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2019

ANNUAL  MEETING

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# State Bar of South Dakota

June 2019

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## *President's Corner* *Reed A. Rasmussen*

**T**his is my last report. As I mentioned in last month's column, one of the toughest parts of the president's job is trying to come up with something to write about every month. I am glad that is now Steve Huff's problem and not mine.

It has been a good year. I never really thought about running for Bar President until I was asked to do so by Eric Schulte. Eric has apologized to me for this several times but, in the end, I am glad I did it.

This has been a year of significant transition for the Bar. Andy Fergel replaced Tom Barnett as our Executive Director. Neil Fulton is taking over from Tom Geu as Dean of the Law School. We have welcomed Justices Mark Salter and Patricia DeVaney to the Supreme Court following the retirement of Justice Glen Severson and the tragic death of Justice Steven Zinter. We have seen the addition of a number of new circuit and magistrate judges. Things have changed a lot since I graduated from Law School 40 years ago.

President Elect Huff, Executive Director Fergel, and I recently attended the meeting of the Strategic Planning Committee in Sioux Falls. It was a good and interesting meeting facilitated by Jennifer

Lewin from the ABA. The Committee is developing a new strategic plan, which will be presented to the Bar Commission during the upcoming year. The members of the Committee work hard and are engaged in the process. I want to particularly thank retired Judge Kathleen Trandahl and Dick Casey for serving as co-chairs of the Committee for the last several years. Jennifer Williams will be replacing Judge Trandahl as one of the co-chairs going forward.

Earlier this year I solicited comments from the membership concerning Model Rule 8.4(g), which had been debated by the Commission on several occasions over the past few years. I received over 50 responses. There were strong opinions both ways. The same is true within the Bar Commission. After a good debate, the Commission eventually voted 7-5, with one abstention, in favor of submitting a revised Rule 8.4(g) to the membership at the annual meeting. The membership will decide whether to propose the Rule to the Supreme Court.

The membership will also be asked to address proposed legislation from the Business Law and Family Law Committees as well as a resolution regarding judicial salaries. Please review the proposals, which are accessible on the Bar's website, and attend the business meeting.

We are looking forward to this year's annual meeting. As usual, it will be a busy time with a lot of opportunity for CLE, Bar business and catching up with old friends. Please plan to attend.

The majority of the feedback I have received this



year on my monthly columns have related to the photographs I have used. In my first column, a fairly recent photo was published. I decided I did not want to subject the membership to that photograph every month. Therefore, the Bar office and I have had fun making use of a new photo every month. The one being used this month is from my college days at Arizona State where I was the MVP of my dorm's softball team. We had considered using this photograph on last year's annual meeting program but decided that probably wouldn't be appropriate. Now that I am bowing out, we decided to go with it.

Thanks to everyone who has volunteered their time for the Bar over the past year. This is a great organization and would not work without the willingness of its members to donate their time and talents. Thanks also to Andy, Beth, Nicole, Tracie, and Denise for their tireless efforts in running the Bar office, promoting the Strategic Plan, working with committees, and operating A2J.

I am going to close my last report with a story about the fine education system in Aberdeen. Our office traditionally buys circus tickets for elementary school children. We usually receive some thank you notes. I wanted to share one that we recently received from five students. With apologies to some fine South Dakota lawyers who have provided excellent service, even though missing an arm or a leg, the students wrote:

Thank you.  
Siegel, Barnett & Schutz, L.L.P.  
All you need is love, life, all four limbs  
and a good attorney.

I'm glad our Aberdeen students recognize the need for a good attorney.

Reed Rasmussen  
[rrasmussen@sbslaw.net](mailto:rrasmussen@sbslaw.net)  
605-225-5420

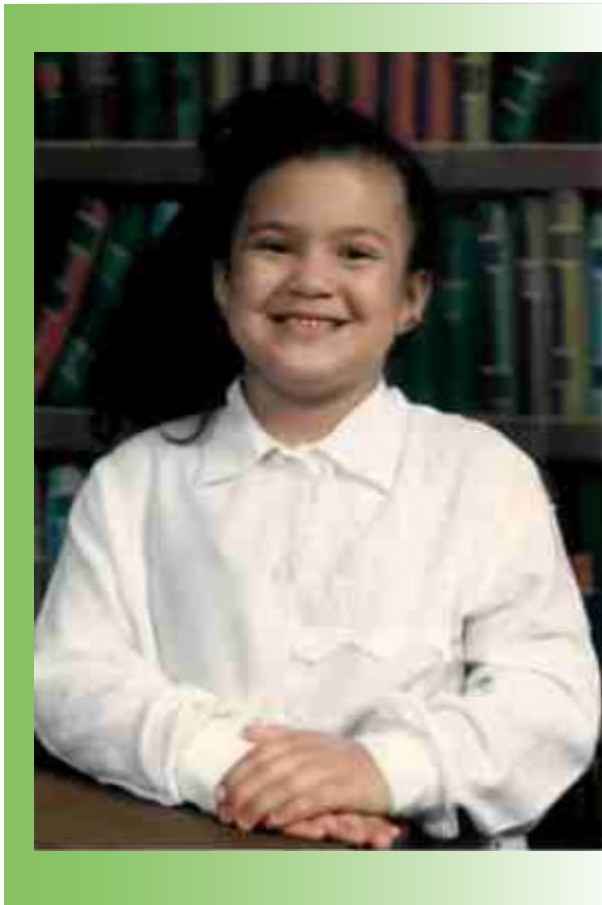


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STATE BAR OF SOUTH DAKOTA



YOUNG LAWYERS SECTION

by: Tamara Nash, YLS President

June Greetings,

This month, I think it is fitting that I take a page from our President's book and share a fun picture with you. This is me when I was younger and obviously more fashionable! I think I am about seven years old in this picture. It would have been 1995 and the side bangs were all the rage.

On to more serious matters! I have truly enjoyed my time serving as your Section president. If you know me, you know I am a service junkie; I love serving our State Bar and local communities. It has been my pleasure to work with other Bar leaders and young lawyers to provide programming to our members and to find new ways to engage our Section. I have learned firsthand that being involved in the State Bar provides opportunities that you cannot find anywhere else! As my presidency ends, I would like to encourage you to continue to stay involved in the #SDYLS and the larger Bar.

As the 2018-2019 Bar year draws to a close, I would

like to just take a moment to reflect on this awesome year and remind you of all the good work you have done. Our theme has centered on engagement. Truly, I am proud of the strides we have made in furtherance of this goal. This year, we organized and hosted three CLEs. In August 2018, we conducted a statewide survey, where we learned about how to engage with our Section's membership. We continued to connect new and veteran lawyers through the Hagemann-Morris Young Lawyer Mentorship Coin Program. And in celebrating the program's 10-year anniversary, we formally matched almost twenty mentors and mentees! In addition, circuit representatives hosted mixers in their respective circuits. We also incorporated the mentorship program at the law school by hosting a lunch for the 1L students during orientation week.

