

State Bar of South Dakota

AUGUST 2021 NEWSLETTER



Preparing for an Extended Absence
- Advice for the Solo Attorney
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State Bar of South Dakota

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PRESIDENT'S CORNER

William C. Garry

I recently traveled to Rapid City and then to Pierre. I always look forward to traveling across the state except, of course, in the winter months. In the spring, summer and fall, the prairie scenery is spectacular. This trip, however, it was sad to see the parched prairie caused by the severe drought conditions in many parts of the state. Farmers and ranchers have already been significantly impacted by these adverse conditions and there does not appear to be any relief predicted in the short term. We will need to offer our support to those whose livelihood has been seriously affected by these drought conditions.

I had the privilege of serving on the Disciplinary Board for four years. The purpose of disciplinary proceedings is not to punish but to remove from the profession those attorneys whose misconduct has proved them unfit to be entrusted with duties and responsibilities belonging to the office of an attorney so that the public may be protected from further wrongdoing. In my experience, the Board was always cognizant of its duty to protect the public, but always treated each lawyer appearing before it with dignity, compassion and professionalism. As President, and pursuant to SDCL 16-19-24, I have appointed James Simko of Sioux Falls to serve a five-year term on the Board. Jamie will join current board members Julie Dvorak (Chair), Roy Wise, Eric Schulte, Jana Miner, John Burke and Curt Everson (lay member). Tom Frieberg and Bob Frieberg serve as Board Counsel.

As President, I have also had the privilege of appointing Tamara Nash as the Young Lawyer Delegate to the ABA House of Delegates. Tamara, a prosecutor in Sioux

Falls, has been very active in the Young Lawyer Section and also represents South Dakota at the national level by volunteering with the ABA Young Lawyers Division. I am confident Tamara will continue to represent and serve South Dakota well as the Young Lawyer Delegate to the ABA House of Delegates.

The Bar Commission recently met in Pierre. Prior to our meeting, we held an orientation for the newly elected Bar Commissioners, Rory King, Franci Foral, John Richter and Jacob Tiede. They join current members Lisa Marso (President-Elect), Marilyn Trefz, Renee Christensen, Matt Roby, Drew Skjoldal, Stacy Johnson, Brent Kempema and Kirsten Aasen. You will learn more about each of these commissioners in the coming months of this President's Corner.

Later next month, Strategic Plan Coordinator Beth Overmoe and I will be conducting Committee/Section leadership orientation lunches in Rapid City, Pierre and Sioux Falls. The committees and sections are vital to the successful workings of our Bar. The lunches will provide an opportunity for the committee and section leaders to meet with me and Beth to discuss our plans for the year and for us to learn of upcoming plans for each committee or section.

Get out and enjoy the rest of your summer before it's too late!



Terry G. Westergaard
August 17, 1963 - July 28, 2021

*We will miss Terry the lawyer, Terry the leader, and
most of all, Terry our friend.*

“The State Bar of South Dakota is deeply saddened to hear of the death of our 2020-2021 Bar President Terry G. Westergaard. Terry led our association and members during the Covid Pandemic with great skill, patience, and empathy. Terry was an exceptional attorney and a gregarious and positive person. Our deepest condolences and prayers go out to his wife Karen, Terry and Karen’s children, and their entire family. In addition, we extend our sympathy to the Bangs McCullen Law Firm in Rapid City and Sioux Falls, the Rapid City community, and all the members of the State Bar who knew and loved Terry. Terry had a positive impact on the State Bar of South Dakota and it is a better organization because of his leadership. Terry will be dearly missed.”

Bill Garry

ATTENTION!!

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State Bar of South Dakota
YOUNG LAWYER SECTION



Ole Olesen
YLS President

Last month, I promised that I would not make my submission to the Newsletter about my adorable daughter Flora. So, I'd like you to meet the newest addition to my family: my son, Bjorn!



You may be asking yourself, what does this have to do with the YLS? Great question! In an effort to cover up being a proud father that is showing off his

children, I will now make a weak attempt at relating something from the YLS to having a new born son:

The YLS mission is to aid and promote the advancement of young lawyers and encourage their interest and participation in the State Bar. We strive to provide resources and tools to young lawyers and law students to help them grow in their career and practice. This mission is strikingly similar to the mission of loving parents. Parents want to help their child(ren) experience as many different things in life in order to find their strengths, weaknesses, passions, etc.; and to encourage and facilitate their participation and growth.

The YLS is in the position to help South Dakota's young lawyers find their strengths and passions within their practice. With the help of our veteran lawyers, our

young lawyers can grow and succeed in their careers and hopefully enjoy a feeling of accomplishment and fulfillment in those careers. The YLS can only carry out this mission because of you and your involvement with the YLS.

If you are a veteran lawyer, we hope to pair you with a young lawyer who needs a mentor. If you are new to the state bar, we hope we can find the perfect volunteer opportunity for you. If you are unable to make an event, we aim to keep you involved with increased technological efforts. Simply put, we want to get you involved and keep you involved with the YLS!

All of the staple events you have come to love and expect from the YLS will continue on this year. As a highlight, you can expect the following programming from the YLS over the course of the bar year:

Statewide Swearing-in Ceremony. On Friday, October 22, 2021, we will continue our tradition of welcoming newly-admitted lawyers to the practice of law in South Dakota. The event is a great opportunity for friends, family, and co-workers to celebrate the accomplishments of our newest lawyers. There is no better way to welcome lawyers to our profession!

CLE's. In addition to the Statewide Swearing-In Ceremony we will be hosting the **Nuts & Bolts CLE**. This CLE covers topics that cater to a young lawyer audience. In the spring, we

will also host the **YLS Bootcamp** in Rapid City and Sioux Falls. The Bootcamp covers various topics applicable to attorneys within the first few years of practice. Additionally, the Boot Camp incorporates a wellness section, which is entitled **#Fit2PracticeSD**. We plan to continue to offer a virtual option for our CLEs this year! Watch the bar newsletter for topics!

Public Service. We will continue to partner with the Veterans Legal Education Group (VLEG) at the law school and our state bar to offer legal clinics to members of the public in need of legal services, including our veterans. We will host veterans' legal clinics this year. We also will continue **Project Destination**, which will

continue our efforts to reach out to students in some of our state's most isolated areas, including Indian Country, and provide them with exposure to area lawyers with a hope of planting seeds of a future in the legal profession.

This year we also will be looking for ways to engage our membership and improve upon our programming. As such, we encourage you to reach out to any of our Board members to voice your concerns and ideas. It is important to us that we provide you with quality programming and opportunities. Young lawyers, be sure to add yourself to our Facebook page: <https://www.facebook.com/groups/SouthDakota.YoungLawyers>



Fellows of the South Dakota Bar Foundation

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

Sustaining Life Fellow - \$50,000 plus

Fred & Luella Cozad

Life Fellow - \$25,000 plus

Frank L. Farrar

Diamond Fellows - \$10,000 plus

Thomas C. Barnett, Jr.
Robert E. Hayes

Platinum Fellows - \$10,000

Hon. Richard H. Battey
Hon. John B. Jones
Scott C. Moses
Charles L. Riter
William Spiry
Hon. Jack R. Von Wald

Gold Fellows - \$5,000

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William F. Day, Jr.
P. Daniel Donohue
Dana J. Frohling
Richard L. Kolker

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

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Kimberley A. Mortenson
Timothy J. Rensch

Presidential Fellows - \$10,000

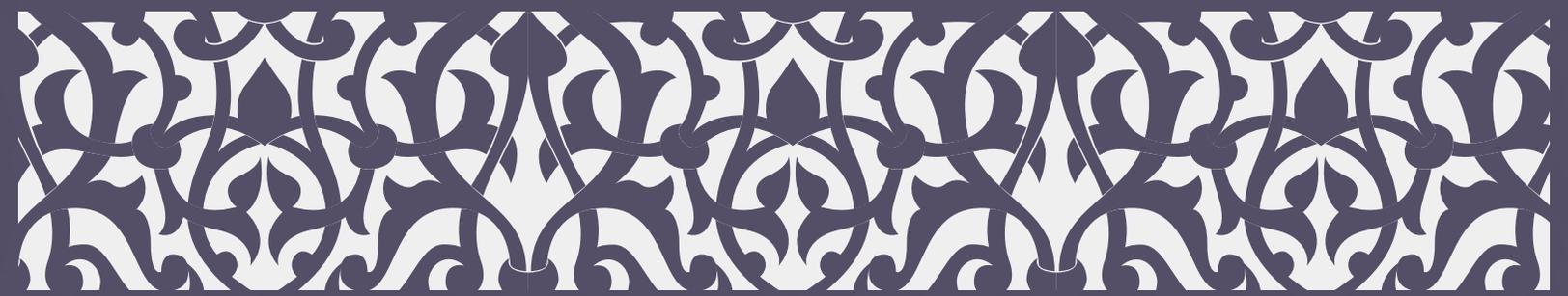
John P. Blackburn
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Barry R. Vickrey

Raising the Bar: Our Profession. Our Responsibility.



DEAN'S LIST : NEWS FROM THE LAW SCHOOL



As I begin my third academic year as dean, I have begun to recognize some of the rhythms of the school year. Certain events reliably define certain times of year. One of the most exciting annual events is the arrival of a new class of law students. August brings that season again and I write to introduce the USD Knudson School of Law Class of 2024 to you.

Currently, we have more than 85 students in the class of 2024 (the number isn't final as I write this column). They are from more than 20 South Dakota communities including towns like Chamberlain, Eagle Butte, Sioux Falls, Watertown, Gregory, and Webster. Our largest undergraduate feeder school remains USD followed by SDSU with out of state undergraduate institutions in third this year. Most of the class comes from outside South Dakota this year. More about why in a minute, but this shift absolutely did not come at the cost of qualified South Dakota students. The only South Dakota students denied admission were those with insufficient entering credentials. We simply persuaded more out-of-state students to choose the Law School this year. The most common reason we heard from South Dakota students who went elsewhere was location; they simply wanted to be in the Twin Cities; Washington, D.C.; or some other location. No law school or location is a perfect match for every student, so losing students who just want to be in another community will happen. We continue to work hard to make sure that students do not select other schools because of cost, quality, or a misunderstanding of the opportunities here, however. We ranked second lowest on student debt and second highest on value in the United States this year according to U.S. News.

Students increasingly recognize that the Law School offers an affordable, effective, and enjoyable education and choose it on that basis.

Numerical credentials for the class of 2024 remain strong. The easiest way to see that is to simply provide a chart with the LSAT and undergraduate grade point averages for the last three classes and the class of 2024:

We can boost these credentials in three ways: raise the floor, raise the ceiling, or swell the middle. We continue to have the most success with the first and last of these options. Following our decline in credentials and corresponding decline in bar passage several years ago, we have continued to successfully tighten our filter on entering credentials. In other words, we continue to slowly but significantly raise our floor.

LSAT/GPA	Class of 2024	Class of 2023	Class of 2022	Class of 2021
25 th Percentile	148/3.1	146/3.21	147/3.14	147/3.0
50 th Percentile	151/3.37	150/3.47	152/3.41	150/3.33
75 th Percentile	154/3.67	155/3.77	154/3.78	154/3.66

We have made one exception on minimum credentials in the form of a conditional admission program that targets first generation, veteran, nontraditional, or other diverse students for admission despite borderline credentials. We screen these students carefully for other indicators of success given that none of us can be reduced entirely to our standardized test scores. We condition admission for these students on their

participation in a one-week “jumpstart” program that introduces them to fundamental legal concepts and study skills. They must also participate in academic support workshops throughout their first year. We are limiting the number of students in this program to five for now and tracking their performance. This allows us to maintain heightened entrance requirements while taking calculated risks and providing additional resources for success to some students who otherwise may not have gotten an opportunity. As we gather more experience with this program, we will continue to refine it.

We have swollen the middle credential band primarily by offering resident tuition to applicants with an LSAT at or above 150. We previously limited that to those with a 155 or above. Over the last five years we consistently received 30 to 40 applicants in the 150 to 154 band but never matriculated more than two. With this expanded program, we have commitments from more than 20 out of state students with LSAT’s between 150 and 154. This does a couple very positive things. First, more students in that band, which is at or above our median LSAT, swells our middle credentials. We make the incoming class stronger by attracting more students in the middle;

students with those credentials consistently perform well in law school and succeed in practice. Second, it has significantly increased the size of our class and our ability to attract students from adjacent states. A supermajority of students still come from South Dakota and states that border South Dakota. Hopefully we can persuade many of them to remain in South Dakota to go to work. This will go a long way in meeting the legal needs in South Dakota and the region. As I have discussed with many of you, there is a sharp drop of students projected to graduate high school beginning in 2025. Initiatives like this are imperative to help us compete for quality students.

