

# State Bar of South Dakota

OCTOBER 2023  
Newsletter





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— Jay R. Gellhaus, Gellhaus & Gellhaus, P.C., Aberdeen, SD

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Reminder that inactive members who do not pay active dues for more than five calendar years lose the right to practice law in South Dakota, absent taking the Bar Examination, unless you meet one of the exceptions set forth in Article IV – 4.3 of the State Bar By-Laws.

**Example 1:** inactive members who have not paid active dues during the years 2020-2023 should pay active dues for the 2024 calendar year (due December 31, 2023). Your invoice for 2024 will reflect the active dues amount.

**Example 2:** inactive members who have not paid active dues during the years 2019-2023 have until December 31, 2023 to change from inactive to active status for the calendar year 2023.

If you are uncertain when you last paid active bar dues, call the State Bar office at 605-224-7554 Option 1 or email [tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net).

# State Bar of South Dakota

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## PRESIDENT'S CORNER



Heather Lammers Bogard

Fall has arrived!

Shortly after Labor Day, Julie Dvorak, Paul Cremer, and I attended the Watertown Area Barristers' Social. Special guests included Chief Justice Steven Jensen and Dean Neil Fulton. Lee and Donna Schoenbeck opened their beautiful home for a large gathering. Once again, I was delighted with the comradery among the lawyers and judges in attendance.

On September 29, just prior to the publication of this newsletter, I will have the opportunity to welcome lawyers at the statewide swearing-in ceremony in Pierre. I will be promoting civility in our profession and reminding our new lawyers that the very Oath they are taking requires them to swear to "abstain from all offensive personality."

October is Breast Cancer Awareness Month, an observance that is especially personal to me. We will see many pink ribbons throughout the month, reminding us of the millions of lives affected by breast cancer. This is also an opportunity for us, as legal professionals, to make a meaningful impact in our communities. Breast cancer takes a significant toll on individuals, their families, and the wider community. As legal professionals, we have the power to provide support and guidance to those navigating the legal aspects of their breast cancer journey. This may include assisting with medical insurance claims, employment rights, disability accommodations, estate planning, and more. By acknowledging Breast Cancer Awareness Month, we pledge our commitment to stand by those affected, providing them with the necessary resources and legal assistance during this challenging time.

Statistics include:

- According to the National Breast Cancer Foundation, Inc., more than 700 women in the U.S. are diagnosed with breast cancer every day.
- Approximately 1 in 8 women in the U.S. will get breast cancer during their lifetime. [fda.gov](https://www.fda.gov)
- Each year, more than 40,000 women die from breast cancer. [fda.gov](https://www.fda.gov)
- Almost 298,000 women in the U.S. will be diagnosed with breast cancer, and more than 43,000 will die of the disease in 2023. National Cancer Institute
- In South Dakota in 2020, 613 female breast cancer cases were reported. Centers for Disease Control and Prevention
- Black women are more likely to die from breast cancer than women of any other racial or ethnic group. [breastcancer.org](https://www.breastcancer.org)
- About 85% of breast cancers occur in women who have no family history of breast cancer. [breastcancer.org](https://www.breastcancer.org)
- Breast cancer affects men too. [breastcancer.org](https://www.breastcancer.org)
- An estimated 2800 men are expected to be diagnosed with breast cancer and 530 will die of the disease in 2023. National Cancer Institute

Breast Cancer Awareness Month is a time to embrace empathy and compassion and to make a difference in the lives of those affected. We have the ability to educate, support, fundraise, and promote wellness within our profession. Let's work towards a future in which breast cancer is no longer a threat. Please get mammograms and seek advice from your medical providers!





**OCTOBER**

*Breast*

**CANCER**

Awareness

Month \_\_\_\_\_



STATE BAR OF SOUTH DAKOTA  
*Younge Lawyers Section*

*Kelsey Blair*  
YLS President



Happy October! As I'm writing this, it is still September and we are just days away from the Nuts & Bolts CLE and the Statewide Swearing-In Ceremony. I wish I could share highlights from those events with you in this newsletter, but alas... deadlines. What I can share is that we are expecting 13 new members of the bar to be sworn in, surrounded by their family, friends, and colleagues. This is my fifth year on the Young Lawyers Section Board, my fifth year being a part of the Statewide Swearing-In Ceremony. I still get goosebumps hearing new admittees take the Oath of Attorney – it's a powerful experience. I keep the Oath of Attorney printed in my office. On the hard days it reminds me how proud and honored I am to be a part of this profession.

As you're reading this, our newest bar members have already been sworn in. These attorneys are about to embark on a journey filled with countless opportunities to make positive contributions to their communities, and to impact the citizens of the State of South Dakota. I encourage you to reach out to the new attorneys in your area and welcome them. Be a resource as they navigate their first years as an attorney. None of us have made it to where we are today without a hand-up from those mentors that came before.

One of the mentors I would like to feature is Professor Hannah Haksgaard. Our 1st Circuit Representative, Derrick Johnson, presented Professor Haksgaard with the Silver Mentor Coin at the Rural Attorney Symposium this past month. The Silver Mentor Coin is presented by the Young Lawyers Section to veteran lawyers and others to recognize outstanding leadership and exceptional mentorship in the legal profession in South Dakota.

The Mentor Coin represents integrity, dedication to the core values of the law, excellence in the profession, and service to our profession and community before self. Professor Haksgaard teaches Property, Family Law, Modern Real Estate Transactions, and Reproduction & the Law, at the University of South Dakota Knudson School of Law. Professor Haksgaard writes about, and proposes solutions for, the rural lawyer shortage – specifically addressing Project Rural Practice here



*Derrick Johnson, presenting Professor Haksgaard with the Silver Mentor Coin*

in South Dakota and how rural practice serves the public good. We are grateful for the mentorship, leadership, and advocacy that Professor Haksgaard provides to the Young Lawyers of South Dakota.

On the horizon for the Young Lawyers Section, I want to highlight the 2nd Circuit Young Lawyers Section Mixer. YLS and the 2nd Circuit Bar Association are partnering with a local non-profit, Friends of the Big Sioux River, to host a park cleanup on November 2nd from 4:00-6:00 p.m. YLS will be providing food and non-alcoholic beverages. Please RSVP to Brooke Schmidt, [bschmidt@dehs.com](mailto:bschmidt@dehs.com), to register for this event. As always, these events are open to all members of the bar, not just young lawyers.



# OATH OF ATTORNEY



**I DO SOLEMNLY SWEAR, OR AFFIRM, THAT:**

**I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE  
CONSTITUTION OF THE STATE OF SOUTH DAKOTA;**

**I WILL MAINTAIN THE RESPECT DUE TO COURTS OF JUSTICE AND  
JUDICIAL OFFICERS;**

**I WILL NOT COUNSEL OR MAINTAIN ANY SUIT OR PROCEEDING WHICH  
SHALL APPEAR TO ME TO BE UNJUST, NOR ANY DEFENSE EXCEPT  
SUCH AS I BELIEVE TO BE HONESTLY DEBATABLE UNDER THE LAW OF  
THE LAND;**

**I WILL EMPLOY FOR THE PURPOSE OF MAINTAINING THE CAUSES  
CONFIDED TO ME SUCH MEANS ONLY AS ARE CONSISTENT WITH  
TRUTH AND HONOR, AND WILL NEVER SEEK TO MISLEAD THE JUDGE  
OR JURY BY ANY ARTIFICE OR FALSE STATEMENT OF FACT OR LAW;**

**I WILL MAINTAIN THE CONFIDENCE AND PRESERVE INVIOLEATE THE  
SECRETS OF MY CLIENT, AND WILL ACCEPT NO COMPENSATION IN  
CONNECTION WITH A CLIENT'S BUSINESS EXCEPT FROM THAT CLIENT  
OR WITH THE CLIENT'S KNOWLEDGE OR APPROVAL;**

**I WILL ABSTAIN FROM ALL OFFENSIVE PERSONALITY, AND ADVANCE  
NO FACT PREJUDICIAL TO THE HONOR OR REPUTATION OF A PARTY  
OR WITNESS, UNLESS REQUIRED BY THE JUSTICE OF THE CAUSE WITH  
WHICH I AM CHARGED;**

**I WILL NEVER REJECT, FROM ANY CONSIDERATION PERSONAL TO  
MYSELF, THE CAUSE OF THE DEFENSELESS OR OPPRESSED, OR DELAY  
ANY PERSON'S CAUSE FOR LUCRE OR MALICE.**

# Fellows of the South Dakota Bar Foundation

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

Fred & Luella Cozad

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

Frank L. Farrar

Gregory A. Yates

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

Thomas C. Barnett, Jr.

Robert E. Hayes

Scott N. Heidepriem

David L. Knudson

Kimberley A. Mortenson

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

Hon. Richard H. Battey

Melissa Nicholson Breit

Chet Groseclose

Hon. John B. Jones

Jerome B. Lammers

Scott C. Moses

Charles L. Riter

William Spiry

Hon. Jack R. Von Wald

## *Gold Fellows - \$5,000*

Renee H. Christensen

Richard A. Cutler

William F. Day, Jr.

P. Daniel Donohue

Dana J. Frohling

David J. King

Richard L. Kolker

Robert A. Martin

Timothy J. Rensch

## *Silver Fellows - \$1,000 (per year)*

Jeremiah J. Davis

Hon. Bobbi J. Rank

Timothy J. Rensch

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

John P. Blackburn

Richard D. Casey

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David A. Gerdes

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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

Pamela R. Reiter

Robert C. Riter, Jr.

Eric C. Schulte

Jeffrey T. Sveen

Charles M. Thompson

Richard L. Travis

Thomas J. Welk

Terry G. Westergaard

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

Hon. John Bastian

Hon. John L. Brown

Mary Jane Cleary

Paul L. Cremer

Andrew L. Fergel

Tom E. Geu

Craig A. Kennedy

Denise Langley

Hon. Judith K. Meierhenry

Laura Clark Rowe

Robert C. Riter, Jr.

Thomas Eugene Simmons

Jason R.F. Sutton

Sarah L. Thorne

Rodrick L. Tobin

Barry R. Vickrey

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



# YOU ARE INVITED TO JOIN!

## Fellows of the South Dakota Bar Foundation

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

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

Address \_\_\_\_\_

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

*I would like to contribute:*

☐ in Lump Sum   ☐ Annually   ☐ Semi-Annually   ☐ Quarterly   ☐ Monthly

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

### In Memoriam

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

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

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

Or you can email this form to:

[tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net) or call 605-224-7554 to set up a payment.

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

*Raising the Bar*  
Our Profession. Our Responsibility.



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KNUDSON SCHOOL OF LAW



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



**Neil Fulton**  
Dean, School of Law

It is entirely predictable that my October column will be about bar exam results. The results themselves are not predictable, of course. Every year, between sixty and ninety recent graduates wait anxiously for the results. Results arrive from different jurisdictions at different times. There are typically USD graduates taking the exam in three to ten jurisdictions other than South Dakota that were their home before law school or where they are planning to make their new home. Results also do not arrive only in the fall; they come in the early spring for those folks who take the examination in February. The largest number arrive in the fall, however.

The results of the July bar exam released so far show good news for graduates of the Law School. Our Ultimate Bar Passage rate (the percentage of graduates who have taken and passed a bar exam within two years of graduation) has reached 83% for the Class of 2021 and 88% for the Class of 2022. Those numbers remain important because the ABA uses them for accreditation and because they reflect the ongoing success of repeat takers.

In South Dakota, the first-time pass rate for the Class of 2023 was 73%. As I write this column, we are waiting for results from almost twenty graduates who took the bar in other jurisdictions. Our full first-time pass rate will not be final until those arrive. The South Dakota first-time pass rate is very close to Nebraska's, for a neighborhood comparison among the few jurisdictions that have also reported so far. As repeat takers continue to have success, this number will continue to climb. I also expect it to compare favorably with the national

average, as it consistently has in the past several years. While individual applicants wait for word about their future, the Law School likewise waits anxiously for aggregate results. We also are required to collect and report the aggregate results for graduates to the ABA for accreditation purposes. Similarly, the bar examiners in each jurisdiction report their aggregate results to the National Conference of Bar Examiners. That data is all verified and made publicly available.

Numbers don't lie, but they can be misrepresented or misunderstood. Accurate information about USD's bar pass rates is available in our ABA 509 reports, which can be found here: <https://www.abarequireddisclosures.org/barpassageoutcomes.aspx>. Accurate information about the pass rates in South Dakota and other jurisdictions can be found on NCBE's website: <https://www.ncbex.org/statistics-research>. Discussion about bar admission policy can produce different opinions, but it must be based on shared facts. Verified sources of information about bar examination results are therefore important. All of us engaged in the important discussion of how the practice of law is regulated should be familiar with and use them. Confusing the honest discussion of bar exam results and valid debate about what bar admissions policy should be with manipulated or misleading data is simply not helpful.

It is also important to have accurate terminology when discussing bar exam results. Similar data is reported and described differently by different groups and in different settings. It is important to be clear which "bar passage" number is being discussed. In ABA reporting, a "first-



time” taker is an applicant taking the bar exam for the first time in any jurisdiction. South Dakota’s Board of Bar Examiners report “first-time” takers as those taking the exam in South Dakota for the first time, even if they have taken and passed the exam elsewhere. This typically does not produce a huge difference in numbers, but it does consistently produce some variation which can be confusing without clarity on which number is being discussed and how it is calculated. That is why I try to talk consistently about Ultimate Bar Pass rate, the number of people who have taken and passed a bar exam within two years of graduation.

Bar admission policy remains an important issue that all judges and lawyers should consider. The Bar Licensure Assessment Steering Committee will report its recommendations to the South Dakota Supreme Court this fall. It remains important that our discussions around bar admission remain thoughtful, open-minded, and well informed. I hope this column is helpful in that effort. I am also happy to answer questions about the Law School’s bar passage numbers or the larger issue of bar admissions for anyone. Please just get in touch.

# DAKOTA DAYS RECEPTION

In celebration of the Unleash Your Legacy  
Award Recipients:

## Public Service:

**Matt Michels, '80, '82, '85**

## Legacy Family of the Year:

**The Cash Family**

**Robert Anderson '77; Sheridan Cash Anderson '75, '78;  
Cash Anderson '18, '21**

**Friday, October 6th**

**3:00 PM - 5:00 PM**

**Student Commons of the Law School**

Light refreshments and hors d'oeuvres  
will be served. Guests are welcome.



