



# State Bar of South Dakota



Journal

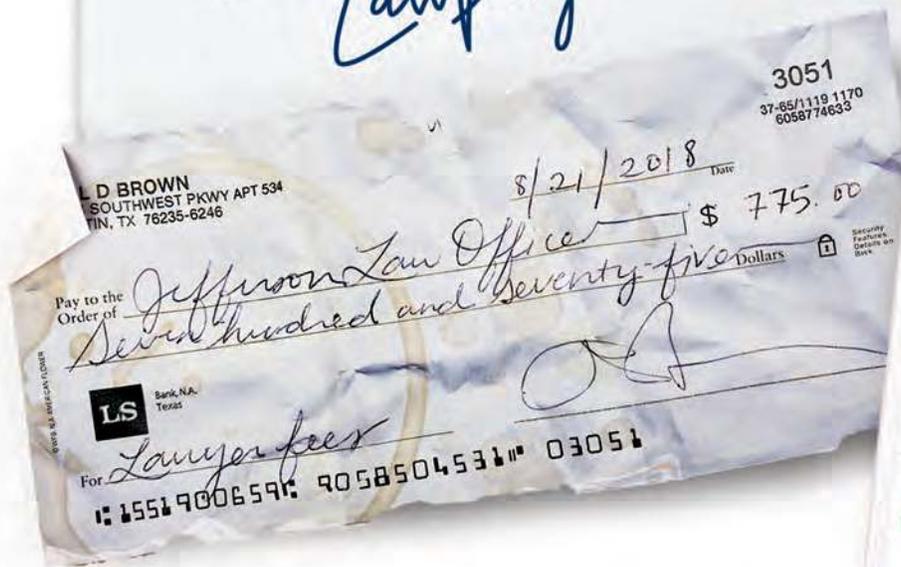
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# State Bar of South Dakota

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## President's Corner

Steven K. Huff

The South Dakota Teen Court Association administers the Teen Court Grant Program created by the South Dakota Legislature in 2007. The program provides grants to new teen courts throughout the state through a competitive grant application process.”

The current span of Teen Court touches all of the following communities: Brookings (Brookings); Brown (Aberdeen); Butte (Belle Fourche); Central (Ft. Pierre/Pierre/Onida); Codington (Watertown); Coteau Valley (Sisseton); Lawrence (Deadwood); Moody (Flandreau/Colman); Pennington (Rapid City); Sioux Empire (Sioux Falls); Spink (Redfield); Vermillion (Clay); and Yankton (Yankton).

How does it work? Teen Court typically works in collaboration with the local States Attorney’s office to offer youth the opportunity to accept full responsibility for their behaviors and work towards clearing their juvenile record. Youth may participate only if they admit guilt and if it is their first offense. These matters remain highly confidential.

The Teen Court program is run specifically by teens for teens. Youth participate in the courtroom and can be a jury member, bailiff, prosecuting attorney or a defense attorney. An adult attorney from the community serves as the judge. Some cases that have been heard in Teen Court include: truancy, underage consumption, petty theft, simple assault, and trespass.

Teen Court receives referrals from the local States Attorney’s Office. The Teen Court Coordinator will receive all paperwork and police reports via mail from the States Attorney’s Office. Contact for an intake is made through a formal letter with basic information regarding the program. Parents are then asked to contact the Teen Court Coordinator to set up the intake.

I have presided over dozens of teen court proceedings, but this Christmas 2019 Clay County proceeding was and will remain special to me and I am guessing to the other participants that evening. I was inspired by not just the candor of the young defendants but the listening and empathy shown by the teen jurors. On several occasions, it was clear that the teen participants were genuinely remorseful, which had not just a positive impact on the jury but the parents in

In an unusual twist of fate, the theme of this month’s President’s Page (Teen Court) surprised me. For several years, I along with others in my firm have served with other Yankton attorneys volunteering to be judges for teen court here in Yankton County. Just before the Christmas break, I received word that help was needed in Clay County for a fill in Teen Court judge.

Up until that request, I had never thought much of Teen Court as more than a purely local affair. I had presumed there were teen courts in other localities, but had not looked around at those programs. Imagine my pleasant surprise to learn from our own UJS website about how pervasive the Teen Court program is across South Dakota. In fact, according to the website:

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

The first teen court program in South Dakota was established in Lawrence County in 1995. Since the establishment of this first teen court program, teen court programs have increased in number in South Dakota and across the nation. There are currently twelve teen court programs in South Dakota and more than 1,300 programs nationwide.

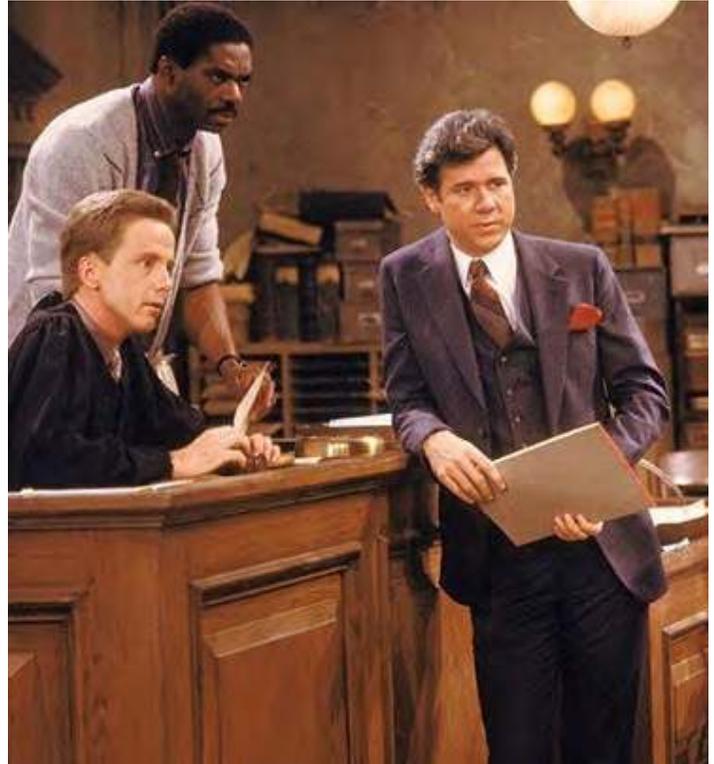
The South Dakota Teen Court Association was established in 2003 to provide technical and networking assistance to teen court programs in South Dakota. The South Dakota Teen Court Association is a 501(c)(3) nonprofit organization.

attendance. It was clear to the entire room that while what the teen did was wrong, the teens had really taken the misstep to heart and had prior to the hearing done a great deal to make amends with his family and others. It was an impressive sight to behold.

As I left Vermillion with Silk Road carry out in hand, I thought this could be a real benefit not just to have more lawyers covering Teen Court sessions, but what a great thing it would be to have young lawyers to be like those attending our very own USD Law School, to help grow the program locally and perhaps even regionally.

To that end, I am pleased to announce that I have taken some preliminary steps to encourage and/or recruit USD law students for the Clay County Teen Court hearings. I hope to provide more information on how that process is coming as the months roll on.

In the meantime, I would strongly urge any lawyer, whether active or inactive, public or private sector, to volunteer for being a judge with your local or area Teen Court program. I know it makes a difference to the kids, their parents, and the localities fortunate enough to have an active Teen Court. This is absolutely one area where you can make a difference. Thank you for your consideration and if anyone ever has questions about Teen Court, please contact me.



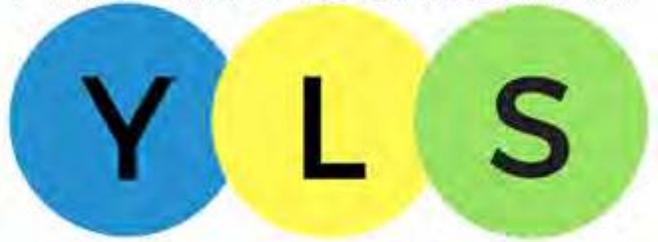
**TEEN COURT**



With the new year comes the tradition of declaring a new year's resolution. We set a goal that we hope to achieve in the next twelve months. For most of us, this is the only time of the year we set goals, and we tend to lose focus on them after a few weeks. Young lawyers especially are looking to advance their careers and should appreciate the importance of setting and pursuing personal and professional goals.



STATE BAR OF SOUTH DAKOTA  
YOUNG LAWYERS SECTION



by: Nathan Chicoine  
YLS President

I recently had the pleasure of attending a program highlighting the importance of setting goals and focusing on achieving them. Shawn Peterson, Senior Vice President of Sales for A & B Business Solutions, began by noting that more than half of employees in America are actively looking for a new job or watching for new job openings. The job search is a symptom of failing to engage in the work. Young employees are most likely to feel detached. Over 70% of millennials are either not engaged or actively disengaged at work. Those who are not engaged lack an intellectual or moral connection to the organization and teams within the organization because they do not feel able to use their abilities fully, are not interested in the work, or do not feel they have someone who cares about their development. Understanding why this percentage of disengaged is so high may help organizations recruit and retain young lawyers and support staff, and help the younger generation find where they fit.

Decades ago, employees were engaged by adapting to the mission of the organization. This is no longer the case. Younger employees will lose interest if a mission is imposed on them. Instead, engaging employees requires an organization to find a way for its vision to match its employees' values. Set the organization's goals and encourage a goal-setting atmosphere for advancing individual careers. Employees with individual goals will gravitate toward a role within the organization that reflects their values while fulfills the organization's vision. Holding the organization accountable for pursuing its goals will motivate employees and manifest in their own goal setting. Shawn's message is that by setting goals, employees will engage, and the workplace

culture will improve and breed success.

Simply setting goals is will not lead to increased productivity if the goals are not effective. To be effective, goals must be S.M.A.R.T. They must be Specific, Measurable, Agreed upon, Realistic, and Time-based. For example, a goal to be a better person this year, while realistic and not controversial, is neither specific nor measurable. One would not objectively know if the goal was met, and there is no accountability for the goal setter. Tailor your goals to be positive, descriptive, and achievable with an indicator of progress after a certain period of time. We should make goals that are more effective if we want to be engaged and connect with others.

A solid new year's resolution is good practice. For 2020, try to set some SMART new year's resolutions for yourself and your workplace and hold one other to them. You may find yourself better connected to your co-workers and more engaged in your work. Ask me how I'm coming along with mine, and I'll reciprocate. Let's hope we're happier having done it.





# PSA

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# INDIAN LAW UPDATE: BUSINESS-RELATED TRIBAL IMMUNITY & THE ARM OF THE TRIBE TEST

January Law for Lunch

Many tribes generate revenue through tribally-owned businesses. These tribally-owned businesses can share the tribe's sovereign immunity if they are sufficiently linked to the tribe itself to be an "arm of the tribe." Casinos are one example; now many tribes are expanding into e-commerce, including financial services and online lending. In some instances, both in gaming and in lending, this model has been abused by people trying to take advantage of a tribe's sovereignty to evade otherwise-applicable state laws. This webinar is relevant for anyone advising tribes or tribally-owned businesses, and for anyone advising consumers who do business with any such entities.

