fire Department, or a charity of your choice.



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Join Zoom Meeting

This event is independent of the State Bar.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN RE: DISCIPLINE OF)	JUDGMENT OF SUSPENSION
THOMAS EVERETT HARMON,)	
AS AN ATTORNEY AT LAW.)	#29794
)	

On October 14, 2021, Thomas Everett Harmon (Respondent), by and through his counsel, Jeffrey G. Hurd, having self-referred the Final Attorney Discipline Order (Atty Misc. 21-01) of the United States District Court, District of South Dakota, hereinafter "DCSD", entered October 7, 2021, reporting, among other things, that he had been temporarily suspended from practice in the DCSD, because of his failure to be admitted to practice in South Dakota within one year from his provisional admission by the DCSD to act as a federal public defender in the DCSD.

The Court by order of March 2, 2022, referred the matter to the Disciplinary Board of the State of South (the Board), for investigation, report and recommendation to the Court pursuant to SDCL 16-19-45 and the Board filed its Findings of Fact, Conclusions of Law, and Recommendation and that they were deemed a formal accusation against Respondent. The Board having recommended:

1. That formal discipline be imposed upon the Respondent by suspending Respondent's license to practice law in the State of South Dakota for a period of one (1) year and that these Findings of Fact, Conclusions of law and Recommendation be deemed a formal accusation against respondent pursuant to SDCL § 16-19-67.

2. Pursuant to SDCL § 16-19-67(3), Respondent has thirty (30) days in which to admit or deny the allegations of the formal accusations set forth above. If Respondent admits the allegations or fails to answer, the Supreme Court may proceed to render judgment.
3. If respondent denies the allegations, the matter may be referred to a referee pursuant to SDCL § 16-19-67(4) or tried by the Supreme Court which may thereafter determine and impose such discipline as it deems appropriate.
4. That Respondent be required to reimburse the State Bar of South Dakota for expenses incurred by the Board as allowed under SDCL § 16-19-70.2.

On May 31, 2022, Respondent filed an answer to the formal accusation pursuant to SDCL 16-19-67(3), admitting the allegations in the Formal Accusations of the Board.

The Final Attorney Discipline Order (Atty Misc. 21-01) of the DCSD, findings of fact, conclusions of law, recommendation, and formal accusation of the Disciplinary Board and Respondent's Answer were thoroughly considered by the Court, and

The Court having determined that a judgment of suspension from the practice of law in all the courts of South Dakota is the appropriate discipline to be imposed, for violating Rules 3.3, 5.5, 8.1, 8.4 (a) (c) and (d) of the South Dakota Rules of Professional Conduct, now, therefore, it is

ORDERED that Thomas Everett Harmon be and he is hereby suspended from the practice of law in South Dakota for a period of one (1) year from the date of Judgment of Suspension.

#29794, Order of Suspension

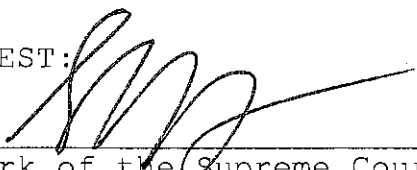
IT IS FURTHER ORDERED that Harmon shall on or before August 12, 2022 pay \$1,905.53 to the State Bar of South Dakota as reimbursement of its itemized expenses, allowed under SDCL 16-19-70.2.

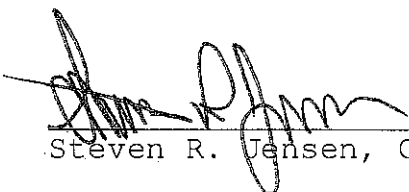
IT IS FURTHER ORDERED that proof of the payment be filed with the Clerk of this Court on or before September 12, 2022.

DATED at Pierre, South Dakota this 12th day of July, 2022.

BY THE COURT:

ATTEST:


Clerk of the Supreme Court
(SEAL)


Steven R. Jensen, Chief Justice

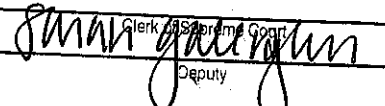
PARTICIPATING: Chief Justice Steven R. Jensen, Justices Janine M. Kern, Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUL 12 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
12 day of July, 2022.


Shirley A. Jameson-Fergel
Clerk of the Supreme Court
Deputy

-3-



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BOARD OF BAR COMMISSIONERS

Minutes, May 18, 2022

Meeting Via Zoom

President William Garry called the meeting to order at 9:00 a.m. Central Time on Wednesday, May 18, 2022. Present at the meeting were Garry, President Elect Lisa Marso, Commissioners Aasen, Christensen, Dougherty, Foral, Kempema, King, Pickar, Richter, Roby, Tiede, and Trefz. Executive Director/Secretary-Treasurer Andrew Fergel was also present during the meeting.

Minutes of April 22, 2022, Meeting: President Elect Marso moved to approve the minutes of the April 22, 2022, meeting held via Zoom. Commissioner Pickar seconded the motion. Motion passed.

Executive Director's Report: Fergel gave a report on what Bar staff has been working on since the April Bar Commission meeting.

Draft Amendment to Bar Bylaws Concerning Attendance and Voting at Annual Business Meeting: Fergel presented proposed amendments to Section 4.4 of the State Bar of South Dakota Bylaws that in effect would require the Bar to provide an option for members to attend and vote at the annual business meeting via an electronic platform on a permanent basis going forward. Commissioner King made a motion to present the proposal to the State Bar membership at the Annual Business Meeting on June 24th for its consideration. Commissioner Tiede seconded the motion. Motion passed.

Association Healthcare Plan: Dan Maguire met with the Commission at it April 2022 meeting to talk about an association healthcare plan for the State Bar of South Dakota. As part of his presentation to the Commission, Mr. Maguire answered questions and described plan options that would be available for selection under an association plan. Mr. Maguire also presented proposed rates for each plan option. The Commission did not take any action on whether to proceed with implementation of an association healthcare plan for the Bar at it April meeting; therefore, Fergel asked the Commission to consider taking formal action at this meeting. Thereafter, Commissioner Trefz made a motion to authorize Mr. Maguire to proceed with implementation of an association healthcare plan for the State Bar of South Dakota. Commissioner Aasen seconded the motion. After discussion, the motion passed. Commissioner Dougherty abstained from voting on the motion.

Approve/Ratify the State Bar of South Dakota Form 990 and Form 990-T Returns for Tax Year Ended July 31, 2021: After review, a motion was made by Commissioner Pickar to approve/ratify the filing of the State Bar of South Dakota's Form 990 and Form 990-T for the taxable year ended July 31, 2021, together with all associated forms as prepared by Palmer, Currier & Hoffert, LLP. Commissioner

King seconded the motion. Motion passed.