# SAVE THE DATE

## FALL OCI DATES:

**Nov 2-3      Round III**

Housing has become a major barrier to students accepting positions outside of the Southeast South Dakota area. If you are willing to host an intern or recent graduate, please fill out this [form](#).

Email [Teramie.Hill@usd.edu](mailto:Teramie.Hill@usd.edu) for questions concerning OCIs or hosting interns.



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## JUSTICE SQUAD

THANK YOU TO THE FOLLOWING ATTORNEYS THAT ACCEPTED A PRO BONO OR REDUCED RATE CASE IN JUNE OR JULY FROM ACCESS TO JUSTICE, INC.! YOU ARE NOW A MEMBER OF THE A2J JUSTICE SQUAD - AN ELITE GROUP OF SOUTH DAKOTA LAWYERS WHO ACCEPT THE RESPONSIBILITY TO DEFEND JUSTICE, UPHOLD THEIR OATH AND PROVIDE LEGAL REPRESENTATION TO THOSE WHO NEED IT.

BRENDA ASK  
TOM FRIEBERG  
JOHN KNIGHT  
BETH ROESLER  
MELISSA SOMMERS

### ATTENTION SOUTH DAKOTA ATTORNEYS: How to sign up as an attorney volunteer through the [sd.freelegalanswers.org](http://sd.freelegalanswers.org) website



1. Click on the ATTORNEY REGISTRATION tab.
2. Answer the questions to register and create your account.
3. Once the SDFLA administrator has approved your registration, you may log on to the website and choose the questions you would like to answer.

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### Special Thanks to:

ADAM ALTMAN  
STEVE HUFF  
DENISE LANGLEY  
MARWIN SMITH  
KYLE KRAUSE  
JAMES TAYLOR  
LINDA LEA VIKEN

ARE YOU INTERESTED IN BECOMING A LEGAL SUPERHERO  
AND MEMBER OF THE A2J JUSTICE SQUAD?

PLEASE SEND A MESSAGE TO [ACCESS.TO.JUSTICE@SDBAR.NET](mailto:ACCESS.TO.JUSTICE@SDBAR.NET)



# NOVEMBER LAW FOR LUNCH

with Pamela Reiter &  
Jason Sutton

## THE CONSEQUENCES OF FIDUCIARY BREACHES OF DUTY

November 14, 2023  
12:30 - 1:30 PM CST  
Zoom

In this session, we will delve into the world of fiduciary litigation with South Dakota attorneys Pamela Reiter and Jason Sutton. Together, they will explore situations involving both intentional and unintentional breaches of fiduciary duty by a fiduciary. Fiduciary litigation involves complex legal disputes related to the duties and responsibilities of fiduciaries, such as trustees, executors, guardians, attorneys-in-fact, and financial advisors, in managing assets and affairs on behalf of others. Understanding the nuances of these cases is crucial for legal professionals seeking to provide effective representation and advice in this area of law. Pamela Reiter and Jason Sutton will bring their wealth of knowledge and practical insights to the virtual table. They will guide participants through recent cases decided by the South Dakota Supreme Court and discuss other cases that shed light on this developing area of the law. By examining real-world examples, attendees will gain an understanding of the evolving legal landscape and emerging trends in fiduciary litigation. This Law For Lunch CLE event promises to be an invaluable resource for attorneys, legal professionals, and anyone interested in fiduciary litigation. Whether you are seeking to enhance your expertise in this area or simply stay up-to-date with the latest developments, this session will provide the knowledge and insights you need. Register now to secure your spot and join us on November 14, 2023!



**REGISTER HERE**

### UPCOMING LIVE WEBINARS

*Free to all Bar Members!*

**SANDCREEK EAP**  
An AllOne Health Company

Discover a whole new approach to well-being.



#### Empowering Your Influence

October 11, 2023  
1:30 pm EDT - 2:30 pm EDT  
[Register for this Webinar](#)



#### Mindfulness On the Go

October 24, 2023  
12:00 pm EDT - 12:45 pm EDT  
[Register for this Webinar](#)



#### Competent Leadership

November 8, 2023  
1:30 pm EST - 2:30 pm EST  
[Register for this Webinar](#)

# ANNOUNCEMENTS

Fuller, Williamson, Nelsen & Preheim, LLP  
is pleased to announce that

*David N. Levine*  
has joined the firm.

Fuller, Williamson, Nelsen & Preheim, LLP  
7521 South Louise Avenue  
Sioux Falls, SD 57108

Telephone: (605) 333-0003  
Facsimile: (605) 333-0007

[dlevine@fullerandwilliamson.com](mailto:dlevine@fullerandwilliamson.com)

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

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

*John A. Haraldson*  
as an associate attorney in Rapid City.

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.  
2333 West Boulevard  
Suite 400

P.O. Box 2670  
Rapid City, SD 57709-2670

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

[jharaldson@bangsmccullen.com](mailto:jharaldson@bangsmccullen.com)

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

Lockwood & Zahrbock Kool Law Office, P.C.  
is pleased to announce that

*MarieClaire Christenson*  
has joined the firm as an attorney.

Lockwood & Zahrbock Kool Law Office, P.C.  
121 S. Franklin Avenue, Ste. 1  
Sioux Falls, SD 57103

Telephone: (605) 331-3643

[marieclaire@lockwoodlaw.com](mailto:marieclaire@lockwoodlaw.com)

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

*Jacob Stewart*  
has joined the firm as an associate attorney.

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

Telephone: (605) 342-1078

[jstewart@gpna.com](mailto:jstewart@gpna.com)



**United States District Court**  
**District of South Dakota**  
Office of the Clerk

Central/Northern Division  
P.O. Box 7147  
Pierre, SD 57501

Southern Division  
400 South Phillips,  
Room 128  
Sioux Falls, SD 57104

Western Division  
515 Ninth Street,  
Room 302  
Rapid City, SD 57701

Matthew W. Thelen  
Clerk of Court

Telephone  
(605) 330-6600

**NEWS RELEASE**

Rapid City, South Dakota—The United States District Court for the District of South Dakota announces the portrait unveiling for retired U.S. District Judge Jeffrey L. Viken will be held on Friday, October 20, 2023, at 4:00 p.m. in Courtroom 1 of the Rapid City Federal Building, 515 Ninth Street, Rapid City, South Dakota. The ceremony is open to the general public.



**RPPT Section Roundtable - The Plains  
Commerce Bank v. Beck Decision**

October 4, 2023 10:00 AM - 12:00 PM (CDT) Zoom

Join members of the Real Property, Probate, and Trust Section as they meet with attorneys involved in the Plains Commerce Bank v. Beck case and learn from one another how practitioners are working with their clients following the decision.

Attorneys will discuss:

- A summary of the case and its holding.
- How banks/lenders are reacting.
- How estate planners are reacting.
- How other states have addressed this issue.
- Ideas for best practices moving forward.
- Ideas for effectuating change (legislative, drafting, etc.).



Discussion participants include Reed Rasmussen, Brett Koenecke, Jordan Feist, and Amy Arndt.



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# Learn Jury Selection From a Master!

**with S. Rafe Forman**

Rafe is married for 34 years with two daughters that he adores. He is a partner in Hutchison & Foreman PLLC and has over thirty-four years' experience practicing law: criminal defense, trial specialist, plaintiff's personal injury, malpractice, civil rights, employment, discrimination, wrongful death, excessive force. Thirty-one years teaching and educating experience. Law School Professor teaching Evidence, Voir Dire, Trial Advocacy, Trial Teams and Mastery of Advocacy. He holds an undergraduate degree from Texas A&M University and a law degree from Texas Tech University School of Law. Rafe is passionate about rectifying discrimination and has a few jury trials left in him yet. Parkinson's may be his condition but it's not his story.



**October 13-14**



**USD Knudson School of Law**



**CLE credits available**

A reception at the USD Coyotes home football game at the Dakota Dome will follow Saturday's event.

Kickoff is at 1 PM.

Registration information to follow.

Contact [law@usd.edu](mailto:law@usd.edu) with questions.





## PLEASE NOTE:

The State Bar is providing expanded wellness member benefits through our EAP provider, Sand Creek.

These benefits are available to ALL State Bar members and their household family members, and to USD Law students and their household family members.

Please take advantage of these expanded wellness benefits.

# CORPORATE TRANSPARENCY ACT

*and more...*

October 20, 2023

8:30AM – 11:30AM

Minnehaha Country Club  
Sioux Falls, SD

REGISTER HERE

# SANE COURTROOM TESTIMONY: Instruction for SANEs, Prosecutors, and Advocates

## Details: Class meets virtually and in-person

Virtual: Fridays, October: 13, 20, and 27  
9:00am - 1:00pm CST

In-Person Mock-Courtroom Options:

Friday, November 3 | 9:00am to 4:00pm  
in Pennington County

Friday, November 17 | 9:00am to 4:00pm  
in Minnehaha County



## Cost: Free

Travel reimbursement and hotel  
may be available to SD MDT professionals.

## Register:

<https://sdcpcm.com/event/sane-courtroom-training/>

### SESSION ONE

Overview of Criminal Justice System,  
SD Sexual Assault Laws, Forensic  
Exams & Post Assault Care

### SESSION TWO

Curriculum Vitae, Expert Witness  
Testimony, Preparing for Trial,  
Qualifying the Expert, Testimonial  
Foundations

### SESSION THREE

Direct Examination, Cross  
Examination, Advanced Concepts in  
Witness Testimony

### IN-PERSON SESSION

Mock-Trial, In-Person Courtroom  
Simulation

### TRAINERS

Lara R. Roetzel  
State's Attorney, Pennington County

Jennifer Canton  
SANE Supervisor, Avera Health

Michael R. Moore  
State's Attorney, Beadle County

Crystal Johnson  
Deputy State's Attorney, Minnehaha  
County

Tracey Decker  
Attorney Consultant, SD Network  
Against Family Violence and Sexual  
Assault

**Training Sponsors:** Center for the Prevention of Child Maltreatment and  
SD Network Against Family Violence and Sexual Assault.

"This project was supported by Grant No. 15JOVW-21-GG-00844-RURA awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/ exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice." The recipient also agrees to ensure that any subrecipient at any tier will comply with this condition.



# Court



# Improvement Program

# Training



## TRAUMA-INFORMED COURT SYSTEM

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

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

## LEARNING MORE CAN KEEP KIDS SAFE

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

## UPCOMING TRAININGS

- [Wed Oct 25: Understanding Psychosexual Assessments of Juvenile Offenders](#)
- [Thur Nov 30: Understanding Psychosexual Assessments of Adult Offenders](#)
- [Wed Dec 27: Child & Family Services Review & Data-Driven Processes](#)
- [Wed Jan 31: Family First Prevention Act Update](#)

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

## **Governor Coe I. Crawford**

### **6th Governor of South Dakota (1907-1909)**

The life size bronze statue of Governor Coe I. Crawford, certainly one of the most prominent lawyers to serve as South Dakota's chief executive, arrived at its permanent location on the Trail of Governors near the offices of the State Bar following its unveiling on June 11, 2021. On June 17, 2022, the initial phase of the Trail was completed when the last three statues of former governors were added at that time. These included Beresford attorney W.J. Bulow, 12th governor of South Dakota (1927-1931). As of then, 15 lawyers had served as governor of South Dakota.

Following his graduation from Iowa Law School in 1882, Coe Crawford moved to Pierre and began representing the Chicago and Northwestern Railroad.



In 1885 he built a home at 129 South Washington, one block from the site that would become the location of the South Dakota Governor's Mansion. The Crawford house has been restored and maintained and is listed on the National Register of Historic Places as the Crawford-Pettyjohn House.

Before statehood Crawford served as the Hughes County state's attorney and as a member of the Territorial Legislative Council. After South Dakota became a state, he was elected attorney general and later opened a law practice in Huron where he represented the Chicago & Northwestern Railroad. After being elected governor in 1906, Crawford went on to become one of South Dakota's US senators, returning to Huron to practice law with his son until his death in 1944.

An amateur pugilist or boxer, Crawford's statue by noted South Dakota sculptors, Lee Leung and Sherri Treeby, depicts him in a boxing posture.





## **The Trail of Governors Foundation & The State Bar of South Dakota**

gratefully acknowledge the following members, firms and friends of the State Bar who generously contributed personally and in memory of former and deceased members of the State Bar to the Statue of former governor Coe I. Crawford:

One Quarter of the cost by attorney Jason Glodt, his wife Michelle Glodt and the Glodt family of Pierre; One quarter of the cost by attorneys Curt and Kim Mortenson of Fort Pierre, SD

Karl and Joan Adam, Pierre, in memory of Karl's father, attorney Tom Adam and his mother, Patricia Adam, a founding member of the Trail of Governors Board, daughter of attorney Governor George T. Mickelson and sister of attorney Governor George S. Mickelson; and in memory of Joan's father, attorney Jack Klauck, former Pennington County State's Attorney.

Davenport, Evans, Hurwitz & Smith, LLP, attorneys of Sioux Falls

Attorney Andrew and Shirley Fergel, Pierre

Attorney Robert & Kim Hayes, Sioux Falls

Attorneys Curt and Kim Mortenson, Ft. Pierre, in honor of the Stanley County State's Attorneys, including the late Bernie Duffy who held the position for 22 years (until losing it after an election tie in a legal game of poker to Curt's pair of 10's)

Attorney Robert C. Riter, Jr., Ft. Pierre

Attorneys Ron Schmidt, Rapid City and Chuck Schroyer, Pierre, in memory of their former partners, the late Gary F. Colwill and the late Steven L. Zinter.

Attorney Chuck & Bonny Schroyer, Pierre in honor of Hughes County States's Attorneys including including Governor Coe Crawford (1887-1888)

South Dakota State's Attorneys Association, Pierre

Attorney Bill Van Camp, Ft. Pierre

Former Supreme Court Justice, Lori Wilbur, Sioux Falls

Sandy Zinter, Ft. Pierre

**HIGHLIGHTS****OCTOBER 2023**2023-2024 Officers

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**Mentors! Mentors! Mentors!**

A common theme for our Public Servant Spotlights is the importance of mentoring. From an academic standpoint, mentoring typically falls within two buckets, formal (typically a structured program) or informal (unstructured and naturally developing). On the informal side of things, if you are looking to find a mentor or develop your support network, you may want to reach out to a public sector attorney. In my experience, they are always happy to visit and in the short time visiting, it feels like you always walk away with something that will help you in your day-to-day practice!

**Bar Convention Update**

As many of you are aware, Pierre will be hosting the 2024 Bar Convention. The CLE Committee decided that with Pierre being the seat of State Government, the Public Sector Section will have the opportunity to develop the programming for the afternoon of Thursday, June 13, 2024. Stay tuned...