This is the Class of 2024 by the numbers. One of the other rhythms I have learned is that although each class fits into our tradition and culture of excellence, service, and leadership they each form their own unique identity. At this point, the Class of 2024 has not formed that identity and their story is yet to be written. I am excited to see them begin to do so. I look forward to introducing many of them as individuals to many of you in coming years and seeing their potential start to be realized in the next three years.

The USD Knudson School of Law will be hosting Fall 2021 On Campus Interviews (OCI) on August 19-20, September 9-10, and September 30 - October 1.

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

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



FALL
2021 ON
CAMPUS
INTERVIEWS
(OCI)

To register, please contact Brian Boyenga, Director of Career Services, at brian.boyenga@usd.edu with your preferred interview date and a job description of the position(s) you are seeking to fill.



JUSTICE SQUAD

Thank you to the following attorneys for accepting a pro bono or reduced rate case from Access to Justice, Inc., this month! You are now a member of the the A2J Justice Squad - an elite group of South Dakota lawyers who accept the responsibility to defend justice, uphold their oath and provide legal representation to those who need it.

**KYLE KRAUSE
KELLEN WILLERT
TERRY WIECZOREK**

**ERIKA OLSON
GEORGE NELSON
JACK NICHOLS
LONALD GELLHAUS**

ACCEPT PRO BONO CASE?



AND MUCH THANKS TO:

**BRANDY RHEAD
STEVE HUFF
MARWIN SMITH
DENISE LANGLEY
JAMES TAYLOR
BETH BALOUN
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YOU ARE INVITED TO JOIN!

Fellows of the South Dakota Bar Foundation

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

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- 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:
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111 W Capitol Ave. #1
Pierre, SD 57501

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

ANNOUNCEMENTS

The Law Firm of

Bachand & Hruska, P.C.

206 W. Missouri Ave., Pierre, South Dakota

Telephone: (605) 773-5990

is pleased to announce that

Grant M. Flynn

gflynn@pirlaw.com

has joined the firm as an associate effective
July 6, 2021

South Dakota Department of Health
is pleased to announce that

Ali Schaeffbauer (Tornow)

has joined our legal team as a staff attorney
effective July 26, 2021.

South Dakota Department of Health
909 E. Saint Patrick Street, Suite 4
Rapid City SD 57701

Telephone: (605) 394-1767

Ali.Schaeffbauer@state.sd.us

Boyce Law Firm, L.L.P.
is pleased to announce that

Kristopher A. Reed

joined the firm as an associate attorney in
June 2021.

Boyce Law Firm, L.L.P.
300 S. Main Avenue
P.O. Box 5015
Sioux Falls, SD 57117-5015

Telephone: (605) 336-2424
Facsimile: (605) 334-0618

www.boycelaw.com

Thompson Law, PLLC
is pleased to announce that

Thomas E. Simmons

has joined the firm, Of Counsel.

www.cathompsonlaw.com

Thomas E. Simmons is a full-time faculty member of the University of South Dakota Knudson School of Law and devotes his primary energies and attention to the demands of that job – including teaching, student-support, research, scholarship, faculty governance, and service. He maintains a professional part-time relationship with Thompson Law and its clients as an “of counsel” attorney.

Please join Richardson, Wyly, Wise, Sauck & Hieb, LLP, in extending best wishes to

William K. Sauck, Jr.

who, after 38 years of dedication and service, is retiring from Richardson, Wyly, Wise, Sauck & Hieb, LLP, effective June 30, 2021.

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LAURA ROSE
USD LAW PROFESSOR

THURSDAY
AUG. 19TH
12:30PM - 1:30PM CST

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Use of
Exhibits**



SAVE THE DATE

**ESTATE PLANNING
WITH ROBERT KEEBLER**

 SEPTEMBER 17, 2021

 SIOUX FALLS - RAMKOTA HOTEL

 8:30 AM - 12 NOON CST

- INCOME AND ESTATE TAX CHANGES FOR ESTATE PLANNERS
- ROTH CONVERSATIONS A HOW TO FOR ESTATE LAWYERS AND PLANNERS
- TAX PLANNING FOR LARGE IRA'S INCLUDING WHY MN RESIDENTS SHOULD LEAVE THEIR IRA TO A SD TRUST

REGISTER
HERE

KEEP CALM AND BE CYBERSMART
SEPTEMBER CLE



REGISTER
HERE

Panel on Cryptocurrency

Legal Issues with Cryptocurrency

Tax Implications of Cryptocurrency

September 17th, 2021

1-4 PM

Ramkota Hotel, Sioux Falls

The Inaugural

South Dakota Land and Lending Conference

We're bringing together some of our most business-savvy, innovative minds—lawyers, brokers, lenders, appraisers, abstracters and more—to learn, grow and explore development possibilities in South Dakota.

Take advantage of engaging keynote speakers and panel discussions, breakout sessions and networking opportunities during this full-day summit.

Friday, September 10, 2021 • Sioux Falls • Denny Sanford Premier Center

Location Denny Sanford Premier Center, 1201 Northwest Ave, Sioux Falls, SD 57104

Featuring



Brent Gleeson

Navy SEAL Veteran, Author,
and Leadership Consultant



Trista Curzydlo

C4 Consulting, LLC

Real Estate Panel

Past, Present, and Future of Development
and Brokerage in Sioux Falls – Moderated
by Bill Zortman

Chuck Sutton

Sutton Auction

Craig Lloyd

Lloyd Companies

Michael Bender

Bender Companies

Individual \$50 **Student** \$25

Scan here for event registration & up-to-date info:

Questions? Email ryan.mcknight@sdstate.edu for more info.

<https://www.sdstate.edu/ness-school-management-and-economics/south-dakota-land-and-lending-conference>





South Dakota
Paralegal Association

2021 Semi-Annual Seminar & Meeting

Save the Date!



October 15, 2021



Watch for registration info
in the next newsletter!

6 CLE Credits:

1 Ethics · 4 Substantive · 1 Non-Substantive



SOCIAL: Thursday, October 14 ~ 6-8pm

SEMINAR & MEETING

Friday, October 15 ~ 8am-4pm

- Continental Breakfast @ 7:30am
- Semi-Annual Meeting & Luncheon



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Attorney Advertising

Live Webinar Schedule



WELL-BEING. DONE WELL.

*Webinars listed in blue are hosted by mylifeexpert.com

DATE/TIME	TOPIC	CLICK HERE TO REGISTER
Wednesday, August 11th 1:30 PM - 2:30 PM EST	<i>Leveraging Your Vulnerabilities</i>	
Thursday, August 19th 12:00 PM - 12:30 PM EST	<i>Mindfulness @ Work</i>	
Wednesday, September 8th 1:30 PM - 2:30 PM EST	<i>Caring for Your Loved Ones at Home</i>	
Thursday, September 23rd 12:00 PM - 12:45 PM EST	<i>Unpacking the Backpack</i>	

Can't attend a desired webinar? No problem!

Simply visit allonehealth.com/blog or mylifeexpert.com to view all recorded sessions and download accompanying materials. An account may be required for access to materials on Life Expert. Please reach out to your account manager for more information.

YOU
asked.
we're
answering.
COMING
SOON!

A brand new
State Bar website
and simplified
member hub is on
it's way!

Please watch
your email for
updates this
month!



Meet the 2021 University of South Dakota Knudson School of Law's Public Interest Network Fellows

By Wendy Hess

This year, despite a global pandemic and thanks to your support, the University of South Dakota Knudson School of Law Public Interest Network (PIN) managed to raise over \$10,000 from its 2021 auction. PIN is a student-led organization whose mission is to support USD Knudson School of Law students who volunteer their time working unpaid, summer internships with public interest organizations (such as government agencies, nonprofits, Native American legal services, and public defender offices). PIN hosts an annual auction to fund fellowships for these students.

With the amount raise this year, five USD Knudson School of Law students were awarded fellowships to help cover the cost of living expenses as they complete their public interest summer internships. The 2021 PIN Fellows are: Taylor Bonestroo (Minnehaha County State's Attorney's Office); Sydney Boots (East River Legal Services); Amber Cook (East River Legal Services); Diane Haiar (Southern Minnesota Regional Legal Services); and Bahar Sallae (Minnehaha County Public Advocate's Office).



Pictured: Amber Cook; Bahar Sallae; Diane Haiar; Sydney Boots (not pictured – Taylor Bonestroo)

PIN's outgoing president, Melanie Dumdei, and incoming president, Khriztyn Krininger, worked hard to make this year's fundraising effort so successful. PIN is also grateful to those who donated money and items for the auction and those who participated in the auction. PIN recognizes our generous law office and individual sponsors: May Adam (Platinum); Marlow, Woodward & Huff (Solid Gold); Goosmann Law Firm (Gold); Davenport, Evans, Hurwitz & Smith (Gold); Sue Benton (Gold); and Michael McKey (Gold).

We could not support these students' public interest service without you. Please stay tuned about information about PIN's 2022 fundraising activities.

Interested in finding out more about PIN? You can reach PIN President, Khriztyn Krininger, at Khriztyn.Krininger@coyotes.usd.edu, and the PIN Faculty Advisor, Wendy Hess, at wendy.hess@usd.edu.

REGISTRATION IS NOW OPEN

21st ANNUAL COMMUNITY RESPONSE TO CHILD ABUSE CONFERENCE

Wednesday, September 29

In-Person Pre-Conference · 8:00am-11:15am CT
In-Person Vendor Booths & Lunch · 11:15am-12:00pm CT
Main Program · 12:00pm-5:00pm CT

Thursday, September 30

In-Person Check-In & Breakfast · 7:30am-8:00am CT
Main Program · 8:00am-12:00pm CT

Visit sdpcm.com/conference to reserve your virtual or in-person seat!



Virtual Conference

The Unified Judicial System, the Center for the Prevention of Child Maltreatment and Child's Voice at Sanford Health invite you to save the date for the 20th Annual Community Response to Child Abuse Conference!

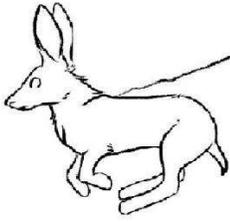
This two-day, multi-disciplinary, in-person and virtual conference provides opportunities for continuing education, networking, learning, and collaboration for those who work to prevent and respond to child maltreatment.

Who Should Attend

Those passionate about the prevention of and response to child abuse and maltreatment, including:

- Medical Providers
- Nurses
- Behavioral Health
- Social Workers
- Counselors
- Law Enforcement
- Legal Community
- Educators
- Dental Providers
- Community Advocates
- Students
- Business Community

Credits have been approved for Education, Social Work, and Counselors & Marriage and Family Therapists.



JACKRABBIT BAR CONFERENCE

September 23-25, 2021
Idaho Falls, Idaho

Name	
Name for Badge	
Title	
Address	
City, State Zip	
Phone	
Email	
Spouse/Guest Name	
Name for Badge	

Fees Per Person Total

Conference Registration (includes meetings, opening reception, breakfasts, and Friday night dinner)	\$425	\$
Spouse/Guest registration Fee (includes opening reception, breakfasts, and Friday night dinner)	\$125	\$

Total \$ _____

Return this form and payment to:

Jackrabbit Bar Conference
c/o Idaho State Bar
PO Box 895
Boise, ID 8701

Or

Email: sbeckwith@isb.idaho.gov

Or

FAX: 208-334-4515

Hotel Information: Hilton Garden Inn

700 Lindsay Blvd
Idaho Falls, ID 83402
1-208-522-9500
Rate \$149/night

Block cutoff date 9/9/21

Cancellations must be confirmed with the hotel 24 hours prior to arrival to avoid a late cancellation fee.