Appointment of State Bar Delegate: The Commission considered applications from two individuals seeking appointment as the State Bar Delegate to the ABA House of Delegates. After review, Commissioner King made a motion to reappoint Sarah Sharp Theophilus as the State Bar Delegate to the ABA House of Delegates. Commissioner Kempema seconded the motion. After discussion, the motion passed.

There being no further business, President Garry adjourned the meeting.

Respectfully submitted,

Andrew L. Fergel
Executive Director/Secretary-Treasurer

Attorney Health & Wellness Resources

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BOARD OF BAR COMMISSIONERS
MINUTES, JUNE 24, 2022
RAMKOTA HOTEL AND CONVENTION CENTER, RAPID CITY

As mandated by the Bylaws of the State Bar of South Dakota, the Board of Bar Commissioners met at the close of the Annual Meeting on Friday, June 24, 2022, in Rapid City, South Dakota. President Lisa K. Marso called the meeting to order at 1:50 p.m. Mountain Time. In attendance were President Marso, President Elect Heather Lammers Bogard, Commissioners Timothy Dougherty, Stacy Johnson, Rory King, Tyler Matson, Erika Olson, Eric Pickar, John Richter, David Strait, and Executive Director/Secretary-Treasurer Andrew Fergel.

Executive Director Fergel informed those present that a Bar Commission retreat and meeting is scheduled for July 21st and 22nd, 2022, in Sioux Falls, South Dakota. Orientation for new commissioners will be conducted on Thursday morning, social and mixer Thursday afternoon, with a business meeting to follow on Friday morning. The primary business to be conducted at the business meeting will be the adoption of a budget for the 2022-2023 fiscal year.

There being no other business, President Marso adjourned the meeting.

Respectfully submitted,

Andrew L. Fergel
Secretary-Treasurer & Executive Director

NINETIETH ANNUAL MEETING OF THE STATE BAR OF SOUTH DAKOTA

RAMKOTA HOTEL AND CONVENTION CENTER RAPID CITY, SOUTH DAKOTA JUNE 22nd, 23rd, and 24th, 2022

The 2022 Annual Meeting of the State Bar of South Dakota was held at the Ramkota Hotel and Convention Center on June 22, 23, and 24, 2022.

Related groups meeting during the Annual Meeting were: South Dakota Bar Foundation, American College of Trial Lawyers, CLE Committee, South Dakota Trial Lawyers, Young Lawyers Section, American Board of Trial Advocates, SD Judges Association, SD Code Commission, Judicial Qualifications Commission, American College of Trust and Estate Counsel, Federal Practice Committee, Council of School Attorneys, Real Property, Probate and Trust Law Section, Public Sector Section, Administrative Law Committee, Agricultural Law Committee, Council of School Attorneys, Municipal Attorneys Association, SD Court Reporters Association, Debtor/Creditor Committee, SD Association of Criminal Defense Lawyers, Project Rural Practice Committee, Solo and Small Firm Committee, Judicial-Bar Liaison Committee, Lawyers Assistance Committee, Lawyers Concerned for Lawyers, Family Law Committee, SD Paralegal Association, Women In Law, Fellows of the American Bar Foundation, and Disciplinary Board.

On Wednesday afternoon, June 22nd, the following CLEs were held:

<u>CLE Title</u>	<u>Number Registered to Attend</u>
ALPS(Ethics)	214
Election Law Updates	157
In-House Counsel – Employee Handbook Do's & Don'ts	194

In addition to the CLEs that were held on Wednesday afternoon, the Young Lawyers Section and Lawyers Committee on Diversity & Inclusion hosted a speed networking event. The event provided an opportunity for bar members, law students, first-time attendees, and non-USD law school graduates to get to know each other better.

On Wednesday evening a social hour, “Legalpalooza,” was hosted by the Young Lawyers Section at the Ramkota Gazebo Courtyard. The South Dakota Trial Lawyers and South Dakota Court Reporters sponsored the event. During the event, Ole Olesen, YLS President, announced that Ashley Blake was selected as the recipient of the 2022 Young Lawyer of the Year Award.

Following Legalpalooza, the State Bar hosted a “Not” Black-Tie Affair that featured cocktails, conversation, and a host of heavy hors d’oeuvres. Approximately 600 people attended the event where an enjoyable time was had by all.

On Thursday Morning and early Thursday afternoon, June 23rd, the following CLEs were held:

<u>CLE Title</u>	<u>Number Registered to Attend</u>
Early Bird	226
Legal Writing with Kristen Davis	334
Bystander Involvement: A Proactive Approach to Resolving Sex-based Harassment	407
Court Security: What a Lawyer Needs to Know	256

Later Thursday afternoon, a reception was hosted by the South Dakota Bar Foundation, South Dakota Community Foundation, and USD School of Law Foundation to thank those who have contributed this year.

Total registration for the 2022 Annual Meeting and Convention was 782, of the 782 registrants, 594 were member lawyers, 1 was a non-member, 143 were spouses/guests, 13 were office staff, and 31 were law students.

FRIDAY, JUNE 24th

President William “Bill” Garry called to order the 90th business meeting of the State Bar of South Dakota promptly at 8:00 a.m. at the Ramkota Convention Center. A quorum was determined to be present. Matt Lucklum, Secretary of the Pennington County Bar gave the address of welcome. Thereafter, President Garry welcomed first-time attendees.

Secretary-Treasurer Fergel gave a financial report, describing the State Bar’s current financial position as solid. As part of his report, Fergel provided year over year balance sheet comparisons for all Bar and South Dakota CLE accounts. He also thanked the membership for approving increases in annual bar dues and CLE fees at the last annual meeting.

Marilyn Trefz, a member of the Bar Commission’s Audit and Finance Committee reported that an independent audit by Palmer, Currier & Hoffert LLP was conducted on the combined financial statements of the State Bar of South Dakota, SD CLE, Inc., and Access to Justice, Inc. for the years ending July 31, 2021, and July 31, 2020. She went on to report that it was the opinion the independent auditors that the combined financial statements presented fairly in all respects and that all changes in net assets and cash flows are in accordance with the accounting principles accepted in the

United States. Thereafter, Eric Pickar moved that the financial report and audit be accepted as presented. Stacy Johnson seconded the motion. Motion passed.

Next, Beth Massa with the South Dakota Community Foundation gave a brief history of how the South Dakota Community Foundation was established and thanked the South Dakota Bar Foundation and South Dakota Bar members for being early partners. Ms. Massa reported that there has been 1.9 million dollars in principal investments into the South Dakota Bar Foundation endowment fund and that the total value of the fund at the end of 2021 was 2.7 million with over \$300,000 in grants distributed to verified nonprofits in the State. In closing, Ms. Massa thanked Key Club members for their work in helping clients create gifts through the South Dakota Community Foundation and expressed appreciation to the membership in general for the work they do.