THU, JAN 23, 2020 12:30 PM - 1:30 PM CST

# *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 and charities the Foundation supports.

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## Fellows of the South Dakota Bar Foundation

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

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### 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.

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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.*

## Dean's List: News from the Law School



by: *Neil Fulton*  
*Dean*  
*USD School of Law*

**H**appy New Year! Students, faculty, and staff are settling back in for spring semester at the Law School. As with many of you, New Year's Resolutions in the Law School abound. A lot of them are even familiar I bet: stop procrastinating, make more time for exercise and sleep, eat better, and the like. I suppose some things never change for us as lawyers.

My resolution is to keep introducing all of you to some other folks at the Law School. This month, it is our new Director of Career Services, Brian Boyenga. We were fortunate to steal Brian from the Beacom School of Business where he worked in student advising. Brian has done a great job in his first months of getting to know students and employers, hearing what both need, and finding ways to connect them. I could go on and on about what Brian is doing, but I'll let him tell you himself.

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As part of the first issue of the state bar newsletter in 2020, I'd like to share an update on what is taking place in Career Services at USD School of Law. For those of you I have not yet met, I'm excited to introduce myself as the law school's new Director of Career Services. I joined the law school mid-semester in Fall 2019, just as fall on-campus interviews (OCIs) were in full swing. This was an especially exciting time to get started, as our students continued to accept some fantastic employment opportunities for summer positions and post-graduate placement.

In my time with the law school so far, I've been thoroughly impressed by the accomplishments and talents of our students in and outside the classroom. Since the conclusion of Fall OCIs, I've been focusing on getting to know our students. By learning the legal

interests of each student, I aim to make the Career Services Office a valuable resource and a welcoming space accessible to all students throughout their legal education. I take pride in helping students position themselves for success by perfecting their resumes and cover letters, being mindful of professionalism and etiquette expectations, and practicing interview techniques.

When speaking with our students, I encourage them to think intentionally about pursuing a variety of types of work experience during their JD program in order to develop their ultimate career goals for after graduation. With our first-year students, I find it useful to learn the motivation behind each student's decision to study the law. This starts a conversation about the types of experiential learning and student organization involvement that would best supplement their education.

For those students in their second year, I enjoy hearing about how their coursework and instructors have influenced their career goals from their first day of class until now. It is fascinating to see how each student's preferences and expectations of placement in the legal profession are either reinforced or evolve during law school. Having check-ins with the Career Services Office is a useful way for students to self-evaluate and receive guidance on how each step they take during school is moving them closer to their career goals.

By third year, each student has a unique story to tell employers about their journey in law school. My goal is to help empower students to take ownership of that story and articulate to employers how the specific elements of their experience have prepared them for meaningful work after graduation. I believe the Career Services Office should play a critical role in each law student's journey, and I look forward to celebrating the successes of our students year after year.

As the spring semester gets underway, my focus has shifted toward our Spring 2020 OCI dates. This year, Spring OCIs will take place in two rounds; January 30-31 and February 27-28. Employers will be able to

interview candidates in all classes for any available openings, including summer internships as well as post-graduate positions. I invite you and your organization to register for one of our Spring OCI rounds by visiting [www.usd.edu/law/career-services](http://www.usd.edu/law/career-services). Employer registration deadlines are Jan. 10 for Round I (Jan. 30-31) and Feb. 1 for Round II (Feb. 27-28). I am also happy to post job openings not through OCI and to help employers look for students who may be interested in a practice like theirs. I really hope to establish relationships with students and employers that lets me help build personalized pairs of employer and student. It is great to be a connected bar, and I hope I can connect with many of you.

I look forward to new and continued partnerships with employers and aiding in meeting their hiring needs. With a large 1L class comes an opportunity to expand and diversify the areas of practice and locations where our students can add relevant work experience to their resumes while in school. I welcome the opportunity to discuss with employers how USD law students can prepare themselves to be effective members of their teams. The mission of the Career Services Office is to facilitate mutually beneficial connections between employers and USD law students and graduates, and I am grateful to be a resource to both parties in that effort.

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South Dakota

# A2J JUSTICE SQUAD

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Craig Thompson	Joan Powell	Michael Whalen	Thomas Keller
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Danny Smeins	Joel Arends	Mike Fink	Tiffani Landeen
Dennis Duncan	Jolene Nasser	N. Dean Nasser	Timothy Hogan
Dennis Groff	Jon LaFleur	Nathan Chicoine	Tyler Larsen
Dick Ericsson	Jordyn Bangasser	Nicole Brandt	Vance Myrabo
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## HERO

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

**Cheri and Jennifer recently attended the Association of Workplace Investigators (AWI) Training Institute and passed the required exams. As a result, Cheri and Jennifer both earned their AWI certificate holder designation.**

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## The Service Subcommittee of the Labor and Employment Law Committee

has coordinated the donation of office furniture and decor to nonprofit legal organizations. We are looking to expand this effort to include helping solo and small law firms in need of office furniture and decor. If you are a non-profit organization or a law firm in need of office furniture OR you would like to donate furniture, please contact **SHANNON GEORGE-LARSON.**

[shannon.george-larson@state.sd.us](mailto:shannon.george-larson@state.sd.us)



SEARCHING FOR A WILL FOR  
**ROB ROY JAMES** FROM  
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If anyone has any information,  
please call Mindy at 808-333-7000.  
Thank you!

Please join Bangs, McCullen, Butler, Foye &  
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in extending best wishes to

*James P. Hurley*

who after years of dedication and service, is  
retiring from Bangs McCullen Law Firm on  
December 31, 2019.

First Interstate Gateway Building  
333 West Boulevard, Suite 400  
Rapid City, SD 57709-2670

Telephone (605) 343-1040

# ANNOUNCEMENTS

Davenport, Evans, Hurwitz & Smith, LLP  
is pleased to announce that

*Reece M. Almond*

has become a partner in the firm  
effective January 1, 2020.

Davenport, Evans, Hurwitz & Smith, LLP  
206 West 14th Street  
P.O. Box 1030  
Sioux Falls, SD 57101-1030

Telephone: (605) 357-1251  
Facsimile: (605) 335-3639

[ralmond@dehs.com](mailto:ralmond@dehs.com)

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

Marlow, Woodward & Huff, Prof. LLC  
is pleased to announce that

*Paul T. Van Olson*

*and*

*Nicholas G. Moser*

have become members of  
Marlow, Woodward & Huff, Prof. LLC  
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[paul@mwhlawyers.com](mailto:paul@mwhlawyers.com)  
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Boyce Law Firm, L.L.P.  
is pleased to announce that

*Tommy Johnson*

has become a partner in the firm  
effective January 1, 2020.

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

Lynn, Jackson, Shultz & Lebrun, P.C.  
is pleased to announce that

*Brian S. Baczwaski*

has become an associate with the firm.

Lynn, Jackson, Shultz & Lebrun, P.C.  
311 N. 27th Ave., Suite 4  
Spearfish, SD 57783

Telephone: (605) 722-9000

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605-770-8080  
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Folks:

Dianne Minnich, Executive Director of the Idaho State Bar has informed me that the 2020 Jackrabbit Bar meeting will be held June 11-13, 2020 at the Best Western Edgewater Resort in Sandpoint, Idaho; <https://www.bestwesternedgewater.com/>. Sandpoint is located on Lake Pend Oreille and is an hour north of Coeur d'Alene, Idaho, and about an hour and a half from the Spokane, Washington airport.

More information and details will follow but I wanted to get this information to those that attended last year's conference so that you can save the dates if you plan to go again this year. Please forward this email on to anyone you think may also have interest in attending. Thanks.

Andy Fergel  
Executive Director  
State Bar of South Dakota

A miniature scene featuring a blue toy car with a white chair and a green polka-dot sofa. The car is a vintage-style sedan with a white roof rack. The chair is a white wooden chair with a pink and white striped blanket draped over it. The sofa is green with white polka dots and a small potted plant is visible on the right side. The background is a plain, light-colored wall.

# WE'VE MOVED!

The State Bar is all moved in to our new office! We are still in transition as we finalize technology and space needs. The best way to reach us during this time is by email. We appreciate your patience as we get settled in, and we welcome you to come visit us in the coming months!

**NEW ADDRESS:  
STATE BAR OF SOUTH DAKOTA  
111 WEST CAPITOL AVENUE, #1  
PIERRE, SD 57501**



UNIVERSITY OF  
SOUTH DAKOTA  
SCHOOL OF LAW



# GUNDERSON LECTURE

**THE HONORABLE DENNIS DAUGAARD**



**DATE: JAN 29, 2020**

**TIME: NOON**

**PLACE: USD LAW COURTROOM**

If you are a person with a disability and need a special accommodation to fully participate, please contact Disability Services at 605-658-3745 or email [disabilityservices@usd.edu](mailto:disabilityservices@usd.edu) 48 hours before the event.  
This document is available in alternative formats upon request, contact Disability Services.

# Application for Pro Bono Emeritus Status

I, \_\_\_\_\_, an active member of the State Bar of South Dakota, do hereby apply for Pro Bono Emeritus Status, for the year 2019.

I understand that if approved, rather than pay regular dues for the year 2020, I will only be required to tender the sum of \$100 (same as inactive dues) but I will be entitled to all the rights and privileges of an active member of the State Bar.

Further, I recognize that this status means that I will be requested to take a referral from East River Legal Services, Dakota Plains Legal Services, or Access to Justice, and I am willing to accept at least one referral in the year 2020.

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

I understand that the Pro Bono Emeritus Status Program will provide me with professional negligence insurance limited to those referral cases of which I accept.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020

Signature \_\_\_\_\_

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

Address \_\_\_\_\_

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

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



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SCHOOL OF LAW

# YOU'RE INVITED TO

## USD School of Law Class of 2020 Night!



vs.



**Date:** Saturday, January 11 • **Where:** Sanford Coyotes Sports Center and Dakota Dome • **Time:** 12 pm - 6 pm

### Double Header Basketball

**Social:** 12 pm and in between games in the entrance of the Dakota Dome

**Women:** 1:00 pm

**Men:** 3:30 pm

This event is open to all USD Law students and alumni. Tickets are **\$20**. To reserve tickets, call 605-677-5959 and tell them you're with the USD Law event. Please enter through the north public entrance.

**Tickets are reserved for USD Law alumni and friends as a 2 for 1 deal!**

## FOOD AND DRINKS WILL BE PROVIDED

If you are a person with a disability and need a special accommodation to fully participate, please contact Disability Services at 605-658-3745 or email [disabilityservices@usd.edu](mailto:disabilityservices@usd.edu) 48 hours before the event. This document is available in alternative formats upon request, contact Disability Services.