For further information, contact Diane Minnich at (208) 334-4500 or dminnich@isb.idaho.gov

Method of Payment: Check Enclosed Credit Card: VISA MasterCard

CC # _____ Zip Code _____ CCV# _____ Exp. Date _____

Signature _____



September 23-25, 2021

Hilton Garden Inn

Idaho Falls, Idaho

Thursday, September 23

4:30 p.m. to 6:00 p.m. **Registration**

6:00 p.m. to 7:00 p.m. **Welcome Reception** – Hilton Garden Inn
patio

Friday, September 24

7:30 a.m. to 8:30 a.m. **Breakfast**

7:30 a.m. to 9:00 a.m. **Registration**

8:30 a.m. to 8:40 a.m. **Welcome to the Jackrabbit Bar
Conference**, Hon. Michael J. Oths, Idaho,
Chancellor

8:40 a.m. – 8:50 a.m. **Welcome to Idaho Falls** – Ammon Mayor
Sean Colletti

8:50 a.m. to 9:00 a.m. **Overview of the Conference**, Diane
Minnich, Idaho

9:00 a.m. to 10:15 a.m. **Judicial Independence: The Founders’
Aims, Concerns and Current
Controversies** – Dr. David Adler, The
Alturas Institute

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

10:30 a.m. to 11:30 a.m. **Courts in Idaho, Water Law** – Hon.
Roger Burdick, former Idaho Supreme Court
Chief Justice

11:30 a.m. to 12:00 noon **Roll Call of the States** – Montana,
Wyoming, South Dakota, Utah, Idaho
Sponsored by ALPS

6:30 p.m. **Dinner – Idaho Falls Art Museum**
Sponsored by Fastcase

SATURDAY, September 25

- 7:30 a.m. to 8:30 a.m. **Breakfast** – Hilton Garden Inn
- 8:30 a.m. – 8:45 a.m. **Roll Call of the States** –North Dakota, Nevada, New Mexico
- 8:45 a.m. – 9:45 a.m. **Idaho National Laboratory**
- 9:45 a.m. – 10:15 a.m. **ABA Update**
- 10:15 a.m. – 10:30 a.m. **Break**
- 10:30 a.m. – 11:30 noon **Future of the Legal Profession** – Utah Regulatory Sandbox
- 11:30 a.m. to 12:00 noon **Unified Bar Update** – Tony J. Weiler, Executive Director, State Bar Association of North Dakota
- 12:00 noon – 12:15 p.m. **Wrap up, Preview of 2022 Conference**

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July 20, 2021

VIA E-MAIL and U.S. MAIL

andrew.fergel@sdbar.net

Andrew Fergel
Executive Director and Secretary-Treasurer
State Bar of South Dakota
222 East Capitol Avenue, #3
Pierre, SD 57501-2596

RE: Rocky Mountain Mineral Law Foundation.

Dear Andrew:

The Trustees Council of the Rocky Mountain Mineral Law Foundation held a virtual Annual Meeting on July 16, 2021. I attended the meeting as Trustee for the South Dakota State Bar.

Due to the global pandemic, the Foundation provided its programming through a virtual online format during the past year. The Foundation sponsored four Special Institutes and twenty-three live webinars in addition to the virtual 2020 Annual Institute which was free to members.

In light of the Foundation's expanding influence, the Trustees Council voted to change the name of the organization to "The Foundation for Natural Resources and Energy Law". The change will better reflect the mission of the Foundation and eliminate any perceived geographical limitations.

The Foundation's Scholarship Committees awarded over \$276,845 in law school scholarships last year. The RMMLF Scholarship Recipient Attendance Program pays travel, accommodation, and incidental expenses for law students to attend Foundation Institutes and Short Courses. Applications for this assistance can be made through the law school Trustee, Sean Kammer.

Andrew Fergel – Executive Director and Secretary – Treasurer, State Bar of South Dakota
2021 Rocky Mountain Mineral Law Foundation Report
July 19, 2021

The following officers were elected to serve for the coming year:

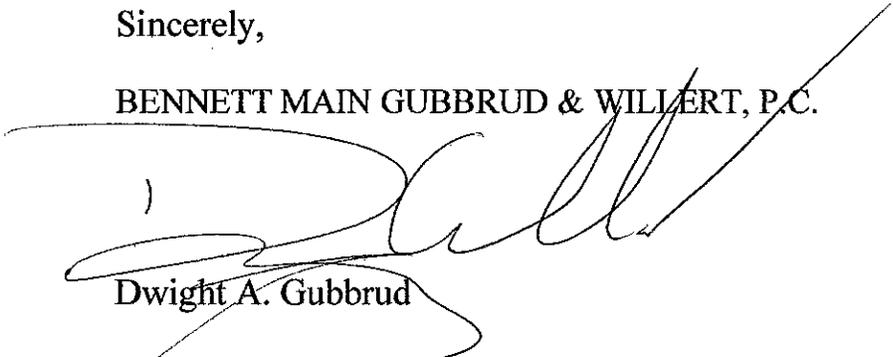
- President - Scott W. Anderson, Hogan Lovells, Denver, Colorado;
- Vice President - Rachel E. Salcido, University of the Pacific, McGeorge School of Law, Sacramento, California;
- Secretary - Hadassah (Dessa) M. Reiner, Holland & Hart LLP, Jackson, Wyoming;
- Treasurer - Monika U. Ehrman, University of North Texas College of Law, Dallas, Texas.

The 2022 Annual Meeting and Institute will be held in Vail, Colorado from July 21 to 23.

If anyone wants further information, please feel free to contact me. You can also learn more about the Foundation and its many programs and publications, by visiting www.rmmlf.org. It was an honor to represent the State Bar on the Foundation's Trustees Council.

Sincerely,

BENNETT MAIN GUBBRUD & WILBERT, P.C.



Dwight A. Gubbrud

DAG/jn

cc: Alex Ritchie, Executive Director, RMMLF



Given how difficult it can be to try and take a planned absence, such as a long vacation or maternity or paternity leave, it's no wonder that having to cope with the consequences of an extended unplanned absence, perhaps due to the sudden onset of a serious health issue, can result in a crisis mode response. In short, an extended absence can be problematic to say the least. The good news is that it needn't be this way. Regardless of the reason behind an extended absence, the accompanying headaches some solos experience can be minimized with a little proactive planning.

The place to start is to find another lawyer willing to act as your backup attorney. If your practice is comprised of several practice areas, you may need to have more than one backup attorney. For some solos, this person may be the same person who has already agreed to assist in the winding up of your practice in the event of your death or disability. Now, understand that a

backup attorney's responsibilities during your absence does not include maintaining your practice. A backup attorney is only there to assist any of your clients with an unforeseen legal emergency. Keep this in mind as it may make the process of finding a backup attorney a bit easier.

Beyond just naming a backup attorney there are several other things you might do in terms of proactive planning. Consider providing notice of the existence of and reason for a backup attorney in your fee agreements so that clients are aware that you have taken steps to protect their interests in the event of an emergency. Maintain a Current Office Procedures manual that outlines your calendaring system, conflict system, active file list, open and closed file systems, accounting system, and any other key system. This can help a backup attorney come up to speed as quickly as possible in the event of an emergency. Of utmost importance is



Authored by: Mark Bassingthwaighte, Risk Manager

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

always keeping critical systems such as the calendar and conflict systems current and making sure that all files are thoroughly documented and kept current.

With the above in place, preparing for a planned absence is relatively straight forward. Here are six key things you will need to take care of:

- 1) All clients will need to be notified as far in advance as possible. This notification should include the name and contact information of your backup attorney and a brief explanation of the limited role of a backup attorney. Think about notifying clients verbally as well as in writing to make sure no one falls through the cracks. This will also give your clients the opportunity to ask questions or express any concerns. Of course, depending upon the nature of your practice, courts and professional contacts such as lenders or realtors may also need to be notified.
- 2) Prepare a case status summary for each open file. If ever called upon, your backup attorney will be most appreciative.
- 3) Create a master list of active client names that includes contact information, the type of matter, and where and how each file can be located and accessed. Commit to making sure your calendar is kept current, then let your backup attorney know how to quickly find and access both this list and your calendar. Also make sure you have ready access to both during your absence.
- 4) Make arrangements for the collection of your mail, acceptance of service, payment of your bills, and the processing of payments received.
- 5) Decide how and under what circumstances someone can reach you in the event of an emergency and share that information with whoever might need it.
- 6) Finally, just before leaving, place an out-of-office sign on the door and change your voicemail and email out-of-office messages as called for noting if or when a response can be expected.

these six steps may be far shorter; but they remain the key items you should try to accomplish. Of course, it's the possibility of having no one available to assist you with your practice if you ever have to take an extended unplanned absence that underscores the importance of naming a backup attorney long before his or her services might be needed.

If you happen to be a solo lawyer who has employed one or more staff, things should be a bit easier because someone familiar with your practice would be available to handle the day-to-day administrative functions of your practice during your absence. This person would also be able to assist your backup attorney, as necessary. Here, the proactive planning piece includes identifying the person you wish to have in charge during your absence, putting together a list of instructions for this individual, and introducing this individual to your backup attorney in order to establish a baseline working relationship. In addition, make certain all staff are on message with what clients are to be told about your absence and make arrangements to assure staff continue to receive regular paychecks.

Even if you have no staff, you might consider temporarily hiring a staff person, if the circumstances surrounding your absence allow for it. Yes, a step like this will take some advance planning and require time for any necessary training; but it is doable, particularly if you previously took the time to develop and maintain an office procedures manual as recommended above.

In conclusion, I will readily admit that many solos do have long and successful careers without ever needing the help of a backup attorney. And I can appreciate that following through on some of the initial proactive planning steps may take some time; but I encourage you to not let either truth be what prevents you from committing to doing so. As I see it, it's all about making it possible to take care of you and your support systems by way of a planned absence and your practice and clients if you are ever forced to deal with an unplanned absence. That's one heck of a good reason if you ask me.

Depending upon the circumstances behind an unplanned absence, the time you have to work through

In Memoriam



Roger Moan
December 25, 1944 -
July 04, 2021

Roger Douglas Moan, age 76, of Baltic, SD, passed away on Sunday, July 4, 2021, at the Sanford USD

Medical Center in Sioux Falls. Funeral services will begin at 2:00 PM Friday, July 9, 2021, at Baltic Lutheran Church. Visitation will be from 5-7:00 PM Thursday, at the Minnehaha Funeral Home, Baltic. In lieu of flowers, memorial may be directed to the Baltic Lutheran Church or the Baltic Fire Department. The service will be live streamed on Roger's obituary page at www.minnehahafuneralhome.com.

Roger was born on December 25, 1944, at Dell Rapids to Henry and Althea (Berg) Moan. He was baptized and confirmed at Willow Creek Lutheran Church. He graduated from Baltic High School in 1962. On November 26, 1963, Roger married Joann Nesheim at Baltic Lutheran Church. After attending Nettleton Business College, he worked for the state highway department and Crescent Electric Supply until being appointed clerk of courts and a magistrate judge for Minnehaha County. Roger served the county for 28 years and boasted that he performed over 6000 weddings.

Roger was very active member of his community. He was a longtime firefighter and past Fire Chief of the Baltic Volunteer Fire Department. He was a member of Baltic Lutheran Church and was a 4-H leader. Roger loved classic cars and could also be found at local car shows. He also enjoyed golfing, collecting John Deere tractors, feeding his birds and squirrels, taking care of the family pets, and attending his grandkids' events.

Survivors include his wife, Joann, Baltic; sons: Tim (Amy) Moan, Yutan, NE, Jeff Moan, Baltic, and Dan (Amy Beck) Moan, Baltic; five grandchildren: Rachel (Ben) Krdzalic, Des Moines, IA, Nicole (Zach) Tolk, Madrid, IA, Korrine (Austin) Moan, Parkston, SD, Logan Moan, Yutan, NE, Jack Moan, Yutan, NE; six great grandchildren: Lenora Tolk, Elisa Tolk, Vaughn

Tolk, Olivia Krdzalic, Westin Moan, and Kimberly Klebenstein; brother, Stanley Moan, Michigan; and many other relatives and friends. He was preceded in death by his parents, Henry & Althea Moan, and a brother, Henry Lyle Moan.



Clyde R Calhoon
May 4, 1941 - July 12, 2021

Clyde R Calhoon, 80, passed away on July 12, 2021 at the United Living Community, after a short battle with cancer. A celebration of life will be held at the Brookings Elks on Friday, July 16th from 5-7pm. The

family extends an invitation to all who knew him and to celebrate his amazing life story.

Clyde was born on May 4, 1941 in Winner, SD to Leon and Wilma (Frantz) Calhoon. He was raised and worked on the family ranch near Ideal, SD and attended country grade school and Winner High School.