**Active! Engaged! Leaders!**



## ***PUBLIC SERVANT SPOTLIGHT***

The Public Sector Section and Administrative Law Committee invite you to join us on November 14, 2023 at 2:00 p.m., CT, via Zoom:

<https://us02web.zoom.us/j/82227963269?pwd=ZTFMTVp3a3BvKzRrRTZZUndHSktWdz09>



“No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of government, except for all those other forms that have been tried.” – Sir Winston Churchill

This Spotlight will feature South Dakota Representative Tony Venhuizen who may have one of the more varied public service backgrounds of our guests so far – you don’t want to miss this one!!

# ***Tony Venhuizen***

# Employment Law



C o r n e r

*By: Kimberly A. Dorsett*

Partner

Richardson, Wyly, Wise,  
Sauck & Hieb, LLP.

## Clocking In and Rounding Up: Will This Practice Survive Houston?

For decades, the Department of Labor has recognized the burden to employers in requiring nonexempt employees to clock in and out exactly at the beginning and ending of their shifts. In most situations, employees will clock in a few minutes before their starting time, or clock out a few minutes short of their actual ending time. As a result, the Department of Labor adopted regulations that allow employers to “round off” these few extra minutes. The rule presumes over time the early times will balance out, and employees will be paid for the actual time worked.

This practice could change as a result of *Houston v. St. Luke’s Health System, Inc.* The 8th Circuit Court of Appeals ruled on August 11, 2023 that a class action lawsuit can proceed against the Kansas City Health provider, St. Luke’s Health Systems, on claims that it underpaid employees through its timekeeping practice of rounding, which arguably did not average out over time. This ruling has great significance for employers, and is just one of a few cases being pursued across the nation that challenge the long-standing practice of employers rounding off time at the beginning and end of shifts.

### Facts of the Case

An employee of St. Luke’s alleged in a putative collective action that the employer’s practice of rounding

employees’ hours violated the FLSA. According to court documents, clocked times within six minutes of a shift’s scheduled start or end were rounded to the scheduled time: “For example, an employee who clocks in at 8:56 a.m. for a 9:00 a.m. shift would not be paid for those four minutes. Likewise, an employee who clocks out early at 4:54 p.m. for a shift ending at 5:00 p.m. would still be paid for those unworked six minutes.” However, the plaintiffs allege that over the course of several years, employees actually lost more money from rounded down minutes than were gained from rounding up. One class of employees allege they were underpaid \$140,000 during a two-year period, and another class alleges \$2.2 million in lost earnings over a six-year period.

A federal district court granted summary judgment for St. Luke’s, finding the policy was lawful and neutrally applied.

### 8th Circuit of Appeals

Upon appeal, the 8th Circuit reversed the grant of summary judgment. “We conclude that the employees have raised a genuine dispute that the rounding policy, as applied, did not average out over time,” Judge Raymond W. Gruender wrote for the panel. In finding that the plaintiffs presented sufficient evidence to raise a dispute that the policy resulted in systematic undercompensation over time, Gruender wrote: “No



matter how one slices the data, most employees and the employees as a whole fared worse under the rounding policy that had they been paid according to their exact time worked.” St. Luke’s argued that any lost time was de minimus, and that finding for the employees would render the FLSA rule permitting rounding irrelevant, or make it too burdensome on the employer. The Court disagreed: “[w]ith automated, electronic timing and accounting, this is easy to verify because the system records the exact time that an employee clocks in or out,” it said. “There is no administrative hassle. This is not like the old days of punch cards and hand arithmetic.”

### What is Next?

This case will no doubt serve as the impetus for a wave of similar lawsuits against employers both large and small. There is also a strong likelihood the regulations permitting rounding will be reviewed and amended. Employers are well advised to conduct confidential audits of their payroll systems, reviewing the actual impact of rounding policies on employees and adjusting their systems if long-term issues are found. Alternatively, employers could attempt to strictly enforce rules prohibiting employees from clocking in or beginning work prior to the start of the scheduled shifts.

CHECK IT OUT

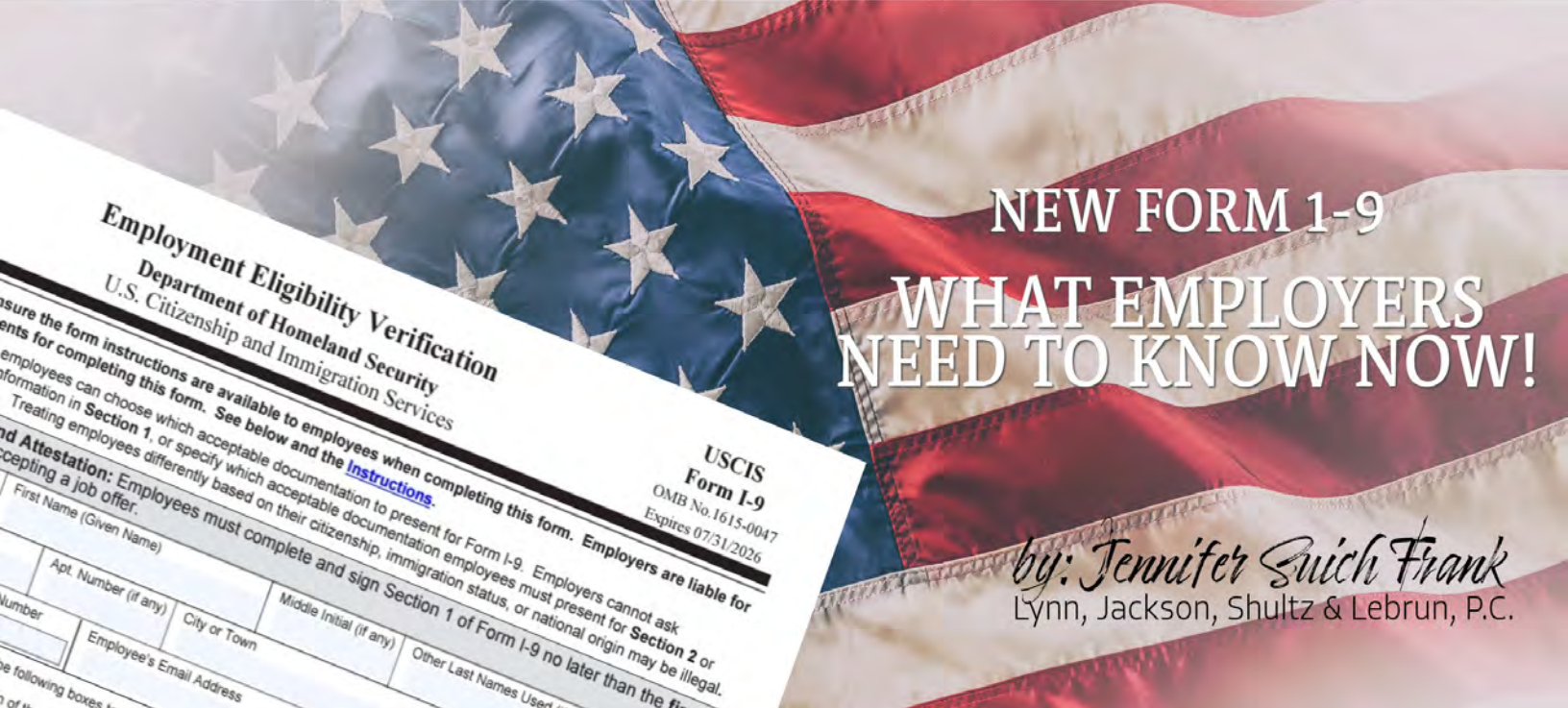
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The U.S. Citizenship and Immigration Services (USCIS), the federal agency responsible for issuing and enforcing Form I-9, announced a new version of such form (otherwise known as Employment Eligibility Verification). This form is used by employers to verify the identity and employment authorization of individuals hired for employment in the United States. Of note, all U.S. employers must properly complete Form I-9 for each individual that they hire for employment in the U.S. (including both citizens and noncitizens). Both employers and employees must complete their applicable section of the form, and employers must sign their section of the form within three (3) business days of hiring the employee.

**Important dates:** The new Form I-9 that is revised has an effective date of 8/1/23, which employers can use now. The previous version of the Form I-9 (rev. 10/21/19) can be used until October 31, 2023. After that date, the older version becomes obsolete. As of November 1, 2023, employers who fail to use the new Form I-9 are subject to all applicable penalties (civil or even potential criminal). Employers do not need to complete the new Form I-9 for current employees who already have a properly completed Form I-9 on file (unless reverification applies after October 31, 2023). Employers are cautioned that unnecessary reverification may violate the Immigration and Nationality Act's anti-discrimination provision.

The USCIS states that the purpose of the revisions to the

Form I-9 is to reduce employer and employee burden associated with the form and its completion.

#### What are the changes?

1. Shorter sections
  - Reduced sections 1 and 2 to fit on one-single-sided sheet (previously 2 pages)
  - Multiple fields were merged into fewer fields when possible
2. Supplement A – Preparer and/or Translator Certification for Section 1
  - This is now a separate page (Supplement – page 3) that employers can give to employees to fill out and return
  - Easier than before where the preparer or translator had to fill in a section and sign at the bottom of section 1
  - Employers may attach additional supplement sheets as necessary
3. Supplement B – Reverification and Rehire
  - Formerly Section 3 on old Form I-9
  - Now a separate page (Supplement – page 4)
  - Used to verify that the employee still has valid employment authorization
  - Used when employee requires reverification, is rehired within three (3) years of the date the original Form I-9 was completed, or provides proof of a legal name change.



- Multiple sections for each reverification or rehire
- Employers may attach additional supplement sheets as necessary

#### 4. Terminology changes

- Previously in section 1, “alien authorized to work” was used under box 4. Now it is changed to “noncitizen authorized to work.”
- Clarification of “noncitizen national” (individual born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad) and “noncitizen authorized to work” (an individual who has authorization to work but is not a U.S. Citizen, noncitizen national, or lawful permanent resident) has been clarified.

#### 5. Usability – Improved

- USCIS has ensured that the Form I-9 can be completed and filled out on tablets and mobile devices
- Easier for employers and employees to fill out electronically
- Ensured Form I-9 can be downloaded easily
- Also removed the requirement to enter N/A in certain fields

#### 6. Anti-Discrimination Measures

- Updated notice at the top of Form I-9 to provide clearer guidance for employers on avoiding discrimination during the verification process.

#### 7. Alternative Document Examination

- New Form I-9 contains a check box employers can use to indicate they used an alternative procedure authorized by Department of Homeland Security (DHS) to examine documents (instead of using the traditional in-person physical examination)

#### 8. List of Acceptable Documents

- A new section called Acceptable Receipts was added, to include some acceptable receipts, as well as guidance and links to information on automatic extensions of employment authorization documentation.
- For receipt validity dates, refer to Handbook for

Employers M-274 (Guidance for Completing Form I-9).

#### 9. Simplified Instructions

- Length of instructions reduced from 15 page to 8 pages
- Definition of key actors in the I-9 process were added
- Streamlined steps each actor takes to complete their section of the form
- Instructions added for use of new checkbox for employers who chose to examine Form I-9 under an alternative procedure authorized by DHS
- Removed abbreviations chart and relocated them to Handbook for Employers M-274 (Guidance for Completing Form I-9).

Employers are reminded that they are to retain Form I-9 for a designated period (3 years after date of hire or 1 year after the date employment ends, whichever is later). In addition, employers must make Form I-9 available for inspection by authorized government officers.

For further resources on Form I-9, such as the changes discussed above, instructions, sample documents, the Handbook for Employers M-274, or relevant news, please visit USCIS’s I-9 Central webpage at <https://www.uscis.gov/i-9-central>.



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# PLEASE JOIN US

**Rededication of the Courtroom and  
Dedication of Tribal Flags**

**Monday, October 16 | 2 P.M.  
Courtroom | Knudson School of Law**

Please join us to celebrate installation of the flags of all tribal, state, and federal courts that operate within the State of South Dakota. A reception will follow with hors d'oeuvres, refreshments, and live music in the student commons of the law school. All are welcome!

If you are a person with a disability and need a special accommodation to fully participate, please contact Disability Services at least 48 hours before an event. Students and the public can contact Disability Services at 605-658-3745 or [disabilityservices@usd.edu](mailto:disabilityservices@usd.edu). Faculty and staff should contact Human Resources at 605-658-3660.

## THE SOUTH DAKOTA DEFENSE LAWYERS ASSOCIATION & STATE BAR OF SOUTH DAKOTA PUBLIC SECTOR SECTION

INVITE YOU TO:

### *A Reception for the Court*

October 4, 2023

5:00PM-7:00PM

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State Bar of South Dakota

Question Presented: When a lawyer is providing services under a pro bono program sponsored by a nonprofit organization or court on a short term basis, without expectation that there will be future representation, such as for a legal help line or free legal clinic, what obligations does the lawyer have to check for conflicts of interest, and are there any particular record keeping requirements or recommendations.

Short Answer: The lawyer is not required to check for conflicts, but the lawyer must decline to provide advice if the lawyer has actual knowledge that the lawyer or the lawyer's firm's representation of another client, either concurrently or in the past, gives rise to a conflict of interest.

Rules Implicated: 6.5

### **FACTS**

Lawyer is one of several lawyers participating in a free program whereby low-income South Dakota residents can submit legal questions to be answered by a South Dakota lawyer. Lawyer wants to know what obligations Lawyer and other participants in the program have to check for conflicts of interest arising from their representation or their firms' representation of other clients, and whether the Committee has any advice or suggestions regarding best practices.

### **ANALYSIS**

Rule 6.5(a)(1) provides that a lawyer who is participating in a nonprofit program providing short-term legal services without expectation of further representation, such as the circumstances Lawyer has described, is subject to Rules 1.7 and 1.9(a) regarding concurrent conflicts and duties to former clients only if the Lawyer knows that providing the advice through the program involves such a conflict, including imputed conflicts under Rule 1.10. Rule 1.0(f) defines "knows" and "knowledge" to mean actual knowledge. Consequently, the Lawyer does not need to decline to answer a question through the program unless the Lawyer has actual knowledge that the Lawyer or Lawyer's firm has or has had previous representation that gives rise to a conflict, and does not need to check for conflicts.

The Ethics Committee is not permitted to provide the opinion requested about "best practices" in open ended fashion, but could, potentially, opine whether a specific practice would be permitted or desired under the Rules.