# Northern Plains Weather Services

Dr. Matthew Bunkers of Northern Plains Weather Services is a certified consulting meteorologist (CCM) and forensic meteorologist with over 25 years of weather analysis and forecasting experience. He can provide reports, depositions, and testimony in the areas of weather and forecasting, severe summer and winter storms, rain and snow estimates, fire weather, flooding, applied climatology and meteorology, agriculture meteorology, and statistics. More information is provided at <http://npweather.com>. Contact Matt at [nrnplnsweather@gmail.com](mailto:nrnplnsweather@gmail.com) or 605.390.7243.



## 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.*

# Did You Know?

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- Shareholder dispute consultation
- Pre-deposition and trial consulting services

*If you aren't sure if we can help with your specific situation, call us to visit about it!*



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## *What's Wrong with Assuming Everything Will Turn Out Just Fine?*

Mark Bassingthwaighte, Esq.  
[mbass@alpsnet.com](mailto:mbass@alpsnet.com)

Everyone makes assumptions every day. As I see it, doing so allows each day to progress with some level of predictability and efficiency. Most days I assume my wife will return home for dinner at her usual time, all my tech will function problem free, and that if I need anything from anyone at the office they'll be available. There's nothing wrong with making such assumptions unless, of course, it turns out one of them is wrong and I am not prepared to deal with the consequences.

My guess is many attorneys would be surprised at the number of claims that are the result of a mistake that can be best described as the attorney was working under a false assumption. Think about a situation as simple as an attorney allowing her workload to grow beyond a reasonable level. Some won't worry because they assume they will somehow find the time to get it all done while others may assume that someone else will be available to pitch in. But what if there really isn't enough time to get it all done? What if no one else is available? What if the person who was asked to help out isn't properly trained and doesn't do the work correctly? Let me share two short stories based upon actual claims to further underscore the concern.

An attorney had a high volume real estate practice. He made a decision to assign all title search responsibilities, settlement package preparation responsibilities, and additional related administrative tasks to one staff person. The attorney assumed everything would be fine because there was no pushback on the amount of work assigned and this person was a trusted, devoted, and competent employee. This staff person, however, was one who also happened to feel unable to speak up for a number of reasons. It wasn't long before she began to feel overwhelmed. She ended up in the weeds due to what had quickly become an excessive workload. The fallout was mistakes were made because the attorney's assumptions proved to be incorrect and there was no safety net in place.

What could this attorney have done to avoid having a claim arise if and when an assumption proved incorrect? I would have advised him to develop a quality control process to assure that all completed settlement documents were reviewed for accuracy. After all, having all important legal documents of any type reviewed by a second set of eyes is always a good idea regardless of practice area. He might have also monitored the reasonableness of every employee's workload or conducted periodic reviews of work in progress in order to stay abreast of how the staff was doing day to day because some people are just unable to say stop, this is enough. Finally he could have instituted a file review process. Obtaining a periodic status update on all active files is a great risk management tool in any practice. One caution with these ideas, however. Understand that the intent here is to have you approach the problem as looking for ways to maintain a quality work product. These processes should never be used as an excuse to start micromanaging the staff.

The second story is one that focuses on assumptions about attorney competency. It started with Attorney Smith who was in the process of retiring. He was fortunate in that another attorney, Attorney Wilson, had an interest in purchasing his practice. As a result of the eventual transfer of files, Wilson's workload jumped literally overnight. Wilson made a decision to assume that all of Smith's prior work was accurate and correct. Wilson also assumed that she would only be liable for the work she did on these new files and not for anything Smith might have done prior to her involvement. Both of her assumptions proved to be incorrect.

The problem here was that Wilson failed to consider the reasons that might be behind Smith's decision to retire. What if Smith's decision was due to his being burned out? What if in the final year or so leading up to his retirement Smith's mental acuity had started to deteriorate? Wilson took no steps to be prepared to deal with any files that might have been neglected or mishandled. When Wilson decided to accept responsibility for Smith's files, she also accepted accountability. From a liability perspective accountability for past work done by Smith may not

be immediate, but it will come. These new clients will expect to be told of any problems in their file. As they see it, Wilson's acceptance of responsibility for their files brought with it a responsibility to review those files. Wilson really should have conducted a thorough file review of all incoming files from Smith, even recently closed files.

The above two stories demonstrate the kinds of consequences that can arise due to working under assumptions without a plan should one turn out to be wrong. While more stories could be told, the point I am trying to make is this. In any busy practice, the temptation to assume all is well can be strong indeed. The new associate is settling in just fine. The network will never go down. Everyone is excited about and

therefore using the new case management system. Again, none of this is a problem as long as every assumption made turns out to be correct. But as shared above, what if the new associate is actually struggling? What if a truck hits a pole and knocks out power so your network isn't available for a last minute filing? What if a few attorneys and staff are using the new case management system incorrectly or not at all due to poor training? You see, life isn't always neat and tidy. Some assumptions will turn out to be incorrect. It's important to keep this in mind and periodically ask if any assumptions are in play. If there are, then the next step is to figure out what to do about it should one or more of them not hold true. Leave them alone and the false ones will bite at some point. It's only a matter of time.

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# CERTIFICATE OF COMPLIANCE

## INSTRUCTIONS

The certificate of compliance for the year 2019 must be submitted to the State Bar of South Dakota by **January 31, 2020**.

IMPORTANT INFORMATION concerning compliance with trust accounting records and procedures, including the reporting form, appear immediately following this notice. All ACTIVE members of the State Bar of South Dakota must file the compliance form with the State Bar not later than January 31, 2020. This rule includes retired lawyers, lawyers engaged in teaching, banking, insurance, full-time government employees, etc. This reporting requirement does NOT include inactive lawyers nor does it include Judges (Federal or Unified Judicial System) who are full time and did not have private clients.

Andrew L. Fergel  
Secretary-Treasurer

## TRUST ACCOUNT COMPLIANCE FORM INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

All lawyers must submit the compliance form no later than January 31, 2020. **Please submit compliance forms after reviewing your December bank statements.** If you have questions, please give me a call. ALF

**2019 CERTIFICATE OF COMPLIANCE**

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

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

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

member(s) of the State Bar of South Dakota certify that during the 12-month period preceding the date of this report: **(check the following items where applicable and/or fill in the blanks)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date \_\_\_\_\_, 2020

**Please state the total number of hours of pro bono service, as defined by the South Dakota Rules of Professional Conduct 6.1, that you (or the whole firm) provided in 2019. Enter 0 if none. Total Hours:\_\_\_\_\_.**

Rule 6.1. Voluntary Pro Bono Public Service

A lawyer should render public interest legal service.

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

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

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

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

6. During the fiscal period ended \_\_December 31, 2019\_\_\_\_\_, to the best of my (our) knowledge I (we), or the firm of which I am a member, as the case may be, maintained books, records and accounts to record all money and trust property received and disbursed in connection with my/our practice, and as a minimum I/we maintained:

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

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

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

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

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

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

10. If you are a solo practitioner, have you made arrangements with another lawyer to secure your files and trust account and protect your clients in the event of your death or disability? Yes \_\_\_\_\_No \_\_\_\_\_ *(This is not currently a requirement, but very much encouraged. Please check out the state bar website for checklists and forms for solo practitioner planning for unexpected death or disability.)*

I am a member of the State Bar of South Dakota filing this report, and to the best of my knowledge and belief the facts as reported herein are accurate, and I certify that I have at all material times been in compliance with Rule 1.15 of the Rules of Professional Conduct entitled Safekeeping Property and SDCL 16-18-20.1 and 16-18-20.2. (All partners, shareholders, or associates checking categories 1a, 1b, or 1c must sign here.)

(Signatures)

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

\_\_\_\_\_, 2020  
Date

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

All Responding Lawyer Signatures:

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

\_\_\_\_\_, 2020  
Date

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**Paul Thorstenson,**  
CPA/ABV, CVA, Partner  
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## Lawyers Concerned For Lawyers Lawyers Assistance Committee

Your Bar Leadership has been concerned that members needing help with chemical dependency or mental health issues may be reluctant to call State Bar Headquarters to inquire where to seek help. Phone calls seeking help for themselves or a loved one or a partner have always and will continue to be kept strictly confidential.

That said, Bar Leadership has determined that a referral agency independent of the State Bar staff may reduce any reluctance to call. Thus, beginning July 1st, we have entered into a contract with Disability Rights South Dakota. Both LCL and LAC committees have provided names and contact information for referrals. You will be provided with the names and phone numbers and can proceed to call whomever you select from the appropriate list.

Disability Rights South Dakota: 605-224-8294  
or toll free 800-658-4782

Phone calls to Disability Rights of SD are kept strictly confidential.

A group of Sioux Falls and Rapid City area attorneys are holding informal peer-led meetings of lawyers who have faced or are dealing with depression, anxiety and/or similar issues.

Attendance is limited to lawyers.

The groups generally meet twice a month and have confidentiality policies.

CARIBOU COFFEE CLUB



For more information or to receive blind copies of group announcements, send an email to: [cariboucoffeeclub@gmail.com](mailto:cariboucoffeeclub@gmail.com)

\*\*The Caribou Coffee Club is not affiliated with the State Bar of South Dakota, the Second Circuit Bar Association, or the Pennington County Bar Association.

## STRESS and DEPRESSION HELP

Contact information for the regional mental health centers in South Dakota is located at [www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com) ("For SDBAR Members" Under the Health & Wellness tab, click on the Stress/Depression/Addiction link. We have reached an understanding with all these centers and all will honor our agreement. If you are stressed out or you believe that you may be suffering from depression, the State Bar encourages you to seek a professional evaluation. If you don't have insurance or otherwise lack the financial resources, the State Bar project, funded by ALPS and the SD Bar Foundation, will cover the evaluation and several follow-up counseling sessions if indicated. You need only schedule the appointment and show them your 2018 active membership card. This is a confidential project. Counseling records are not, repeat, are not made available to the State Bar. We just pay the bill for those who can't afford it, up to the limit of \$500 per lawyer.

If you have a law partner or lawyer friend that you believe may be suffering from stress and depression, visit with them. Encourage this lawyer to consider having an evaluation. Depression caught at the early stages prior to becoming chronic is much, much easier to address. In just a few counseling sessions, you/your friend can learn techniques to deal with the stress more effectively in our lives, whether personal or professional.



## SOLACE PROGRAM

If you are aware of anyone within in the South Dakota Legal Community (lawyers, law office personnel, judges, courthouse employees, or law students) who have suffered a sudden and/or catastrophic loss due to an unexpected event, illness, or injury, the South Dakota SOLACE Program may be able to assist. Please contact [solace@sdbar.net](mailto:solace@sdbar.net) if you, or someone you know, could benefit from this program.

We have a statewide (and beyond) network of generous South Dakota attorneys willing to get involved and help. We do not solicit cash but can assist with contributions of clothing, housing, transportation, medical community contacts, and a myriad of other possible solutions through the thousands of contacts available through the State Bar of South Dakota and its membership.

# January 2020

Official Publication of the State Bar of South Dakota

If you wish to advertise in our publication or post job opportunities, please contact:  
Tracie at [tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net).

The deadline for submissions in the newsletter is the 26<sup>th</sup> of each month, excluding December and February when it is the 23<sup>rd</sup> of the month. If the deadline falls on a weekend, the deadline is the Friday prior.