Clyde attended SDSU after high school where he met an east river girl, Karan Redlin. They soon became engaged and built a new home in Ideal, SD planning to live and work on the Calhoon Ranch. However, on the way to their wedding in January 1964 he was involved in an automobile accident and lost his eyesight. Plans changed and he and Karan returned to SDSU. After graduating from SDSU in 1967 and as magna cum laude from the University of South Dakota Law School in 1970, Clyde returned to Brookings to practice law. In 1971 Clyde and Karan bought a lot on Lake Poinsett and built a cabin where they spent 49 summer weekends fishing, boating and entertaining family with many a 4th of July firework celebrations. In 1974 Clyde was elected to the Office of Brookings County States Attorney. In 1976, Wm. Mark Kratochvil joined the law firm and served as Deputy States Attorney. In 2002 he was recognized as South Dakota's first Prosecutor of the Year. During his tenure in office, Clyde earned a reputation for fairness and firmness and was known as a tough prosecutor. Clyde served the Brookings community as States Attorney for 42 years retiring in December 2016.

Clyde was heavily involved in his community and was a founding member of the Brookings Optimist and named Optimist of the Year in 2001-2002. He also belonged to SDSU Jackrabbit Club, Benevolent and Protective Order of Elks, South Dakota States Attorneys Association, National District Attorneys Association, South Dakota Bar Association. Clyde also received many awards from law enforcement over the years.

Clyde was an avid sports enthusiast following the Winner Warriors, Minnesota Twins, Vikings, Wild and the Brookings Rangers. He was a fanatic about SDSU sports, especially football and attended football in all three SDSU venues over the years and the beloved "Barn" for basketball. Clyde's children were the light of his life and he was very proud of their success in life. But the highlights of his life were his 2 granddaughters and he followed their successes with great pride, especially their time in KCK Wildfire, Sioux Valley Cossacks and soon to be Bobcat Cheer.

Grateful for having shared his life are his wife Karan, his son Chris of Parker, Colorado and his daughter Camille Koolmo of Brookings and her husband Graham and granddaughters, Bella and Mija. His brother, Lee (Keatha) Calhoon and many nieces and nephews. He was preceded in death by his parents and his brother Jim.

Condolences may be sent to the family through www.rudesfuneralhome.com



David E. Lust
March 22, 1968 -
July 23, 2021

Prominent business and civic leader, former state legislator, and loving husband and father,

David Ellwood Lust, 53, of Rapid City, passed away unexpectedly on July 23, 2021 from cardiac arrest.

He was born March 22, 1968 in Aberdeen, South Dakota to James and Dawn (Ellwood) Lust. Dave attended Aberdeen Central High School where he played football and basketball, ran track, and made lifelong friends.

A gifted athlete and leader on and off the field, David graduated in 1986 and enrolled at Dartmouth College. Although forced to end his college football career after his third concussion, Dave went on to play rugby and participate in numerous other athletic and outdoor activities. It was his fraternity, Beta Theta Pi, however, and specifically the members who became true brothers, that forged his college experience and solidified his pride in and devotion to his alma mater. It was also while at Dartmouth on a study abroad program in Mexico that Dave met his future wife, Becky. They married in 1995 and enjoyed over 25 years of love, laughter, and adventure together.

After graduating from Dartmouth in 1990 with a B.A. in political science, Dave worked for an international consulting firm for three years, traveling throughout Europe and South America. He then earned his J.D. from the University of South Dakota in 1997, placing second in his class. Thrilled to be back in his home state, Dave moved with Becky to Rapid City to clerk for Judge Richard Battey, thus beginning his residence in and love for the Black Hills. While in Rapid City, Dave joined the Gunderson, Palmer, Nelson and Ashmore law firm, where he worked as a business attorney for over 22 years, earning countless awards and accolades. In 2006, he embarked on his political career with his election to the South Dakota State Legislature. Dave served 11 years, including two terms as majority leader.

Yet, Dave's greatest impact may have come through his volunteer work. Dave served on many boards, among them the Rapid City Economic Development Partnership, the South Dakota School of Mines & Technology, the Rapid City Area Chamber of Commerce, Junior Achievement, and the Big Brother/Big Sister Foundation, as well as dedicated many hours to his church and the community. Dave was particularly committed to his work with ELEVATE and its mission to promote economic development in Rapid City. Affordable housing needs were also a recent concern he worked to address.

David is survived by his wife, Rebecca (Becky) and four children, Nicholas, Isabelle, Benjamin, and Samuel, all of Rapid City; father, James (Jim) Lust; stepmother, Vicki Lust; sisters, Susan (Gary) Deibert, Debra (Jon) Stonehouse, Karen (Jay) McLaughlin, and Jane (Ed) Walsworth; brothers, Steven (Stacey) Lust and Jamie (Karen) Lust; and stepbrother, John (Jill) Russo. He was

preceded in death by his mother, Dawn.

Dave was a devoted attorney, friend, husband, and father. He enjoyed hunting, golfing, and fly-fishing and looked forward every year to the annual fly-fishing trips to the Bighorn Mountains he planned for fellow fishermen as well as his yearly golf excursions with his high school buddies. He particularly valued the friendships he made throughout his life and always made time for people. He cherished his relationships with his parents and siblings and their families and especially liked taking his own children back to Aberdeen for family gatherings.

Above all, he loved Becky and their children, and despite his many other commitments, always prioritized our needs and activities and let us know how much he treasured our family. From golfing with Nick, to hunting and fishing with Ben, to coaching Sam in baseball, to sharing favorite Frank Sinatra playlists with Isabelle while cooking Sunday dinners, to evening walks and family hikes, Dave was always there for us, keeping

us close and making us laugh. He was an incredible husband and father and will be dearly, dearly missed and lovingly remembered.

A memorial service will be held for David at 1:30 pm MST on Saturday, July 31, at The Fine Arts Theatre at The Monument in Rapid City. A private Episcopal service will be held for the family. The service will be livestreamed and can be viewed at <https://www.osheimschmidt.com/obituary/david-lust>

In lieu of flowers, donations may be sent to the Black Hills Area Community Foundation/David Lust Fund, PO Box 231, Rapid City, SD 57709 for the David Lust Memorial Fund or at <https://bit.ly/dlustmemorial>

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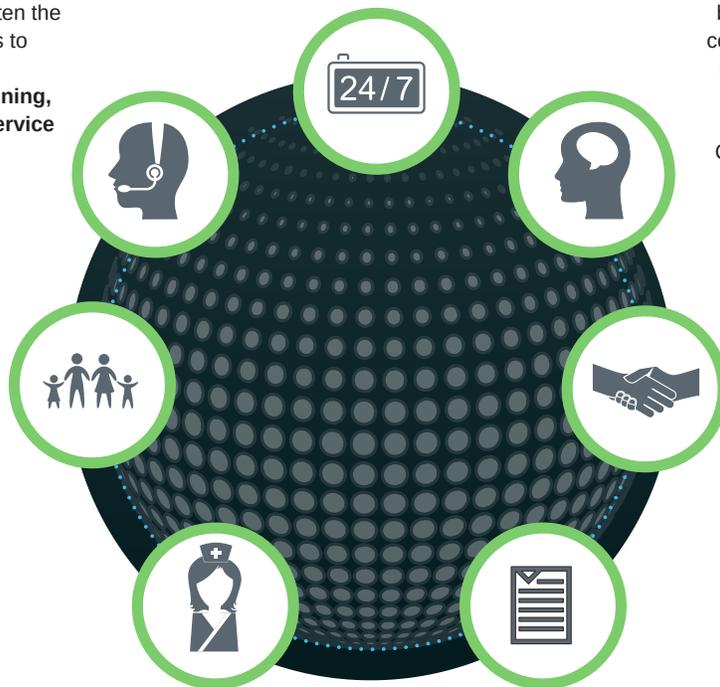
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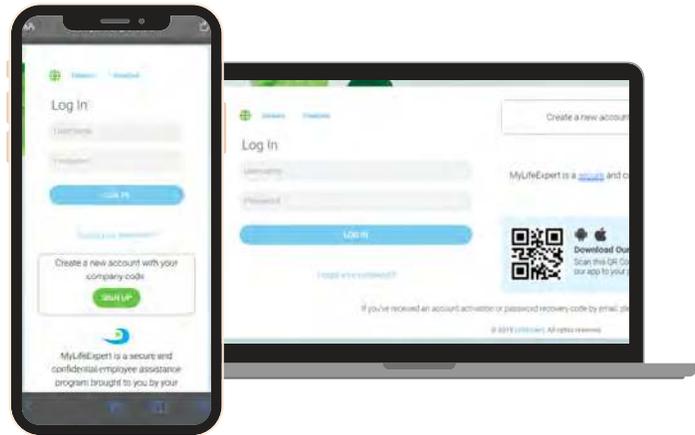
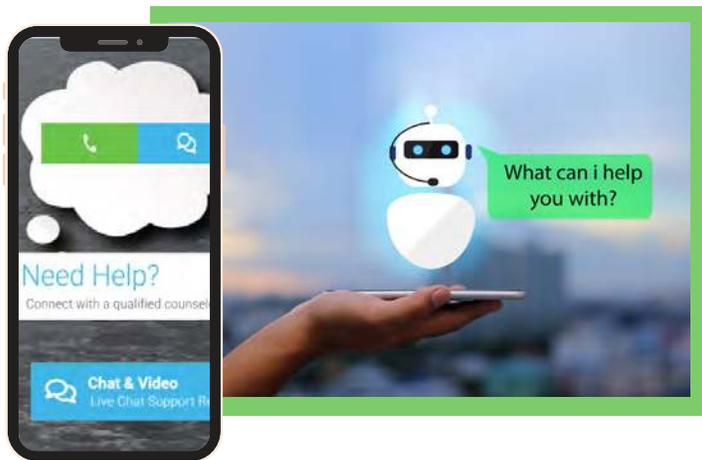
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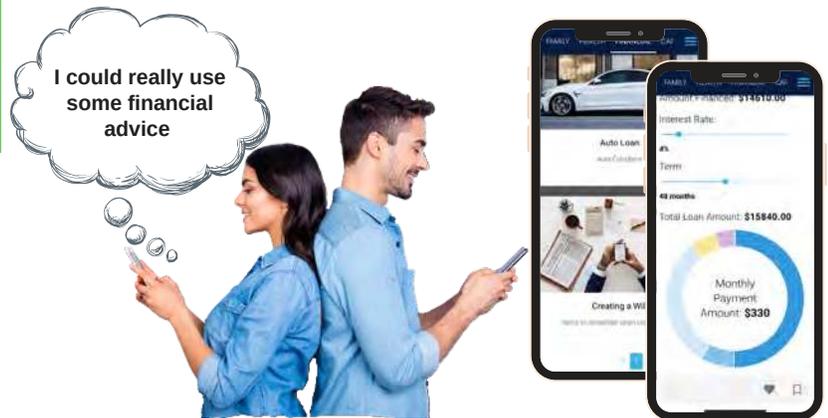
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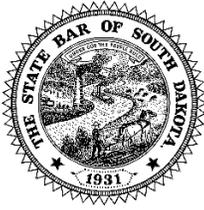
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Steven Blair, Pierre
Megan Borchert, Pierre
Niclas Dahlvang, Wessington Springs
Drew DeGroot, Sioux Falls
Kristen Edwards, Pierre
Morgan Erickson, Yankton
Holly Farris, Pierre
Anita Fuoss, Pierre
William Golden, Canton
Michael Houdyshell, Pierre
Julie Johnson, Mina
Quincy Kjerstad, Rapid City
Kody Kyriss, Pierre
Ryan Loker, Pierre
Frank Marnell, Pierre
Gerald McCabe, Claremont
Amber Mulder, Pierre
Graham Oey, Sioux Falls
John Richter, CH, Pierre
Jeff Shultz, Sioux Falls
Justin Smith, Sioux Falls
Caroline Srstka, Sioux Falls
Sarah Thorne, Pierre
Catherine Williamson, Pierre
Rosa Yaeger, Pierre
Brian Zielinski, Sioux Falls

AGRICULTURAL LAW

Susan Anderson, Custer
Stan Anker, Rapid City
Elliot Bloom, Rapid City
James Cremer, Aberdeen
Brian Donahoe, Sioux Falls
Kristen Edwards, Pierre
Craig Evenson, Clear Lake
Dennis Evenson, Clear Lake
Jacob Fischer, St. Paul MN
Amanda Gaikowski, Sioux Falls
Thomas Geu, Vermillion
Quincy Kjerstad, Rapid City
David Larson, Chamberlain
Larry D. Nelson, Sioux Falls
Robert Nelson, Sioux Falls
Mitchell Peterson, Sioux Falls
Hunter Roberts, Pierre
Jason Shanks, Sioux Falls