**Question Presented:** If a lawyer has set aside settlement funds to pay sales taxes as they are incurred through collection of a structured fee settlement, may the lawyer treat the funds as the lawyer's own and invest or otherwise utilize them pending the need to pay the sales taxes?

**Short Answer:** Yes. In fact, the lawyer must keep these funds segregated from client funds.

**Rules Implicated:** 1.15

### **FACTS**

Lawyer represented Client in a personal injury matter, which is now concluded. The representation resulted in a recovery for the Client. Lawyer and Client entered into a typical contingent-fee written agreement, whereby the Lawyer would be paid a percentage of the recovery (after deducting costs/expenses other than fees). Instead of taking the fee as a lump sum payment, Lawyer and the defendant's insurer entered into an agreement whereby the insurer would purchase an annuity for the benefit of Lawyer, under which Lawyer would receive the fee over a period of ten years in annual installments, set to commence in the future. Because an attorney's fees are subject to South Dakota sales tax, Lawyer received as a lump sum the funds needed to pay the sales taxes on the fees before having the rest put into the annuity. Lawyer has learned from conversations with the South Dakota Department of Revenue that the sales taxes on the fees Lawyer is to be paid over time are not due until the Lawyer receives each annuity payment.

Lawyer wants to know whether Lawyer may, in the meantime, invest the funds set aside for sales taxes.

### **ANALYSIS**

Lawyer's inquiry implicates Rule 1.15 regarding safekeeping of client funds and maintenance of client trust accounts in general. Under Rule 1.15, a lawyer who has received client funds including funds advanced in anticipation of fees being incurred must keep those funds segregated in a separate trust account. The Committee believes the funds set aside for sales taxes are not Client funds. They are funds related to fees Lawyer has already earned, even if those fees will be paid out by a third party over time. Consequently, the Lawyer may treat these funds as Lawyer would treat any other Lawyer funds. In that regard, Lawyer must not keep the funds in any trust account where any client funds are located.

Question Presented: Whether an attorney who is not licensed in South Dakota may take a deposition in an adjudicative proceeding venued in a South Dakota state tribunal on behalf of a party if the attorney is licensed in the state where the deposition is going to be taken.

Short Answer: Not without being admitted *Pro Hac Vice* in the South Dakota proceeding.

Rules Implicated: 5.5

### **FACTS**

Lawyer represents Client in an adjudicative proceeding before a South Dakota state tribunal. The opposing party has hired an expert who resides in another state. Lawyer plans to hire an attorney licensed in that other state (but not licensed in South Dakota) to take the expert's deposition without appearing in the South Dakota proceeding. Is this practice acceptable under South Dakota's Rules of Professional Conduct?

### **ANALYSIS**

Rule 5.5(c) regarding the multi-jurisdictional practice of law provides in relevant part:

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

...

(2) Are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized

...

Rule 5.5(c)(2) and its comments (particularly cmts. [9]-[11]) do not squarely address the question here, i.e., a lawyer licensed in state A but not state B is going to take a deposition in state A for use in a case venued in state B. There is also minimal precedent or commentary from other jurisdictions addressing the issue.

It is the Committee's opinion that an attorney taking (or defending) a deposition of a witness noticed in and on behalf of a party to, a South Dakota venued adjudicative proceeding is practicing law in South Dakota and must either be admitted to practice law in South Dakota generally or admitted *Pro Hac Vice* in the proceeding specifically.



**Question Presented:** Whether an attorney or firm providing court-appointed criminal defense services to a County may represent the County's county seat on matters unrelated to those criminal defense services?

**Short Answer:** Not without limiting the scope of representation and obtaining any required conflict of interest waivers, and not without otherwise satisfying the rules regarding concurrent conflicts.

**Rules Implicated:** 1.2, 1.7, and 1.11

### **FACTS**

A law Firm currently represents most of the court-appointed criminal defendants in the County where the Firm is located. The County funds the appointments, but the criminal defendants are the Firm's clients. A City in the County (the County seat, in fact) has approached the Firm about serving as the City's general counsel on an ongoing basis. However, about half of the Firm's criminal appointments for the County involve arrests made by the City's police officers, who are likely witnesses to those matters.

The Firm does not believe it can simultaneously represent the City on police-related issues (such as budgetary or personnel decisions) and criminal defendants in cases involving the City's police officers, even with a conflicts waiver. However, the Firm inquires whether it could prospectively limit its representation of the City to advising the City on matters other than those concerning the City's police force, including any City police budget or personnel matters, thereby potentially obviating the need for a conflict waiver regarding the criminal appointments.

### **ANALYSIS**

Rule 1.11(d)(1) provides that if a lawyer is serving as a public officer or employee, Rules 1.7 (concurrent conflicts of interest), 1.9 (duties to former clients), and 1.13 (organization as client) apply to the representation.

Rule 1.7(a)(1) provides that concurrent representation of two clients is not permitted (absent a written consent to the representation) if the representation of one client will be "directly adverse" to another client.

Rule 1.7(b)(1) further clarifies that, even with a written waiver of a conflict, a lawyer cannot represent one client adversely to another client, even on an unrelated matter, if the lawyer does not believe the lawyer can provide competent, diligent representation because of the conflict.

Rule 1.2(c) provides that a lawyer may prospectively limit the scope of the lawyer's representation of a client so long as the client gives informed consent to the limited scope of representation.

Given the competing interests that might apply if the Firm represented the City on police-related matters while also representing criminal defendants in cases where City police officers are involved, the Committee (without formally opining as such) agrees with the Firm's conclusion that Rule 1.7(b)(1) could very well bar that representation.

The Firm can, in theory, limit the scope of its representation of the City so long as the City consents to the limited scope of representation after being fully advised of the benefits and burdens of doing so. Although not required by the Rules to do so, the Firm should provide the parameters of the representation and the explanation of benefits and burdens in writing. The Firm should include the caveat that unexpected issues or conflicts could arise from the Firm's representation of criminal defendants in matters involving City officers that might still present unwaivable conflicts that would necessitate the City obtaining advice or representation on those matters from another firm.

In addition, Rule 1.7 regarding concurrent conflicts of interest applies regardless of whether the contemporaneous representations are related. Accordingly, limiting the scope of the Firm's representation of the City will not eliminate the need for the Firm to obtain conflict waivers. Even if the City consents to the Firm representing criminal defendant clients in matters where the City's police are involved, those criminal defendant clients would still be entitled to either grant or withhold written consent to the Firm's representation of them after being fully advised that the Firm simultaneously represents the City on other matters.

Finally, and just as critically, even if the Firm properly limits the scope of its representation of the City and obtains proper conflict waivers, that is not the end of the inquiry

As noted in comments [14] and [15] to Rule 1.7:

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

In other words, notwithstanding any waiver, the Firm's attorneys must still be able to affirmatively and honestly state that they can provide competent and diligent representation of their criminal defendant clients in cases involving City police officers without concern that the Firm's attorneys' zealous advocacy for those clients will be blunted, even unconsciously, by the presence of the Firm's relationship with the City; or, conversely, that they will not use their relationship with the City to influence the testimony of the City's officers. In addressing a

similar situation, the Alabama State Bar's Ethics Division of its Office of General Counsel stated:

The conflict which confronts this law firm comes very close to falling within that category of conflicts described in the Comment. By virtue of the firm's representation of the city, the attorneys in the firm are in a position to use the attorney-client relationship as leverage to persuade the city to accord their clients more favorable treatment than would be afforded the clients of other attorneys. No waiver, regardless of how it is worded, can change this fact.

This office does not suggest that the attorneys in the firm would take advantage of the firm's position or use their leverage with the city improperly. However, assurances, no matter how sincere, that they would not do so would be insufficient to overcome the perception of impropriety which would prevail, not only in the legal profession, but perhaps more significantly, on the part of the public.

On the other hand, the client of a city attorney who gets convicted may well feel that the city attorney did not oppose the prosecution, or cross-examine city police officers, as aggressively as would an attorney whose firm did not represent the city. The attorney could be open to the accusation that his representation of the client was "materially limited", within the meaning of Rule 1.7(b), by his, and his firm's, "own interests". The perception by the client, and by the public, could well be that the attorney was reluctant to employ an aggressive defense which might antagonize city officials and jeopardize his firm's continued employment.

Such a contention could easily provide the basis for a post-conviction motion alleging ineffective assistance of counsel. While waiver on the part of the client might provide an arguably persuasive defense to such a motion, it is equally possible that the waiver could be found ineffectual, particularly if obtained from an uneducated and unsophisticated client.

Both opinion requests raise questions concerning the extent to which the involvement of city police officers impacts upon the conflict. When a police officer testifies as a prosecuting witness the city attorney, if he is to do the best possible job for the defendant, is placed in the almost untenable position of undermining the credibility and discrediting the testimony of his own client. However, police testimony only goes to the degree, not the existence, of the conflict. The attorney's representation may be "materially limited" to a lesser degree when the prosecution is not dependent on police testimony but the underlying basis for the conflict is no less. The fact that a police officer testifies obviously exacerbates the conflict but it is not the basis for the conflict. In other words, the elimination of police testimony from the equation would by no means eliminate the conflict because the city attorney is still simultaneously representing two clients whose interests are "directly adverse" to each other<sup>1</sup>

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<sup>1</sup> <https://www.alabar.org/office-of-general-counsel/formal-opinions/2005-01/>



The Committee agrees with this cautionary reasoning and warnings, as well as the Ethics Division's ultimate conclusion:

In summation, it is the opinion of the Office of General Counsel that this conflict situation is so fraught with potential ethical pitfalls that the advisability of waiver and consent appears to be, at best, highly questionable. However, this office will not go so far as to hold this conflict to be absolutely unwaivable, despite the many ethical concerns discussed herein.



## HOW TO AVOID Common Conflict of Interest Traps

Particularly in the solo and small firm setting, conflict missteps are often not a “whoops, we missed that name” kind of thing. More often the misstep is an attorney or firm simply fails to recognize that a conflict is in play, or if it is recognized, a decision is made to move forward regardless. Given this, here are a few general tips that can help you avoid many of the more common conflict missteps.

**Be wary of representing two or more parties at once** such as a divorcing couple, a husband and wife wanting wills, multiple plaintiffs in a personal injury matter, multiple partners forming a new business, or the buyer and seller in a real estate transaction. This doesn't mean you can never take on multiple parties. There are situations where it is ethically permissible and entirely appropriate. However, if you do, fully disclose to each of the multiple clients the ramifications of agreeing to joint representation and only after you determine that competent representation can be provided to each of the clients. For example, are there any alternative courses of action that might be less available or no longer available as a result of the joint representation? If so, this needs to be shared. Discuss how both potential and any actual conflicts will affect your representation of everyone and come at it from the perspective of a disinterested attorney who only

represents one of the parties. Advise the clients that on matters concerning the joint representation there is no individual client confidentiality among the group. In addition, consider advising each of them to seek independent outside advice as to whether they should agree to joint representation. Regardless, do not proceed with the representation until all clients have given you their informed consent, which should be in writing.

Now two quick side notes. First, recognize that non-waivable conflicts do exist, despite what some of your peers choose to believe, and they often appear in these types of settings. When in doubt, seek advice from someone well versed in the ethical rules. Second, in an attempt to avoid dual representation problems some attorneys will agree to represent one of the parties and document that the other has been advised to seek independent counsel. Should the remaining non-client decide to proceed without representation, understand that you don't get it both ways. In spite of any documentation to the contrary, if you continue to interact with this individual by answering questions to help move the matter along you can unintentionally establish an attorney-client relationship and undo the precautions taken. Your actions will always speak louder than your written words. Never answer any

legal questions from the non-client. Simply advise them to seek independent counsel. If that slows things down, so be it.

**Avoid joint representation in those potential conflict situations where there is a high probability that potential conflicts** will evolve into actual conflicts such as with criminal co-defendants or with certain situations involving multiple plaintiffs. Remember Murphy's Law. More often than not the actual conflict will arise. If it does and is one that cannot be waived, your only option will be to completely withdraw from the entire matter. Stated another way, in most multiple client representation matters if you're conflicted out for one client, you're conflicted out for all. This is just one of the risks that come with joint representation. In the world of ethics and malpractice, an attempt to stay in with one client while dropping another is called the "Hot Potato Drop." Should a claim ever arise as a result of your dropping all but one as a client, the lawyers on the other side will put this spin on your actions. They'll argue that you put your financial interests above the interests of the client or clients you dropped and that rarely turns out well for the lawyer being sued.

**Always document the conclusion of representation with a letter of closure.** In terms of conflicts, an interesting question that arises from time to time is when does a current client become a past client for conflict resolution purposes? The temptation is to rationalize that the passage of time coupled with a bright line gets you there. After all, doesn't the fact that the deed was delivered four months ago, the settlement funds were disbursed two years ago, the judge signed the final order last year, or that the contract was signed three years ago mean these various matters are concluded and all of these clients are now past clients?

Our conflict rules don't speak of bright lines or the passage of time as being determinative. Keep it simple. For conflict resolution purposes, once someone becomes a current client, they are always a current client unless and until you clearly document otherwise. For example, one would be well advised to never alter a will for one party after having written the wills for both parties a few years earlier absent clear documentation that the prior representation of both had ceased.

Finally, keep the following in mind if you ever get to the point where you are considering suing a client **for fees**. It's unethical to sue a current client for fees. Make certain you have documentation that this client is a past client prior to filing suit. Again, this is usually done in a closure letter that plainly states something along the lines of "this concludes our representation of you in this matter." In fact, this is one of a number of reasons why conflict savvy firms keep all letters of closure even after destroying the related files years after closing them. The closure letter is part of the conflict database because it's what documents who are past clients.

**Avoid becoming a director, officer or shareholder of a corporation while also acting as the corporation's attorney.** This dual role can create all kinds of problems to include loss of attorney client privilege, an increased risk of a malpractice claim, and an inability to participate in certain decisions. If you do find yourself on a **client corporate board**, don't further compound the conflict issues by taking an ownership interest in the company that exceeds 5%. At that point the potential conflict problems reach a point where some malpractice carriers will decide to exclude the risk. The safest play is to never take a financial interest in a client entity due to the difficulty in proving down the road that you never put your financial interests above the interests of your client.