### Address Changes:

email [tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net) or log in to your profile at [www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com)

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*President Elect* – Terry G. Westergaard, Rapid City

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*5th Circuit* - Rodrick Tobin, Aberdeen

*6th Circuit* - Brent Kempema, Pierre

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# Sand Creek

## WORKPLACE WELLNESS

To: All Members of  
The State Bar of South Dakota  
From: The State Bar of South Dakota

We all have problems. And, most often, we manage to solve them ourselves, but sometimes we can't handle them alone. Recognizing that attorneys can develop personal problems that may jeopardize their health, family structure or employment, the State Bar of South Dakota provides members with the Sand Creek Member Assistance Program.

Sand Creek is a confidential telephonic counseling service that can help members solve personal and work related problems before they grow into serious and costly crises.

Employee Assistance Services (EAP) are provided by a staff of professional counselors, clinical psychologists, and social workers skilled at helping you identify and hand handle problems such as marital and family issues, chemical dependency, mental and emotional disorders and educational or career problems.

Free confidential telephonic services provided to you by Sand Creek include: problem assessment, action planning, and follow up along with 24-hour crisis telephone services. To access these services - see the box to your right.

The Sand Creek website, [www.sandcreekeap.com](http://www.sandcreekeap.com), is a useful resource designed to help make your life easier. On the website you will find: Child care and elder care referrals; hundreds of articles on important mental and emotional health issues; work-related resources to help manage stress, cope with job changes or deal with a difficult boss; wellness resources including a comprehensive exercise, nutrition and healthy living portal that has hundreds of articles, recipes and tips for healthy living.

Confidentiality is the bedrock of a Member Assistance Program. All discussions and services are kept strictly confidential. The State Bar of South Dakota will not know that you are using the services. We encourage you to use this valuable benefit.

Sand Creek is a HIPPA compliant service.

Go to [www.sandcreekeap.com](http://www.sandcreekeap.com)  
Click the Work Life Wellness Login Link

Our Company ID is sbsd1

Or call 800-632-7643

Monday-Friday, 7:30am-5pm CT

Immediate, Confidential Support

24 hours a day/7 days a week:

888-243-5744

*All discussions and services are kept  
strictly confidential.*



THE STATE BAR OF SOUTH DAKOTA WILL NOT KNOW YOU ARE USING THE SERVICE.  
THESE SERVICES ARE FREE. YOU ARE ENCOURAGED TO USE THIS VALUABLE BENEFIT.

# *In Memoriam*



Tom Tobin, 74, of Winner, SD passed away on Friday, December 27, 2019.

Memorial service will be held on Friday, January 3rd, 2019 at 12:00pm at the Winner United Methodist

Church in Winner, SD. Private family burial will be held at a later date. Visitation will be held one hour prior to memorial service on Friday.



Elizabeth Joan (Dixon) Dixon-Bare  
September 24, 1965 -  
November 16, 2019  
(age 54)

Elizabeth Joan Dixon-Bare, 54, of Rock Island, died Saturday, November 16, 2019 at St. Anthony's Nursing and Rehab Center, Rock Island, surrounded by her loved ones and friends. A Funeral Mass will be 10 am Thursday, November 21, 2019 at St. Patrick Catholic Church, 9619 140th St. W., Taylor Ridge, Ill. A rosary will be recited at 3:30 pm Wednesday, November 20, 2019 followed by visitation from 4-7 pm at Wheelan-Pressly Funeral Home and Crematory, Milan. Burial will be at Edgington Cemetery. Memorials in care of QC Animal

Welfare Center, St. Patrick Catholic Church or St. Anthony's Nursing and Rehab Center.

Elizabeth was born in Moline, Illinois on September 24, 1965, a daughter of Stephen C. and Janice Verbeke Dixon. She graduated from Rockridge High School in 1983. While married to Scott Bare for a short time, Elizabeth lived in South Dakota where she earned a Doctor of Law Degree (J.S.D) from the University of South Dakota, graduating in 2002.

Elizabeth served a clerkship in South Dakota before coming back to Rock Island where she worked for the States Attorney's office. She was currently employed as an attorney and contract specialist at the Rock Island Arsenal.

Elizabeth was quick witted and had a great sense of humor. She was a hard worker with great integrity, intelligence, sweet smile and so much more. Elizabeth loved animals, especially cats. Those left to cherish her memory include her parents, Stephen and Janice Dixon, Matherville, Ill.; sisters, Julie (Scott) Bell, Viola, Andrea (Bradley) Schafman, Milan and Deanna (Rodney) Hawk, Moline; sister-in-law, Patti Dixon, Matherville; numerous aunts, uncles, nieces, nephews and cousins; and her fur-babies, Gabby, Lily and Fancy.

She was preceded in death by her brother, Steven "Butch" W. Dixon.



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE PROPOSED ) AMENDMENT OF SDCL 15-6-5(d) ) AMENDMENT OF SDCL 15-12-33 ) AMENDMENT OF SDCL 15-15-4 ) AMENDMENT TO THE APPENDIX OF CHAPTER ) 16-18, SOUTH DAKOTA RULES OF ) PROFESSIONAL CONDUCT, MAINTAINING THE ) INTEGRITY OF THE PROFESSION ) RULE 8.4, MISCONDUCT ) AMENDMENT TO THE APPENDIX OF CHAPTER ) 25-4A, SOUTH DAKOTA PARENTING ) GUIDELINES ) ADOPTION OF A RULE REQUIRING A PARTY ) TO DEMONSTRATE A PRIMA FACIE SHOWING ) OF SUBSTANTIAL AND MATERIAL CHANGE IN ) CIRCUMSTANCE BY AFFIDAVIT BEFORE THE ) PARTY MAY PROCEED ON A MOTION FOR ) CHANGE OF PHYSICAL CUSTODY )	NOTICE OF RULES HEARING  NO. 141
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Petitions for amendments of existing sections of the South Dakota Codified Laws and adoption of new rules having been filed with the Court, and the Court having determined that the proposed amendments and adoption should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON FEBRUARY 11, 2020, 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. **Proposed Amendment of SDCL 15-6-5(d). Filing of papers--Originals--Copies.** The original of all papers served upon a party or presented to any court or judge in support of any application or motion and including the summons, all pleadings, notices, ~~demands, offers,~~ stipulations, affidavits, written motions, briefs, memorandums of law, and orders shall, if not filed before service, be filed with the court, together with

proof of such service, forthwith upon such service. The foregoing requirement of filing applies to the notice of filing of an order and the notice of entry of a judgment together with proof of service thereof, both of which shall be filed forthwith; if not filed within ten days after service thereof, the time of service shall be deemed to be the date of filing of the notice and proof of service. If papers are not to be served, they must be filed with the court at the time of their presentation to the court for any action or consideration.

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

**Explanation for Proposal**

I am the proponent of this rule change, John P. Blackburn, Attorney at Law, Yankton, SD.

I propose the rule change to SDCL 15-6-5(d). In the second and third lines (pocket part) of that statute the words "demands, offers," appear. I propose deletion of those words "demands, offers," because we do not file demands and offers between counsel because, at least in my opinion, demands and offers are made in settlement/negotiation discussions, communications. In fifty-one years, I have never filed a "demand" in litigation which is where demands are usually made and offers and demands are often made in all types of litigations or, if the words are necessary, then clarify the type demands or offers to be filed. If filed, the usual demands and offers could have an adverse effect on party's litigation filings and strategies. Ordinarily, demands and offers are confidential between or among parties. My suggestion for this proposed change is to delete those two words and leave the rest of the statute as is.

This discussion "analysis" is not made pursuant to or based upon any Federal or State statute.

I have not made any comparison to any Federal rule.

My analysis of how the change affects the existing rule/statute is: in spite of the fact those words have been in the statute for many years, I have never seen offers or demands filed which may mean a change is not necessary, but the statute requires these filings and that seems contrary to common practice and avoidance of adversely coloring the litigation.

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**2. Proposed Amendment of SDCL 15-12-33. Transmittal of copies of order to substitute judge or magistrate and counsel.** When an order appointing a substitute judge or magistrate has been filed with the clerk of the circuit court, that clerk shall notify the appointed judge or magistrate of ~~his~~ their appointment by electronic mailing or by personally delivering to them ~~him~~ a certified copy of such order of appointment and a statement of the case if one has been prepared or requested by the said substitute, and shall provide via electronic or first-class mail a certified copy of such order of appointment to all parties or to their attorneys of record in the action involved.

**Explanation for Proposal**

The proposal by the State Court Administrator's Office is intended to avoid the requirement that a certified copy be provided of the order to substitute a judicial officer. With the transition to electronic documents clerks of court do not routinely print and then make certified copies of orders so this would eliminate that requirement.

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**3. Proposed Amendment of SDCL 15-15-4. Sale or destruction of exhibits if not collected when judgment final-- Retention of necessary copies--Fee.** Whenever the decision or judgment of the court has become final, the clerk of courts shall give notice to the attorneys or parties of record by electronic or first-class ~~registered or certified~~ mail that the exhibits in the possession of the clerk, if not collected within thirty days, shall upon order of the court be destroyed or sold at sale under chapter 15-19. However, upon proper application to the court, the exhibit may be preserved as a part of the permanent record in the files. If an exhibit is a necessary part of the judgment or consists of a written instrument establishing the liability of a party against whom judgment has been rendered, a copy of it shall be made and retained by the clerk and the original canceled by endorsement across its face before being returned to the person entitled thereto as determined by the court. Unless the person entitled thereto as determined by the court shall furnish a true copy of such exhibit, he shall pay the fee of the clerk for making such copy.

**Explanation for Proposal**

The proposal by the State Court Administrator's Office is intended to avoid the requirement that the notice of sale or destruction be provided by registered or certified mail.

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4. Proposed Amendment to:

APPENDIX TO CHAPTER 16-18 IN PART  
SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT

Maintaining the Integrity of the Profession

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; ~~or~~

(g) engage in harassing or discriminatory conduct by the known use of words or actions based upon race, sex, religion, national origin, disability, age, or sexual orientation when that conduct is directed to litigants, witnesses, lawyers, judges, court personnel, or others and that conduct is prejudicial to the administration of justice. This rule does not apply to legitimate advocacy when race, sex, religion, national origin, disability, age, or sexual orientation is an issue in any legal proceeding, action or forum where said counsel provides advice. This rule is not intended to prevent an attorney from declining to represent a client. A finding that a preemptory challenge is exercised in a biased or prejudicial fashion on any of the above-named reasons does not violate this rule. Any violation of the rule may be used solely for disciplinary proceedings and shall not form the basis of a private civil cause of action or a criminal or quasi-criminal complaint or charge.

Explanation for Proposal

The proposed amendment to Rule 8.4 is being sent to the Court, by the State Bar of South Dakota, after a great deal of discussion and debate by the State Bar Commission and the Bar at

large. This rule amendment was discussed and debated by the State Bar Commission at its regular meeting on April 24, 2019. After discussion, it was moved and seconded that the Commission present the proposed Rule 8.4 amendment to the Bar membership for a vote at the Bar's annual meeting in June 2019. The motion passed with 7 aye votes, 5 no votes and one abstention.