Danny Smeins, Britton
Kelsea Sutton, Co-CH, Burke
Jacob Tiede, Mitchell
Michael Traxinger, Co-CH, Aberdeen
Paul Tschetter, Sioux Falls
Chelsea Wenzel, Pierre
Todd Wilkinson, De Smet

ALTERNATIVE DISPUTE RESOLUTION

Patrick Burns, Minneapolis, MN
Gregory Erlandson, Rapid City
Hon. David Gienapp, Madison
Chet Groseclose, Sioux Falls
Jason Harris, Sioux Falls
Lindsay Harris, Sioux Falls
Katie Johnson, Beresford
David Larson, Chamberlain
James Marsh, Tripp
Michael McKnight, Sioux Falls
Greg Peterson, Aberdeen
Vince Purtell, Sioux Falls
Elizabeth Rosenbaum, Sioux City, IA
Laura Rowe, Onida
Ali Schaeffbauer, Rapid City
Heidi Thoennes, Sioux Falls
Marilyn Trefz, Vermillion
Linda Lea Viken, CH, Rapid City

BUSINESS LAW

Susan Anderson, Custer
Amy Arndt, Co-CH, Sioux Falls
Frances Becker, Rapid City
Josh Brown, Sioux Falls
James Cremer, Aberdeen
Thomas Deadrick, Pierre
Jacob Dempsey, Pierre
Justin DiBona, Rapid City
Matthew Dorothy, Harrisburg
Joe Dylla, Sioux Falls
Eric Erickson, Sioux Falls
Ryan Fargen, Sioux Falls
Vincent Foley, Watertown
Tom Geu, Vermillion
Patrick Goetzinger, Rapid City
Chad Hansen, Dell Rapids
Dixie Hieb, Sioux Falls
Laura Hodson, Rapid City
David Hosmer, Yankton
Curtis Jensen, Rapid City
Darrell Jesse, Yankton

Brian Kirby, Sioux Falls
Andrew Knutson, Co-CH, Sioux Falls
Carey Miller, Sioux Falls
Ronda Miller, Belle Fourche
Heath Oberloh, Sioux Falls
Erika Olson, Rapid City
David Rezac, Sioux Falls
Barry Sackett, Sioux Falls
Timothy Thomas, Rapid City
Bobbi Thury, Sioux Falls
Matthew Tobin, Sioux Falls
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Last Update: 8/2/2021

BOARD OF BAR COMMISSIONERS

Minutes, May 20, 2021

Meeting Held by ZOOM

President Terry Westergaard called the meeting to order at 9:00 a.m. on Thursday, May 20, 2021. Present were President Westergaard, President Elect Bill Garry, Commissioners Aasen, Christensen, Dougherty, Ginsbach, Hruska, Johnson, Pilcher, Roby, Skjoldal, Trefz, and Wurgler. Also, present were Secretary-Treasurer Andrew Fergel and Strategic Plan Coordinator Beth Overmoe.

Minutes of April 30, 2021, Bar Commission Meeting: Commissioner Aasen made a motion to approve the minutes of the April 30, 2021, Bar Commission meeting. The motion was seconded by President Elect Garry. Motion passed.

Executive Director's Report: Executive Director Fergel gave report on the items he and staff have been working on since the April 30, 2021, Bar Commission meeting. Items mentioned in the report were the annual meeting program, the Strategic Planning Committee's virtual retreat on the topic of member benefits, work on transitioning to a new State Bar website and member management system, and final preparation for the State Bar Convention.

Miscellaneous: A discussion was held about the Diversity and Inclusion Committee's upcoming program at the State Bar Convention. No action was taken by the Commission following the discussion.

Adjourn: A motion was made by Commissioner Wurgler to adjourn the meeting. The motion was seconded by Commissioner Pilcher. Motion passed.

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

Respectfully submitted,

Andrew L. Fergel
Secretary-Treasurer

SPECIAL MEETING OF THE BOARD OF BAR COMMISSIONERS

June 8, 2021

Meeting Held by ZOOM

President Terry Westergaard called the meeting to order at 2:00 p.m. on Tuesday, June 8, 2021. Present were President Westergaard, President Elect Bill Garry, Commissioners Aasen, Christensen, Dougherty, Hruska, Johnson, Kempema, Pickar, Pilcher, Skjoldal, and Trefz. Also, present were Secretary-Treasurer Andrew Fergel, Assistant Director Nicole Ogan, Access to Justice, Inc. Co-Coordinator Denise Langley, Strategic Plan Coordinator Beth Overmoe, Tamara Nash, Erika Olson, Neil Fulton, Cesar Juarez, Amanda Work, Alison Ramsdell, Bob Frieberg, and Stephanie Pochop.

The special meeting was set pursuant to Section 7.8 of the South Dakota State Bar Bylaws at the call of Commissioners Pilcher, Hruska, and Wurgler for the purpose of discussing the program of the Diversity and Inclusion Committee at the upcoming Bar Convention entitled, “Exploring ‘White Fragility’ and Racism: Moving Beyond Lip Service and Improving our Bar Together.”

After the meeting was called to order, the Commission held a discussion with the members of the Diversity and Inclusion Committee present and State Bar Staff about how the program was originally organized, how the panelists for the program were selected, whether the Diversity and Inclusion Committee contacted the Bar about hosting the Program or whether staff had suggested the program, and the general purpose for the program. In addition, there were questions about why the book ‘White Fragility’ was selected to facilitate a discussion about race.

No action was taken by the Commission upon conclusion of the discussion and question and answer session.

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

Respectfully submitted,

Andrew L. Fergel
Secretary-Treasurer

**EIGHTY-NINETH ANNUAL MEETING OF
THE STATE BAR OF SOUTH DAKOTA
SIOUX FALLS CONVENTION CENTER
SIOUX FALLS, SOUTH DAKOTA
JUNE 16, 17, 18, 2021**

The 2021 Annual Meeting of the State Bar of South Dakota was held at the Sioux Falls Convention Center on June 16, 17, and 18, 2021.

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

The teams of Patrick Goetzinger, Cam McCue, Brian Kirby, and Aiden Goetzinger; and Gavin Pochop, Mae Meierhenry, Margaret Meierhenry, and Joe Erickson tied for the top spot at the Annual ALPS/Law School Golf Tournament. The tournament is a charitable fundraiser for the USD Foundation for the benefit of the USD Law School.

On Wednesday afternoon the following CLEs were held:

<u>CLE Title</u>	<u>Number Registered to Attend</u>
ALPS(Ethics)	224
General Counsel 101	162

On Wednesday afternoon, the Diversity and Inclusion Committee hosted a guided panel discussion about race. At the program, the Committee presented the Inaugural Diversity and Inclusion Award to Pennington County State’s Attorney Mark Vargo. More than 300 people attended the program.

On Wednesday evening a social hour, “Legalpalooza”, was hosted by the Young Lawyers Section at the Sioux Falls Stadium. The event was sponsored by the South

Dakota Trial Lawyers and South Dakota Court Reporters. During the event, Raleigh E. Hansman was presented with the Young Lawyer of the Year Award.

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

On Thursday Morning and early Thursday afternoon the following CLEs were held:

<u>CLE Title</u>	<u>Number Registered to Attend</u>
Early Bird	174
Up In Smoke! Changes to SD Marijuana Laws	321
Transactional Law	91
Ethical Leadership	275

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

On Thursday evening the State Bar hosted a reception in honor of Retired Chief Justice David Gilbertson. At the reception Retired Chief Justice Gilbertson was presented with a Dale Lamphere miniature sculpture entitled “Vision”, on behalf of the Bar and Project Rural Practice, for all he has done through his service as Chief Justice.

Total registration for the 2021 Annual Meeting was 724, including 511 lawyers, 143 spouses/guests, and 70 law students/paralegals.

FRIDAY, JUNE 18th

President Terry Westergaard called to order the 89th business meeting of the State Bar of South Dakota promptly at 8:00 a.m. at the Sioux Falls Convention Center. A quorum was determined to be present. Second Circuit Bar President Timothy Billion gave the address of welcome. State Bar President Elect William C. Garry gave the response and President Westergaard welcomed first-time attendees.

Secretary-Treasurer Fergel gave a financial report, describing the State Bar’s current financial position as solid. However, Fergel advised that the Bar’s current financial position is a result of savings realized by not holding in-person events during a portion of the last fiscal year and a good portion of this fiscal year. He advised that the current budget allows for greater spending than incoming revenue and for the

Bar to maintain a strong financial position the proposed dues and fee increase that would be presented to the membership later in the business meeting was necessary.

Marilyn Trefz, a member of the Bar Commission's Audit and Finance Committee reported that the Committee had reviewed the GAAP audit for the preceding year. She noted that the audit appeared to be in order and moved that it be accepted as presented. The motion was seconded and passed.

State Bar Foundation President Eric C. Schulte summarized the work of the South Dakota Bar Foundation during the past fiscal year. He asked all members to please give the opt out donation of \$75.00 that is included on their bar dues invoice and to also consider becoming a fellow of the Bar Foundation at a level of their choosing. Lastly, Mr. Schulte mentioned the generosity Judge Scott Moses to the Bar Foundation noting that Judge Moses had passed away this past year. Next, Jeff Veltkamp with the South Dakota Community Foundation, discussed the progress the Community Foundation has made over the past year and thanked the Bar for entrusting it to manage the South Dakota Bar Foundation's endowed funds.

Denise Langley, Co-Coordinator of Access to Justice, Inc. took the podium to present the William F. Day, Jr. Law Student Pro Bono Award. Ms. Langley announced that this year there were co-recipients of the award, Levi Mitchell and Melanie Dumdei of the University of South Dakota Knudson School of Law. Thereafter, President Westergaard presented the President's Pro Bono award to Chet Groseclose.

Dean Neil Fulton of the USD Knudson School of Law gave a report on the Law School. In his report, Dean Fulton focused on three big ideas facing the Law School and the legal profession. They were the impending demographic cliff where between the years 2025 and 2036 the number of high school graduates for which the Law School and the legal profession will compete is forecast to decrease significantly from current levels; the shifting expectations of what makes a "well prepared" law school graduate; and remaining a community of excellence, service, and leadership. Dean Fulton wrapped up his comments by stating "the future presents significant challenges, but it is a great day to be a lawyer and meet them."

Chief Justice Steven Jensen gave a brief report on Unified Judicial System. In his remarks the Chief Justice talked about this being his first report to Bar and thanked his predecessor, Retired Chief Justice Gilbertson, for all he had done in his time as Chief Justice. In addition, Chief Justice Jensen mentioned the amount of turnover in circuit and magistrate judges, 2020 being a difficult year with judicial emergency

orders, the work of the Supreme Court's Commission on Sexual Harassment in the Legal Profession and the recommendations set forth in the Commission's report, court security, the judicial pay increase, and upcoming updates to Odyssey. In closing, the Chief Justice expressed thanks to many for their work during a year of COVID.

Next, President Westergaard presented a proposed amendment to Section 4.5 of the State Bar of South Dakota Bylaws to increase Bar dues and CLE fees. The proposed amendment would increase active member dues by \$100, CLE fees by \$25, and inactive member dues by \$25, and become effective January 1, 2022, if approved by the Supreme Court after a rules hearing. Jeff Hurd made a motion for the State Bar to support amending Section 4.5 of the bylaws as presented. The motion was seconded by Bob Morris. President Westergaard called for discussion. Several members spoke in favor of supporting the increase. Thereafter, the motion passed.

Judge Michael Day presented a resolution for the State Bar of South Dakota to support the efforts of the UJS Court Reporter Committee to continue its mission of recruiting and retaining qualified court reporters for the betterment of the administration of justice in South Dakota. After his presentation, Judge Day moved that the proposed resolution be adopted. John Blackburn seconded the motion. President Westergaard then called for discussion and thereafter the motion passed.

Amy Arndt, Chair of the Business Law Committee, presented the report of the Committee. After her report on the Business Law Committee's work, Ms. Arndt presented a proposed bill to repeal SDCL §§ 47-34A-1010 through 47-34A-1016 of Article 10 of the Uniform Limited Liability Company Act to eliminate duplication and conflict with the domestication statutes in Article 9 of the Uniform Limited Liability Company Act. She then moved that the South Dakota Bar support the proposed legislation as presented during the next legislative session. The motion was seconded by Bob Morris. President Westergaard invited discussion and thereafter the motion passed.