**Periodically stop and remind yourself just who the client is and act accordingly because sometimes it can get messy.** For example, an attorney was approached by the son of two long-term clients. Son introduced several non-clients to the attorney and asked the attorney to incorporate a startup business and handle related matters for a small stake in this new company. The son's contribution was to be his intellectual capital and the non-clients were the money guys. The attorney accepted the work and had frequent contact with the son and the investors throughout the process. Sometime later, one of the investors contacted the attorney and asked him to remove a preemptive rights clause from the organizing documents in order to facilitate a needed cash infusion from two additional investors who would only make a contribution if they were granted a substantial stake in the company. There were no funds available to pay the attorney for this additional work, but he was



offered the opportunity to increase his own stake in the company. This request forced the attorney to determine who his client was. At that point he realized that his failure to clarify and document who was a client and who wasn't, coupled with past actions that seemed to allow corporate constituents and investors to believe that he represented everyone, resulted in his correctly deciding that he had no other option but to withdraw.

**Never solicit investors on behalf of a client's business.** Should their investment in the business ever go south, one of the allegations in any subsequent claim is going to be you put your financial interests above those of the investors. And note that malpractice policies don't cover investment advice. This loss could all too easily end up being on you.

Last but certainly not least, **be extremely cautious about entering into business relationships with clients.** At the outset, Model Rule 1.8 is clear. The transaction must be fair and reasonable to the client. The client must be made fully aware of and clearly understand the terms of the transaction, the material risks and disadvantages to the client, any reasonable alternatives, the attorney's part in the transaction, and any potential conflicts of interest. The client must not only be advised to seek independent legal advice but actually given a reasonable amount of time to do so. Finally, the client must provide written consent.

The problem here is that the attorney needs to be particularly mindful that he cannot continue employment if his independent professional judgment will be affected by the business interest taken. Additionally, the full disclosure requirements of the rule include the fact that at some point the attorney and the client may potentially have differing interests in this business transaction that would preclude the

attorney from continued service. Further, while the client should be encouraged to seek independent legal counsel, many times the reason that the issue comes up is that the client has no money to pay for legal services and the business deal being considered is an offer of stock in exchange for legal services. At a minimum, the client should be counseled to seek independent advice from another source, perhaps their CPA or financial advisor.

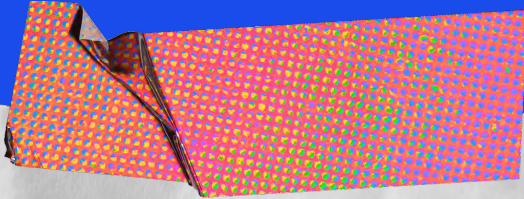
If the business relationship happens to be a stock in lieu of fees deal, don't minimize the risk that the business will be wildly successful or falter terribly. In either case the lawyer can find himself in a difficult position because the lawyer may now find that he has been substantially overpaid (from the client's perspective) or is facing the reality that no payday is coming. While there are no specific boundaries as to how much of an ownership interest is too much, certainly the degree to which a lawyer can maintain independent legal judgment would seem to be directly correlated to the percentage of ownership interest taken. As a general guideline, consider never allowing your ownership interest to exceed 5% as the conflict concerns can become quite significant beyond that point.



Authored by: Mark Bassingthwaighte, ALPS Risk Manager

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

# 2ND CIRCUIT YLS MENTORSHIP MIXER



Join us for an exciting collaboration between the 2nd Circuit, the State Bar In-House Counsel Section, the State Bar Young Lawyers Section (YLS), and a local non-profit organization, Friends of the Big Sioux River, for a meaningful and fun-filled afternoon of community service! At the 2nd Circuit YLS Mixer, we believe in making a positive impact on our community while fostering connections among legal professionals. That's why we're teaming up with Friends of the Big Sioux River to host a park cleanup event at Cherry Rock Park, conveniently located near downtown Sioux Falls.

**CHERRY ROCK PARK PICNIC SHELTER**  
**NOVEMBER 2, 2023**  
**4:00 PM**

**CHANGE  
MAKERS**



**CONTACT: BROOKE SCHMIDT [BSCHMIDT@DEHS.COM](mailto:BSCHMIDT@DEHS.COM)**



# U.S. Attorney's Office Outreach

In September, the United States Attorney's Office held its Annual Working Retreat in Pierre, SD. In addition to completing mandatory ethics and other training, members of the office engaged in community outreach to the Crow Creek and Lower Brule Indian reservations.

The United States Attorney, Assistant United States Attorneys, and support staff met with tribal leadership in Lower Brule and Fort Thompson to learn about each tribe's history, culture, and ongoing community safety concerns. Members of the office then visited schools to talk with students about career pathways, bullying, drug use, and gun safety.



*U.S. Attorney's Office staff with Lower Brule Sioux Tribal Chairman Clyde Estes and other LBST council members*



*U.S. Attorney's Office staff with Crow Creek Sioux Tribal Chairman, Peter Lengkeek*

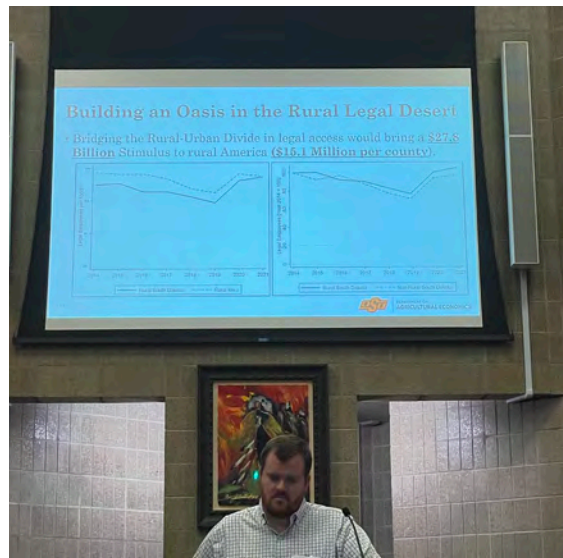
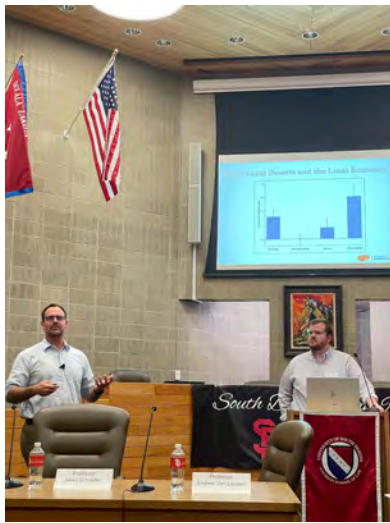
community outreach



## Law Review's Rural Attorney Symposium







UNIVERSITY OF  
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# Introducing Your Member Portal

Browse benefits. Request services. Enjoy 24/7/365 access.

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Request counseling by submitting an online form or live chat. Choose from in-person or virtual counseling options to meet your needs.

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Submit a request for family care and lifestyle support including childcare and eldercare referrals, legal and financial consultation, personal assistant referrals and medical advocacy consultation.

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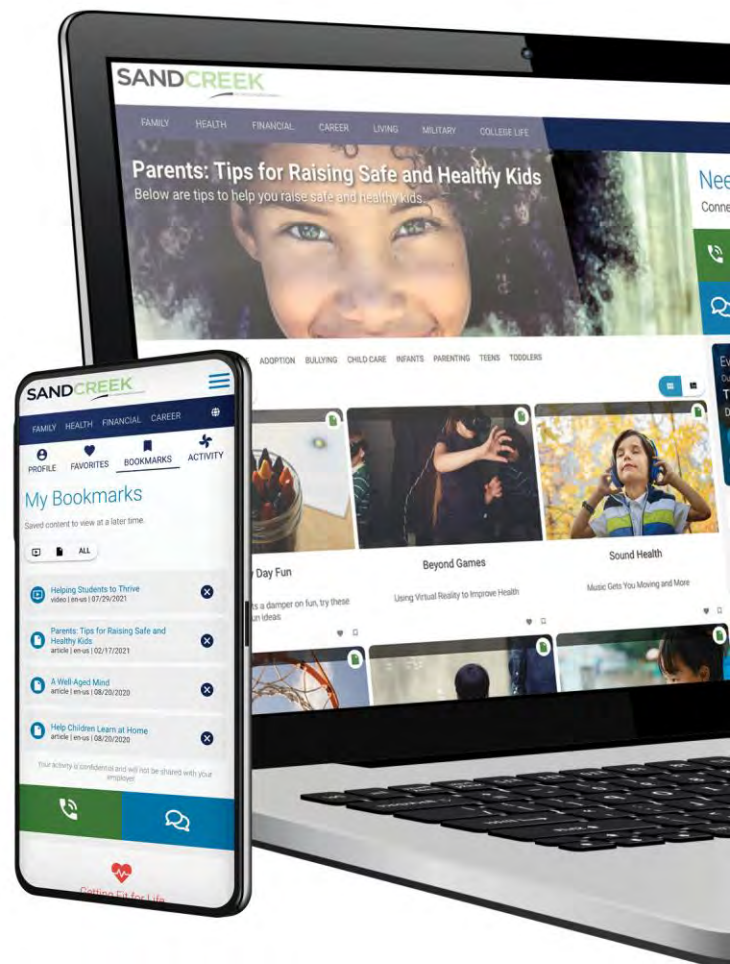
Health and lifestyle assessments, interactive checklists, soft skills courses, podcasts, resource locators, exclusive discounts, and expansive articles on whole health and well-being.

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1. Visit [www.sandcreekeap.com](http://www.sandcreekeap.com) and click on "Log In to the Member Portal"
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3. A confirmation email will be sent to complete the process



Contact Sand Creek EAP  
**Call: 888-243-5744**  
 Visit: [www.sandcreekeap.com](http://www.sandcreekeap.com)  
 Code: SDHELP

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# Life comes with challenges. Your Assistance Program is here to help.

Your Assistance Program can help you reduce stress, improve mental health, and make life easier by connecting you to the right information, resources, and referrals.

All services are free, confidential, and available to you and your family members. This includes access to short-term counseling and the wide range of services listed below:

## Mental Health Sessions

Manage stress, anxiety, and depression, resolve conflict, improve relationships, and address any personal issues. Choose from in-person sessions, video counseling, or telephonic counseling.

## Life Coaching

Reach personal and professional goals, manage life transitions, overcome obstacles, strengthen relationships, and build balance.

## Financial Consultation

Build financial wellness related to budgeting, buying a home, paying off debt, managing taxes, preventing identity theft, and saving for retirement or tuition.

## Legal Consultation

Get help with personal legal matters including estate planning, wills, real estate, bankruptcy, divorce, custody, and more.

## Work-Life Resources and Referrals

Obtain information and referrals when seeking childcare, adoption, special needs support, eldercare, housing, transportation, education, and pet care.

## Personal Assistant

Save time with referrals for travel and entertainment, seeking professional services, cleaning services, home food delivery, and managing everyday tasks.

## Medical Advocacy

Get help navigating insurance, obtaining doctor referrals, securing medical equipment, and planning for transitional care and discharge.

## Member Portal

Access your benefits 24/7/365 through your member portal with online requests and chat options. Explore thousands of self-help tools and resources including articles, assessments, podcasts, and resource locators.



Contact Sand Creek EAP  
Call: 888-243-5744  
Visit: [www.sandcreekeap.com](http://www.sandcreekeap.com)  
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*June 12 - 14, 2024  
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# You Asked, We Answered.

## State Bar of South Dakota Association Healthcare Plan Now Available

As part of our ongoing commitment to our members, the State Bar of South Dakota has partnered with Avera Health Plans to provide affordable healthcare benefits to South Dakota Bar members and their employees. In 2019, State Bar leadership advocated for an Association Group Healthcare Plan and our members noted in a 2022 survey that a healthcare option would be a worthwhile member benefit. At its May 2022 meeting, the Bar Commission passed a motion to proceed with implementation of an Association Healthcare Plan and we are pleased to announce its availability beginning February 1, 2023.

The following agents or agencies that are authorized to sell the State Bar Association Health Plan in Eastern South Dakota.

Office Location	Agency	Contact
Mitchell & Yankton Area	Dice Financial	Jacquelyn Johnson
Aberdeen Area	Mark Mehlhoff	Mark Mehlhoff
Sioux Falls Area	Midwest Employee Benefits	Dawn Knutson
Sioux Falls & Brookings Area	McGreevy & Associates	John Lawler
Pierre, Mitchell & Sioux Falls Area	Fisher Rounds & Associates,	Josh Gilkerson
Watertown Area:	Freimark & Associates	Todd Freimark

Black Hills Insurance Agency & Carver Insurance will handle Western South Dakota.

Office Location	Agency	Contact
West River	Black Hills Insurance Agency & Carver Insurance	Dan Maguire, Everett Strong & Lisa Knutson

## Questions on Eligibility, Rates, and Services?

Please contact the agency listed above based on your office location within the state for questions related to the Association Healthcare Plan.



# *In Memoriam*



Dr. Anita Remerowski  
September 27, 1947 -  
August 31, 2023

An amazing woman has  
departed us.

Dr. Anita Remerowski, JD/  
M.D. passed away in Olympia,  
Washington, on Thursday,  
August 31, 2023, with her husband at her side. She left  
her kindness, concern for the poor and less fortunate,  
sense of humor, and unwavering opinions on the state of  
the government, religion, and legal and medical issues  
across the central and western United States. A more  
committed Democrat and progressive there never was.

Anita was born to Frank and Margaret Remerowski in  
Philipsburg, Montana, on September 27, 1947. In the  
1950's Margaret, a teacher, moved with her two small  
daughters to Central California, where she taught  
migrant workers. Anita attended various elementary  
schools, then St. Mary's Catholic Girls School in the Bay  
Area. In 1969 she graduated from UC Berkeley Magna  
Cum Laude and Phi Beta Kappa.

Anita went on to get a law degree from Boalt Hall, UC  
Berkeley. In 1972 she and her young son Eric moved to  
Alaska, where she worked first for a private law firm and  
then for the Alaska State School System, flying in small  
planes to schools all over Alaska.

An adventurer, she lived with Eric in Boston and Rapid  
City, South Dakota, before moving to Mission. She  
met Terry Pechota at her interview for a job with South  
Dakota Legal Services. She got the job and Terry got a  
wife. The two were married in 1976 at St. Francis.

Anita worked for South Dakota Legal Services as a staff  
attorney and eventually became its director in 1978. As  
she told her friends, it was the best time of her professional  
and personal life. She undertook and directed litigation  
that was significant if not monumental, including cases  
in the Eighth Circuit Court of Appeals establishing a  
United States trust responsibility for Indian health  
care in Indian Country and the right of people in South  
Dakota's unorganized counties to vote for those who

governed them in attached organized counties. In  
her first case in the South Dakota Supreme Court she  
clarified the right of women to have their maiden name  
returned in divorce actions.