In October, the SDYLS hosted the eighth annual Statewide Swearing-in Ceremony held at the Capitol Rotunda in Pierre. Approximately 100 friends, family members, and other honored guests attended the event to witness 19 new lawyers take the oath of attorney administered by Chief Justice Gilbertson.

To sharpen our focus on public service, the SDYLS Board committed to continuing our work with Project Destination for the third year. This project aims to engage Native American students in a conversation about the law and to plant seeds of a future legal career. This spring, Project Destination was implemented in five schools.



Finally, as an affiliate organization of the ABA Young Lawyers Division (YLD), we sent Section members to all four ABA and YLD conferences to network with other young lawyers, gain insight into ways the #SDYLS can expand and improve programming, and obtain valuable education related to their respective practice areas. The attending members also served as our South Dakota delegates at the ABA YLD assemblies, voting on critical policy matters that impact young lawyers across the nation!

As you can see, it has been quite a year! I am proud of our strides forward and am confident the 2019-2020 board will continue the momentum.

I would also like to take my opportunity, maybe for the last time, to use this awesome platform to thank those who have been a steadfast resource for myself and the Board over the course of this year.

To our Board of Directors: Justin, Anthony, Brittany, Nick, Ryan, Holly, Kassie, Kelsey, Jenna, Carrie, and Nate. You rock! You have taken to the mission of our Board and executed with perfection. I am blessed to call each of you my colleague and friend.

Thank you to President Rasmussen for being a shining example of bar leadership this year. To our Bar staff, Nicole, Elizabeth, Tracie, and Andy; thank you for all your hard work! You make being a volunteer a stellar experience.

Thank you to our Bar Commission for your resolute support of the Section and efforts to include us in Bar business.

To the #SDYLS presidents I have served under, Elizabeth Overmoe, Paul Tschetter, and Judge Howard. Thank you for your guidance and example of dedication to the Section.

I would also like to express my gratitude to the membership of the entire State Bar for supporting and providing mentorship to the #SDYLS.

On a personal note, thank you to my mentors and

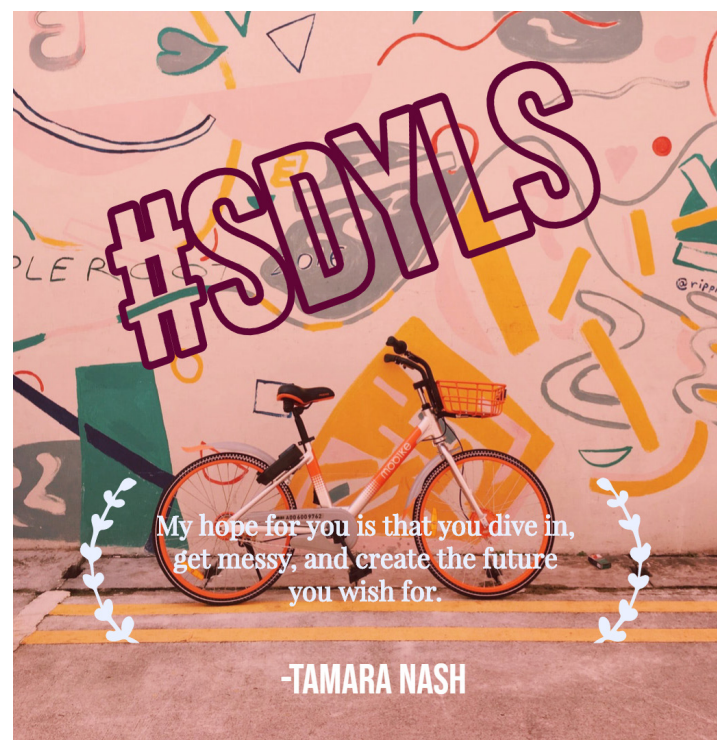
coworkers for being a steadfast source of support. I appreciate all of your guidance and wisdom. Truly, I would not be where I am today without you. You have been unwavering beacons of light, which have guided me as I walk this journey.

Looking to next year, Nate Chicoine is your incoming president. This Section is lucky to have him! Nate and I graduated together in 2013 and I am proud to call him a close friend. It has been a joy to lead this Section with him as my vice-president. I am looking forward to the awesome leadership and guidance he will provide the Board next year. I am certain he will do great things in the coming months for the State Bar.

Thank you for allowing me to lead the South Dakota Young Lawyers Section! It has been a true honor and pleasure. I will never forget the lessons I have learned and will always treasure this experience.

In closing, I would like to leave you with this quote, “the most reliable way to predict the future is to create it.” My hope for you is that you dive in, get messy, and create the future you wish for.

Best Regards,  
Tamara P. Nash



# *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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### In Memoriam

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## Bar Commissioners Spotlight

Monte Hopper

Not long ago, Bar leadership decided that it would be a good idea for the state bar members to know something about the Bar Commissioners who have been elected to serve on the Commission. Each Commissioner will take his or her turn providing some background and current information in this column. As I take my turn, the unusual thing is that by the time the June newsletter is prepared and distributed, I will be within one month of the completion of my term on the Commission.

Mine is an abbreviated term, two years instead of three, as I was asked to run for the Third Circuit Commissioner position. Josh Wurgler had been elected to serve as the Third Circuit representative, but his position was vacated when he moved to the Fifth Circuit.

I have practiced law in Watertown for nearly 38 years, coming back to my hometown in 1981 after a stint at USD, and Iowa Law School. I recall sitting for the bar examination during the diploma privilege era. It was a pretty small group. Preparation was an issue, as Iowa did not use the multistate exam, and South Dakota did not have a bar review course at all. I ended up taking an at-home course offered for Minnesota multistate examinees, and read Nutshells to fill in the gaps. As with most law graduates, I suspect, there was some level of uncertainty, and I wondered whether my prior construction jobs would end up being my career path.

Our firm has always been a general practice firm, but my focus changed in 1985 when one of our partners, Bill Hackett, was fatally injured in a golf cart accident. Bill did a lot of insurance defense work, which was transferred to me. That work constituted the bulk of my practice for the next 25 years. I am pleased to have worked with, and against, some of the brightest and best lawyers in the state. I currently represent some school districts, businesses and individuals in this part of the state.

As I look back on my two-year term on the Bar Commission, I am impressed with the time, dedication and concern exercised by all the Commission members, but especially the effort shown by our Presidents, Pamela Reiter, and Reed Rasmussen. I always heard

outgoing Presidents' remarks, thanking their family and partners for tolerating the workload, travel and time required to do the job. I had no idea.