The proposed rule was then presented to the State Bar's membership at its June 2019 annual meeting. President Reed Rasmussen introduced the proposal to amend Rule 8.4 (Misconduct) of the South Dakota Rules of Professional Conduct by Supreme Court Rule. Thereafter, a motion was made that the State Bar of South Dakota propose and support a change to the South Dakota Rules of Professional Conduct before the Supreme Court by supporting the addition to Rule 8.4 as approved by the Bar Commission. The motion was seconded. Thereafter, comments were made by members both for and against the proposed change to Rule 8.4. After a lengthy discussion, the question was called, and the call was supported by the membership. A voice vote was then held, and the motion was declared passed by the President. Immediately thereafter, a request for a division of the house was made by a member and granted by the President. Those that supported the motion were asked to stand and then those that were opposed were asked to stand. After observing the division, President Rasmussen declared the motion passed by a majority of those present. However, the division did demonstrate that there was a considerable number of members present opposed.

The enclosed proposal adds a subsection to Rule 8.4. The new subsection would specifically make it professional misconduct for a lawyer to "engage in harassing or discriminatory conduct by the known use of words or actions based upon race, sex, religion, national origin, disability, age, or sexual orientation when that conduct is directed to litigants, witnesses, lawyers, judges, court personnel, or others and that conduct is prejudicial to the administration of justice." The new subsection also outlines when the rule does not apply and that it is not intended to prevent an attorney from declining to represent a client.

The proposed amendment to Rule 8.4 is not based upon any state or federal rule or statute and it should not affect any other current rules or statutes.

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**5. Proposed Amendment to:**

**APPENDIX TO CHAPTER 25-4A  
SOUTH DAKOTA PARENTING GUIDELINES**

**Introduction**

A powerful cause of stress, suffering, and maladjustment in children of divorce or separation is not simply the divorce or separation itself, but rather the continuing conflict between their parents before, during, and after the divorce and/or separation. To minimize harm to their children, parents should agree on a parenting arrangement that is most conducive to the children having frequent and meaningful contact with both parents, with as little conflict as possible. When parental maturity, personality, and communication skills are adequate, the ideal arrangement is reasonable time with the noncustodial parent upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed parenting agreement made by the parents to fit their particular needs and, more importantly, the needs of their children. It is recommended that an annual calendar be prepared so that the parents and the children are aware of the parenting schedule. If the parents are unable to agree on their own Parenting Plan, however, these Guidelines become mandatory and will be used as their Parenting Plan and are enforceable as a court order. SDCL 25-4A-10, 25-4A-11. In the event a parent's time with the children becomes an issue in court, the judge will set whatever Parenting Plan best meets the needs of the children.

**GUIDELINE 1. GENERAL RULES**

A parent must always avoid speaking negatively about the other parent and must firmly discourage such conduct by relatives or friends. Each parent should speak in positive terms about the other parent in the presence of the children. Each parent must encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other parent. The basic rules of conduct and discipline established by the custodial parent should be the baseline standard for both parents and any step-parents, and consistently enforced by all caregivers, so that the children do not receive mixed messages.

Children will benefit from continued contact with all relatives and friends on both sides of the family for whom they feel affection. Such relationships must be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents

should have their children maintain ties with both the maternal and paternal relatives. Usually the children will visit the paternal relatives during times when the children are with their father and the maternal relatives during times when they are with their mother.

In cases where both parents reside in the same community at the time of separation, and then one parent leaves the area, thus changing the Parenting Plan, the court will consider imposing on the parent who moved the travel costs for the children necessary to facilitate future time with the children; however, the court will also consider other factors such as the economic circumstances of the parents and the reasons prompting the move. Before relocating the children, the custodial parent is required to comply with South Dakota's statutory forty-five-day written notice requirements. SDCL 25-4A-17.

**1.1. Parental Communication.** Parents must always keep each other advised of their home and work addresses and telephone numbers. Whenever feasible, all communication concerning the children must be conducted directly between the parents in person, or by telephone, or at their residences, or via email or text message. Absent an emergency, communication should not occur at a parent's place of employment.

**1.2. Grade Reports and Medical Information.** The custodial parent must provide the noncustodial parent with the name, address, and telephone number of the school where any child attends and must authorize the noncustodial parent to communicate concerning the child directly with the school and with the child's doctors and other professionals, outside the presence of the custodial parent. The noncustodial parent also has an obligation to contact the school to ensure receipt of school report cards, notices, etc., so that he/she can remain involved with their child's education. Both parents will be listed on all of the child's records. Each parent must immediately notify the other parent of any medical emergencies or serious illnesses of a child. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, orthodontia and similar health care, and school records must be made equally available to both parents. Counseling, psychiatric, psychotherapy, and other records subject to confidentiality or privilege must only be released in accordance with state and federal law; but, if available to one parent, must be available to both. The parents must make reasonable efforts to ensure that the name and address of the other parent is listed on all such records. If the child is taking medications, the custodial parent must provide a sufficient amount and appropriate instructions. If either parent enrolls the child in any social, beneficent,

religious, or peer group activity, service, benefit, or program for which written application is required, the enrolling parent must provide the name and address of the other parent on, or supplementary to, the application. [This provision does not apply to insurance or annuities.] The parent enrolling the child shall advise the other parent of the name of the coach, director, and organization providing the activity along with their contact information. The custodial parent must notify the noncustodial parent of all school or other events (for example, church and sports) involving parental participation. The noncustodial parent also has an obligation to contact the activity director to ensure receipt of information such as practice schedules, games, etc.

Attendance at academic or disciplinary meetings pertaining to the minor child shall be limited to the parents and the respective school professional(s). Others shall not attend such meetings without advance mutual parental agreement or court order.

**1.3. Clothing.** The custodial parent will send an appropriate supply of children's clothing with the children, which must be returned clean (when reasonably possible) with the children by the noncustodial parent. The noncustodial parent must advise, as far in advance as possible, of any special activities so that appropriate clothing belonging to the children may be sent. It is recommended that the noncustodial parent have some basic clothing available in his/her home to ensure that all of the children's basic needs are met.

**1.4. Withholding Support or Time with the Children.** Neither time with the children nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and, absent abuse or other safety concerns, time with the noncustodial parent, neither of which is dependent upon the other. In other words, no support does not mean the children will spend no time with the noncustodial parent, and no time with the noncustodial parent does not mean no support needs to be paid to the custodial parent. If there is a violation of either the parenting order or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.

**1.5. Adjustments in Parenting Plan.** Although this is a specific schedule, the parents are expected to fairly modify the Parenting Plan when family necessities, illnesses, or commitments reasonably so require. The requesting parent must act in good faith and give as much notice as circumstances permit.

~~**1.6. Parent's Vacation with Children.** Unless otherwise specified in a court order or agreed upon by the parents, each parent is entitled to a vacation with the children for a reasonable period of time, usually equal. The custodial parent should plan a vacation during the time when the other parent is not scheduled to spend time with the children. Parents are encouraged to coordinate vacation plans.~~

**1.76. Insurance Forms.** The parent who has medical insurance coverage on the children must supply to the other parent an insurance card and, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. Except in emergencies, the parent taking the children to a doctor, dentist, or other provider not so approved or qualified may be required to pay the additional cost thus created. However, when there is a change in insurance, which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or the economic consequences of changing carriers. When there is an obligation to pay medical expenses, the parent responsible for paying must be promptly furnished with the bill, and where applicable, the explanation of benefits, by the other parent. The parents must cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill must make arrangements directly with the health care provider and will inform the other parent of such arrangements unless previously paid by the other parent. Insurance refunds must be promptly turned over to the parent who paid the bill for which the refund was received.

**1.87. Child Support Abatement.** Unless a court order otherwise provides, child support will not abate during any period when the children are with the noncustodial parent. South Dakota law allows for child support abatements and offsets under certain circumstances. See generally SDCL 25-7. However, no abatement or offset may be taken unless there is a court order authorizing it.

**1.98. Noncustodial Parent's Missed Time with the Children.** When scheduled time with the children cannot occur due to events beyond either parent's control, such as illness of the parent exercising time with the children, then a mutually agreeable substituted date will be arranged, as quickly as possible. Each parent must timely advise the other parent when scheduled time with the children cannot be exercised. Missed time with the children must not be unreasonably accumulated.

**1.109. Children of Different Ages.** Except with very young children and adolescents, it usually makes sense for all the children to share the same schedule of parenting time with the noncustodial parent. Having brothers or sisters along can be an important support for children. Infants have special needs that may well prevent a parent from being with both the infant and the older children at the same time. Teenagers' special needs for peer involvement and for some control of their own lives may place them on different schedules from their younger brothers and sisters. Because it is intended that the noncustodial parent's time with the children be a shared experience between siblings and, unless these guidelines, a court order, or circumstances such as age, illness, or a particular event suggests otherwise, all the children should participate together in spending time with the noncustodial parent.

**1.110. Communication with Children.** Either parent may call, text, email, or Skype (or use similar technology) to communicate with the children at reasonable times and with reasonable frequency during those periods the children are with the other parent. The children may, of course, call, text, email, or Skype (or use similar technology) to communicate with either parent, at reasonable hours and with reasonable frequencies. Parents are cautioned that communication between the parent and the children should not be so excessive as to interfere with the other parent's time, nor used to undermine the other parent's authority. During long vacations, the parent with whom the children are on vacation is required to make the children available for telephone calls with the other parent at least every three days. At all other times, the parent the children are with must not refuse to answer the other parent's telephone calls or turn off the telephone in order to deny the other parent telephone contact. If a parent uses an answering machine or cell phone voicemail, messages left should be returned by a telephone call to that parent as soon as possible. Parents should agree on a specified time for calls to the children so that the children will be made available no less than three days per week. ~~Either parent may wish to provide an elder a child with a cell phone to facilitate these communications.~~ In such instances, it is not appropriate for a parent to use restrictions from talking to the other parent on that cell phone as a means of punishing the child subject to a parent's ability to set reasonable restrictions on cell phone use while the child is present in that parent's home. Communication between a parent and child must not be censored, recorded, or monitored, absent a court order. With older children, establishing an email account for communication with the other parent is recommended and should likewise not be read or monitored by the other parent without court permission. Email communication or text messaging between parents is also

helpful in keeping the other parent informed about the children. Abuse, neglect, criminal activity, or protection orders may impact access to information regarding the custodial parent or the children.

**1.1211. Other Contact.** Parents have an unrestricted right to send cards, letters, packages, audio and video cassettes, CDs, or similar items, to their children. Children also have the same right to send items to their parents. Neither parent will interfere with this right. A parent may wish to provide the children with self-addressed, stamped envelopes for the children's use in corresponding with that parent.

**1.12. Social Media.** Parents shall be entitled to the username and passwords to all social media accounts of the minor children. Each parent shall have unfettered full access to the social media accounts of the minor children with the exception of private communications between the other parent and children.