Following the South Dakota Community Foundation report, Stephanie Pochop delivered a report on the work of the South Dakota Bar Foundation. In her report, Ms. Pochop emphasized that the dollars gifted to the foundation support important programs throughout South Dakota such as the South Dakota Guardianship Program, the WORKS Program, Access to Justice, Inc., Project Rural Practice, and the Lawyers Assistance Program. Ms. Pochop informed membership that the South Dakota Bar Foundation is planning a strategic planning session this fall to become more resourceful in raising and utilizing funds to impact more programs in the future. In closing, Ms. Pochop encouraged every member to become a donor to the South Dakota Bar Foundation and promised that whatever amount was given to the Foundation would be put to good use.

Denise Langley, Coordinator of Access to Justice, Inc. (“A2J”) took the podium to summarize the work of the program this past year. Ms. Langley’s report included information about the number of hours South Dakota attorney volunteers provided in pro bono work, the program’s partnership with USD’s Veterans Legal Education Group, and the work that has been done with Dakota Plains Legal Services and East River Legal Services to effectuate a Statewide Legal Needs Assessment that is currently underway. Ms. Langley also informed the membership that A2J was the host of this year’s golf tournament held in conjunction with the Bar Convention and announced that the winner of the inaugural 2022 A2J Golf Tournament was Daneta Wollman’s team that consisted of Daneta, Troy Ward, Gavin Pochop, and Mae Pochop.

After her report on the A2J program, Ms. Langley presented the William F. Day, Jr. Law Student Pro Bono Award. Ms. Langley announced that the 2022 recipient of the award is Marcus Ian Hause of the University of South Dakota Knudson School of Law.

Thereafter, President Garry presented the President's Pro Bono award to Reece Almond, an attorney with Davenport, Evans, Hurwitz & Smith, LLP.

Dean Neil Fulton gave a report on the USD Knudson School of Law. In his remarks Dean Fulton stated that the Law School remains a community of excellence, service, and leadership and that the fundamental source of strength for the Law School is the strength of its community. He emphasized that as South Dakota's law school, all Bar members are part of its community. However, he cautioned that despite our fundamental strength we cannot assume the future of the Law School or the profession as there will be significant challenges to both and we will have to work together to meet those challenges. In closing, Dean Fulton declared "it's a great day to be a South Dakota lawyer. It's a great day at the Law School and for South Dakota lawyers. And, as we work together to build our Law School and our profession, there are great days ahead."

Immediately following Dean Fulton's report on the Law School, Chief Justice Steven Jensen gave a report on the Unified Judicial System. In his remarks, the Chief Justice spoke about how the Court System operated over last couple of years during the COVID-19 pandemic. He spoke about the order the Supreme Court entered declaring a statewide judicial emergency in response to the COVID-19 pandemic on March 13, 2020, that authorized the presiding judges in each of South Dakota's seven judicial circuits to adopt, amend or suspend court rules or orders to respond to the public health emergency. In addition, he mentioned that the Supreme Court entered several statewide orders related to the suspension of the 180-day (speedy trial) rule; the use of interactive audio-visual devices; remote notarizations, depositions and signatures; postal procedures and the regulation of the admission of attorneys during the declaration of the judicial emergency. He then announced that the Court entered an order on May 12, 2022, rescinding the declaration of judicial emergency which will become effective June 30, 2022. The Chief Justice stated that some changes made during the pandemic were positive and will continue. Other changes utilized during the pandemic will continue to be studied, for example, the Court will continue to explore the advantages and disadvantages of remote proceedings. Other matters mentioned by the Chief Justice during his presentation were the adoption by the Supreme Court of a rule requiring mandatory training for parents involved in custody and visitation disputes, and the courthouse security initiative. The Chief Justice also gave updates on three projects; the Bar Examination, providing improved access to the courts for pro se and low-income individuals, and the compensation structure for attorneys providing indigent defense for clients in South Dakota. The Chief Justice closed his remarks by expressing his gratitude for all the work judges and all UJS staff do for the State of South Dakota.

Following the Chief Justice's Report on the UJS, President Garry introduced the keynote speaker for the meeting, Malcom "Chap" Chapman. Mr. Chapman gave a

dynamic and meaningful address centered on civility that was well received. After, Mr. Chapman's address the meeting was recessed for short break.

After the meeting was called back to order, Andrew Fergel presented a proposed amendment to Section 4.4 of the South Dakota Bar Bylaws that would provide an option for members to attend and vote at the annual business meeting via an electronic platform on a permanent basis going forward. David Larson made a motion to support amending the South Dakota Bar Bylaws, as presented, through the Supreme Court's rule making process. Judge Jane Pfeifle seconded the motion. President Garry asked if there was any discussion on the motion and Eric Bogue rose to speak against approving the proposed amendment. There being no further discussion, President Garry called for the vote and the motion failed.

John Burke, Chair of the Practice Rules Revision Committee, gave a brief report on the work of the Committee and the presented proposed amendments to the following:

- a. Appendix C of SDCL Ch. 15-6 (Forms)
- b. SDCL 15-6-45(a) – Subpoena for Attendance of Witnesses
- c. SDCL 1-26-33.2 – Time for Serving Brief
- d. SDCL 15-6-5 – Service and Filing of Pleadings and Other Papers

After Mr. Burke's presentation on each proposal in the order outlined above, the following action was taken:

John Burke made a motion that the State Bar approve the proposed amendments to Appendix C of SDCL Ch. 15-6 (Forms), to be submitted to the South Dakota Supreme Court for consideration. Eric Pickar seconded the motion. President Garry asked if there was any further discussion on the motion, seeing none he called for the vote and the motion passed.

John Burke made a motion that the State Bar approve the proposed amendments to SDCL 15-6-45(a) – Subpoena for Attendance of Witnesses, to be submitted to the Supreme Court for consideration. Steve Huff seconded the motion. President Garry asked if there was any further discussion on the motion, seeing none he called for the vote and the motion passed.

John Burke made a motion that the State Bar approve the proposed amendment to SDCL 1-26-33.2 – Time for Serving Briefs, be submitted to the Supreme Court for consideration. Eric Pickar seconded the motion. President Garry asked if there was any further discussion on the motion, seeing none he called for the vote and the motion passed.

John Burke made a motion that the proposed amendments to SDCL 15-6-5 – Service and Filing of Pleadings and Other Papers, be approved by the State Bar to be submitted to the Supreme Court for consideration. Tyler Matson seconded the motion. After several questions and discussion, the vote was called, and the motion passed.