Their son Dominic was born in 1978 and son Alec  
in 1979. Mother Margaret moved from California to  
Mission to help her raise her sons. Anita made lifelong  
friends in her professional and private life during her  
time at Mission including Bill Janklow, Charlie and Vi  
Colombe, Lionel and Barbara Bordeaux, Father Harry  
Eglasar, Tom and Judy Tobin, Ryan White Feather,  
Frank Pommersheim, Phil Baird, Marvin Amiotte, Julie  
Valandra, and a host of others. In 1980 the family moved  
to Boulder, Colorado, where she went to work for the  
Native American Rights Fund providing litigation  
services and other support for Indian Legal Services  
Programs across the United States.

Anita's personal mission in life was to help people. In  
1984, believing she could help more people as a doctor,  
she changed career and life paths. She took the necessary  
prerequisite courses at the South Dakota School of  
Mines, then enrolled in medical school at Northwestern  
University in Evanston, Illinois. Eric, Dominic, and  
Alec went with her. Many plane trips between South  
Dakota and Illinois took place during these years.

She became board certified in internal medicine and  
practiced in Minnesota, South Dakota, Nebraska,  
Missouri, Iowa, Arizona, Washington, and Texas.

In San Antonio, Texas, Anita found immense satisfaction  
volunteering and administering at Each One Teach  
One, helping migrants learn English and employment  
skills. She made many dear friends in San Antonio and  
elsewhere, including Colleen Walker-Vamos, Diane  
Warren, Lea Ream, and Rebecca Stokes who along with  
her family loved and cared for her.

Anita is survived by her husband, Terry L. Pechota,  
Rapid City, South Dakota; sister Mary, San Francisco,  
California; sons, Eric Remerowski, Amarillo, Texas;  
Dominic Pechota (Heidi), Decorah, Iowa; Alec Pechota  
(Annie), Boise, Idaho; stepson, Todd Pechota (Shelly),  
Custer, South Dakota; and grandchildren, Samantha,  
Will, Bridget, Harper, Jalyn, Tate, Collin, and Lucy  
Leona. Anita will be laid to rest in Philipsburg,  
Montana, alongside her dear mother whom Anita had  
cared for until she died.

# Attorney Health & Wellness Resources

It's okay to ask for help



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- *SD Bar Members & household family members*
- *USD Law Students & their household family members*

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# ***Career Center***

## **STATE BAR OF SOUTH DAKOTA CLASSIFIEDS**

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



### **Deputy State's Attorney – Codington County**

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 abuse and neglect cases, juvenile cases, and assisting with the prosecution of adult felony and misdemeanor 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 the Codington County Drug Court and DUI 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 wage \$6,455.40 per month depending on experience. 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: August 1, 2023 – October 13, 2023, or until filled.

### **Attorney – Rapid City**

The law firm of Thomas Braun Bernard & Burke, LLP in Rapid City is seeking a lateral attorney with at least 4 years' private practice experience in the areas of estate planning and/or business transactional work. The ideal candidate will possess strong communications skills, be attentive to detail, and be self-motivated. Compensation will be commensurate with education and experience. Benefits include 401(k), health insurance, professional dues and memberships, CLE tuition, and various other incidentals. Confidential inquiries, including a cover letter and resume should be mailed to John W. Burke, Thomas Braun Bernard & Burke, LLP, 4200 Beach Drive – Suite 1, Rapid City, SD 57702, or e-mailed to [jburke@tb3law.com](mailto:jburke@tb3law.com).

### **Deputy/Senior Deputy Public Defender – Sioux Falls**

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 appearing in the criminal and juvenile justice system. We are currently seeking someone who is interested in becoming part of an experienced litigation team that has a high capacity for trials and offers an expansive opportunity for courtroom practice. 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.



The hiring range is \$3,325.60 - \$3,761.60/biweekly DOQ, with full earning potential up to \$4,581.60/biweekly. Minnehaha County offers a competitive benefits package including health, dental, vision, and life insurance, a generous paid time off program, extended sick leave, retirement, and an employee assistance program. For a full list of qualifications and to apply visit: [http:// jobs.minnehahacounty.gov](http://jobs.minnehahacounty.gov). Review of applications begins on September 21, 2023. EO/AA Employer. Contact Human Resources with questions at 605-367-4337.

### **Juvenile Tribal Healing to Wellness Coordinator – Fort Thompson**

This is a new position that will require the incumbent to launch the Tribe's new Juvenile Healing to Wellness project. The position will work directly with youth and their families as well as the courts and agency partners to reduce the number of juveniles committing offenses. Primary duties include screening, assessment, coordination of services, case planning/monitoring, referral for services, advocacy & educational services, records & data management.

This position is non-exempt, full time, with tribal benefits. The wage range is between \$18.00 to \$21.00 per hour, depending on experience. The Wellness Coordinator will work Monday – Friday from 8:00 a.m. to 4:30 p.m. at the courthouse. At times, this position may require work to be performed after hours, on weekends, and on holidays. The candidate must be willing to provide support to clients and agency partners at any time. The position is funded for one year; continued employment is based on available funding.

Must have High School Diploma, GED equivalent, or one year of relevant experience in a dual work setting—office and field work. Must pass a PL 101-630 background check.

This position will remain open until filled. Applications can be submitted to the Personnel Department at the Tribal Administration Building.

Tribal Personnel Department  
CROW CREEK SIOUX TRIBE  
P.O. BOX 50  
FORT THOMPSON, SOUTH DAKOTA 57339  
Ph – 605.245.2221  
Fax – 605.245.2829

### **Bailiff– Fort Thompson**

This position is responsible for the security in the courtroom and for the safety of all participants, maintaining order in the courtroom, and handling jurors. The Bailiff will be cross trained to assist the Clerks of Court and Court Services Officer. Additional duties include serving paperwork, assisting the public, administering drug and alcohol testing for the Court Services Officer, and accompanying court staff when requested.

This position is non-exempt, full time with tribal benefits. The wage range is between \$18.00 and \$22.00 per hour, depending on experience. The Officer will work Monday – Friday from 8:00 a.m. to 4:30 p.m. at the courthouse. This position requires some travel for training events.

A high school diploma, GED equivalent, or one year of relevant experience is required. Law enforcement or corrections certification and/or experience is preferred. The candidate must pass a PL 101-630 background check and drug test.

This position will remain open until filled. Applications can be submitted to the Personnel Department at the Tribal Administration Building.

Tribal Personnel Department  
CROW CREEK SIOUX TRIBE  
P.O. BOX 50  
FORT THOMPSON, SOUTH DAKOTA 57339  
Ph – 605.245.2221  
Fax – 605.245.2829

### **Tribal Attorney– Fort Thompson**

OPEN: UNTIL FILLED.  
SALARY: Based upon budget/qualifications.

The Crow Creek Sioux Tribe is soliciting applications for employment, as an independent contractor, for a Tribal Attorney.

To be eligible to serve as a Tribal Attorney, a person shall possess a Juris Doctor degree from an accredited law school and a license to practice law, in good standing; be at least 21 years of age, be of high moral character and integrity and be physically able to perform the duties of

the office. This position is not open to any individual who has a history of disciplinary action with a tribal, state, or federal bar. The candidate must also pass a background check and drug test.

The Tribal Attorney will serve as General Counsel for the Crow Creek Sioux Tribe and perform legal services in the representation of the Crow Creek Sioux Tribe in matters of litigation, advice, consultation and general Tribal Attorney duties, including advice to Crow Creek Tribal member. It is specifically understood and agreed that the Tribal Attorney shall not represent said Tribal members but shall provide legal advice.

Interested candidates are invited to submit their resume, cover letter, Proof of Bar Membership and references to [mariah.sazue@outlook.com](mailto:mariah.sazue@outlook.com). Please outline your relevant legal experience, commitment to tribal justice, and reasons for your interest in this position.

For inquiries, please contact Mariah Sazue at 605-245-2221 ext. 2062 or [mariah.sazue@outlook.com](mailto:mariah.sazue@outlook.com).

Tribal Personnel Department  
CROW CREEK SIOUX TRIBE  
PO BOX 50  
Fort Thompson, SD 57339  
Phone: 605-245-2221 Fax: 605-245-2829

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

Full-time permanent position now open for a Deputy State's Attorney in the Hughes County Office of the State's Attorney in Pierre, South Dakota.

The Hughes County State's Attorney's Office is looking for a criminal attorney to handle lower-level felony and juvenile cases, present those cases for legal proceedings, perform legal research, and prepare, draft and file legal documents and correspondence. Additional responsibilities include but are not limited to: covering other felony and misdemeanor hearings when required, advising local law enforcement agencies, dealing with juvenile justice issues, providing information to victims and witnesses and helping to fulfill the statutory responsibilities of the office.

Applicants must be able to: manage a large case volume and respond quickly and effectively to changing

circumstances; speak and write effectively; establish and maintain effective working relationships with coworkers, other agencies, and the public; maintain professional appearance and demeanor.

**Minimum Qualifications:** Applicants must possess a J.D. and be an active member in good standing of the State Bar of South Dakota or be admitted within one year of hiring.

**Preferred Qualifications:** One or more years' experience in criminal law is highly preferred but will consider all applicants.

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

Please send a resume and cover letter to Casey Jo Deibert, Hughes County State's Attorney, 104 E. Capitol, Pierre, SD 57501. Resumes and cover letters will also be accepted via email at [casey.deibert@co.hughes.sd.us](mailto:casey.deibert@co.hughes.sd.us).

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

### **Chief Prosecutor For The Standing Rock Sioux Tribal Court – Fort Yates, ND**

Open: Until Filled

Salary: Negotiable

The Standing Rock Sioux Tribe is soliciting applications for employment, as an Independent Contract Employee, for a CHIEF PROSECUTOR FOR THE STANDING ROCK SIOUX TRIBAL COURT. The Chief Prosecutor represents the interests of the Standing Rock Sioux Tribe in prosecuting individuals alleged to have violated criminal provisions of the Standing Rock Tribal Code of Justice. The responsibilities of the Chief Prosecutor include, but are not limited to, reviewing reports, complaints, and citations, collaborating with law enforcement, interviewing witnesses, gathering relevant case information, determining probable cause, issuing subpoenas, researching case law, drafting and filing legal pleadings, motions, briefs, negotiating settlements and plea agreements, and preparing and presenting criminal

and civil cases in the Standing Rock Tribal Court and Supreme Court on behalf of the Standing Rock Sioux Tribe. The Chief Prosecutor will provide supervision over the legal responsibilities of the Prosecution Office.

Interested applicants shall possess knowledge of applicable Tribal and Federal Law, and jurisdictional issues relevant to Tribal Jurisdiction. Applicants must have experience and an understanding of criminal procedure, evidence legal research and be skilled in verbal and written communication, and operations of computer technology necessary to perform the required duties.

The Chief Prosecutor position is a preferred full time position. Compensation is negotiable based on experience. The terms of employment to be determined by the agreement of the parties. The contract shall be compensated on an hourly basis. The statutory prerequisites for employment are:

Title 1-502. Qualifications.

(a) To be eligible to serve as a Chief Prosecutor, a person shall: (1) be an active member in good standing of the Bar of any State or Federal court; (2) be at least 21 years of age; (3) be of high moral character and integrity; (4) have a degree in law from an accredited law school; (5) have never been convicted of a felony; (6) not have been dishonorably discharged from the Armed Services; (7) be physically able to carry out the duties of the office.

Applications shall be in writing, to include a Professional Resume, Proof of Bar Membership, legal qualifications, letters of recommendation and any other submissions at the option of the applicant. All applications are considered on merit.

Applications for the Chief Prosecutor position may be sent, by mail, to Ms. Dellis M. Agard, Court Administrator, Standing Rock Sioux Tribal Court, PO Box 363, Fort Yates, ND, or by Email to [dagard@standingrock.org](mailto:dagard@standingrock.org). Ms. Agard can also be contacted by Telephone at (701) 854-7244 Ext. 7419.

The worksite for this position is located at the Standing Rock Tribal Court in Fort Yates, ND. The Sitting Bull College Transit provides bus services, at nominal cost, to and from Bismarck, ND; Mobridge, SD; McLaughlin, SD and Selfridge, ND and coordinated with the Tribal Work Day, which is 8:00 AM to 4:30 PM (Central Time).

## **Litigation Legal Assistant/Paralegal – Yankton**

Marlow, Woodward & Huff, Prof. LLC is seeking a legal assistant/paralegal.

Duties include:

- Case file management.
- Communications with clients, witnesses, experts and others.
- Drafting legal correspondence.
- Drafting standard pleadings.
- Performing electronic filings in state, federal and appellate courts.
- Assisting with responding to interrogatories and production of documents.
- Managing deadlines and scheduling.
- Ordering medical records/bills.
- Assisting with trial preparations and trials.

Benefits:

- Salary depending on experience, plus bonuses.
- SEP Plan.
- Paid time off.

Education:

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

Please send cover letter, resume and references to [deb@mwhlawyers.com](mailto:deb@mwhlawyers.com)

## **Public Defender – Sisseton Wahpeton Oyate**

Sisseton Wahpeton Oyate is seeking to fill the following position:

PUBLIC DEFENDER

- Must have Juris Doctor Degree from an ABA accredited law school
- Tribal preference will apply

Position is Open until filled

Job Descriptions and an Application can be found online: <http://www.swo-nsn.gov/contact/employment>

For any Questions you can Contact:

Angel DeCoteau -HR Interviewer/Recruiter at (605) 698-8238 / [AngelDeCoteau@swo-nsn.gov](mailto:AngelDeCoteau@swo-nsn.gov) OR  
Denise Hill -HR Office Manager at (605) 698-8251 / [DeniseH@swo-nsn.gov](mailto:DeniseH@swo-nsn.gov)



## Office Manager – Sioux Falls

The ACLU seeks applicants for the full-time position of Office Manager at the ACLU of North Dakota, South Dakota, and Wyoming, a national Chapter of the ACLU. The role is based in our Sioux Falls, SD office.

The ACLU-ND/SD/WY defends civil liberties and civil rights in North Dakota, South Dakota, and Wyoming through litigation, legislation, and public education.

Reporting to the Deputy Director, the Office Manager will be responsible for ensuring the Sioux Falls and Jackson offices are running smoothly and efficiently. From managing the collection of administrative data and reports to collaborating on updating and maintaining Chapter policies, the Office Manager plays a critical role in the operations of the office and the Chapter's overall work.