Pamela worked tirelessly to lead the effort to identify and hire a new executive director for the state bar. Even having completed her term, she remains willing to serve whenever asked. She is currently working hard to get the new Lawyer Referral Service Program up and running.

Reed has demonstrated a steady hand when guiding the Commission through serious, and somewhat difficult, issues and proposals, none more so than the Rule 8.4(g) debate. Although this is a contentious issue, with compelling arguments being made on both sides, his leadership led to a proposal to be considered by the membership at the State Bar meeting, after fair and thoughtful deliberation by the Commission.

Although I will not be present, I have no doubt that President-elect Steve Huff's leadership and guidance will be equally valuable.

After practicing for more than 37 years, I could now be in the last half of my career. I thank those of you with whom I have had the privilege to work in the past, and look forward to meeting and working with many more of you in the future.

Thursday Evening - June 20th

6 pm - Minerva's Lounge

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## 2019 ABA Young Lawyers Division Spring Conference Report

The 2019 ABA Young lawyers Division (YLD) Spring Conference was held in Washington D.C. The meeting brought together hundreds of the Division's members. During the meeting, the Division hosted its own programming and networking events. The conference theme was civic engagement. As such, attendees attended private events at the United States Capitol Building where they heard from U.S Senator Lindsey Graham and Representative Joe Kennedy and their aides. Attendees also received a private talk at the United States Supreme Court, where they were welcomed by the Court's curator and clerk. Following programming, attendees enjoyed dinner and dancing at a private event at the United States Library of Congress. Below is a summary of the events attended by South Dakota Young lawyers, Nate Chicoine and Tamara Nash.



### Tamara P. Nash

Tamara serves within the Division in several capacities. She serves as Chair of the Minorities in the Profession Committee (MIPC), Liaison to the ABA's Commission on Women in the Profession, she is a member of the Resolutions team, and she was appointed to serve on LORALAB (the YLD's long-range planning board). Due to her various roles within the YLD, Tamara sits on Council and Cabinet. This meeting Tamara has the honor of planning and implementing a Division lunch CLE entitled, "Breaking Barriers, Claiming a Seat at the Table." This event highlighted those who contribute to the legal profession and public sector through breaking down barriers. The featured speaker was Judge Diane Humetewa who serves as a United States District Judge for the United States District Court for the District of Arizona. She is the first Native American woman and enrolled tribal member to serve on a federal court. Other conference highlights for Tamara include:

- **Fireside chat with former US Attorney General Alberto Gonzales**— This program allowed attendees to listen to the former Atty General's perspectives on his former role and current events.
- **The Men of Color Summit**- This summit was the product of two years' worth of work on Chair, Tommy Preston's behalf. The Project is designed to empower men of color to become leaders in the legal profession, facilitate an intergenerational support system, and encourage opportunities for community service and civic engagement. The summit engaged attendees with keynote speakers, panel presentations, and group discussions.
- **Division Council** – During council, the advisory body for the Division's Assembly, the body voted on two matters, which directly impact the Division: (1) amending Division bylaws to allow a Division Assembly seat to any young lawyer serving as a state young lawyer delegate representative to the ABA HOD (2) amending Division's bylaws to define a "young lawyer" to first 10 years of practice. Each of these items passed and will be voted on during Assembly at ABA Annual in San Francisco.



### Nate Chicoine

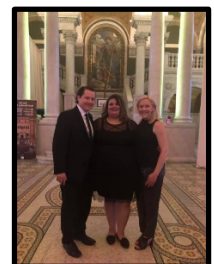
Nate attended the conference as an Affiliate President-Elect. The conference theme was civic engagement highlighted by:

- **A View from the Hill** – Attendees toured the Capitol and US Supreme Court, where they learned the meaning behind the artwork and the courtroom setup during argument. Swearing-in at the US Supreme Court is a special event all should relish. Don't let the photo above fool you. A warm, sunny day turned into a torrential downpour, and the group was asked to leave and find shelter among the columns.
- **Opening Plenary** – Be a turtle and find a ladder. Stick your neck out and let a mentor lift you. DC Attorney General Karl Racine discussed an underdog immigrant's dedication to serve and overcome prejudice, and US Rep. Joe Cunningham commented on a political underdog's integrity and courage to beat the odds and make a difference in a divisive political climate.
- **Fireside chat with former US AG Alberto Gonzales** – His interview touched on his role as White House Counsel and advising Pres. Bush on heavy topics like interrogation techniques on Guantanamo detainees, nationwide firing of US Attorneys, and warrantless surveillance. Each administration encounters tough issues that test the limits of power.
- **Breaking Barriers** – Judge Diane Humetewa was encouraged to pursue the legal profession but could not relate to the men that occupied the courtrooms. In 2014, she became the first Native American woman to serve on the federal bench.

**Thank you to the SD Young Lawyers Section and State Bar of South Dakota for your continued support as we learn and grow through our involvement in the ABA YLD!**

If you have interest in becoming involved in the ABA YLD or the State Bar Young Lawyers Section, please feel free to contact the Section President Tamara Nash (Tamara.Nash@state.sd.us).

*The remaining conference for the 2018-2019 bar year is ABA Annual (August 8-10, 2019).*





STATE BAR OF SOUTH DAKOTA



YOUNG LAWYERS SECTION

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*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.*



# The Fun Room

## Dry Hospitality Suite

Hosted by: Diversity and Inclusion Committee, Lawyers Assistance Committee, and Lawyers Concerned for Lawyers

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### ***NOTICE OF ANNUAL MEETING OF THE SOUTH DAKOTA JUDGE'S ASSOCIATION***

NOTICE IS HEREBY GIVEN that the Annual Meeting of the South Dakota Judge's Association will be held at the Ramkota Hotel, Rapid City, South Dakota on June 29, 2019, commencing at the hour of 1:30 pm.

This notice is given pursuant to the By-Laws of the South Dakota Judges Association to all Supreme Court Justices, Circuit Court Judges and Magistrate Judges.

Submitted,

***Judge Bruce Anderson***

President, SD Judge's Association May 26, 2019

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- Laura Kulm Ask
- Eric Matt
- Eric Schulte
- Mark Krogstad
- Terry Wieczorek
- Joel Arends
- Kellen Willert
- James R. Myers
- Katie Johnson

**AND MUCH THANKS TO  
SCOTT MOSES AND KYLE KRAUSE  
FOR THEIR ASSISTANCE ON SD FREE LEGAL  
ANSWERS THIS MONTH!**

Are you interested in becoming a legal superhero and member of the A2J Justice Squad?