Next at the podium was Erika Olson, Chair of the Real Property, Probate, and Trusts Section's subcommittee on Title Standards. Ms. Olson gave a brief history on the subcommittee's work the past year. That work resulted in proposed changes to the 2002 Title Standards that the subcommittee felt were obviously changes that the subcommittee was seeking approval on at this meeting. Ms. Olson informed the membership that the subcommittee will continue to work on additional needed substantive changes for which the subcommittee hopes to seek approval next year. After her presentation on the proposed amendments drafted this year to the Title Standard Ms. Olson made a motion that the State Bar approve the proposed amendments to the 2002 Title Standards for publication in the Appendix to Chapter 43-30 of the South Dakota Codified Laws. Steve Huff seconded the motion. President Garry asked if there was any discussion on the motion. Thereafter a discussion followed concerning the need to change the word "by" in section 9-04 to the word "but". Based upon the discussion Bob Morris made a substitute motion to approve the proposed amended Title Standards for publication subject to the change discussed. The motion was seconded and subsequently passed.

Tracey Dollison-Decker gave a short report on the activities of the Public Sector Section and introduced John Richter to present two awards on behalf of the Section. The Rising Star Award was presented to Sarah Covington, a law student that has donated her time and talent to the Section, and the first annual Public Sector Attorney of the Year Award was presented to David Wiest, Deputy Secretary of the South Dakota Department of Revenue.

Next, Amada Work, Chair of the LCDI Committee, presented the Second Annual Diversity and Inclusion Award to Brendan Johnson a Partner in Robins Kaplan LLP.

Next, President Garry announced the unopposed nominees for the 1st, 2nd, 3rd, and 7th Circuit Bar Commission positions. Petitions had been filed for Tyler Matson (1st Circuit), Caroline Srstka (2nd Circuit), David Strait (3rd Circuit) and Erika Olson (7th Circuit). No names were submitted to State Bar Staff, pursuant to Article VII, Section 7.4.b. of the State Bar Bylaws that would allow someone to run from the floor. Therefore, President Garry asked for a motion to cast a unanimous ballot for the four uncontested nominees for the Bar Commission. Pamela Reiter made a motion to cast a unanimous ballot for Tyler Matson, Caroline Srstka, David Strait, and Erika Olson. Bob Nelson seconded the motion. Motion passed. Thereafter, President Garry announced the nominees for 6th Circuit Bar Commissioner, Justin Bell and Ryan

Loker. Each candidate was given a few minutes to address the membership prior to the start of voting. James D. Taylor spoke on behalf of Ryan Loker, as Mr. Loker was unable to appear in person, and Justin Bell spoke on his own behalf. After the ballots were canvassed, President Garry declared Justin Bell elected.

Alex Hoffman, President of the USD Knudson School of Law Student Bar Association, announced the winner of the McKusick Award. This year the recipient of the award was Patrick G. Goetzinger.

Awards were presented to the following 50-year veterans of the State Bar: A. Stevenson Bogue, Omaha, NE; Bruce Boyd, Sioux Falls, SD; Mary Dell Cody, Yankton, SD; Van Fishback, Brookings, SD; Brian Hagg, Rapid City, SD; E. James Hood, Spearfish, SD; Richard Huffman, Rapid City, SD; Glen Johnson, Peoria, AZ; R. Van Johnson, Sioux Falls, SD; Robert Kean, Fort Pierre, SD; Wilson Kleibacker Jr., Madison, SD; Gerald Leeling, Burke, SD; Hon. Larry Long, Sioux Falls, SD; James Margadant, Rapid City, SD; William Matheson, Sioux Falls, SD; Michael McCann, Brookings, SD; Lynn Moran, Woonsocket, SD; Allen Nelson, Rapid City, SD; Harold O'Connell, Elgin, IL; Peter Pagones, Aberdeen, SD; Thomas Parlman, Sioux Falls, SD; Terry Pechota, Rapid City, SD; John Quaintance, Sioux Falls, SD; Terry Quinn, Rapid City, SD; Doyle Sage, Sioux Falls, SD; Ronald Schulz, Watertown, SD; Hon. Rodney Steele, Brookings, SD; Herb Sundall, Kennebec, SD; Richard Wendt, Pierre, SD; and Gregory Yates, Encino, CA.

The meeting was then recessed, and a joint reception was held for the McKusick Award recipient and the 50-year State Bar Veterans.

President Garry called the meeting back to order at 1:15 p.m. Ole Olesen, Young Lawyers Section President, read the Necrology in memory of the following members deceased since the last annual meeting: Chris Beesley, Custer, SD; Lee Burd, Sioux Falls, SD; Clyde Calhoon, Brookings, SD; Brooks Christenson, Yankton, SD; George Danforth, Minden, NV; Frank Farrar, Britton, SD; David Feldhaus, Chicago, IL; David Gerdes, Pierre, SD; Waonsilawin Gillis, Rapid City, SD; William Jason Groves, Rapid City, SD; Donald Hageman, Fort Pierre, SD; Robert Hiaring, Billings, MT; Peter Horner Jr., Sioux Falls, SD; Bruce Hubbard, Sturgis, SD; Patrick Kane, Sioux Falls, SD; Cynthia Kirkeby, Vermillion, SD; David Lust, Rapid City, SD; Jeffrey Maks, Rapid City, SD; James McCulloch, Vermillion, SD; Chad Nelson, Milbank, SD; Richard Sabers, Sioux Falls, SD; Henry Eugene Sechser, Mill Valley, CA; William Severns, Spearfish, SD; Leon Vander Linden, Webster, SD; Vernon Vanderhule, Yankton, SD; and Terry G. Westergaard, Rapid City, SD.

After the Necrology, Mr. Olesen presented a report on the activities of the Young Lawyers Section. Immediately following his report, Mr. Olesen presented the Young Lawyers Section President's Appreciation Award to Elizabeth Overmoe. To memorialize the award Ms. Overmoe was presented with a silver mentorship coin.

Young Lawyers Section Elections were held, and the following slate of uncontested nominees were elected to the board positions as stated: President-Elect: Kelsey Blair, Secretary/Treasurer: Chelsea Wenzel, 2nd Circuit Representative: Brooke Schmidt, 4th Circuit Representative: Spencer Prosen, 6th Circuit Representative: Rachelle Norberg, and At-Large Representative: Mae Pochop.

After the Young Lawyers Section election, President Garry gave an emotional final address where he expressed that it has been the highlight of career to serve as the President of the State Bar of South Dakota. His address included thanks to family, friends, colleagues, bar members, the Bar Commission, and Bar staff. President Garry's address was met with warm applause.

President Garry then installed Lisa K. Marso as President of the State Bar. Upon accepting the gavel, President Marso thanked Past President Garry for his service to the Bar and delivered a short address.