**1.13. Privacy of Residence.** A parent may not enter the residence of the other parent except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence. The children must be picked up at and returned to the front entrance of the other parent's residence. The parent dropping off the children must not leave until the children are safely inside the other parent's residence. Parents must refrain from surprise visits to the other parent's home. A parent's time with the children is his/her own, and the children's time with the other parent is equally private.

**1.14. Parenting Time Refusal.** Parents should always encourage the children to attend parenting time with the other parent absent circumstances outlined in 1.17. Parents shall not deny parenting time with the other parent solely based on the refusal of the children.

**1.1415. Special Considerations for Adolescents.** While children never get to choose where they live, within reason, the parents should honestly and fairly consider their teenager's wishes on time with a parent. Neither parent should attempt to pressure their teenager to make a decision on time with a parent adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

**1.1516. Day Care Providers.** When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

**1.1617. Special Circumstances:**

- A. **Child Abuse.** When child abuse has been established and a continuing danger is shown to exist, all time with the abusive parent must cease or only be allowed under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.
- B. **Domestic Abuse.** Witnessing domestic abuse has long-term, emotionally detrimental effects on children. A person who loses control and acts impulsively with the other parent may be capable of doing so with children as well. Depending on the nature of the spousal abuse and when it occurred, the court may require an abusive parent to successfully complete appropriate counseling before being permitted unsupervised time with the children.
- C. **Substance Abuse.** Time with the children must not occur when a parent is abusing substances.
- D. **Long Interruption of Contact.** In those situations where the noncustodial parent has not had an ongoing relationship with the children for an extended period, time with the children should begin with brief parenting time and a gradual transition to the Parenting Plan in these guidelines.
- E. **Abduction Threats.** Noncustodial parents who have threatened to abduct or hide the children will have either no time with the children or only supervised time.
- F. **Breastfeeding Child.** Parents must be sensitive to the special needs of breastfeeding children. A child's basic sleep, feeding, and waking cycles should be maintained to limit disruption in the child's routine. Forcibly changing these routines due to the upheaval of parental disagreement is detrimental to the physical health and emotional well-being of the child. On the other hand, it is important that the child be able to bond with both parents.

- (a) For children being exclusively breastfed, the nursing child can still have frequent parenting time with the father. The amount of time will be dictated by the infant's feeding schedule, progressing to more time as the child grows older. Yet where both parents have been engaged in an ongoing caregiving routine with a nursing child, the same caregiving arrangement should be continued as much as possible to maintain

stability for the child. If the father has been caring for the child overnight or for twenty-four hour periods while the nursing mother sleeps or works, then these guidelines encourage that arrangement to continue.

- (b) A mother may not use breastfeeding as a means to deprive the father of time with the child. If, for example, a nursing mother uses day care or a babysitter for the child, the same accommodations (i.e., bottle feeding with breast milk or formula, or increased time between breast feeding sessions) used with the day care provider or babysitter will be used with the father, if the father is capable of personally providing the same caregiving.

- G. **A Parent's New Relationship.** Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parents' separation and/or divorce.
- H. **Religious Holidays and Native American Ceremonies.** Parents must respect their children's needs to be raised in their faith and to maintain their cultural heritage and must cooperate with each other to achieve these goals. However, religious holidays and Native American ceremonies should not be used to unreasonably deprive the noncustodial parent of time with the children.
- I. **Other.** The court will limit or deny time with the children to parents who show neglectful, impulsive, immoral, criminal, assaultive, or other risk-taking behavior with or in the presence of the children.

1.18. Additional Time with the Noncustodial Parent. The children's time with the noncustodial parent should be liberal and flexible. For many parents, these guidelines should be considered only a minimum direction for interaction with the children. These guidelines are not meant to foreclose the parents from agreeing to modify the Parenting Plan as they find reasonable and in the best interests of their children at any given time.

**GUIDELINE 2. NONCUSTODIAL PARENTING TIME WITH CHILDREN UNDER AGE FIVE**

**2.1. Children Under Age Five Generally.** Newborns (birth to three months) and infants (three to six months) have a great need for continuous contact with their primary caregiver, but also

frequent contact with both parents who provide a sense of security, nurturing, and predictability. Generally, overnights for a very young child is not recommended unless the noncustodial parent is very closely attached to the child and is able personally to provide primary care, the child is adaptable, and the parents are cooperative. Older children are able to tolerate more and longer separations from one parent or the other. The following guidelines for children under age five are designed to take into account childhood developmental milestones. Since children mature at different rates, these may need to be adjusted to fit a child's individual circumstances. These guidelines will not apply in those instances where the parents are truly sharing equally all the caregiving responsibilities for the children and the children are equally attached to both parents. In those situations where the custodial parent has been the primary caregiver and the noncustodial parent has maintained a continuous relationship with the children, but has not shared equally in child caregiving, the following guidelines generally apply.

**2.2. Newborns - Birth ~~to~~ until Three Months.** Three, two-hour custodial periods per week and one weekend custodial period for six hours at the custodial parent's residence or another agreed location. No overnights, except in circumstances described in 1.1617 F(a) and (b) (noncustodial parent caring for infant in accord with previous arrangements). Breastfeeding must be accommodated, but the parents must cooperate in working out alternatives. See Paragraph 1.1617 F (breastfeeding).

**2.3. Infants - Three ~~to~~ until Six Months.** Alternative Parenting Plans: (1) Three, three-hour custodial periods per week, ~~with and~~ one weekend day for six hours. Breast feeding must be accommodated, but the parents must cooperate in working out alternatives. Or (2) Three, three-hour custodial periods per week, ~~with and~~ one overnight on a weekend not to exceed for no longer than a twelve eighteen-hours-period, if the child is not breastfeeding and the noncustodial parent is capable of personally providing primary care. See exceptions in Paragraph 1.1617 F (a) and (b) (breastfeeding).

**2.4. Babies - Six ~~to~~ until Twelve Months.** Alternative Parenting Plans: (1) Three, four-hour custodial periods per week of ~~up to four hours each with and~~ one weekend day for six hours; or (2) Three, four-hour custodial periods per week of ~~up to four hours each with and one weekend day for six hours, but with one overnight on a weekend not to exceed~~ twelve eighteen hours, if the child is not breastfeeding, and the noncustodial parent is capable of providing personal primary care; or (3) Child spends time in alternate homes, but spends significantly more time in one parent's home and no more than one to two overnights spaced

regularly throughout the week at the other parent's home, if the child is not breastfeeding. As to arrangements (1), (2), and (3), see exceptions in Paragraph 1. ~~1617 F(a) and (b)~~. Arrangement (3) ~~should be considered only for mature, requires an~~ adaptable children and cooperative parents.

**2.5. Toddlers - Twelve to until Thirty-six Months.**

Alternative Parenting Plans: (1) Three, eight-hour custodial periods per week ~~of up to eight hours each~~ on a predictable schedule; or (2) Three, eight-hour custodial periods per week ~~of up to eight hours each~~ on a predictable schedule ~~in addition to~~ and one overnight per week not to exceed eighteen hours; or (3) Child spends time in alternate homes, but with significantly more time in one parent's home with one or two overnights spaced regularly throughout the week. Arrangement (3) requires an ~~adaptable child and cooperative parents.~~

**2.6. Preschoolers - Three to until Five Years.** Alternative Parenting Plans: (1) One overnight custodial period not to exceed eighteen hours and one two additional eight-hour parenting periods each week, separate from the overnight custodial period, midweek custodial period with the child returning to the custodial parent's home at least one hour before bedtime; or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other parent's home. Arrangement (2) requires an ~~adaptable child and cooperative parents.~~

If parents cannot agree on which provision shall apply in sections 2.2 through 2.6, the parties shall use option 1 until further order of the court.

~~In addition, a vacation of no longer than two weeks with the noncustodial parent.~~

**2.7. Children in Day Care.** In families where a child has been in day care before the parental separation, the child may be able to tolerate more time with the noncustodial parent earlier because the child is more accustomed to separations from both parents. The noncustodial parent of a child under age five should not during his/her time place the child with a babysitter or day care provider. If the noncustodial parent cannot be with the child personally, the child should be returned to the custodial parent. Allowing the child to visit with relatives for short periods of time may be appropriate, if the relatives are not merely serving as babysitters. While a child is in day care, the noncustodial parent may remove the child to have parenting time, provided that suitable prior arrangements are made with both the custodial parent and the day care provider. This parenting time must also not jeopardize the provision of the day care by that provider. The noncustodial parent must be available to provide

direct care and at least one day's notice is given to the custodial parent. The parent removing the child is either to take the child to the other parent at the regular pick up time, or see that the child is returned to day care prior to the pick up time. Parental responsibility for day care costs will remain the same.

**2.8. ~~Holidays and Summer.~~** For toddlers and preschool-age children, when the parents celebrate the holiday in the same or a nearby community, the parents will alternate Easter, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving, Christmas Eve and Christmas Day each year so that the children spend equal time with each parent during this holiday period. Prior to a child's 5<sup>th</sup> birthday, holiday parenting time shall be consistent with the longest period of parenting time currently being exercised by the noncustodial parent starting on the day of the holiday. ~~Other major holidays should also be divided between the parents. With children ages three to five, a vacation of up to two weeks of uninterrupted time in the summer upon thirty days advance written notice (by mail, email, or text message) is reasonable. Parents are encouraged to coordinate vacation plans.~~

**2.9. Mother's Day - Father's Day.** The children shall be with their mother each Mother's Day and with their father each Father's Day. Prior to a child's 5<sup>th</sup> birthday, this parenting time shall be consistent with the longest period of parenting time currently being exercised by the noncustodial parent.

**2.10. Vacation for Children Three until Five Years Old.** Upon thirty days advance written notice (by mail, email, or text message), each parent is entitled to a vacation of up to two separate one-week periods of uninterrupted time with children each year, not to conflict with the other parent's holiday parenting time. Parents are encouraged to coordinate vacation plans.

**GUIDELINE 3. NONCUSTODIAL PARENTING TIME FOR CHILDREN OVER AGE FIVE AND OLDER WHEN THERE IS SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND THE PARENTS RESIDE NO MORE THAN 200 MILES APART**

**3.1. Weekends.** Parenting time will consist of alternate weekends from Friday at 5:30 p.m. to Sunday at 7:00 p.m., or an equivalent period of time if the noncustodial parent is unavailable on weekends and the children do not miss school. The starting and ending times may change to fit the parents' schedules. In addition, if time and distance allow, the noncustodial parent may spend time on a regular schedule with the children once or twice per week for two or three hours, or have one midweek overnight time. In most cases, it is a positive

experience for the children to have the noncustodial parent involved in taking the children to and from school, and it is recommended that the noncustodial parent extend the alternating weekends by picking up the children from school on Friday and taking the children to school on Monday. All transportation for the midweek custodial periods is the responsibility of the parent exercising them.