Please send a message to Denise Langley at:  
[access.to.justice@sdbar.net](mailto:access.to.justice@sdbar.net).



# JOIN US



**JUNE 21, 2019**  
**SDPA ANNUAL SEMINAR**

*Please join us -- Open to all legal staff!*

To be held in conjunction with  
the State Bar convention at the  
Ramkota Hotel in Rapid City.

**FIND THE REGISTRATION  
FORM INSIDE THIS ISSUE!**

## Calling all legal assistants!

### Membership in the South Dakota Paralegal Association includes:

- Two educational seminars per year  
*CLE eligible!*  
*Ethics included!*  
*Open to all legal staff!*
- NALA certification study groups  
*Scholarships and reimbursement awards!*
- Quarterly newsletters
- 360° Leadership Academy
- Social events
- Community volunteer projects
- Job listings
- *And much more!*

Visit our website for more info!  
**[www.SDPalegals.com](http://www.SDPalegals.com)**

## \*Red Mass

OUR LADY OF PERPETUAL HELP CATHEDRAL  
OUR LADY'S CHAPEL

5:30 P.M., THURSDAY, JUNE 20, 2019

The Red Mass dates from the Middle Ages—as early as 1307, during the reign of Edward I of England. Its purpose, then as now, is to invoke divine guidance and strength for lawyers, judges, and civic leaders. During the Middle Ages, the English legal year was divided into four terms of court, each of which was celebrated with a Red Mass. In time, the custom evolved into one of such celebration held traditionally near Michaelmas (September 29), the season at which the courts, Parliament and universities all began their official activities of the year.

Ecclesiastical traditions called for red vestments to be worn by the priests celebrating the mass, described as a Votive Mass of the Holy Spirit. In the time of Edward I, twelve judges of the High Court sat at the King's Bench at Westminster. As befit their position and academic station, they too wore scarlet robes. Rounding out the assembly were the university professors, with the doctors among them wearing red academic gowns. Thus was born the name "Red Mass."

After the first Red Mass in the United States was celebrated in New York City in 1928, the practice spread to Boston, Chicago, New Orleans, and San Francisco. Perhaps the most well-known celebration in this country is held in Washington, D.C., where it is attended by the President of the United States, the Chief Justice of the Supreme Court, members of Congress, judges, diplomats, and lawyers.

*\*This function is not sponsored by the State Bar.*



# ANNOUNCEMENTS

Ver Beek Law, Prof. L.L.C. is  
pleased to announce that

*Megan Reed*

has joined the firm as an associate attorney.

Ver Beek Law, Prof. L.L.C.  
6201 E Silver Maple Circle, Suite 101  
Sioux Falls, SD 57110

Telephone: (605) 988-8556

[megan@verbeeklaw.com](mailto:megan@verbeeklaw.com)

Address Correction

*Edward S. Hruska, III*

Moreno & Bachand, P.C.  
PO Box 1174  
Pierre, SD 57501

Telephone: (605) 224-0461

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

Grey and Eisenbraun Law is  
pleased to announce that

*Michelle Potts*

has joined the firm as an associate attorney.

Grey & Eisenbraun Law, Prof. L.L.C.  
909 St. Joseph St., 10th Floor  
Rapid City, SD 57701

Telephone: (605) 791-5454

Facsimile: (605) 791-5459

[www.rapidcitylawyers.net](http://www.rapidcitylawyers.net)

Address Correction

*Dana J. Frohling &  
Victor Rapkoch*

Frohling Law Office  
PO Box 919  
724 Main Street  
Britton SD 57430

Telephone: (605) 448-2273

Facsimile: (605) 448-2275

[Dana@FrohlingLaw.com](mailto:Dana@FrohlingLaw.com)

[Victor@FrohlingLaw.com](mailto:Victor@FrohlingLaw.com)

Wesolick Law Firm has changed  
their name to

*Aspen Legacy Planning*  
with their practice emphasis being estate  
planning, elder law and Medicaid planning.

*Aspen Legacy Planning*

is also pleased to announce that they are  
adding a new office located at

540 Heritage Drive  
Spearfish, SD 57783

Telephone: (605) 721-7665  
Facsimile: (605) 721-7673

909 St. Joseph Street, Suite 202  
Rapid City, SD 57701

Telephone: (605) 721-7665  
Facsimile: (605) 721-7673

[stephen@aspenlegacyplanning.com](mailto:stephen@aspenlegacyplanning.com)  
[www.AspenLegacyPlanning.com](http://www.AspenLegacyPlanning.com)

Aspen Legacy Planning  
is pleased to announce that

*Mariah C. Bloom*  
has joined the firm as an associate attorney  
effective June 1, 2019.

Aspen Legacy Planning  
540 Heritage Drive  
Spearfish, SD 57783

Telephone: (605) 721-7665  
Facsimile: (605) 721-7673

[mariah@aspenlegacyplanning.com](mailto:mariah@aspenlegacyplanning.com)  
[www.AspenLegacyPlanning.com](http://www.AspenLegacyPlanning.com)

Myers Billion, LLP  
is pleased to announce that

*Brett Waltner*  
has joined the firm as a partner  
effective May 1, 2019.

Myers Billion, LLP  
230 S. Phillips Ave, Suite 300  
PO Box 1085  
Sioux Falls, SD 57101-1085

Telephone: (605) 336-3700

[bwaltner@myersbillion.com](mailto:bwaltner@myersbillion.com)  
[www.myersbillion.com](http://www.myersbillion.com)



You are cordially invited to attend  
the Investiture of the

**Honorable  
M. Bridget Mayer**

as Judge  
of the Sixth Judicial Circuit  
on Saturday, June 8, 2019  
at 2:30 p.m.

In the Capitol Rotunda  
Pierre, South Dakota  
Reception following in the Rotunda

The golf tournament will be held on Thursday, June 20, 2019 at the Golf Club at Red Rock in Rapid City. The format is a four-person scramble. The golfers will be handicapped by tee placement as has been done in the past. Participants need not have established handicap and all are welcome to play. This tournament is open to all members (which includes the judiciary), spouses/companions, court reporters and law students. This tournament is a charitable fundraiser for the Law School. Winners receive shirts and bragging rights. Entry is \$125.00 per person (\$500.00 for the team). This entry fee includes (per team) green fees, golf cart, range balls, two mulligans (per person), and entry into a skins game. The tournament will have two shotgun starts—8:30 am and 2 pm. Teams may select which time they tee off. Participants who are not attending Thursday morning meetings are urged to reserve the 8:30 am start time. Checks should be made payable to the ALPS/USD Foundation Golf Tournament. Please submit your tournament registration form and entry fee by June 7, 2019. After June 7, late entries will be accepted on an “as available” basis. Mulligans and a skins game will be offered onsite. This tournament is once again made possible by the generous donation of \$1,000 from ALPS.