Thereafter, in her first official act, President Marso called for nominations for the position of President Elect of the State Bar of South Dakota. Edward Carpenter nominated Heather Lammers Bogard. Mike Hickey seconded the nomination. There being no other nominations, Bob Frieberg made a motion that nominations cease, and a unanimous ballot be cast for Ms. Bogard. Eric Pickar seconded the motion. The motion passed and a unanimous ballot was cast for Heather Lammers Bogard.

There being no further business, President Marso adjourned the meeting.

Respectfully submitted,

Andrew L. Fergel
Executive Director & Secretary-Treasurer

Ethics Opinion 2022-02

Question Presented: What should a Lawyer do if a third party is interfering with the Lawyer's communication with the Client and if the Lawyer is not receiving sufficient information to believe the Lawyer is being candid with the Court about the facts?

Short Answer: The Lawyer must act to remove the interference. If that cannot be accomplished, Lawyer must withdraw from representation; and the Lawyer should not make knowingly false statements to the Court.

Rules Implicated: 1.4 and 3.3

FACTS

Lawyer provides services to the County on a contract basis. Lawyer assists individual Petitioners with preparing involuntary commitment (IVC) petitions for people who believe their friends or family members need the protection of an IVC. In this scenario, the County pays the Lawyer, but the Petitioners are the Clients.

The County also pays a Facility that is not Lawyer's client to be involved with the process, including evaluating the subjects of the IVC petitions. Lawyer believes that standard procedures the Facility has implemented interfere with Lawyer's communication with the Lawyer's Clients, i.e., the Petitioners. Lawyer also believes the Facility is failing to follow statutorily-mandated procedures for IVC matters and is not providing Lawyer with sufficient information regarding its evaluations to enable Lawyer to provide full, complete, and accurate information to the Court regarding the petitions.

Lawyer inquires whether Lawyer can or must tell the Facility to follow proper procedures and whether Lawyer can continue to provide services on the IVC matters when Lawyer believes the lack of cooperation and information from the Facility is interfering with the attorney-client relationship with the Petitioners, and is preventing the Lawyer from being able to know the Lawyer is being candid with the Court.

ANALYSIS

Whether Lawyer is correct that the Facility is failing to follow proper procedures or failing to provide sufficient information for Lawyer to be candid with the Court are questions only the Lawyer can answer. For this opinion, the Committee is assuming Lawyer is correct on both points, subject to further discussion below.

The Facility is not a client, and the Lawyer does not appear to believe the County is a client, despite the County paying for services. This belief is not unreasonable under the circumstances, so the Committee will also assume the Lawyer is correct that the only Clients are the Petitioners.

Under Rule 1.4 regarding Communication, Lawyer must take necessary steps to communicate with the Petitioners effectively. If Lawyer believes that the Facility is impairing communication

with the Petitioners, Lawyer must tell the Facility that is the case and ask the Facility to stop. If the Facility continues to interfere with communication, the Lawyer should approach the County about the issue, and note that the Facility's policies are interfering with the Lawyer's attorney-client relationships with Petitioners. If neither of these approaches is effective, the Lawyer should tell the County that Lawyer will have to withdraw if the Facility does not stop interfering with Lawyer's communications with the Petitioners, and may consider telling the County that subsequent attorneys retained by the County will be in the same quandary until it is solved. If this is unsuccessful, then the Lawyer must withdraw from further representation.

Rule 3.3 regarding Candor to the Tribunal prohibits Lawyer only from knowingly making false statements to a court or assisting a client with making statements the Lawyer knows to be false. Lawyer is concerned that the information Facility is providing is sufficiently lacking that Lawyer is failing to be candid with the Court during IVC matters. This uncertainty is not within the ambit of Rule 3.3. Attorneys sometimes have to appear before a court and advocate for clients while knowing or suspecting they lack complete information. Here, as long as the Lawyer's lack of information does not lead Lawyer to knowingly make a false statement of fact, e.g., that the Lawyer knows something to be accurate, when that is not the case because of the lack of information, the candor rule isn't implicated.

That said, if the Lawyer is in a position of having to respond to an inquiry from the Court that may result in a knowing false statement by the Lawyer because of the lack of information from the Facility, the Lawyer's only duties in the scenario as presented are to the Petitioners and the Court. Lawyer must in that case disclose that Lawyer lacks the information needed to answer the Court's inquiry, and is free to tell the Court that the Facility has not provided the necessary information (assuming that is the case).

CONCLUSION

If Lawyer believes a third party is interfering with the attorney-client relationship, the Lawyer must take all reasonable steps to remove that interference and, if unsuccessful, must withdraw from the representation. The Lawyer is not failing to be candid with the Court solely because Lawyer believes information about the case is lacking but must be truthful and candid with the Court and disclose that the information is lacking if the Court asks.

Ethics Opinion 2022-03

Question Presented: May a law firm employ a non-lawyer to assist parties with resolving disputes as a “neutral” if the law firm already represents other clients adverse to the non-lawyer’s clients?

Short Answer: Yes, but the law firm should restrict the non-lawyer’s access to lawyers’ files and vice-versa.

Rules Implicated: 1.7 and 1.10

FACTS

Law Firm provides some services on a pro bono or reduced-fee basis. Law Firm applied for and received a grant enabling the firm to hire a non-lawyer social worker to serve as a mediator for housing disputes. Local landlords or tenants are able to contact the social worker, who then acts as a “neutral” in trying to help the parties resolve their disputes on a non-binding basis. If the dispute is not resolved, the parties are free to seek their usual legal remedies without the social worker’s further involvement.

Law Firm is concerned about what to do if a landlord or tenant seeks the social worker’s services when the Law Firm is already representing a different party adverse to the landlord or tenant. For example, it is possible the Law Firm represents one spouse in a divorce action, and the other spouse will seek the social worker’s services in a landlord/tenant dispute. During the course of the mediation of that dispute, the social worker may learn confidential information that the Law Firm’s existing client could use to the legal client’s advantage. Law Firm inquires whether this is a conflict of interest, and what Law Firm must do to avoid conflicts.

ANALYSIS

Rule 1.7 prohibits lawyers from representing a client in a matter that will result in the lawyer being simultaneously adverse to a different client, even in an unrelated matter. Rule 1.10(a) extends this prohibition to other lawyers in the same firm. Law Firm here appears concerned that Law Firm’s existing representation of clients in legal matters may be deemed to conflict with the Law Firm’s social worker’s provision of “neutral” services to parties who are already adverse to the Law Firm’s existing clients.