### COMPENSATION

The ACLU values equity, transparency, and clarity in pay. Consistent with the ACLU's compensation philosophy, there is a set salary for this role. The annual salary for this position is \$65,230 (Level I), reflective of a position based in Sioux Falls. This salary will be subject to a locality adjustment (according to a specific city and state), if an authorization is granted to work outside of the location listed in this posting. Note that most of the salaries listed on our job postings reflect New York, NY salaries, where our National offices are headquartered.

### RESPONSIBILITIES

- Manage the needs of two physical offices and several remote staff across three states and multiple time zones, including physical office needs and the collecting and processing of monthly administrative reports
- Collaborate with the Deputy Director on updating, maintaining, and distributing Chapter policies
- Oversee and ensure overall professional appearance and organization of the office to maintain a clean, welcoming, and professional work environment for employees, volunteers, and visitors
- Supervise general office operations and space management
- Provide administrative support to the Senior Leadership Team as requested
- Act as primary liaison with the building management about office space and building matters
- Train and assist staff in using office equipment and

troubleshooting as necessary

- Train and assist staff in compiling and submitting monthly expense reports, lobby reports, and other routine administrative reports
- Maintain office supplies and coordinate maintenance of office equipment
- Track monthly expenditures, maintain finance and lobbying reports, request bill payment, and perform other financial functions
- Act as liaison with local IT consultant and national IT staff to troubleshoot and maintain Chapter computers, printers, and phones
- Manage the legal intake/complaint system with routine monitoring, tracking, and delivering
- Coordinate logistics around events and trainings including booking event spaces, travel, insurance, and payments
- Organize and schedule recurring meetings, including all staff meetings and trainings
- Manage, track, and move forward contract procurement processes from start to finish across staff

In addition to:

- Engage in special projects and other duties as assigned
- Center principles of equity, inclusion, and belonging in all work, embedding the values in program development, policy application, and organizational practices and processes
- Commitment to the mission of the ACLU
- Demonstrate a commitment to diversity within the office using a personal approach that values all individuals and respects differences in regards to race, ethnicity, age, gender identity and expression, sexual orientation, religion, disability and socio-economic circumstance
- Commitment to work collaboratively and respectfully toward resolving obstacles and/or conflicts

### EXPERIENCE & QUALIFICATIONS

- Administrative experience in a fast-paced office, with a track record of deftly managing competing priorities and strong organizational, communication, prioritization and planning skills
- Comfort with technology, good trouble-shooting skills, and the ability to learn new software easily
- Excellent oral and written skills. The ability to communicate and work effectively with staff, volunteers, and the general public

- Attention to detail and superior proofreading skills are a must
- Highly proficient Microsoft Office skills, especially Excel and Word
- Verbal, written and interpersonal savvy, with superior judgment at all times
- Dedication to and understanding of the need for confidentiality
- Deadline-driven and personally accountable

#### PREFERRED QUALIFICATIONS

- Ability to identify needs before they arise and proactively work to address them
- Demonstrated experience in coordinating with and horizontally managing staff as needed

Click Here to Apply!

#### **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](mailto:kelsey@verbeeklaw.com).

#### **Associate Attorney – Sioux Falls**

Cutler Law Firm, LLP is seeking an associate attorney to join its Business Section. Practicing attorneys, law clerks and students are encouraged to apply.

Business Associate Attorneys have the opportunity to work alongside partners and other associates on a broad range of business transaction, contract and real estate matters. Our clients include large and small companies in manufacturing, telecommunications, logistics, financial services, real estate development, and others.

Qualified candidates will have:

- Strong oral and written communication skills
- Capable of high-level analytical and critical thinking and problem solving
- Top academic credentials
- Excellent interpersonal skills and the ability to work well as part of a team
- J.D. from an ABA-Accredited Law School or in the final year of study and on track to graduate

- Practicing attorneys must have a license and be in good standing to practice in South Dakota or intentions to obtain a license in South Dakota.

Cutler Law Firm, LLP offers competitive salary and a full benefit package. Interested applicants are asked to send a cover letter, resume and references to:

Cutler Law Firm, LLP

Attn: Shawn Noem, Business Manager

140 N Phillips Ave, Fourth Floor

Sioux Falls, SD 57104

Or email to: [shawnn@cutlerlawfirm.com](mailto:shawnn@cutlerlawfirm.com)

#### **Attorney General– Pine Ridge**

OGLALA SIOUX TRIBE

VACANCY ANNOUNCEMENT

POSITION: ATTORNEY GENERAL

SALARY: NEGOTIABLE

OPENING DATE: July 11, 2023

CLOSING DATE: UNTIL FILLED

PROGRAM: OGLALA SIOUX TRIBE

LOCATION: PINE RIDGE, SO. DAK.

ATTORNEY GENERAL'S OFFICE

General Description of Duties:

The Attorney General is the Chief Prosecutor of the Oglala Sioux Tribe. The Attorney General shall be directly responsible to the Oglala Sioux Tribal Council. The Attorney General may be dismissed upon ninety (90) days written notice by the Oglala Sioux Tribal Council. The Attorney General is responsible for providing administrative, management, and technical expertise in performing all administrative and programmatic functions of the OST Attorney General's Office. The Attorney General will supervise a support staff of eight (8) persons, including four (4) Tribal Prosecutors and four (4) Clerks, in the day-to-day operations of the office. The Attorney General shall be responsible for their work performance, time and attendance, approval and disapproval of leave, performance evaluations, and disciplinary actions, if necessary. The Attorney General will review training needs of staff and ensure that those needs are met to improve job performance. The election for the Attorney General will be made by the Oglala Sioux Tribal Council.

Specific Duties:

The Attorney General shall:

1. Be the Law Enforcement Official for the Oglala Sioux Tribe.
2. Prosecute and represent the Oglala Sioux Tribe in all major criminal and civil cases filed by the OST Attorney General's Office, including cases that involve public officials.
3. Be responsible for the day-to-day operations of the OST Attorney General's Office, including the supervision of all civil or criminal cases filed by the OST Attorney General's Office before the OST Tribal Court.
4. Assist the OST Legal Department and committees of the Oglala Sioux Tribal Council on revisions to the OST Law and Order Code and Court Rules.
5. Assist the OST Legal Department in legal disputes with the Federal Government, State Government, and other entities or individuals.
6. Advise OST Law Enforcement Officers on all legal matters.
7. Be authorized to issue directives to the OST Chief of Police to conduct criminal investigations.
8. Issue directives regarding law-enforcement procedures to the OST Chief of Police, when necessary, to protect the Civil Rights of Oglala Sioux Tribal members.
9. At all times, respect and uphold the integrity and independence of the OST Tribal Court, and the OST Constitution and By-Laws.
10. The OST Law and Order Committee and Attorney General shall request a report from the United States Attorney's Office containing aggregate data on the cases in which the United States Attorney's Office has declined prosecution and the reason for the federal declinations. Upon the request of the OST Law and Order Committee, the Attorney General shall provide a report containing aggregate data on the number of prosecutions brought by the Oglala Sioux Tribe in cases in which the United States Attorney's Office has declined prosecution.
11. The Attorney General and the prosecutors working under the Attorney General shall have prosecutorial discretion.

#### Requirements and Qualifications:

The Attorney General must:

1. Have knowledge of the Oglala Sioux Tribal Code, South Dakota and other State Codes, Federal Laws, Indian Child Welfare Act, and various opinions and decisions that may affect the OST Tribal Court.
2. Exercise good judgment in the analysis of evidence, documents, and other information available.
3. Have a Juris Doctorate Degree.
4. Have the ability to maintain a friendly, courteous, and

- professional attitude toward the staff, supervisor, and the general public.
5. Have the ability to work under pressure while maintaining a high degree of accuracy.
6. Have knowledge of the OST Tribal Accounting System, Property System, Personnel System, Financial System, and Policies and Procedures of Contract Management.
7. Have no prior felony conviction within the last three (3) years.
8. Have no misdemeanor type offense within the past year.
9. Have the ability to establish priorities and to ensure that all program tasks are accomplished in a timely and accurate manner.
10. Have the ability to adjust staff assignments to meet office objectives.
11. Have the ability to communicate with other departments and agencies on prosecutorial procedures to better coordinate services.
12. Have the ability to keep abreast of new laws and procedures in order to adapt them to the OST Attorney General's Office.
13. Be an Attorney-At-Law licensed to practice in, and of good standing with, the Federal Courts and the Courts of the State of South Dakota or other States.
14. Have no less than two (2) years' experience as a practicing attorney.
15. Apply for admission to practice in the Oglala Sioux Tribal Court within thirty (30) days after assuming office, if not already admitted to practice in the Oglala Sioux Tribal Court. (As a government official, the Attorney General shall be exempt from payment of any fee for admission to practice in the OST Tribal Court.)
16. Have no conflicts of interest with the Oglala Sioux Tribe, meaning the Attorney General must not have represented a person or entity in a lawsuit against the Oglala Sioux Tribe or its departments, programs, agencies, or entities prior to service as the Attorney General.
17. Not be listed on the Sex Offender Registry.
18. Not be listed as suspended or debarred on the System for Award Management (SAM) official website (<https://sam.gov>).
19. Not submit false or inaccurate information on the application for employment.

#### How to Apply:

OST Human Resource Department P.O. Box 439, Pine Ridge, South Dakota 57770 or email the OST Human



Resource Director Michelle Poor Bear @ MichellePB@ogmlala.org. Attach all pertinent documentation, i.e., copy of official college transcripts and/or college degree (diploma), copy of law school transcript or degree (diploma), certificate of Indian Blood if claiming Indian Preference and DD214 if claiming Veteran's Preference.

Notice:

Applicants tentatively selected for position with the Oglala Sioux Tribe will be required to submit to a complete background check, including: Federal F.B.I. Records Check; State Repository Criminal Records Check; Tribal Records Check (or local records checks for out-of-area applicants); Employment Records and Reference Check; Education Verification Check; Personal Reference Check; Federal Suspension and Debarment Check; and Sex Offender Registry Check. Appointment to the position will be contingent on verification of the applicant's qualification and eligibility for the position based on the results of the background check.

Registry Check. Appointment to the position will be contingent on verification of the applicant's qualification and eligibility for the position based on the results of the background check.

In accordance with OST Ordinance 18-22, background checks will be done on individuals applying for positions with the Oglala Sioux Tribe.

### **Associate Attorney – Yankton**

Kennedy, Pier, Loftus & Reynolds, LLP, a general practice law firm with offices in Yankton, SD and Hartington, NE, is seeking an associate attorney. Strong academic background and communication skills required. Base compensation plus profit sharing and benefit plan. All inquiries will be kept in strict confidence. Please send cover letter, transcript, resume and references to 322 Walnut Street, Yankton, SD 57078 or email to [lbovero@yanktonlawyers.com](mailto:lbovero@yanktonlawyers.com).

### **Senior Assistant City Attorney – Sioux Falls**

HIRING RANGE DOQ: \$3,947.20 - \$5,164.00 bi-weekly

DEADLINE FOR FILING: Friday, October 13, 2023

#### **JOB SUMMARY**

Perform advanced professional legal services handling

more complex and highly sensitive work assignments. Provide legal assistance, advice, counsel to, and representation of City government, elected officials, officers, and employees regarding complex legal matters across various disciplines as assigned while exercising significant independent legal judgment.

#### **MINIMUM QUALIFICATIONS**

Graduation from an accredited school of law and a minimum of eight (8) years' experience in the practice of law, preferably in public sector law, regulatory compliance work experience, or diversified program management experience including conducting research and/or investigations and analyzing data; or any such combination of education, experience, and training as may be acceptable to the hiring authority.

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

#### **APPLICATION AND SELECTION**

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

#### **OUR COMPENSATION AND BENEFITS SUMMARY**

- Competitive salary with other public and industry positions, including step advancements.
- The City participates in the South Dakota Retirement System. Employees receive a 6% match. Additionally, employees may choose to enroll in a Deferred Compensation Plan.
- Health, Dental, and Vision Insurance: Competitive rates for single, 2-party, and family.
- 11 paid holidays and 2 personal leave days each calendar year.
- New employees are granted 40 hours of vacation at time of hire and accrue an additional 2 weeks in their first year.
- Sick leave accrues over 96 hours per year.

### **Division of Banking – Trust Examiner – Sioux Falls or Pierre**

Job ID: 23485

Salary: \$52,500 annually

Closing Date: Open Until Filled

This is a full-time, 40 hours weekly, position with the South Dakota Division of Banking, part of the

Department of Labor & Regulation. For more information on the Division of Banking, please visit <https://dlr.sd.gov/banking>. The Division of Banking regulates the state's banking, trust, and financial services industries to assure that our citizens have confidence in our state's financial markets and services. We are seeking an inquisitive individual with analytical and communication skills to join our team of professional Financial Institution Examiners in either Pierre or Sioux Falls.

Examiners at the Division of Banking enjoy:

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

As part of a team, you will:

- determine the financial condition of state-chartered trust institutions;
- evaluate adequacy of trust institutions' internal control procedures;
- determine compliance with State and Federal statutes related to banking, trust, licensing, and consumer protection;
- evaluate investment portfolios and decision-making to determine suitability;
- review and evaluate the oversight and governance structure of trust institutions;
- make recommendations on findings;
- investigate consumer complaints related to supervised trust institutions.

The ideal candidate will have:

- A bachelor's degree in trust, banking, finance, accounting, or a related field with an advanced degree preferred. Professional experience that leads to mastery of the following knowledge and abilities

will be considered.

- Knowledge of accounting and auditing principles and procedures; the organization of banks and trust companies; financial and fiduciary work environments; fiduciary principles; trust-related statutes and regulations; and Microsoft Office products and management information systems.
- Skill to communicate concisely and effectively with co-workers, financial institution personnel, and examiners from other agencies; gather, interpret, report, and use financial information; understand and interpret federal and state trust regulations; effectively manage time and prioritize tasks.

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

This position is exempt from the Civil Service Act.

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

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

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

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

Must apply online: <https://sodakprod-lm01.cloud.infor.com:1443/lmg/hr/xmlhttp/shorturl.do?key=MJ2>

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

### **Attorney – Pierre**

Seeking a professional, dedicated attorney to represent the South Dakota Public Utilities Commission in proceedings before the commission and in dealing with the regulated utility industry.

This position pays \$100,000 or more annually depending on qualifications or relevant experience. This position works in an office in South Dakota's Capitol building in Pierre, interacting with other attorneys, professional staff and utility representatives.