#### **WHEN**

Thursday, June 20th at 8:30 am and 2:00 pm

#### **WHERE**

Golf Club at Red Rock at 6520 Birkdale Rd.

#### **COST**

\$500

#### **Buy Tickets**

#### **CONTACT**

**State Bar Of South Dakota**

605.224.7554

**GOLF CLUB at Red Rocks**

## *ALPS/Law School Golf Tournament*



Present:



## MAKING THE CONNECTION: UNDERSTANDING THE INTERSECTIONALITY OF SUBSTANCE USE AND COURT SYSTEMS

*Tara Adamski & Jennifer Williams*  
Co-Chairs

**June 19, 2019**  
**1:00 p.m. – 4:00 p.m.**

Ramkota Hotel  
Rapid City, SD

HOW DOES SUBSTANCE USE AFFECT THE BRAIN? HOW DOES SUBSTANCE USE BY CLIENTS  
AFFECT YOUR PRACTICE OF LAW, NO MATTER WHAT TYPE OF LAW YOU PRACTICE?

Diedre R. Fleming is a Dual-Diagnosis Therapist in Ashtabula, Ohio. She has received her Master of Science in Criminology from the University of Cincinnati and has presented at the Ohio Supreme Court Drug Court conference and numerous other speaking engagements related to substance use disorder, specialty dockets, and reentry programming.

Through this presentation, you will learn about current trends and topics pertaining to:

- Neurobiology of Substance Use Disorder
- Behavioral Manifestations of Substance Use/Mental Health Disorders
- Specialty Dockets Overview (Best Practices)

*Diedre R. Fleming, MS, LCDC III; Dual-Diagnosis Therapist, Community Counseling Center, Ashtabula, Ohio. Ms. Fleming is an active treatment team member on the Municipal Recovery Court and Family Drug Court in Ohio, as well as an adjunct team member for the Ashtabula Common Pleas Mental Health Court and Drug Court in Ohio. Ms. Fleming also likes Pina colodas and getting caught in the rain, she's not really into yoga and feels she has half a brain.*

Pre-Registration for this CLE is part of the annual meeting registration!

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

The State Bar of South Dakota, The Committee on Continuing Legal Education, and ALPS

**Present:**

# ALPS/ETHICS

**June 19, 2019**

**1:00 – 4:00 pm**

**Ramkota Hotel**

**Rapid City, SD**

**Robert W. Minto, Jr.** has served as President and CEO and Director of ALPS Corporation since 1987 and as of May 2013 serves as Executive Board Chair and Director. Mr. Minto also serves as President and CEO of Lawyers Reinsurance Company (Vermont).

*Mr. Minto* received his B.A. degree in Business Administration from the University of Washington in 1969 and his J.D. from the University of Montana School of Law in 1973. He served as an Associate (1973-1977), a Principal (1978-1991) and Of Counsel (1991-2000) with the law firm of Worden Thane in Missoula, Montana.

*Mr. Minto* has significant experience in mediation and arbitration having represented numerous parties during his law practice from 1973 to 1991 and has served as a facilitator mediator or arbitrator for the not-for-profit sector. He has experience as an arbitrator in insurance/reinsurance disputes dating back to 2003.

**Mark Bassingthwaite, Esq., ALPS Risk Manager**

“My primary role is to be a resource. Be it an ethics concern, a tech problem, or simply wanting a little advice on how to improve the calendaring process, I’m the guy that’s here to try to tackle the questions you have regarding the practice of law.”

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

When it comes to risk management for law firms, Mark is available to answer your practice management questions. If you are an ALPS-insured firm, you can arrange to have Mark perform a Risk Assessment Visit, auditing your firm’s critical systems to spot and avoid any potential problems, for a reasonable fee.

Pre-Registration for this CLE is part of the annual meeting registration!

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

June 20th

# THE EARLY BIRD CATCHES THE WORM!



6:30-7:30 am

How does the First Step Act Apply  
to South Dakota Defendants -  
Ryan Kolbeck



Project Rural Practice -  
Bob Morris

Elder Law Update -  
Aaron Eiesland



2018 POWER ACT - Providing Legal Assistance to  
Victims of Domestic Violence - Judge Karen Schreier



2019 Legislative Update  
- Lindsey Riter-Rapp



Supreme Court Update  
- Meghan Joyce





# *Adventure Track 1*

**ERIC HANSON, ROD  
TOBIN, AND  
CHAD HANSEN WILL  
PRESENT ON:**

- **WHAT TO EXPECT  
FROM NEW ALTA  
TITLE INSURANCE  
POLICIES**
- **INDUSTRY CHANGES  
IN SOUTH DAKOTA  
AND NATIONWIDE**
- **COMMON (AND  
PREVENTABLE)  
DRAFTING AND  
CLOSING MISTAKES**

## **REAL PROPERTY — COMING CHANGES AND COMMON ISSUES**

**JUNE 20TH  
8-9 AM**



# Unwinding Irrevocable Trusts

with  
professor  
Tom Simmons

*Adventure Track 1*

**June 20th  
9-10 A.M.**



**JUNE 20, 2019**  
**10-11 AM**  
**ADVENTURE TRACK 1**

# Why Your Digital Footprint Should Matter to You and other matters related to Internet Safety

**THIS SESSION WILL COVER CURRENT  
TRENDS PERTAINING TO:**

- ⊗ **INTERNET CRIMES AGAINST CHILDREN,**
- ⊗ **THE DYNAMICS OF DIGITAL FOOTPRINTS  
FOR PROFESSIONALS, AND**
- ⊗ **THE DANGERS TO PROFESSIONALS  
REGARDING DOXING AND CYBER-SECURITY.**

## **SPEAKERS:**

**HOLLIE STRAND; COMPUTER FORENSIC EXAMINER,  
INTERNET CRIMES AGAINST CHILDREN, PENNINGTON  
COUNTY SHERIFF'S OFFICE, RAPID CITY, SOUTH  
DAKOTA**

**BRENT GROMER; SUPERVISORY SPECIAL AGENT,  
SOUTH DAKOTA DIVISION OF CRIMINAL INVESTIGATION,  
INTERNET CRIMES AGAINST CHILDREN COMMANDER,  
RAPID CITY, SOUTH DAKOTA**



EVERYONE IS

**WELCOME**

## ADVENTURE TRACK 1

COMMON ISSUES/CONCERNS  
WHEN IMMIGRATION ISSUES  
SHOW UP IN FAMILY LAW CASES

20  
JUNE

11 A.M. -  
12 P.M.



Q&A



# IMPLICIT BIAS: ITS IMPACT AND HOW TO COMBAT IT

Adventure Track 2

SYBIL WILL IDENTIFY  
WAYS TO RECOGNIZE  
BIAS, DISCUSS ITS  
IMPLICATIONS, AND  
SHARE BEST PRACTICES  
FOR CREATING AN  
INCLUSIVE LEGAL  
COMMUNITY.