Rule 1.10(a) applies only to “lawyers,” stating “[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9.” The social worker is not a “lawyer,” so Rule 1.10 on its face would not appear to apply. This is bolstered by Comment 4 to Rule 1.10, which states

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the

person became a lawyer, for example, work that the person did as a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

Law Firm will not have a conflict solely because a person who engages the Law Firm's social worker is adverse to a different person whom the Law Firm already represents in a different legal matter. However, the Law Firm should ensure that the social worker does not have any access to the Law Firm's legal files, and that its lawyers do not have any access to the social worker's mediation files.

Ethics Opinion 2022-04

Question Presented: What must a Lawyer do if a newspaper or other reporter misquotes the Lawyer's statement in a manner that gives the impression the Lawyer claims to have a certain "expertise" or other certification when the Lawyer does not.

Short Answer: The Lawyer is not responsible for the media's misquoting of the Lawyer's statements about the Lawyer's practice.

Rules Implicated: 7.4

FACTS

Lawyer was contacted by a reporter about a local lawsuit. The Lawyer spoke with the reporter "on background" regarding the lawsuit, before agreeing to give the reporter a few quotes. The Lawyer did not state or imply that Lawyer was an "expert" or "legal expert," nor did the Lawyer state or imply that Lawyer had a certain "specialty" or "specialization." However, the article the reporter published stated the Lawyer had claimed to have those qualifications. Lawyer does not have an official certification in any area of practice. The article also included statements that appeared to be accurately quoted or paraphrased from Lawyer's website.

Lawyer asks whether Lawyer has an ethical obligation under Rule 7.4 of the South Dakota Rules of Professional Conduct to ask the reporter to retract or correct the article.

ANALYSIS

Lawyer is concerned with Rule 7.4(e)'s proscription against a lawyer stating or implying "that a lawyer is certified as a specialist in a particular field of law" unless the Lawyer is actually certified in that field by an approved organization.

Assuming the Lawyer did not make or imply the statements the reporter attributed to the Lawyer regarding the Lawyer's "expertise" or "specialization," then Lawyer will not violate the Rule by not asking the reporter to correct the errors, even assuming the erroneous statements would violate Rule 7.4 in the first instance. Lawyer is not responsible for the reporter's error. Lawyer should, however, ensure that any statements on Lawyer's website, such as the ones the reporter quoted, are accurate.

PUBLIC NOTICE

REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE

The current appointment of Magistrate Judge Sarah Morrison is due to expire on January 2, 2023. Magistrate Judge Morrison serves in the Seventh Judicial Circuit.

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

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

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

Comments must be received by October 4, 2022.



State Bar of South Dakota

Officers, Section Leadership, & Officers of Related Groups 2022-2023

Officers of the Bar

President, Lisa Marso, Sioux Falls
President-Elect, Heather Lammers Bogard, Rapid City
Andrew Fergel, Executive Director & Secretary-Treasurer, Pierre

Board of Bar Commissioners

1st – Tyler Matson, Yankton
2nd – Caroline Srstka, Sioux Falls
3rd – David Strait, Watertown
4th – Drew Skjoldal, Spearfish
5th – Stacy Johnson, Aberdeen
6th – Justin Bell, Pierre
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George Nelson, Rapid City

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Langu Okall, Sioux Falls

Mallory Schulte, Yankton

Shane Vogt, Sioux Falls

STRATEGIC PLAN**Richard Casey, Co-CH, Sioux Falls**

Andrew Fergel, Pierre

Hon. Francy Foral, Sturgis

Thomas Frieberg, Beresford

Neil Fulton, Vermillion

Patrick Goetzinger, Rapid City

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Seth Pearman, Flandreau

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Pamela Reiter, Sioux Falls

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Jennifer Williams, Co-CH, Rapid City

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Last Update: 7/27/2022

Career Center

STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

Email your employment announcement to 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



Family Law Attorney -Sioux Falls

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

Deputy State's Attorney - Watertown

The Codington County State's Attorney's Office is inviting applicants for the position of Deputy State's Attorney. The position will be responsible for the prosecution of adult misdemeanor and felony cases occurring in Codington County, South Dakota. Duties include charging determinations, bond arguments, preliminary and grand jury hearings, drafting and arguing motions, court/jury trials, witness preparation, and briefing the court on relevant case law. Additional duties include assisting in the prosecution of abuse and neglect cases, juvenile cases, and representation in the Codington County Drug Court and the Veteran's Treatment Court, when necessary.

Qualifications:

Applicants must possess a Juris Doctorate degree from an accredited law school and be licensed to practice in South Dakota or willing and qualified to sit for the next available South Dakota bar examination. Working knowledge of civil and criminal law and methods and practices of pleadings; court procedures and rules of evidence; principles, methods, materials and practices

utilized in legal research; and general law and established precedents.

Salary: Starting salary \$73,434.00. Codington County also offers a comprehensive benefits package including vacation leave, sick leave and paid holidays; health, dental and life insurance and inclusion in the South Dakota Retirement System (SDRS).

Please submit resume to: Rebecca Morlock Reeves, Codington County State's Attorney, 14 1st Ave. SE, Watertown, SD 57201

Opening and Closing dates: May 24, 2022 – July 30, 2022, or until filled.

Family Law Attorney -Sioux Falls

Job ID: 19603

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

Location: Pierre

Salary: \$85,023.36/annually, depending on experience

Closing date: August 8, 2022

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

The Mission of the South Dakota Unified Judicial System is to provide Justice for All!

Our employees are our most valuable resource and crucial to accomplishing our mission. We seek talented and motivated individuals to be the face of the court system and help ensure that the Court and all the people that come before it receives the highest level of service.

Our dedicated staff work to enhance community safety and ensure victim's rights while treating all individuals with dignity and respect.

The Unified Judicial System offers a comprehensive benefits package consisting of 10-12 paid holidays every year, extensive sick and vacation leave, paid family leave, military training leave, health and flexible benefits, regular working hours, continuing education opportunities, retirement benefits, a great working environment, and more.

Position Purpose: To provide administrative legal advice for the Unified Judicial System (UJS) employees, Judges, projects, and programs regarding business practices, program management, and operational policies and procedures; facilitating actions of committees and taskforces; and assisting with legislative development to secure and improve court operations and enhance access to justice and public trust. Duties may include:

- advising on legal matters impacting UJS employees and programs, including potential litigation;
- providing legal review and oversight related to various programs within the UJS;
- reviewing and updating UJS publications, forms, and resources for legal accuracy prior to publication;
- coordinating or assisting in coordinating the child support referee and/or rural attorney recruitment program;
- providing legal technical assistance and assessment of entities within the UJS;
- staffing selected committees within the UJS;
- reviewing grant programs and ensuring compliance.