Sander Morehead, Chair of the Ethics Committee, presented an Ethics Committee report that included a proposal to amend Rule 1.2 of the South Dakota Rules of Professional Conduct by adding a new section "e" with a new comment related to the new section "e". Adopting the proposed amendment would permit a lawyer to counsel or assist a client regarding conduct expressly permitted by South Dakota cannabis laws, even if the same conduct violates federal law. After presenting the proposed amendment to Rule 1.2, Mr. Morehead made a motion for the Bar to support the rule change as presented. The motion was seconded by Steve Huff. President Westergaard

invited discussion and thereafter the motion passed. The proposed amendment will be presented to the Supreme Court for its consideration at an upcoming rules hearing.

McLean Kerver delivered a report concerning the work of the Elder Law Committee this past year. After Ms. Kerver's report, Tom Simmons, a member of the Elder Law Committee presented proposed legislation to authorize remote witnessing for five varieties of legal instruments associated with estate planning: Wills, Living Wills, Healthcare Powers of Attorney, Anatomical Gifts/Refusals, and Pre-Need Cremation Authorizations. After his presentation of the proposed legislation, Mr. Simmons made a motion that the State Bar support the legislation at the next legislative session. The motion was seconded. President Westergaard called for discussion. Thereafter, three members spoke in favor of the motion and the motion passed.

Matthew Murphy, Chair of the Evidence Committee, provided a brief report to the membership about the work of the Evidence Committee. As part of his report, Mr. Murphy presented proposed amendments to rules of evidence 404(b) and 807 codified as SDCL 19-19-404(b) and SDCL 19-19-807 respectively. Mr. Murphy stated that the Evidence Committee's proposed changes to the two South Dakota rules of evidence would result in the two rules mimicking the current corresponding federal rules. Mr. Murphy then described how SDCL 19-19-404(b) would change to mimic the federal rule and made a motion to have the Bar support amending SDCL 19-19-404(b), as presented, through the Supreme Court's rulemaking process. The motion was seconded by Tom Frieberg. President Westergaard called for discussion and thereafter the motion passed. Mr. Murphy then went through the how SDCL 19-19-807 would change to mimic the corresponding federal rule and then made a motion that the Bar amend SDCL 19-19-807, as presented, through the Supreme Court's rule making process. The motion was seconded by Tim Rensch. President Westergaard called for discussion and thereafter the motion passed.

Cesar Juarez, Co-chair of the Diversity and Inclusion Committee, presented the Inaugural Diversity and Inclusion Award to Pennington County State's Attorney Mark Vargo. Mr. Vargo was unable to attend the business meeting; therefore, his Chief Deputy, Lara Roetzel accepted the award on his behalf.

MarieClaire Christenson, USD Student Bar Association President and Renee Gallagher, USD Student Bar Association Vice President, announced the winner of the McKusick Award. This year the recipient of the award was Harvey C. Jewett, IV.

Awards were presented to the following 50-year veterans of the State Bar: Jan S. Amundson, Alexandria, VA, David M. Axtmann, Highmore, SD, Lee R. Burd, Sioux Falls, SD, Thomas V. Conway, Arlington, VA, James R. Davies, Alexandria, SD, Thomas A. DiGrazia, Kailua, HI, Greg A. Eiesland, Rapid City, SD, Wally Eklund, Rapid City, SD, Thomas G. Fritz, Rapid City, SD, Roger R. Gerlach, Salem, SD, Kenneth L. Gosch, Aberdeen, SD, Wynn A. Gunderson, Rapid City, SD, Robert A. Moore, Rapid City, SD, Stephen L. Pevar, Hartford, CT, Arthur L. Rusch, Vermillion, SD, Randolph F. Stiles, Mitchell, SD, John A. Storsteen, Webster, SD, William G. Taylor, Sioux Falls, SD, John S. Theeler, Mitchell, SD, and Thomas L. Trimble, Rapid City, SD.

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

President Westergaard called the meeting back to order at 1:15 p.m. Caroline Srstka, Young Lawyers President, read the Necrology in memory of the following members deceased since the last annual meeting: Rory Michael Barch, Ivan Fred Bormann, David L. Braun, Brooks Christenson, Ryan Dell, Richard Arthur Duncan, Steven C. Emery, William P. Heaston, Robert D. Hofer, Andrew John Hoffman, Merle A. Johnson, Richard H. Kakeldey, Mark A. Keenan, John W. Larson, Jeffrey Paul Maks, Acie William Matthews, Mark V. Meierhenry, John L. Morgan, Hon. Scott C. Moses, Frank Joseph Mullin, Howard W. Paulson, Scott Jay Podhradsky, Jerry L. Pollard, Micheal E. Sebastian, Keith Roger Smit, E. Steeves Smith, James E. Smith, Timothy C. Sweeney, Robert Lee Varilek, and Daniel B. Weinstein.

After the Necrology, Ms. Srstka presented a report on the activities of the Young Lawyers Section. Immediately following her report, Ms. Srstka presented the Young Lawyers Section President's Appreciation Award to Retired Chief Justice David Gilbertson.

Elections for the Young Lawyers Section were held and the following persons were elected to the board position stated: President-Elect: Anthony Sutton, Secretary/Treasurer: Kelsey Weber, 1st Circuit Representative: Mallory Schulte, 3rd Circuit Representative: Anthony Teesdale, 5th Circuit Representative: Jason Erickson, 7th Circuit Representative: Katelyn Cook.

Next, President Westergaard announced the names of those members that has filed petitions for at-large vacancies on the Bar Commission. Petitions had been filed for Seth Pearman (3rd Circuit), Francy E. Foral (4th Circuit), and John T. Richter (6th

Circuit). Prior to the election, Seth Pearman withdrew his petition for an at-large position due to the location of his residence. Also, the names of Tyler Matson (1st Circuit), Jacob Tiede (1st Circuit), and Rory King (5th Circuit) had been formally submitted to State Bar Staff, pursuant to Article VII, Section 7.4.b. of the State Bar bylaws to run for an at-large commissioner spot from the floor. Therefore, President Westergaard asked if there were nominations from the floor. Thereafter, Ole Olesen nominated Tyler Matson, Josh Wurgler nominated Rory King, and Steven Huff nominated Jacob Tiede. Pursuant to Section 7.3 of the State Bar bylaws no two at-large commissioners may reside within the same judicial circuit; therefore, a runoff was held between Tyler Matson and Jacob Tiede in which Jacob Tiede was successful. After the runoff, there remained four candidates for four open at-large positions on the Commission. A motion was made by Pamela Reiter to cast a unanimous ballot for Francy E. Foral, John T. Richter, Rory King, and Jacob Tiede. The motion was seconded by Robert Riter. Motion passed.

After the Commissioner elections, President Westergaard gave a brief final address where he expressed that it has been the highlight of career to serve as the President of the State Bar of South Dakota. His address also included thanks to many including friends, colleagues, committee and section members, the Bar Commission, and Bar staff, which was received by the membership with applause.

President Westergaard then installed William C. Garry as President of the State Bar. Upon accepting the gavel, President Garry thanked Past President Westergaard for his service to the Bar in a year made difficult by the pandemic and then delivered a short address.

Thereafter, in his first official act, President Garry called for nominations for the position of President Elect. Pamela Reiter nominated Lisa Marso. The nomination of Lisa Marso was seconded by Tom Welk and Stephanie Pochop. There being no further nominations, a unanimous vote was cast for Lisa Marso.

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

Respectfully submitted,

Andrew L. Fergel
Executive Director & Secretary-Treasurer

**BOARD OF BAR COMMISSIONERS
MINUTES, JUNE 18, 2021
SIOUX FALLS CONVENTION CENTER, SIOUX FALLS**

As mandated by the Bylaws of the State Bar of South Dakota, the Board of Bar Commissioners met at the close of the Annual Meeting on Friday, June 18, 2021, in Sioux Falls, South Dakota. President William Garry called the meeting to order at 2:15 p.m. Central Time. In attendance were President Garry, President Elect Lisa Marso, Commissioners Kirsten Aasen, Renee Christensen, Timothy Dougherty, Francly Foral, Brent Kempema, Rory King, John Richter, Matthew Roby, Jacob Tiede, Marilyn Trefz, and Executive Director/Secretary-Treasurer Andrew Fergel.

Executive Director Fergel informed those present that a Bar Commission retreat and meeting would be held in Pierre on July 22nd and 23rd. Orientation for new commissioners will be conducted on Thursday morning, social and mixer Thursday afternoon, with a business meeting to follow on Friday morning. The primary business to be conducted at the business meeting will be the adoption of a budget for the 2021-2022 fiscal year.

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

Respectfully submitted,

Andrew L. Fergel
Secretary-Treasurer & Executive Director

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE PROPOSED)	NOTICE OF SPECIAL
AMENDMENTS TO VARIOUS SECTIONS)	RULES HEARING
TO AUTHORIZE THE EXPANDED USE OF)	
INTERACTIVE AUDIOVISUAL DEVICES)	NO. 145
AMENDMENT OF ARTICLE IV, SECTION 4.5)	
OF THE APPENDIX TO SDCL CHAPTER 16-17)	
ADOPTION OF THE PREAMBLE AND SCOPE)	
TO THE RULES OF PROFESSIONAL CONDUCT,)	
OF THE APPENDIX TO SDCL CHAPTER 16-18)	
AMENDMENT OF THE RULES OF)	
PROFESSIONAL CONDUCT, OF THE APPENDIX)	
TO SDCL CHAPTER 16-18, RULE 1.2.)	
AMENDMENT OF SDCL 19-19-404(b))	
AMENDMENT OF SDCL 19-19-807)	
AMENDMENT OF SDCL 23A-44-5.1)	

Petitions for amendments of existing sections of the South Dakota Codified Laws and an adoption of a new rule having been filed with the Court, and the Court having determined that the proposed amendments should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON August 24, 2021, at 11:00 A.M., C.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. A proposal to amend various sections to authorize the expanded use of interactive audiovisual devices.

Section 1. That § 15-5A-9 be amended as follows:

At the discretion of the court, interactive audiovisual devices may be used to conduct an arraignment, an initial appearance on a probation revocation petition, a probation revocation hearing, any non-evidentiary based motion hearing, a felony plea hearing or a sentencing hearing. Use of interactive audiovisual device will not be permitted to conduct any ~~felony plea hearings, any stage of a trial, felony sentencing, or probation~~

~~revocation hearing~~ unless all parties to the proceeding stipulate to the use of the interactive audiovisual device. ~~for one of the aforementioned purposes.~~ For any felony sentencing hearing involving a Class 4 felony or higher, a defendant retains the right to appear in person. The judge presiding over the matter always retains the discretion not to allow an appearance by interactive audiovisual device if the judge believes that to do so would prejudice any party to the proceeding.

Section 2. That § 23A-39-1 be amended as follows:

(Rule 43 (a)) Presence required at all times except as provided. A defendant shall be present at his arraignment, at the time of his plea, at every stage of his trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as provided by §§ 23A-39-2 and 23A-39-3. For purposes of this rule a defendant's presence shall include participation via interactive audiovisual device for purposes of an arraignment, plea hearing or sentencing hearing.

Section 3. That a new section to chapter 23A be added as follows:

For the purposes of 23A-7-1 and 23A-7-2 the term "open court" shall include participation via an interactive audiovisual device for any court proceeding accessible to the public.

23A-7-1. (Rule 10) Arraignment in open court--Procedure--

Verification or correction of name--Copy given to defendant. An arraignment shall be conducted in open court, except that an arraignment for a Class 2 misdemeanor may be conducted in chambers, and shall consist of reading the indictment, information, or complaint, as is applicable, to the defendant or stating to him the substance of the charge and calling on him to plead thereto.

A defendant must be informed that if the name in the indictment, information, or complaint is not his true name, he must then declare his true name or be proceeded against by the name given in the indictment, information, or complaint. If he gives no other name, the court may proceed accordingly. If he alleges that another name is his true name, he shall be proceeded against pursuant to § 23A-6-20. He shall be given a copy of the indictment,

information, or complaint, as is applicable, before he is called upon to plead.

23A-7-2. (Rule 11(a)) Pleas permitted to defendant--Requirements for plea of guilty or nolo contendere. A defendant may plead:

- (1) Not guilty;
- (2) Not guilty and not guilty by reason of insanity;
- (3) Guilty;
- (4) Nolo contendere; or
- (5) Guilty but mentally ill.

Except as otherwise specifically provided, a plea of guilty or nolo contendere can only be entered by a defendant himself in open court. If a defendant refuses to plead, or if the court refuses to accept a plea of guilty or nolo contendere, the court shall enter a plea of not guilty. The court may not enter a judgment unless it is satisfied that there is a factual basis for any plea except a plea of nolo contendere.