Sybil L. Dunlop  
GREEN ESPEL pllp  
Minneapolis, MN

June  
20th  
8-9 am

# Affordable Technology for the Solo and Small Firm



Wise use of technology can make the difference  
for the solo or small firm in remaining viable and  
competitive.

This session will cover affordable essential technology for the solo/small firm. The session will also discuss options available to move beyond basic technology and be a technologically savvy small law firm by offering collaboration tools, client portals, and using data to improve services and profitability.

9 am - 10 am



June 20th

AdventureTrack 2



**STEPHEN WESOLICK** will offer practical tips on litigation, undue influence and testamentary capacity claims, **DAN FRITZ** will offer tips on steps to take to ensure that an estate plan is not later ensnared in an undue influence or testamentary capacity claim, and **DR. MICHAEL HUXFORD**, who has experience in evaluating elderly folks for purposes of determining whether they possess the requisite capacity will be speaking!

# LITIGATING UNDUE INFLUENCE **AND LACK OF CAPACITY CLAIMS**

## ADVENTURE TRACK 2

**JUNE 20, 2019**

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**10-11 AM**

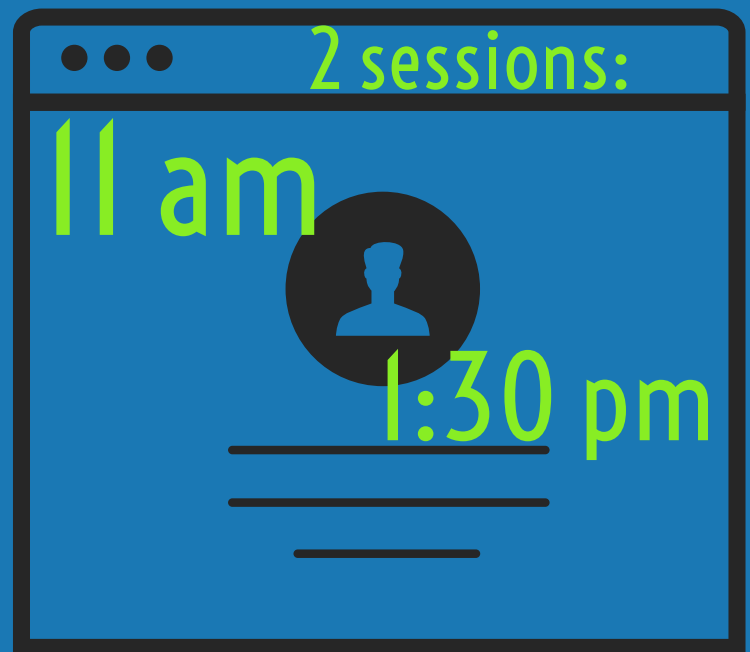
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*In the Know:*

# STATE BAR RESOURCES THAT HELP YOU STAY CONNECTED

*Speakers:*

*Colleen Zea and  
Elizabeth Overmoe*



This program is dedicated to any member who wants to learn more about how the State Bar website can be used to help you stay connected and be informed. Colleen and Beth will navigate through the website to show attendees where specific information can be found and also demonstrate how to get the most from community pages. Other State Bar resources will be highlighted during the program for State Bar leadership, committee and section chairs and members.

ADVENTURE TRACK 2



# eCourts UJS Odyssey eAccess Solution Training

\*\*\*\*\*

June  
20th

Join UJS  
for important  
training!



## Professional Liability Insurance for Attorneys

**RhodesAnderson Insurance proudly offers the Attorney Protective program:**

- \$25,000 of claims expenses paid in every covered claim before the deductible applies
- Disciplinary proceedings coverage of up to \$100,000 in aggregate
- Four ways to reduce your deductible by 50%, up to a total reduction of no more than \$25,000
- Underwritten by National Liability & Fire Insurance Company, which has an A++ A.M. Best rating

**For more information, visit [www.attpromote.com/243/SD](http://www.attpromote.com/243/SD) or call  
RhodesAnderson Insurance at (605) 225-3172 or (800) 658-3362.**



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# PLEASE JOIN TERRY WESTERGAARD

CANDIDATE  
FOR 2019  
**BAR  
PRESIDENT  
ELECT**



.....  
RAPID CITY  
RAMKOTA HOTEL  
Hospitality Room  
Executive Lounge & #2715  
.....



**WEDNESDAY  
JUNE 19TH**

4:30 to 6:00 pm  
& 9:00 to 11:00 pm

**THURSDAY  
JUNE 20TH**

6:00 to 11:00 pm

## PLEASE JOIN BILL GARRY

Candidate for 2020  
Bar President Elect  
Hospitality Room 2715

Wednesday, June 19

4:30 - 6 pm and 9 - 11 pm

Thursday, June 20

8 - 11 pm

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



by: Neil Fulton  
Dean  
USD School of Law

**W**hy? Author Simon Sinek wisely says that this is the important first question for any organization to answer about itself—why does it exist? It was the first question my wife Molly asked me when I said I was thinking about applying to be dean. So it is absolutely one of the first things I want to talk about with all of you; I think the “why” of USD Law School is something we all can believe in and support.

To understand the Law School’s “why,” you must go back to its beginning. Senator Thomas Sterling and Ambassador Bartlett Tripp saw that South Dakota did not have a law school and that it would never join the front rank of states without one. They saw the reality that lawyers, perhaps uniquely among professional vocations, are called to be leaders; they further concluded that if South Dakota was to reach its fullest potential, it would need to grow those lawyer leaders here at home. So, in 1901 they realized that vision and USD Law School opened its doors.

In the century plus since, USD Law has lived up to that lofty expectation. Our graduates have made up the bulk of South Dakota’s practicing lawyers. But they’ve also been most of its judges and justices, many of its business leaders, along with legislators (in Pierre and D.C.) and governors. I say repeatedly, because it is true, that you simply cannot write the history of South Dakota without USD Law School graduates. We have been, and we will continue to be, a community of excellence, service, and leadership across South Dakota and beyond in any setting where a law degree can be used. That is WHO we are, and it is the beginning of understanding WHY we are.