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

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

Please email your resume, cover letter and contact information for three career-related references to [PUC@state.sd.us](mailto:PUC@state.sd.us) by Nov. 30, 2023.

### **HIDTA Prosecutor– Sioux Falls**

DETAILS: The Office of the United States Attorney and the Office of Attorney General seek an attorney for the High Intensity Drug Trafficking Area (HIDTA) program. The attorney will be an employee of the South Dakota Attorney General's Office who will be cross designated as a Special Assistant United States Attorney (SAUSA). This position will be stationed at the United States Attorney's Office in Sioux Falls. The attorney will prosecute controlled substance cases in federal and state court. Accordingly, litigation experience is preferred. The individual must also have strong research and writing capabilities. This position is funded through an allocation from the Office of National Drug Policy, which is subject to annual appropriations from Congress, annual approval by the South Dakota Legislature and biennial funding review by Midwest HIDTA. The successful applicant must be able to start within reasonable notice.

OFFICE LOCATION: This position will be stationed in

Sioux Falls South Dakota.

STARTING SALARY: Salary negotiable, depending on experience. There is an excellent benefit package including leave and employee insurance coverage.

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

APPLICATION PROCESS AND DEADLINE DATE: Interested persons should send a resume containing three references, a writing sample and a letter describing their qualifications by October 14, 2023, to the following e-mail address: [Brent.Kempema@state.sd.us](mailto:Brent.Kempema@state.sd.us)

Or mailing address:

SD Attorney General's Office  
Attn: Brent Kempema  
1302 E Hwy 14 Suite 1  
Pierre, SD 57501

### **Staff Attorney – Eagle Butte**

*Are you passionate about racial justice and holistic legal advocacy? Join our team, and make a long-term impact!*

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Eagle Butte, South Dakota office. The Eagle Butte office serves the counties of Dewey, Haakon, Potter and Ziebach, along with the Cheyenne River Indian Reservation.

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

SALARY: Starting at \$60,000 plus, depending on



experience. Staff work a 4-day work week, and DPLS has an excellent fringe benefits package including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

CLOSING DATE: Open until filled.

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

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

### **Staff Attorney – Mission**

*Are you passionate about racial justice and holistic legal advocacy? Join our team, and make a long-term impact!*

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Mission, South Dakota office. The Mission office serves the counties Gregory, Jones, Mellette, Todd and Tripp, along with the Rosebud Reservation.

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

SALARY: Starting at \$60,000 plus, depending on experience. DPLS has excellent fringe benefits, including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

CLOSING DATE: Open until filled.

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

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

### **Staff Attorney – Sioux Falls**

East River Legal Services (ERLS), a civil non-profit law office, seeks an attorney to assist with ensuring victims of crime remain safe, retaining housing for families, and preserving limited household resources to ensure that low-income South Dakotans can be self-sufficient. ERLS creatively uses legal remedies and support to advocate for the most vulnerable members of our communities.

Under the supervision of the Managing Attorney, the Staff Attorney will represent clients primarily in family law. Other practice areas at East River Legal Services include housing, public benefits, and consumer matters. The types of services provided include legal advice, brief service, and direct representation. Aside from direct representation, the Staff Attorney may also, from time to time, prepare and deliver client and community education, appear in administrative and judicial forums, and contribute to special legal and community projects.

#### **Duties and Responsibilities:**

1. Conduct and oversee client interviews, investigation, field investigations, and fact gathering;
2. Provide high-quality legal representation or advice to clients on housing, family law, protection orders, debt collection, guardianships, and other related matters in state court and administrative proceedings;
3. Offer high-quality legal representation or advice to clients on bankruptcy and federal Social Security benefits (preferred, but not required);
4. Handle a full range of litigation activities including drafting pleadings, conducting depositions, completing discovery, negotiations, motions practice, and representation of ERLS clients at trial;
5. Stay well-informed of the applicable laws and case laws as they develop and change to ensure that East River Legal Services is applying new laws properly;
6. Keep accurate records of case activities and provide

the necessary information to meet reporting requirements;

7. Participate in meetings as part of East River Legal Services and the Legal Team;
8. Comply with all regulations, grant requirements, and internal operating and personnel policies;
9. Provide education and outreach to members of the community, service providers, and community organizations;
10. IWork in collaboration with community organizations that provide rental assistance, domestic violence support, and other services available to assist our clients;
11. Perform other duties, which may be assigned from time to time by the Managing Attorney or Executive Director.

**Knowledge, Skills, & Abilities:**

1. JD admitted to practice in South Dakota or be eligible for admission to the South Dakota State Bar;
2. Admittance to the US District Court of South Dakota is preferred, but not required;
3. Ability to spot legal issues in cases while providing real-time counsel, comfort, and advice;
4. Excellent communication skills, both verbal and written;
5. Ability to prioritize and manage multiple clients and responsibilities;
6. Proficient at the use of technology including, but not limited to: word processing, spreadsheets, internet-based programs, database systems, and computer-based legal research;
7. Must be detail-oriented, organized, and self-motivated;
8. Ability to work effectively as part of a team and independently;
9. Ability to handle numerous tasks concurrently;
10. Skills and experience in interacting with persons of various social, racial, cultural, economic, and educational backgrounds;
11. Bilingual language skills are desired and compensated, but not required.

**Classification:**

Classified as an exempt employee.

**Salary:**

\$60,000 to \$70,000/year, depending on experience.

Benefits include 13 paid holidays, vacation leave, sick leave, health insurance, dental insurance, vision

insurance, Life Insurance, AD&D Insurance, IRA, and travel reimbursement.

**To Apply:**

Please send a cover letter, resume, and references to:

Melissa Frericks

Program Administrator

East River Legal Services

335 North Main Avenue, Suite #200

Sioux Falls, SD 57104

[Melissa@erlservices.org](mailto:Melissa@erlservices.org)

**Submission Deadline:**

Open until filled

East River Legal Services is an Equal Opportunity Employer. Persons of color, veterans, persons with disabilities, and persons from other traditionally underrepresented communities are strongly encouraged to apply.

**Lateral Attorney – Rapid City**

The law firm of DeMersseman Jensen Tellinghuisen & Huffman, LLP in Rapid City is seeking a lateral attorney for its general practice law firm in Rapid City. The ideal candidate will have experience in civil litigation, estate planning, and/or business transactions. Our established client base will provide productive work. Confidential inquiries with a cover letter and resume can be mailed to DeMersseman Jensen Tellinghuisen & Huffman, LLP, 516 Fifth Street, Rapid City, SD 57701, or e-mailed to [law@demjen.com](mailto:law@demjen.com).

**Staff Attorney –Jackson, WY**

The ACLU seeks applicants for the full-time position of Staff Attorney in the ACLU of North Dakota, South Dakota, and Wyoming, a national Chapter of the ACLU. The role is based in our office in Jackson, WY.

Reporting to the Legal Director, the Staff Attorney will will develop and litigate cases and participate in non-litigation advocacy to advance civil liberties and civil rights in Wyoming. This is a remarkable opportunity for a politically astute and strategic attorney who understands the value of both litigation and non-litigation advocacy. During legislative session, the staff attorney will be asked to develop legal opinions on proposed legislation and support the Advocacy Director and lobbyist in Wyoming.

## COMPENSATION

The ACLU values equity, transparency, and clarity in pay. Consistent with the ACLU's compensation philosophy, there is a set salary for this role. The annual salary for this position is \$92,805 (Level G), reflective of a position based in Jackson Hole, WY. This salary will be subject to a locality adjustment (according to a specific city and state), if an authorization is granted to work outside of the location listed in this posting. Note that most of the salaries listed on our job postings reflect New York, NY salaries, where our National offices are headquartered.

## RESPONSIBILITIES

- Engage in all aspects of litigation: manage and develop significant litigation in federal and state court including trial and appellate court litigation, prepare and respond to written discovery requests, take and defend depositions, engage in motion practice, write briefs, present oral arguments, and conduct trials
- Develop relationships and work with a team of cooperating attorneys, including those at other public interest organizations
- Supervise law students, interns, and volunteers
- Manage and oversee the intake process, supervise intake database administration; regularly review and handle complaint intake for potential action; strategize and execute or monitor intake-related actions
- Work closely with legal and non-legal program staff, particularly legislative, communications, and advocacy staff members both at National ACLU and affiliate offices
- Provide legal research as needed on legislative proposals
- Represent the ACLU at hearings and meetings, public forums, task forces, workgroups and conferences when appropriate
- Engage in public speaking, including representing ACLU positions to the media and public generally in collaboration with the Communications Director
- Provide regular and timely updates and reports to the Legal Director and/or Executive Director
- Meet with individual donors to discuss the Legal Program as necessary and in conjunction with the Executive Director and Development Director

In addition to:

- Engage in special projects and other duties as assigned

- Center principles of equity, inclusion, and belonging in all work, embedding the values in program development, policy application, and organizational practices and processes
- Commitment to the mission of the ACLU
- Demonstrate a commitment to diversity within the office using a personal approach that values all individuals and respects differences in regards to race, ethnicity, age, gender identity and expression, sexual orientation, religion, disability and socio-economic circumstance
- Commitment to work collaboratively and respectfully toward resolving obstacles and/or conflicts

## EXPERIENCE & QUALIFICATIONS

- A J.D. degree
- Must be licensed to practice law and in good standing in the Wyoming Bar or eligible for admission by test or waiver within one year of hire
- Ability to think creatively and to use non-litigation strategies to promote integrated advocacy campaigns
- Skilled in managerial and administrative tasks related to litigation, including supervising volunteers and coordinating with others inside and outside the ACLU
- Ability to work with diverse clients and to develop impact litigation
- Exceptional initiative, self-starter, vision and ability to develop and implement short- and long-term integrated advocacy strategies
- Ability to handle and prioritize multiple activities and responsibilities and the ability to work under pressure
- A team player who works collaboratively and shares responsibility and credit
- Commitment to the highest ethical standards of legal practice
- Ability to work evening and weekend hours and travel throughout the states as needed

## PREFERRED QUALIFICATIONS

- At least 5 years of litigation experience
- Demonstrated experience in constitutional or public interest law and/or federal court litigation. Extraordinary candidates with less experience may be considered

## COMPENSATION

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Consistent with the ACLU's compensation philosophy, there is a set salary for this role. The annual salary for this position is \$92,805 (Level G), reflective of a position based in Jackson Hole, WY. This salary will be subject to a locality adjustment (according to a specific city and state), if an authorization is granted to work outside of the location listed in this posting. Note that most of the salaries listed on our job postings reflect New York, NY salaries, where our National offices are headquartered. [Click Here to Apply!](#)

## Attorney – Public Entity

Nachawati Law Group is searching for an Attorney to work in our Public Entity Litigation Division. The Public Entity Litigation Division at Nachawati Law Group represents state, county, city, and other governments in complex civil enforcement actions in the areas of consumer protection, environmental protection, public nuisance, negligence, and more. From the opioid epidemic to PFAS contamination, our team of dedicated former public servants and complex civil litigators help public officials across the country protect their citizens from corporate malfeasance. The successful candidate will be involved in litigating a variety of complex civil enforcement cases throughout all phases, from filing to trial. The job requires strong legal research and writing skills, a solid grasp of civil procedure, and the ability to hit the ground running mid-stream in complex matters. Remote work arrangements will be considered on a case-by-case basis.

### Responsibilities of our Public Entity Litigation Attorney

- Research and draft complaints, pleadings, motions, and complex legal documents
- Review document productions and prepare for complex depositions and hearings.
- Take and defend depositions.
- Argue a variety of motions in state and federal courts around the country.
- Effectively manage case deadlines by actively moving cases forward and adhering to scheduling orders
- Collaborate closely with clients, team members, staff, and co-counsel to effectively litigate and resolve matters on behalf of sophisticated public entities in closely watched cases.

### Required Skills and Qualifications of Our Public Entity Attorney

- J.D. degree from an accredited law school
- 2-6 years of civil litigation experience
- Admitted to practice in at least one U.S. state.
- Demonstrated experience with document review platforms like Everlaw and Relativity
- Demonstrated experience taking and defending depositions.
- Demonstrated skill in legal research and writing.
- Outstanding organization and a team player attitude

### Preferred Skills of Our Public Entity Attorney

- Admitted to practice in Texas, New Mexico, Minnesota, and/or South Dakota.
- Experience representing clients (public or private) in consumer protection, environmental, mass tort, and/or products liability cases.
- Civil jury trial experience
- E-discovery litigation experience
- Ability to travel to depositions, hearings, mediations, and more.

### What We Offer

- Competitive compensation based on experience.
- Comprehensive and generous benefits package, including medical, dental, vision, short-term, and long-term disability, and life/AD&D
- Matching 401k, up to 6% match
- Collaborative and diverse work environment
- One day a week hybrid schedule

### About Nachawati Law Group

At Nachawati Law Group, we successfully fight corporate injustices for our clients by delivering passionate, persistent, professional, and trustworthy representation. Our lawyers are passionate about balancing the scales of justice for our clients. We focus on our client's needs and believe in being approachable, responsive, effective, and trustworthy. Building successful relationships with our clients allows us to represent them more effectively and address their needs.

Nachawati Law Group is an equal employment opportunity firm and considers all individuals regardless of race, religion, sex, national origin, age, disability, veteran status, or sexual orientation. We do not tolerate discrimination in hiring, work responsibilities, promotions, compensation, terminations, or any other employment condition.

# UPCOMING EVENTS

**OCTOBER 20, 2023.**

**THE CORPORATE TRANSPARENCY ACT: COMING SOON TO A FAMILY - OWNED ENTITY NEAR YOUER**

Minnehaha County Club, Sioux Falls

**NOVEMBER 1, 2023**

**BAR COMMISSION MEETING**

Zoom

**NOVEMBER 14, 2023**

**NOVEMBER LAW FOR LUNCH - THE CONSEQUENCES OF FIDUCIARY BREACHES OF DUTY**

Zoom

**DECEMBER 19, 2023**

**DECEMBER LAW FOR LUNCH - CYBERSECURITY**

Zoom

**JANUARY 3, 2024**

**BAR COMMISSION MEETING**

Zoom

**JANUARY 4 - 5, 2024**

**DISCIPLINARY BOARD MEETING**

Pierre

**JANUARY 16, 2024**

**JANUARY LAW FOR LUNCH - TAX UPDATE**

Zoom

**FEBRUARY 20, 2024**

**FEBRUARY LAW FOR LUNCH - ORGANIZATION**

Zoom

**MARCH 19, 2024**

**MARCH LAW FOR LUNCH - INDIAN LAW**

Zoom

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