**3.2. Mother's Day - Father's Day.** The children shall be with their mother each Mother's Day and with their father each Father's Day from 9:00 a.m. to 8:00 p.m. ~~Conflicts between these special days and regular parenting time will be resolved under Paragraph 1.9.~~

**3.3. Summer Vacation.** The children will be with each parent for one-half of the school summer vacation. Summer vacation begins the day after school is released and ends the day before school commences. The custodial parent may elect to have the child the week before school resumes as part of their summer vacation to allow the child to be well prepared to recommence school. At the option of the noncustodial parent, the time may be consecutive or it may be split into two or more blocks of time. If the children go to summer school and it is impossible for the noncustodial parent to schedule this time other than during summer school, the noncustodial parent may elect to take the time when the children are in summer school and transport the children to the summer school sessions at the children's school or an equivalent summer school session in the noncustodial parent's community.

**3.4. Winter (Christmas) Vacation.** The children will spend with each parent one-half of the school winter vacation, a period that begins ~~the evening when~~ the children are released from school and continues to the morning evening of the day ~~before~~ the children ~~will~~ return to school. If the parents cannot agree on the division of this period, the noncustodial parent will have the first half in even-numbered years. If there are an odd number of days during winter vacation, the noncustodial parent shall get the extra day. Holidays, such as Christmas, are extremely important times of shared enjoyment, family tradition, and meaning. Families living in the same or nearby communities must work out ways for the children to spend part of each important holiday at both homes. If the parents are unable to work out a shared arrangement for the Christmas/New Year holiday and they celebrate the holidays in the same or a nearby community, in those years when Christmas does not fall in a parent's week, the children will be with the other parent from 11:00 a.m. to 8:00 p.m. on Christmas Day.

**3.5. Holidays Weekends.** Parents will alternate the following holidays weekends so long as they are observed by the child's school district: Martin Luther King, Jr. Day; President's Day; Easter; Memorial Day; the 4th of July; Labor Day; Native Americans' Day; Halloween; and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; Martin Luther King Jr. Day, President's Day, and Native Americans' Day weekends will begin on the preceding Friday evening and end on Monday evening; the 4th of July will begin the evening of July 3 at 5:00 p.m. and end the morning of July 5 at 10:00 a.m.; Halloween will begin at 3:00 p.m. and end at 8:00 p.m. Unless otherwise specified, holiday weekends begin at ~~5:30 p.m.~~ when the children are released from school and continues to the morning of the day the children are returned to school. ~~and end at 7:00 p.m. on the designated days. The noncustodial parent will have Memorial Day weekend and the custodial parent will have Labor Day weekend.~~

**3.6. Children's Birthdays.** As with holidays, a child's birthday will be alternated annually between the parents. If a child's birthday falls on a weekday, it will be celebrated from 3:00 p.m. to 8:00 p.m. If a child's birthday falls on a weekend, it will be celebrated with ~~the noncustodial parent~~ from 11:00 a.m. to 8:00 p.m. ~~(or so much of the period as the noncustodial parent elects to use).~~ In some instances, the parents may agree to share the child's birthday, with each parent spending a few hours with the child.

**3.7. Parent's Birthdays.** The children will spend the day with the parent on the parent's birthday, unless it interferes with the other parent's scheduled time during a vacation or a major holiday. If a parent's birthday falls on a holiday, that parent may elect to exercise parenting time on another day during that month, upon sufficient advance notice to the other parent.

**3.8. Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and the regularly scheduled weekend time with the parent, the holiday takes precedence. Unless mutually agreed, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time.

**3.9. Parenting Time Before and During Summer Periods.** The custodial parent will have the weekend before the beginning and the weekend after the end of the noncustodial parent's summer period, regardless of whose weekend it may be. Weekend time "missed" during the summer period will not be "made up." During the noncustodial parent's extended summer time with the children

of more than three consecutive weeks, it will be the noncustodial parent's duty to arrange for a mutually convenient 48-hour continuous period of time for the custodial parent to spend with the children, unless impractical because of distance.

3.10. Parent's Vacation with Children Age Five and Older. Unless otherwise specified in a court order or agreed upon by the parents, each parent is entitled to a vacation with the children for a reasonable period of time, usually equal. The custodial parent should plan a vacation during the time when the other parent is not scheduled to spend time with the children. Parents are encouraged to coordinate vacation plans.

**3.1011. Notice of Canceled Time with the Children.** Whenever possible, the noncustodial parent will give a minimum of three days notice of intent not to exercise all or part of the scheduled time with the children. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the explanation, will be provided to the other parent. Custodial parents will give the same type of notice when events beyond their control make the cancellation or modification of the scheduled time with the noncustodial parent necessary. If the custodial parent cancels or modifies the noncustodial parent's time with the children because the children have a scheduling conflict, the noncustodial parent will be given the opportunity to take the children to the scheduled event or appointment.

**3.1112. Pick Up and Return of Children.** When the parents live in the same community, the responsibility for picking up and returning the children will be shared. Usually the parent who receives the children will handle the transportation. The person picking up or returning the children has an obligation to be punctual, to arrive at the agreed-upon time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

~~3.12. Additional Time with the Noncustodial Parent.~~ The children's time with the noncustodial parent should be liberal and flexible. For many parents, these guidelines should be considered only a minimum direction for interaction with the children. These guidelines are not meant to foreclose the parents from agreeing to modify the Parenting Plan as they find reasonable and in the best interests of their children at any given time.

**GUIDELINE 4. NONCUSTODIAL PARENTING TIME WITH CHILDREN OVER AGE FIVE AND OLDER WHEN PARENTS RESIDE MORE THAN 200 MILES APART**

~~4.1. **Summer and Holidays.** This parenting time will consist of all but three weeks of the school summer vacation period. It is recommended that the time start one week after school is out and end two weeks before school begins so that the child will be well prepared to recommence school. In addition, w~~ Where distance and finances permit, on an alternating basis, the Thanksgiving break, school winter (Christmas) break, and spring break will be with the noncustodial parent.

4.2. **Summers.** This parenting time will consist of all but 10 days of the school summer vacation period beginning three days after school is released and ending one week before school recommences so the children will be well prepared to recommence school.

4.23. **Priority of Summer Time with Noncustodial Parent.** Summer time with the noncustodial parent takes precedence over summer activities (such as sports) when the noncustodial parent's time cannot be reasonably scheduled around such events. Even so, the conscientious noncustodial parent will often be able to enroll the child in a similar activity in the noncustodial parent's community.

4.34. **Notice.** At least sixty (60) days written notice (by mail, email, or text message) must be given by the noncustodial parent of the date for commencing extended summer parenting time with the children so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to give the precise number of days notice does not entitle the custodial parent the right to deny the noncustodial parent parenting time with the children.

4.45. **Additional Time with the Noncustodial Parent.** Where distance and finances permit, additional parenting time for the noncustodial parent, such as holiday weekends or special events, is encouraged. When the noncustodial parent is in the area where the children reside, or the children are in the area where the noncustodial parent resides, liberal time with the children must be allowed and because the noncustodial parent does not get weekly time with the children, the children can miss some school to spend time with the noncustodial parent, so long as it does not substantially impair the children's scholastic progress.

**GUIDELINE 5. SHARED PARENTING PLAN**

**5.1. Shared Parenting Plan.** South Dakota law allows parents to agree in writing to a detailed Shared Parenting Plan, which provides that the children will reside no less than one hundred eighty nights per calendar year in each parent's home, and that the parents will share the duties and responsibilities of parenting the children and the expenses of the children in proportion to their incomes. Such Shared Parenting Plan must be incorporated into the custody order. SDCL 25-7-6.27. A Shared Parenting Plan requires adaptable children and cooperative parents.

**5.2. Factors for Shared Parenting.** SDCL 25-4A-24 sets forth the factors the court considers in granting shared parenting.

**Explanation for Proposal**

Over the past year the Family Law Committee of the State Bar of South Dakota worked on the enclosed proposal to modify the guidelines. The Committee noted, while the guidelines are implemented as an initial custody order, they lack clarity as to which parenting plan is imposed when children are less than five years of age. Further, the Committee noted the guidelines have not been modified to reflect factors to be considered when determining whether a shared parenting plan should be implemented or not pursuant to SDCL § 25-4A-24. Finally, the Committee felt it would be beneficial to address issues concerning social media and other regularly discussed parenting issues that are not addressed in the current guidelines.

For the Court's information, the enclosed proposed guidelines were presented to the South Dakota Bar Commission on April 24, 2019. At that time, the Commission voted to present the proposed amended parenting guidelines to the Bar membership at the annual meeting in June. Thereafter, the revised parenting guidelines were presented to the State Bar membership at its June 2019 annual meeting at which time the members present, by voice vote, voted to support amending the guidelines without any audible opposition.

The revised guidelines are not based upon any specific state or federal rule or statute and they should not affect any other current rules or statutes.

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**6. Proposed adoption for a new Supreme Court Rule requiring a party to demonstrate a prima facie showing of a substantial and material change in circumstances by affidavit before the party may proceed on a motion for change of physical custody.**

A party seeking modification of a child custody order entered after a contested hearing has the burden of proving (1) there has been a substantial and material change of circumstances since the existing custody order was entered and (2) the welfare and best interests of the child require modification. The fact conditions have changed since the custody order is not sufficient in itself to warrant a custody modification. Either factor standing alone will not justify a change of custody; both must be present.

Before a party may proceed on a motion for a change of physical custody, the moving party must submit an affidavit sufficient to demonstrate a prima facie showing of a substantial and material change in circumstances. Upon the filing of the motion and affidavit, the court shall schedule an expedited hearing as soon as practical. Further, the court may order the parties to adhere to SDCL § 15-6-6(d) for filing further pleadings before the scheduled hearing.

At the prima facie hearing, the court shall make the determination as to whether the matter may proceed to trial and if so, whether a custody evaluation, consistent with SDCL § 25-4A-23, or mediation, consistent with SDCL § 25-4-56, shall be ordered.

#### **Explanation for Proposal**

This proposed rule is being brought by the State Bar as a result of State Bar's Family Law Committee working through and discussing various proposals. The purpose of the rule is to set a threshold a party must overcome before a change in custody matter may proceed through the court process in instances where a child custody order was previously entered after a contested hearing. The State Bar's Family Law Committee believes the proposed rule will provide for judicial economy and save party litigants' time and resources.

For the Court's information, the enclosed proposed rule was presented to the South Dakota Bar Commission on April 24, 2019. At that time, the Commission voted to present the proposed rule to the Bar membership at the annual meeting in June.

Notice of Rules Hearing No. 141 - February 11, 2020

Thereafter, the rule was presented to the State Bar membership at its June 2019 annual meeting at which time the members present voted to support it.

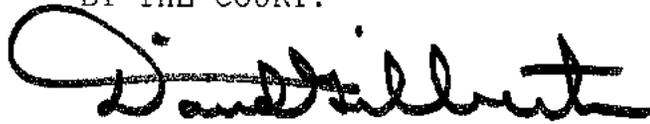
The proposed rule is not based upon any specific state or federal rule or statute and it should not affect any other current rules or statutes.