Why we are here requires us to step back to our first principles. And as lawyers our first principles

turn on the reality that we live under the rule of law. We talk about that a lot these days, so much that it can become easy to forget what we’re really talking about. Maybe my favorite explanation comes from the play *Love Letters* by A.R. Gurney. The play traces a decades long correspondence between two friends, one of whom becomes a lawyer and United States senator. In one letter he says that laws are “the letters that society writes to itself.” That’s a great description when you think about it. Because in a letter you have something to say: something about who you are, what is important in life, what you fear, what you love, and who you want to be in your most thoughtful moments. Lawyers are the scribes of these societal letters in the form of our laws. Although all citizens are part of this vital correspondence, lawyers are uniquely engaged in our ongoing correspondence within about who we are, who we can be, who we want to be, and how we plan to achieve that vision.

For our republic to endure and grow, that correspondence must continue. It must be thoughtful and accurate. It must continuously draw all of us more deeply into it. If we the people withdraw from the correspondence, it withers and dies.

So back to why. In all this, why lawyers? Why USD Law School?

To me, the Law School’s very basic “why” is that this intra-societal correspondence is not self-executing. We need lawyers to author and apply our laws, to structure our businesses, to resolve our disputes, and facilitate the ongoing conversation about who we are as a society. And for South Dakota to thrive, we need those lawyers in our communities—all our communities. To do that, we need to provide our best and brightest young minds with the opportunity to get a practical, affordable, and effective education here at home. USD Law school has done that for generations and continues to do so.

I’ve been struck by the strength of the Law School community in my conversations around campus. Students are enthused about their education, strongly attached to their faculty, and prepared with knowledge and skills they are taking out into the world. Faculty are engaged, innovative, and insightful; their

commitment to effective teaching and transformative scholarship is clear. Lastly, the interest and support among alumni and friends is empowering. I cannot tell you how many people have shared their support for the Law School with me and expressed a desire to help. If the “why” of South Dakota’s law school is to produce the leaders for its future, the “how” is us working together as part of the larger legal community.

I believe that USD Law can be a hub to connect our lawyers (present and future), all branches of our government, our business community, and our citizens in the vital work of building South Dakota’s future together. I invite all of you to be a part of that. Come judge a moot court, come mentor a student, come interview an intern or associate candidate, come ask for research assistance from the law library or involvement of faculty in a policy question, or just come to visit. The law is by its nature communal, not individual work, and I believe that USD Law is a home for the South Dakota legal community.

So, to circle back to the start and why. The “why” of USD Law School is that for our society to endure, it needs a vibrant legal community, and building that community begins right here at home with the education of responsible, resourceful, and respectful lawyers to serve South Dakota. It is why I am so excited to join the Law School and to find ways for all of you to be involved there too.



**DeRouchey Agriculture  
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**Roger DeRouchey**  
700 Broad St. Alexandria, SD 57311  
605-770-8080  
derouchey.agconsulting@triotel.net

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- 9 years Researching, Deposition, Testifying
- Expert witness on agriculture issues

[www.deroucheyagriculturealllegalconsulting.com/services.html](http://www.deroucheyagriculturealllegalconsulting.com/services.html)

# A MAN HEARS WHAT HE WANTS TO HEAR. AND DISREGARDS THE REST.

Paul Simon

*Helping parties to REALLY  
hear each other!*

## MEDIATIONS



**Robert J. Burns**

612-388-9927 | robertjburns@gmail.com

- Qualified as a Rule 114 Neutral by the Minnesota Supreme Court
- South Dakota Trial Lawyer of the Year (SDTLA)
- First board certified lawyer in South Dakota (NBTA)
- Cases handled throughout South Dakota
- Dates available in June & July

**Business disputes, family law  
and tort litigation**



# Awards for Half Century of Service



The practice of issuing awards to those members of the State Bar who have reached the fifty-year milestone since admission to practice law in the State of South Dakota, inaugurated in 1969, is being continued in 2019. The ceremony has become one of the highlights of our Annual Meeting.

The following State Bar members are eligible to receive the award at the annual meeting in June:

*50 years - Everett E. Hoyt, Rapid City; Ronald P. Johnsen, Rapid City;  
Ralph A. Kemnitz, Philip; William J. Klimisch, Surprise, AZ;  
Marlin M. Lessmann, Sioux City, IA; Ronald K. Miller, Plankinton;  
Charles P. Schroyer, Pierre; Ronald L. Schultz, Batesland;  
William L. Severns, Spearfish; H. Bruce Shreves, New Orleans, LA;  
Charles M. Thompson, Pierre*

There may be others who should be included in this list. It will be most helpful if you will scrutinize the foregoing list, and if omissions or corrections occur to you, please notify Andrew Fergel at State Bar Headquarters.

USD  
Law  
School

CLASS  
OF  
1969



Friday  
June 21st  
6:30 PM

Arrowhead  
Country  
Club

3675 SHERIDAN LAKE RD.

RSVP TO Chuck Schroyer  
605.280.2623 or  
cps57501@aol.com

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# CLASS OF 99 20 YEAR REUNION

THURSDAY, JUNE 20TH  
6 - 9 MINERVA'S BAR  
PARTY ROOM

CLASS OF  
1976



Wednesday  
June 19th  
5:00 PM

## Minerva's Lounge

USD Law School Class of 1976!  
The evening begins at 5pm in  
the Minerva's Lounge, followed  
by the Banquet at 6:30pm. A  
table will be reserved!

Reunited and it  
feels so good!

BOB MARTIN AND  
TOM NICHOLSON  
(BOB & TOM)  
WOULD LIKE TO  
ANNOUNCE THAT THE  
CLASS OF 1979  
WILL BE HOLDING THEIR  
**40 YEAR(!)**  
CLASS REUNION

**DURING  
THE  
BAR  
CONVENTION**

**WEDNESDAY  
6.19.19**

**CLASS  
OF**

**1979**

**WE WILL HAVE A TABLE RESERVED AT THE BANQUET  
AND GATHER AFTERWARDS FOR MORE FUN AND STORY-TELLING!  
IF YOU WOULD LIKE TO JOIN US – PLEASE EMAIL BOB  
[RAM@ROBERTMARTINPC.COM] AND TOM [TOM@NICHOLSONANDNICHOLSON.COM].  
WE WILL HAVE MORE INFORMATION ABOUT REGISTERING  
FOR THE BANQUET IN THE UPCOMING MONTHS!**



# LIVING ABOVE THE BAR

by: Matt Roby

Hi, my name is Matt and I'm an alcoholic. Or I suffer from "alcohol use disorder." Or I'm a "problem drinker." Whatever label you prefer, one thing I know for sure: I'm no longer able to safely consume alcohol in any amount. My experience tells me that once I take the first drink, I lose the power of choice. For me, taking another drink would lead me right back to where I was toward the ending of my drinking.