Explanation for Proposal

The proposed rule changes are submitted to authorize continued expanded use of interactive audiovisual devices. The use of interactive audiovisual devices in court proceedings expanded in response to the COVID-19 pandemic and have proven to be highly successful; the SCAO survey of South Dakota circuits confirms the effectiveness of continued use. The use of interactive audiovisual devices reduces time associated with prisoner travel and a personal appearance at the courthouse, decreases time delays between appearances for many defendants, and comport with all due process requirements. The rule change supports the efficient administration of justice. These proposals are not based on any other federal or state rule; although many other states as surveyed by the SCAO have similar rules allowing for audiovisual device appearances.

2. Proposed Amendment of Article IV, Section 4.5 of the Appendix to SDCL Chapter 16-17 - The State Bar of South Dakota Bylaws

4.5. Membership Fees. The State Bar may annually impose upon the Members approved State Bar dues ("Dues"), CLE Fee, and Client Assistant Fee (collectively "Membership Fees"). Membership Fees will be set to meet the State Bar's financial obligations. The Bar Commission may set the Membership Fees based upon membership type or other criteria. The Executive Director will assess Membership Fees on a calendar-year basis. Members must pay the Membership Fees in advance each January 1st.

a. **Approval.** The Supreme Court must approve Membership Fees proposed by the Bar Commission before the Executive Director may assess them on the Members.

b. **Active Member Dues.** Active Member Dues are:

i. **Calendar Year of Admission.** Waived for newly admitted Members the calendar year of admission unless, in a prior year, that Member was a member of another state bar or practiced law in another state or jurisdiction without mandatory bar membership; in either of those cases, the newly admitted Member will pay Dues based on years in practice specified in Paragraph 4.5.b.ii, or 4.5.b.iii, below.

ii. **2nd - 4th Calendar Years after Admission Year.** ~~\$190~~\$290, except Members electing Emeritus Status will pay ~~\$100~~\$125.

iii. **5th Calendar Year after Admission Year and Thereafter.** ~~\$315~~\$415, except Members electing Emeritus Status will pay ~~\$100~~\$125.

c. **Inactive Member Dues.** Inactive Member Dues are ~~\$100~~\$125.

d. **Continuing Legal Education.** Each Active Member, except Supreme Court Justices, Circuit Court Judges, Magistrate Judges, and Members electing Emeritus Status, must pay a ~~\$100~~\$125 Continuing Legal Education program fee ("CLE Fee").

e. **Client Assistance Fund.** The State Bar may charge each Active Member, after the calendar year of admission, a Client Assistance Fund fee of \$25 ("Client Assistance Fee"). The State Bar will hold this fee in a separate Client Assistance Fund. The State Bar will charge the Client Assistance Fee whenever the fund balance is less

than \$80,000 and will continue to charge the fee until the Client Assistance Fund balance reaches \$100,000. The State Bar will not charge the Client Assistance Fee when the fund balance is \$100,000 or greater. Federal Judges, Supreme Court Justices, Circuit Court Judges, and Magistrate Judges will be exempt from the Client Assistance Fee. The Bar Commission may use the Client Assistance Fund to pay premiums on a group insurance policy should the Commission determine that the purchase of such coverage would be an appropriate use of the fund.

- f. **Failure to Pay.** The Bar Commission may suspend any Member who does not pay the Membership Fees when due, and upon suspension, that Member will not be in good standing with the State Bar. A suspended Member may, at any time within five years of the suspension date, be reinstated upon payment of all delinquent and current Membership Fees ("Delinquent Fees") together with any penalties imposed by the Bar Commission. Penalties imposed by the Bar Commission may not exceed double the Delinquent Fees amount ("Delinquency Penalty"). After five years, a Member may only be reinstated as specified in Paragraph 4.3.

Explanation for Proposal

The above amendment to Section 4.5 of the State Bar of South Dakota bylaws is being proposed by the State Bar of South Dakota for the purpose of raising active and inactive member dues, emeritus status member dues, and CLE fees to adequately support the ongoing future operations and regulatory functions of the State Bar of South Dakota. A motion was passed by the membership of the State Bar of South Dakota at its annual business meeting on June 18, 2021, in support of amending Section 4.5 of the South Dakota State Bar bylaws as depicted in the proposal above. Adoption of the proposed changes to Section 4.5 will raise active member dues by \$100.00, inactive member dues by \$25.00, emeritus status member dues by \$25.00 (see SDCL 16-17-4.1), and continuing legal education ("CLE") fees by \$25.00.

3. Proposed Adoption of the Preamble and Scope to the Rules of Professional Conduct of the Appendix to SDCL Chapter 16-18.

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a

public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In

addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Explanation for Proposal

As noted by the Code Commission in the Appendix to Chapter 16-18:

The Supreme Court Rules that adopted and amended the South Dakota Rules of Professional Conduct did not include the Preamble, Scope, and Comments included with these rules. The Preamble, Scope, and Comments were adapted by the Ethics Committee of the State Bar of South Dakota from the American Bar Association *Model Rules of Professional Conduct*.

The proposal submitted by the State Court Administrator's Office would adopt the Preamble and Scope as a court rule.

This would provide the overarching structure to the Rules while allowing the State Bar Ethics Committee to continue to adapt the Comments to the Rules.

4. Proposed Amendment of the Appendix to SDCL Chapter 16-18, the Rules of Professional Conduct, Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) Notwithstanding subsection (d), a lawyer may counsel or assist a client regarding conduct expressly permitted by South Dakota Cannabis laws, even if the same conduct violates federal law, but the lawyer must inform the client that the conduct violates federal law and advise the client about the legal consequences under federal law of the client's proposed course of conduct.

Explanation for Proposal

The amendment to Rule 1.2 is being proposed by the State Bar of South Dakota. At the State Bar's annual meeting on June 18, 2021, a motion was passed by the membership to seek to amend Rule 1.2 as presented above through the Supreme Court's rule making process. In addition to amending Rule 1.2 as depicted above, the motion also encompassed adding a new comment to Rule 1.2 as follows:

Comment: "Subsection (e) addresses the conflict between South Dakota state law and federal law related to the cultivation, distribution, or use of marijuana. This subsection is intended to clarify that, notwithstanding federal law prohibitions, a lawyer may ethically advise a client about complying with South Dakota's Cannabis laws. This advice and assistance may include providing legal services to a client to help the client create or operate a business that is lawful under South Dakota's Cannabis laws, such as: advice and services related to incorporating a business; tax, employment, and contract-related advice and services; lobbying to government agencies about the scope of or changes to the law; and otherwise assisting a client with operating a business in compliance with South Dakota law. It may also include providing legal advice or advocacy to a state, county, or municipal government body in discussing, drafting, and enacting statutes or regulations to implement South Dakota's Cannabis laws. This list of potential acceptable conduct is intended to be exemplary, not limiting.

However, a lawyer may not advise a client about how to avoid the detection or prosecution by federal authorities of the same conduct. The lawyer must also inform the client of the conflict between state and federal law, including the potential for criminal liability and the penalties that could be associated with violating federal law. Where appropriate the lawyer must also advise the client of other potential impacts on the lawyer-client relationship, including on the attorney-client privilege, which could arise from the fact the client's conduct may be prohibited under federal law. Finally, the rules of the Federal District Court for the District of South Dakota are not impacted by this comment, even if it has adopted these rules as its own."

The addition of section "(e)" to Rule 1.2 is being proposed to make it clear that lawyers may advise or assist a client regarding conduct permitted by South Dakota cannabis law while at the same time advising the client that the conduct under South Dakota law is prohibited under federal law and the legal consequences that may result under federal law because of the client's proposed course of conduct. This proposal was precipitated by the passage of Amendment A and Initiated Measure 26 during the November 2020 general election.

Pursuant to current practice the comment proposed above will be submitted to the Legislative Research Counsel, by recommendation of the Ethics Committee of the State Bar, for publication under the

amended rule in the code should the Court approve the proposed amendment. The amendment to Rule 1.2 and the proposed comment illustrate that there is a difference between South Dakota cannabis law and the federal law on cannabis.

5. Proposed Amendment of SDCL 19-19-404(b) .

(b) **Other Crimes crimes, wrongs, or other acts.**

- (1) Prohibited Uses. Evidence of a any other crime, wrong, or ~~other~~ act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
- (2) Permitted uses; ~~notice in a criminal case~~. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. ~~On request by a defendant in a criminal case, the prosecutor must:~~
- (3) Notice in a criminal case. In a criminal case, the prosecutor must:
 - (A) Provide reasonable notice ~~of the general nature~~ of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it; and
 - (B) Articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and
 - (C) Do so in writing before trial - or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

Explanation for Proposal

The proposal to amend SDCL 19-19-404(b) originated in the State Bar's Evidence Committee and is being proposed by the State Bar of South Dakota. At the recent State Bar annual meeting a motion was passed to submit the proposal to the Supreme Court's rule making process.

The reason for changing SDCL 19-19-404(b) is to replicate the current federal rule, FRE 404(b), which was amended and became effective on December 1, 2020. The amendments reflected in 404(b), 404(b)(1), and 404(b)(2), were intended for textual clarification without substantive impact, while the amendments reflected in 404(b)(3) are more substantive. Most noteworthy is: 1) The new

requirement that the prosecutor affirmatively provide the other acts evidence without being asked, a change meant to streamline the pretrial process; 2) The new notice provisions which require written notice, which will help avoid needless disputes over the occurrence and validity of a notice provided; and 3) The new requirement that the notice provide more substance than the rule required before, which will permit a trial court and the parties to better prepare for a more efficient trial. The new Rule 404(b)(3)(C) leaves the trial court discretion for unique circumstances where the more rigid notice requirements are not met and the moving party can show good cause.

Amending SDCL 19-19-404(b) to mimic FRE 404(b) would continue on with the work done in 2016 to adjust South Dakota's rules of evidence to match, where appropriate and logical, the Federal Rules of Evidence.

6. Proposed Amendment of SDCL 19-19-807. Residual exception.

(a) In general. Under the following ~~circumstances~~ conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not ~~specifically covered by~~ admissible under a hearsay exception in § 19-19-803 or 19-19-804.

- (1) ~~The statement has equivalent circumstantial guarantees of trustworthiness~~ is supported by sufficient guarantees of trustworthiness--after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and
- (2) ~~It is offered as evidence of a material fact;~~
- (3) ~~It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts, and.~~
- (4) ~~Admitting it will best serve the purposes of these rules and the interests of justice.~~

(b) Notice. The statement is admissible only if, ~~before the trial or hearing,~~ the proponent gives an adverse party reasonable notice of the intent to offer the statement ~~and its particulars, including the declarant's name and address,~~ --including its substance and the declarant's name-- so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing--or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

requirement that the prosecutor affirmatively provide the other acts evidence without being asked, a change meant to streamline the pretrial process; 2) The new notice provisions which require written notice, which will help avoid needless disputes over the occurrence and validity of a notice provided; and 3) The new requirement that the notice provide more substance than the rule required before, which will permit a trial court and the parties to better prepare for a more efficient trial. The new Rule 404(b)(3)(C) leaves the trial court discretion for unique circumstances where the more rigid notice requirements are not met and the moving party can show good cause.

Amending SDCL 19-19-404(b) to mimic FRE 404(b) would continue on with the work done in 2016 to adjust South Dakota's rules of evidence to match, where appropriate and logical, the Federal Rules of Evidence.

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- (2) ~~It is offered as evidence of a material fact;~~
- (3) ~~It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and~~
- (4) ~~Admitting it will best serve the purposes of these rules and the interests of justice.~~

(b) Notice. The statement is admissible only if, ~~before the trial or hearing,~~ the proponent gives an adverse party reasonable notice of the intent to offer the statement and ~~its particulars, including the declarant's name and address,~~including its substance and the declarant's name--so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing--or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

Explanation for Proposal

The proposal to amend SDCL 19-19-807 originated in the State Bar's Evidence Committee and is being proposed by the State Bar of South Dakota. At the recent State Bar annual meeting a motion was passed to submit the proposal to the Supreme Court's rule making process. The reason for changing SDCL 19-19-807 is to replicate the current federal rule, FRE 807, which was amended and became effective on December 1, 2019. The amendments reflected in 807(a), 807(a)(2), and 807(a)(4) were intended for textual clarification and removal of surplusage due to similar issues already having been covered by other rules. The amendments to 807(a)(1) were intended to provide some clarification to the trustworthiness prong of the analysis due to some confusion at the federal court level as to how to apply the prior "equivalent circumstantial guarantees" language. The State Bar Evidence Committee concluded that South Dakota precedent utilizes a multifactor test for this prong of the rule which would remain consistent with the new proposed language.