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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 January 21, 2020. 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 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 <http://www.ujs.sd.gov/> or the State Bar of South Dakota's website at <http://www.sdbar.org/>.

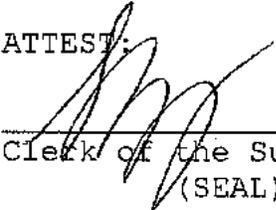
DATED at Pierre, South Dakota this 12th day of December, 2019.

BY THE COURT:

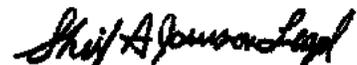


David Gilbertson, Chief Justice  
SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

ATTEST:

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

DEC 12 2019

  
Clerk

# CAREER CENTER

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

## ATTORNEYS

### Associate Attorney - Sioux Falls

Boyce Law Firm, LLP, a top-rated 20+ lawyer firm located in Sioux Falls, is accepting applications for ASSOCIATE ATTORNEYS in the firm's litigation section. Applicants must be self-starters with a strong desire to learn. Superior written and verbal communication skills are of utmost importance. Visit our website at [www.boycelaw.com](http://www.boycelaw.com) to learn more about the firm, our history, and our people.

All applicants are welcome to apply. Preference will be given to applicants in the top 1/3 of their class, to those who have prior work experience, and to those currently licensed to practice in South Dakota.

Start Date: Upon hiring.

Benefits include generous 401K match, profit sharing, health insurance, annual CLE tuition, professional dues and memberships, and numerous incidental benefits.

Direct resume, cover letter, and law school transcript to Michele Benson, Boyce Law Firm, LLP, PO Box 5015, Sioux Falls, SD 57117-5015 or to [mlbenson@boycelaw.com](mailto:mlbenson@boycelaw.com).

### Attorney - Sioux Falls

The State of South Dakota Department of Corrections invites applicants for the position of: Attorney – Adult Corrections

Opening Date: December 12, 2019

Closing Date: Until Filled

Salary: \$67,713.84 or greater dependent on qualifications

Location: Sioux Falls, SD – South Dakota State Penitentiary

Position Objective:

This is a full-time position with the South Dakota Department of Corrections. For more information on the Department of Corrections, please visit: <http://doc.sd.gov>. The Attorney assists the Wardens with the management of inmate litigation for Adult Corrections; as well as the development and maintenance of all relevant policies and operational memoranda governing the South Dakota State

Penitentiary in Sioux Falls.

Duties:

This person will serve as a central point of contact for inmate litigation for the Department of Corrections, Adult Corrections. Act as coordinator and liaison with outside legal counsel and courts for inmate litigation. Assist the Department of Corrections in the development of capital punishment policies and operational procedures. Will develop and maintain the South Dakota State Penitentiary policy and operations memoranda manuals.

Licenses and Certifications:

This position requires graduation from law school with a JD and membership in the State Bar of South Dakota.

The Ideal Candidate Will Have:

A thorough knowledge of, Department of Corrections' policies and institutional operations memoranda and procedures. A strong understanding of methods, procedures, and principles of practicing law in the state of South Dakota. Use a modern approach to concepts, principles, and practices related to the incarceration and rehabilitation of criminal offenders. Possess modern management principles and practices, particularly those related to policy and procedure development.

The candidate will have the ability to represent the Department of Corrections in a wide variety of settings and meetings, use effective communication styles. This person will effectively analyze situations and exercise judgment and discretion by establishing, applying, and interpreting departmental policies and institution operations, memoranda, and procedures. The candidate should be able to recognize deficiencies in/and recommend changes to policies, operations memoranda and procedures. Possess the ability to resolve legal problems and organizational conflict. Successful applicant(s) will be required to undergo a background investigation. An arrest/conviction record will not necessarily bar employment. Offers of employment are conditional upon successful completion of a drug screening.

Benefits Package:

The State of South Dakota offers paid employee health insurance plus ten paid holidays, generous vacation

leave accrual, and medical, dental, vision, and other benefits. For more information visit <https://bhr.sd.gov/job-seekers/work-for-state-government/index.html>

To Apply:

Applications can be filled out online at: <https://scsddlmprod.agilera.net/ltn/xmlhttp/shorturl.do?key=51O>

## Child Support Referee - Pierre

Location: 6th Judicial Circuit

Type: Independent Contractor

Category: Unified Judicial System

Close Date: Until filled

Post Date: 12/17/2019

No. of Positions Available: 1

Position Description: This position is that of an independent contractor with the Unified Judicial System as a child support referee. The qualifications and duties of the referees are generally described in South Dakota Codified Law including SDCL 25-7A-6 and 25-7A-22. Candidates for appointment as child support referees are recommended to the Supreme Court for appointment by the State Court Administrator. For the 6th Judicial Circuit referee, the majority of cases will be from the Pierre area. However, cases could sometimes be assigned from other circuits state-wide. After approval by the Supreme Court, a contract will be entered between the referee and the UJS. Currently, the flat-fee compensation for work as a child support referee is \$263 per case, as long as the contract requirements are met. The referee must provide their own equipment, schedule their own hearings and draft the necessary documents. Space may be provided, if necessary, in the local Courthouse.

All candidates for the child support referee position should possess the following criteria:

- Be a licensed attorney in the State of South Dakota & is a member in good standing of the State Bar Association;
- Be familiar with family law and the child support referee process;
- Be organized in scheduling hearings and managing the associated paperwork;
- Able to efficiently manage time & priorities;
- Facilitate and maintain good working relationships with a wide variety of sources including the public, clerks, Judges, and DSS;
- Able to remain neutral and objective while assisting the public with the child support referee process;

- Able to manage stress and work with difficult people;
- Communicate effectively via telephone and e-mail;
- Be detail oriented;
- Able to meet strict deadlines;
- Able to maintain a professional demeanor at all times;
- Able to comply with the requirements of UJS.

A letter of interest as well as a complete resume may be submitted to the following address:

Suzanne Starr

State Court Administrators Office

Director of Policy & Legal Services

500 E. Capitol Avenue

Pierre, SD 57501

The candidate recommended for approval to the Supreme Court will be subject to a background check.

## Deputy State's Attorney – Codington County

The Codington County State's Attorney's Office is inviting applicants for the position of Deputy State's Attorney. The position is full time and will be responsible for the prosecution of all adult misdemeanor cases occurring in Codington County, South Dakota. Duties include charging determinations, bond arguments, preliminary and grand jury hearings, drafting and arguing motions, court/jury trials, witness preparation, and briefing the court on relevant case law. Additional duties include assisting in the prosecution of adult felony cases, 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: Annual – \$55,728.72 - \$67,379.76, depending on experience. Codington County also offers a comprehensive benefits package including 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: December 17, 2019 – January 15, 2020, or until filled.

## **Spanish-Speaking Staff Attorney - Worthington, MN**

The Immigrant Law Center of Minnesota is seeking a staff attorney in its Worthington, Minnesota office. Second language fluency in Spanish is required.

Job Title: Staff Attorney Location: Worthington, MN

Type: Full-time Deadline: Open until filled

Primary Duties and Responsibilities:

The Staff Attorney is responsible for providing information, technical assistance, outreach and training, and legal representation in immigration matters to income-eligible persons of all nationalities.

Responsibilities:

1) Provide legal representation in immigration matters, including some or all of the following: prepare and submit affirmative immigration applications to the U.S. Citizenship and Immigration Services (USCIS), respond to requests for evidence, ensure that clients receive and understand notices from USCIS regarding their applications, prepare and represent clients in administrative interviews with USCIS, and educate clients about their rights and obligations under immigration law. 2) Case types may include naturalization, adjustment of status, Deferred Action for Childhood Arrivals, U Visa, self-petitions under the Violence Against Women Act, Special Immigrant Juvenile Status petitions, family-based petitions, and administrative appeals.

3) Conduct intake consultations with potential clients.

4) Identify and resolve legal issues on behalf of new clients, accept cases, maintain client files. 5) Maintain client data in compliance with organization protocols and in compliance with grants and contracts. 6)

Engage in outreach efforts to immigrant and refugee communities regarding our legal services. 7) Conduct Know Your Rights presentations for immigrant and refugee communities. 8) Provide information about immigration law to agencies that work with immigrant and refugee communities on a one-to-one basis and through presentations. 9) Assist in grant proposal and report preparation as needed.

Education/Experience:

J.D. degree and admission to a state bar and experience in immigration matters preferred.

Compensation: Salary range is \$43,700-\$65,550, dependent on experience. Benefits include paid-time-off; health, dental, life, short-term disability, and long-term disability insurance; and retirement plan with employer matching.

Additional Information:

For further information on the Immigrant Law Center of Minnesota, please visit [www.ilcm.org](http://www.ilcm.org).

If interested, please forward cover letter and resume to [oficinalegal@ilcm.org](mailto:oficinalegal@ilcm.org) or mail to ILCM Legal, 450 North Syndicate Street., Suite 200, Saint Paul, Minnesota 55104.

## **FINANCIAL INSTITUTION EXAMINER**

### **South Dakota Division of Banking**

The Division of Banking is seeking inquisitive and analytical applicants with excellent communication skills to join our team of professional Financial Institution Examiners in Pierre or Sioux Falls. The Division regulates the state's banking, trust, and financial services industries to assure confidence in financial markets and services. Examiners determine the condition of state-chartered banks, trust companies, and other licensed financial institutions; evaluate adequacy of internal control procedures; determine compliance with State and Federal statutes related to banking, trust, licensing, and consumer protection; evaluate trust and loan administration and corresponding investment portfolios for prudence, quality, and suitability; make recommendations on findings; and investigate consumer complaints related to supervised financial institutions.

Bachelor's degree in banking, finance, accounting, business, economics, or a related field, and advanced degrees (JD, MBA, etc.) preferred.

Starting salary: \$40,000 - \$45,000 annually, depending on experience. Excellent training and salary advancement opportunities.

No previous examination experience necessary.

Overnight travel is required. For more information visit <https://bhr.sd.gov/job-seekers/work-for-state-government/index.html>. Apply at: <http://tinyurl.com/y2syfka5>. "An Equal Opportunity Employer"

To be considered, please attach a letter of interest, post-secondary transcripts, and a writing sample. The State of South Dakota offers paid employee health insurance, ten paid holidays, generous vacation leave accrual, plus medical, dental, vision, and other benefits.

# JANUARY

# 2020

Disciplinary Board	January 9-10, 2020	Red Rossa, Pierre
Bar Commission Meeting	January 10, 2020	Lake Sharp Rm, Ramkota, Pierre
Bar Commission Teleconference	February 20	
Disciplinary Board	April 2-3, 2010	Clubhouse Hotel, SF
Bar Commission Meeting	April 30, 2020	The Lodge at Deadwood
Strategic planning Retreat	May 1, 2020	The Lodge at Deadwood
Bar Commission Teleconference	May 21, 2020	
Annual Meeting	June 17-19, 2020	Ramkota Hotel, Pierre
Disciplinary Board	June 15-16 2020	Red Rossa, Pierre