The State Court Administrator's Office (SCAO) is the administrative office of the Unified Judicial System. The SCAO implements the rules and policies of the Supreme Court as they apply to the operation and administration of the courts and is the liaison between the judicial branch and other branches of government.

Minimum Qualifications:

Graduation from an American Bar Association-accredited law school and possession of a Juris Doctorate. Licensed to practice law in South Dakota or successful completion of the first South Dakota bar examination following employment with the SCAO. Experience working in the courts in the legal profession such as a trial court attorney, family law attorney, or a related field is preferred.

Successful completion of a criminal background investigation is required for employment.

Knowledge, Skills and Abilities:

Knowledge of:

- the law;
- the court system and its functions;
- methods of legal research and analysis;
- laws and procedures regarding development of legislation and lobbying.

Skill in:

- legal writing;
- organizational management;
- time management.

Ability to:

- to communicate effectively both orally and in writing;
- draft precise contracts, interpret contract terms, and negotiate and communicate contract terms;
- establish and maintain effective working relationships with a wide variety of people;
- convey ideas and future directions clearly;
- conduct legal research, analyze results, and write pertinent legal recommendations;
- interpret and apply the law and UJS policies to various situations;
- understand computer system capabilities at a professional level.

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

You may view our benefits information at https://ujs.sd.gov/uploads/pubs/Come_work_for_us.pdf.

Unified Judicial System
500 East Capitol Avenue
Pierre, SD 57501-5070
Phone: 605.773.4867
"An Equal Opportunity Employer"

Deputy/Senior Deputy Public Defender - Sioux Falls

GENERAL INFORMATION:

Interested in appellate practice? The Minnehaha County Public Defender's Office is looking for a dedicated Deputy/Senior Deputy Public Defender with excellent advocacy skills who is committed to ensuring justice to indigent clients seeking post-conviction relief in Minnehaha County. Our office places a high value on diversity of experiences and perspectives and encourages applications from all qualified individuals from all ethnic and racial backgrounds, veterans, LGBT individuals, and persons with disabilities. We are currently seeking someone who is passionate about appellate advocacy, may have participated in moot court or trial team, or has experience filing post-conviction motions. The ideal candidate will be self-reliant, motivated, and possess advanced computer literacy skills, including experience with legal research, and electronic court filing. The research and brief writing will involve a wide variety of constitutional and statutory issues.

In addition to filing post-conviction motions at the circuit level, and representing clients in direct appeals to the South Dakota Supreme Court and post-conviction motions at the circuit court level, the appellate attorney for the Minnehaha County Public Defender's Office will also gain the valued experience of presenting oral arguments before the State's highest Court. Apply now to be considered for this opportunity to grow your criminal defense practice, access our expansive document library, and surround yourself with skilled criminal defense attorneys.

Please attach a cover letter to the online application.

The hiring range is \$3,167.20 - \$3,582.40/biweekly with full earning potential up to \$4,363.20/biweekly.

This posting will remain open until filled. Review of applications begins on Wednesday, July 20th, 2022.

CLOSING DATE: Continuous

All applications must be submitted by 5:00 p.m. on the date the position closes.

EXAMPLES OF DUTIES INCLUDE:

Advocate on behalf of individuals charged with felonies and misdemeanors through all phases of litigation to

include pre-trial, trial, and litigating all aspects of the case through disposition. Coordinate efforts with a support team of paralegals and other staff to ensure the responsible handling of a demanding caseload through disposition of the case. Maintain client communications by telephone, office appointments, and institutional visits. Keep client apprised of investigations, negotiations, and court rulings. Appear at regularly scheduled court dockets and appearances related to an assigned caseload. Conduct legal research and draft motions and pleadings. Interview witnesses. Review legal documents, police reports, transcripts, and related correspondence. Attend professional development training both within and outside the office.

MINIMUM QUALIFICATIONS:

Graduation from a college of law and attainment of a Juris Doctorate degree from an accredited law school. Admission by the Supreme Court of South Dakota to practice law in the State of South Dakota or be licensed to practice law in any other state and able to take the next bar examination offered in South Dakota. This opportunity is also open to recent law school graduates who are eligible to sit for the next available South Dakota bar examination. Comparable combination of education and experience may be considered. Possession of a valid driver's license and must maintain a safe driving record with Minnehaha County. Must successfully complete pre-employment background process. Working knowledge of civil and criminal law, court procedures, and the principles and practices of legal research. Ability to work with a diverse population and be attentive to the needs of the clientele. Working knowledge of the principles, methods, materials, and practices utilized in legal research. Working knowledge of general law and established precedents. Ability to speak and write effectively in the preparation and presentation of legal matters. Ability to maintain effective working relationships with co-workers, clients, other agencies, and the public. Ability to maintain professional appearance and demeanor. Consideration for appointment as a Senior Deputy Public Defender requires a minimum of two years of relevant work experience.

PREFERRED QUALIFICATIONS:

Demonstrates a commitment to working with the indigent accused and to providing social advocacy to the clientele served by the Public Defender's Office.

Minnehaha County is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion or creed, national origin or ancestry, citizenship, sex or gender including pregnancy, sexual orientation and gender identity, marital status, age, disability, veteran's status, genetic information, or any other legally protected status. Arrangements for accommodations required by disabilities can be made by contacting Human Resources at (605) 367-4337.

APPLICATIONS MAY BE FILED ONLINE AT:
<http://jobs.minnehahacounty.org>

OUR OFFICE IS LOCATED AT:

415 N Dakota Avenue
Sioux Falls, SD 57104
605-367-4337
jobs@minnehahacounty.org

Job #22-72
DEPUTY/SENIOR DEPUTY PUBLIC DEFENDER
MH

Attorney - Pierre

Job ID: 19651
Agency: South Dakota Department of Revenue
Location: Pierre
Salary: \$69,300 to \$108,000 annually, depending on experience
Pay Grade: L2 - L3
Closing Date: Open Until Filled
This is a full-time position with the South Dakota Department of Revenue. For more information on the South Dakota Department of Revenue, please visit <https://dor.sd.gov/>.

Why the Department of Revenue

At the Department of Revenue, culture is everything. It's at the heart of what we do for our employees, community, and our customers – the citizens of South Dakota. Our work is driven with a vision to create an open and collaborative environment that provides professional customer service, contributes to a favorable economic climate, and is accountable to the citizens of South Dakota. Sound like a good fit? As a Department of Revenue employee, here's what you'll experience:

- Innovation – We are always looking for new ways to push forward and evolve.
- Professional growth – We provide new challenges for you to tackle and provide valuable trainings.
- Career development – Investing in our employees' development through our onboarding, mentoring, and leadership programs.
- Fit – We promote a flexible work/life balance while you do what you do best every day.
- Collaboration – You have the ability to work with all divisions within the department as a member of the legal team.
- Giving back to the community – We offer opportunities to support local organizations throughout the year.