The changes to 807(b) relate to notice requirements and are meant to further streamline the pretrial and trial process. The new Rule 807(b) leaves the trial court discretion for unique circumstances where the moving party failed the notice requirement but can come forth with good cause during the trial itself.

Amending SDCL 19-19-807 to mimic FRE 807 would continue on with the work done in 2016 to adjust South Dakota's rules of evidence to match, where appropriate and logical, the Federal Rules of Evidence.

7. Proposed Amendment of SDCL 23A-44-5.1. Time allowed for disposition of criminal case--Periods excluded--Dismissal.

(1) Every person indicted, informed or complained against for any offense shall be brought to trial within one hundred eighty days, and such time shall be computed as provided in this section.

(2) Such one hundred eighty day period shall commence to run from the date the defendant has first appeared before a judicial officer on an indictment, information or complaint.

(3) If such defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such period shall commence to run from the date of the mistrial, filing of the order granting a new trial, or the filing of the mandate on remand.

(4) The following periods shall be excluded in computing the time for trial:

(a) The period of delay resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on competency and the period during which he is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions brought under § 23A-8-3; motions for a change of venue; and the time consumed in the trial of other charges against the defendant;

(b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel provided it is approved by the court and a written order filed. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the court of his right to a speedy trial and the effect of his consent;

(c) The period of delay resulting from a continuance granted by the court at the request of the prosecuting attorney if the continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date and provided a written order is filed;

(d) The period of delay resulting from the absence or unavailability of the defendant;

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant shall be granted a severance so that he may be tried within the time limits applicable to him;

(f) The period of delay resulting from a change of judge or magistrate obtained by the defendant under chapter 15-12; and

(g) The period of delay during the declaration of a judicial emergency by the Supreme Court pursuant to chapter 16-3 which shall be retroactive to the date the judicial emergency is declared; and

~~(h)~~ Other periods of delay not specifically enumerated herein, but only if the court finds that they are for good

cause. A motion for good cause need not be made within the one hundred eighty day period.

(5) If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, prejudice to the defendant is presumed. Unless the prosecuting attorney rebuts the presumption of prejudice, the defendant shall be entitled to a dismissal with prejudice of the offense charged and any other offense required by law to be joined with the offense charged.

Explanation for Proposal

The proposal by the State Court Administrator's Office would exclude the period of time in which a judicial emergency has been declared by the Supreme Court pursuant to SDCL ch. 16-3. The period or duration of delay for the impacted jurisdiction(s) as delineated by the judicial emergency order would be excluded from the computation of time to bring a matter to trial.

As the Court is aware, the March 13, 2020, "COVID-19 Order Suspending 180-Day Rule" provides in part:

"IT IS HEREBY ORDERED THAT the provisions of SDCL § 23A-44-5.1, commonly known as the 180-day rule, are hereby suspended effective as of March 13, 2020, for all counties statewide until rescinded by further order of the Court."

The proposed change effectuates this order in practice when the COVID-19 emergency order is rescinded and would avoid the necessity for good cause findings in individual cases for the time that judicial emergency, or a future judicial emergency, is declared by the Court.

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and five copies thereof filed with the Clerk of the Supreme Court no later than August 9, 2021. Subsequent to the hearing, the Court may reject or adopt the proposed amendments or adoption of any rule germane to the subject thereof.

Notice of Rules Hearing No. 145 - August 24, 2021

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <https://uj.s.sd.gov/Supreme Court/Hearings.aspx> or the State Bar of South Dakota's website <https://www.statebarofsouthdakota.com>.

DATED at Pierre, South Dakota this 8th day of July, 2021.

BY THE COURT:

ATTEST:



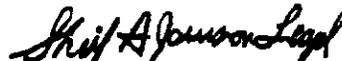
Clerk of the Supreme Court
(SEAL)



Steven R. Jensen, Chief Justice

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUL 8 2021


Clerk

Career Center

STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

Email your employment announcement to tracie.bradford@sdbar.net by August 26th to have it included in the September Newsletter. Please be sure to include a closing date. To see more jobs listings, visit www.statebarofsouthdakota.com



Associate and Senior Associate Attorney - Remote

The Marek Weisman Law Firm is seeking a new associate.

Plaintiff's litigation boutique that focuses on national healthcare and ADA matters with a client base of healthcare workers and students seeks a new associate. This position is unique since it can be both transactional and/or involve litigation while fully remote (stay in your hometown). There will be antitrust, whistleblower, ADA and employment law matters. Our client base includes a substantial number of workers that are minorities, female or have disabilities and we encourage those passionate about these issues to apply. The main partner you will be working with is very detail oriented but also tech-savvy. Motivation and passion means as much to us as grades. No need to submit writing samples or a cover letter in your initial application.

We have two positions. For one position we are seeking recent graduates or those a few years out of law school. For the second position, someone with 4-8+ years of litigation experience. The right applicant can be licensed in any state.

Please submit a resume to jobs@marekweisman.com

Civil Deputy State's Attorney - Lincoln County

The Lincoln County State's Attorney, Thomas Wollman, welcomes applications for a Civil Deputy State's Attorney. This position provides routine legal representation and advice to the County government,

its various elected officials, department heads and agencies.

Responsibilities include residential and commercial property tax appeals by County taxpayers, land use and environmental enforcement matters, defending legal actions, lawsuits and claims brought against the County. This position works closing with the Chief Civil Deputy State's Attorney.

Minimum Qualifications: Graduation from a college of law, attainment of a Juris Doctorate degree from an accredited law school, and admission by the Supreme Court of South Dakota to practice law in the state of South Dakota or be licensed to practice law in any other state and able to take the next available South Dakota bar examination or be a recent or imminent law school graduate, eligible to sit for the next available South Dakota bar examination. Comparable combination of education and experience may be considered.

Preferred Qualifications: Previous civil trial or litigation practice preferred. Strong oral argument skills. \$74,588.80 - \$82,326.40/annually plus benefits. To view a full listing of qualifications and to apply visit: <http://www.lincolncountysd.org> then click on the Employment icon.

Application deadline: August 4 at 5:00 p.m. Contact Human Resources with questions at 605-764-6609. Equal Opportunity Employer.

Associate Attorney - Yankton, SD and Hartington, NE

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. Inquiries will be accepted through September 30, 2021.

Deputy Public Advocate / Senior Deputy Public Advocate - Sioux Falls

GENERAL INFORMATION:

The Minnehaha County Public Advocate's Office is seeking a Deputy Public Advocate/Senior Deputy Public Advocate with excellent advocacy skills and who is committed to ensuring justice, humanity, and equality to indigent clients within the criminal justice system. Our attorneys prepare and manage a caseload of misdemeanor, felony, abuse and neglect, and mental health cases.

Consider a rewarding career with us and enjoy a comprehensive benefits package including paid holidays; health, dental, vision, and life insurance; generous PTO program; extended sick leave program; inclusion into the South Dakota Retirement System (SDRS); and a deferred compensation plan!

Please attach a cover letter to the online application.

The hiring range is \$2,735.20 - \$3,250.40/biweekly with full earning potential up to \$3,959.20/biweekly.

CLOSING DATE: 08/04/21 05:00 PM

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

EXAMPLES OF DUTIES INCLUDE:

Prepare and manage a caseload of misdemeanor, felony, abuse and neglect, and mental commitment cases. Provide legal advice and assistance to clients. Represent clients in court and at hearings and perform

appellate work. Provide representation to clients for felony and misdemeanor cases, appeals, abuse and neglect proceedings, mental committal hearings, involuntary committal hearings, and juvenile cases. Meet and communicate with clients. Interview witnesses. Obtain reports and records. Review police reports, grand jury transcripts, and all other case discovery. Examine evidence and investigate claims. Make recommendations on sentences. Assist clients with treatment programs, court ordered classes, or counseling. Perform legal research and writing. Draft, prepare, and file legal documents and correspondence and performs appellate work. Interview defendants to ascertain case facts. Arrange pretrial investigations with paralegals and other office staff. Correlate findings and prepare case. Conduct case, examine and cross examine witnesses, and summarize case to the jury. Perform legal research and writing. Draft, prepare, and file legal documents and correspondence. Track and record time on each case for billing purposes. Perform other clerical tasks associated with case preparation.

MINIMUM QUALIFICATIONS:

Graduation from an accredited law school. Must have either passed the South Dakota bar examination and be eligible to practice law in the state of South Dakota; be licensed to practice law in any other state and able to take the next available South Dakota bar examination; or be a recent law school graduate, eligible to sit for the next available South Dakota bar examination. Comparable combination of education and experience may be considered. Possession of a valid driver's license and must maintain a safe driving record with Minnehaha County. Must successfully complete pre-employment background process. Demonstrates a commitment to working with the indigent accused and to providing social advocacy to the clientele served by the Public Advocate's Office. Working knowledge of civil and criminal law. Working knowledge of court procedures. Working knowledge of methods, materials, and practices utilized in legal research. Ability to work with a diverse population and be attentive to the needs of the clientele. Ability to meet with clients offsite. Ability to appear in court on a daily basis. Ability to speak and write effectively in the preparation and presentation of legal matters. Ability to establish and maintain effective working relationships with co-workers, other agencies, and the public. Ability to maintain professional appearance and demeanor.

PREFERRED QUALIFICATIONS:

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

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

APPLICATIONS MAY BE FILED ONLINE AT:

<http://jobs.minnehahacounty.org>

OUR OFFICE IS LOCATED AT:

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

Job #21-69

DEPUTY PUBLIC ADVOCATE / SENIOR DEPUTY
PUBLIC ADVOCATE

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.

Attorney - Rapid City

Credit Collections Bureau is seeking to expand by adding an attorney to join their Rapid City, SD branch. Credit Collections Bureau has been a successful Midwest collection agency for over 30 years, with locations in 3 states. You can join this successful team and continue to provide their clients with excellent results on their accounts receivable needs, while

maintaining compliance with applicable laws and regulations.

Requirements include:

- The ideal candidate will have 0-3 years' experience.
- Must be licensed in South Dakota or seeking licensure during the July 2021 Bar Exam.
- Ability and desire to obtain licensure in other states.
- Making court appearances and participate in hearings.
- Ability to conduct legal research and summarize findings concisely.
- Drafting civil litigation pleadings and defend the same.
- Participate in both civil litigation and business and transaction law. A rare opportunity to do both!
- Desire to become an expert in healthcare collections, as well as applicable laws and regulations
- Willingness to take direction from Senior Counsel.
- Must be a team player who is organized and can professionally interact with all staff.

Benefits include: 40-hour work week, competitive salary, and benefits package, matching 401(k), health, dental and vision insurance, and generous PTO package.

To apply, please submit a resume and cover letter by email to meganbrandriet@cabinet.com

Deputy State's Attorney – Codington County

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

Qualifications:

Applicants must possess a Juris Doctorate degree from an accredited law school and be licensed to practice in South Dakota or willing and qualified to sit for the next available South Dakota bar examination. Working

knowledge of civil and criminal law and methods and practices of pleadings; court procedures and rules of evidence; principles, methods, materials and practices utilized in legal research; and general law and established precedents.

Salary: Starting salary \$72,164.00. Codington County also offers a comprehensive benefits package including vacation leave, sick leave and paid holidays; health, dental and life insurance and inclusion in the South Dakota Retirement System (SDRS).

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

Opening and Closing dates: July 6, 2021 – July 30, 2021, or until filled.



ATTORNEYS - OATH OF ATTORNEY

I do solemnly swear, or affirm, that:

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

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

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

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

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

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

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



UPCOMING EVENTS

AUGUST 19 | TRIAL TECHNIQUES /LAW AND USE OF EXHIBITS | LAW FOR LUNCH WEBINAR

SEPTEMBER 17 | ESTATE PLANNING CLE AM | RAMKOTA HOTEL, SIOUX FALLS

SEPTEMBER 17 | CRYPTOCURRENCY CLE PM | RAMKOTA HOTEL, SIOUX FALLS

OCTOBER 22 | NUTS AND BOLTS CLE | PIERRE

OCTOBER 22 | STATEWIDE SWEARING IN CEREMONY | CAPITOL ROTUNDA, PIERRE