Who we want

- an attorney interested in practicing within a broad range of legal subjects, including, but not limited to: taxation, Indian law, motor vehicle, alcoholic beverages, tobacco, lottery, and gaming;
- a highly motivated and experienced attorney with a passion for service and desire to make a difference;
- a dedicated individual who will represent the Department of Revenue with strong leadership skills and legal advice on a wide range of highly visible and sensitive issues.

What you will do

The duties of the Attorney include:

- representing the department before state and federal court;
- preparing briefs and participating in oral arguments;
- providing legal services to all divisions with the department;
- drafting administrative rules and assisting with the promulgation process;
- providing legal advice to the Secretary, Deputy Secretary, and Division Directors of the department;
- drafting and reviewing contracts and Requests for Proposals;
- collaborating with other State agencies and departments.

What you need:

- graduate of an accredited law school;
- licensed to practice law in South Dakota or ability to become licensed shortly after employment.

The ideal candidate will have:

- experience in state and federal court;
- knowledge of litigation practice and strategies;
- prior experience or interest in tax law and/or Indian law;
- excellent written and verbal communication skills;
- ability to analyze complex technical issues, facts, evidence, and precedents to arrive at a logical interpretation;
- ability to develop and maintain strong relationships with diverse groups.

Equally as important will be a strong work ethic and interpersonal skills, discretion, confidentiality, and a positive attitude!

If you enjoy a fast pace, working with a fun group, and are comfortable both implementing and accepting changes, you're going to enjoy this position!

Additional Requirements: To be considered, please include a cover letter, resume, law school transcripts, and a writing sample.

This position is exempt from the Civil Service Act. 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 eleven 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:

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

South Dakota Bureau of Human Resources

Telephone: 605.773.3148 Email: careers@state.sd.us

<http://bhr.sd.gov/workforus>

"An Equal Opportunity Employer"

Attorney - 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 family law and business law/commercial matters. This position 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. Compensation 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 or sherry@goodselloviatt.com

Attorney - Sioux Falls

Lockwood & Zahrbock Kool Law Office is seeking an attorney who shares its client-centered focus to join our family and criminal law practice. Interested candidates please send your resume to tressa@lockwoodlaw.com or rhonda@lockwoodlaw.com

Paralegal- Sioux Falls

Lockwood & Zahrbock Kool Law Office is seeking a paralegal to join our family and criminal law practice. Interested candidates please send your resume to tressa@lockwoodlaw.com or rhonda@lockwoodlaw.com

Senior Trust/Wealth Management Officer- Sioux Falls

JOB SUMMARY

Handles the independent administration of accounts naming First National Wealth Management in Sioux Falls in a fiduciary capacity. Maintains close communication with clients, beneficiaries, and professionals to accomplish goals and objectives of account relationships. Acts as the Relationship Manager coordinating with all areas of the Bank to meet the client's needs. Participates in strategic planning initiatives and collaborates in the creation and update of Wealth Management procedures.

ACCOUNTABILITIES

- Personal Trust Account Administration
- Facilitate proper execution of responsibilities with legal, tax, accounting, investment, and administrative functions
- Provide superior client service
- Assume responsibility for the administration of certain complex accounts in the department, which require the highest degree of proficiency and expertise
- Develop into a specialist in a specific area of administration (special needs, dynasty, insurance trust, trust accounting, etc.)
- Wealth Management Team Strategy
- Assist in implementing new work procedures and systems to accomplish planning and department development objectives and to ensure compliance with federal regulations
- Mentor and train personal trust teammates
- Serve on interdepartmental committees
- Participate in implementation of strategic plan
- Business Development
- Develop and maintain positive relationships with referral sources and pursue and respond to business development opportunities
- Initiate and maintain client, networking, and professional contacts and community involvement
- Participate in First National Bank's sales culture
- Continuing Education
- Attend educational opportunities to maintain certifications
- Participate in industry related boards, training, and networking
- Proactively pursue activities that drive increased knowledge and service improvements

REQUIREMENTS

Education: Bachelor's Degree required. MBA, JD, MPA, CFP, CTFA or CFIRS certification required within five years of employment.

Previous Experience: Five years of Trust or Banking/ Financial Services experience.

SKILLS

1. Ability to work independently with little supervision. Self-motivated.
2. Effective and professional verbal and written

communication skills.

3. Demonstrates a high degree of concern for professional and innovative client service.

4. Detail oriented individual able to complete tasks with a high degree of accuracy required.

Senior Associate Attorney - Sioux Falls

The law firm of Ogborn Mihm Quaintance, PLLC (www.OMQLegal.com) is seeking a general practice lawyer with five years or more of business and transactional law experience to assume an immediate role in an active practice. Candidates should have strong organizational, writing and communication skills.

Salary and Benefits: Competitive, depending upon experience.

To Apply: An Interested applicant should send a cover letter and a resume with references to: Mike Ogborn, Mike.Ogborn@omqlegal.com. All applications will be kept confidential.

Contractors in the Southeast Judicial District

The North Dakota Commission on Legal Counsel for Indigents is currently looking for contractors in the Southeast Judicial District, primarily Foster and Wells Counties. If you are interested please fill out the Application for Conflict Counsel Appointment ([applicationConflictCounsel.pdf](#) (nd.gov)) and email it to clcivc@nd.gov. If you have any questions regarding these contracts, please contact Executive Director Travis Finck or Deputy Director Todd Ewell at 701-845-8632.



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UPCOMING EVENTS

August 17 | Bar Commission Meeting | Teleconference

August 26 | Law for Lunch - The Impeachment Process: An Academic and Functional Review

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

September 9, 8-noon | Estate Planning CLE | The Country Club of Sioux Falls

September 9, 1-4pm | Advanced Transactional Negotiations CLE | Missouri River Energy Services, Sioux Falls

September 21 | Bar Commission Meeting | Teleconference

September 22-23 | Disciplinary Board Meeting | TBA

October 21 | Bar Commission Meeting | Pierre

October 21 | Nuts and Bolts CLE | Pierre

October 21 | Statewide Swearing-In Ceremony | Capitol Rotunda, Pierre

November 16 | Bar Commission Meeting | Teleconference

November 17 | Law for Lunch - Consumer Protection

December 15 | Law for Lunch - Cybersecurity

December 21 | Bar Commission Meeting | Teleconference

January 5, 2023 | Bar Commission Meeting | Pierre

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 17, 2023 | Bar Commission Meeting | Teleconference

May 18, 2023 | Law for Lunch - 2023 Legislative Updates

June 23, 2023 | Bar Commission Meeting | Ramkota, Sioux Falls