I don't have any shame in making this admission, but it didn't come easy. The fact is, I loved everything about alcohol – looking up new cocktail recipes, bloody marys on game day, pretending like I cared about the latest microbrew IPA (I was really only interested in the higher alcohol content), and, of course, the liquid courage to sing karaoke.

I have many fond memories that involved alcohol – college and law school parties, weddings, bachelor parties, and golf trips. Towards the end of my drinking, however, all the fun was gone. I was living to drink and drinking to live. When I wasn't drinking, I was thinking about drinking. That's a serious problem, especially in a profession that requires complete focus and concentration on the task at hand.

My drinking brought me to a point where I could no longer imagine life with or without alcohol. I knew deep down my drinking was ruining any hope I had of being a productive member of society, let alone an effective attorney. Although I managed to avoid any noteworthy legal, family, or professional troubles, my mental and physical health suffered terribly.

I tried everything I could dream up to drink alcohol "normally." Changing beverages. Switching jobs. Moving to a new zip code. Keeping track of my drinks on a spreadsheet (seriously). My journey included all the usual suspects – minor run-ins with the criminal justice system, interventions by friends and family, visits to counselors, clergy, pastors, psychologists, psychiatrists, and hospitals, and participation in treatment programs.

By the fall of 2015, drinking had completely taken control of my life. I was at a "jumping off point."

On December 11, 2015, I entered my second in-patient treatment program a physically, mentally, emotionally, and spiritually broken person. Thankfully, I quickly encountered a number of individuals, including many attorneys, who became an immediate network of support. I haven't had a drink since.

These individuals shared with me their experiences in recovery and taught me how to stay sober one day at a time. I learned by their example that helping others is a vital component of recovery (that's part of the reason I agreed to write this column). Most importantly, I discovered I didn't have to walk this path alone.

It's my hope that opening up about my alcoholism will reassure those lawyers suffering in silence that there's no shame in asking for help. There truly is life after alcohol and there's a whole network of people who are eager to help on a moment's notice. It's also my hope that lawyers who may be using alcohol unsafely will take a hard look at why they're drinking and take steps to develop a healthier relationship to alcohol.

I suggest that everyone who regularly consumes alcohol ask yourself why you drink and take stock of your drinking habits. Doing so before it starts to interrupt your life will save you and your loved ones loads of trouble and heartache. If you discover that you're routinely relying on alcohol to relieve the stresses of the day, I can tell you from firsthand experience that you're walking a dangerous path.

If you think you need to cut back and you're able to do so, bravo. Strive to maintain a healthy relationship to alcohol. Of course, if you're an alcoholic, all the self-analysis in the world may do you no good.

If you find yourself unable to cut back when you earnestly want to, or you find that you're drinking seems to be unintentionally escalating, please don't hesitate to reach out to me or anyone else on the Lawyers Concerned for Lawyers committee. I assure you we'll be there to share our experiences, offer assistance, and let you know that you're not alone. After all, selfishly, helping others is vital to our own recovery. Feel free to give me a call anytime at (605) 881-4949.



# 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, flooding, applied climatology and meteorology, agriculture meteorology, and statistics. More information is provided at <http://npweather.com>, and you can contact Matt at [nrnplnsweather@gmail.com](mailto:nrnplnsweather@gmail.com) or 605.390.7243.

## Retirement Open House — in honor of Carlyle Richards —



Thursday, June 27, 2019

3:30-5:30 pm

- Open to the public
- Appetizers will be provided
- Short remarks at 5:00 pm

Hosted by:

**Agtegra Cooperative**

**908 Lamont Street South**

**Aberdeen, South Dakota 57401**

*Event sponsored by the Brown County Bar Association and the NSU Foundation*

## Wednesday, June 19, 2019

**8:00 am** Child Support Modification Referees – Roosevelt Room

**8:30 am** SD Bar Foundation Board of Directors Meeting – Bear Butte Room

**10:00 am** REGISTRATION BEGINS – Convention Center I

**10:30 am** Bar Commission Meeting – Bear Butte Room

**11:00 am**

CLE Committee Meeting – Badlands Room

SD Trial Lawyers Board of Governors Meeting and Luncheon – Black Elk Peak Room

**12 noon**

SD YLS/Non-USD Law School Graduates Speed Networking and Luncheon – Washington Room

American College of Trial Lawyers Luncheon – Needles Room

**1:00 pm**

CLE: ALPS/Ethics – Rushmore Room

CLE: Making the Connection: Understanding the Intersectionality of Substance Use and Court Systems – Washington Room

**1:30 am** SD Judges Association Meeting – Badlands Room

**2:00 pm** SD Code Commission – Jefferson Room

**5:00 pm**

Registration Closes

Class of 76 Reunion – Minerva's Lounge

**5:30 pm** LegalPalooza, YLS Mixer, Sponsored by SD Trial Lawyers and SD Defense Lawyers – Gazebo Courtyard

**6:30 pm**

BANQUET – Convention Center II, Music by *Oahe Light and Sound*

Class of 1979 Reunion

## Thursday, June 20, 2019

**6:00 am** REGISTRATION BEGINS – Convention Center I

**6:30 am** CLE: Early Bird – Rushmore Room

American College of Trust & Estate Counsel (ACTEC) Breakfast – Black Elk PeakRm

**7:00 am** American Board of Trial Advocates (ABOTA) Breakfast – Lincoln Room

**8:00 am**

CLE: Real Property – Coming Changes and Common Issues

CLE: Implicit Bias: Its Impact and How to Combat It

SD Court Reporters Association

**8:30 am** ALPS/Law School Foundation Golf Tournament 1<sup>st</sup> Shotgun Start – Golf Club at Red Rock, Rapid City

**9:00**

CLE: Unwinding Irrevocable Trusts

CLE: Affordable Technology for the Solo and Small Firm

**10:00 am**

CLE: Why Your Digital Footprint Should Matter to You

CLE: Litigating Undue Influence and Lack of Capacity Claims

## 11:00 am

CLE: Common Issues/Concerns When Immigration Issues Show Up in Family Law Cases

CLE: In the Know: State Bar Resources That Help You Stay Connected

CLE: eCourts UJS Odyssey eAccess Solutions Training

SD Trial Lawyers Association Annual Meeting and Luncheon – Pactola Room

**11:00 am** Council of School Attorneys Meeting – Sylvan II Room

## 12 noon, Thursday, June 21, 2018

Real Property, Probate and Trust Law Section Luncheon – Needles Room

Administrative Law Committee Lunch – Badlands Room

Agricultural Law and Debtor/Creditor Committee Lunch – Jefferson Room

Council of School Attorneys, Municipal Attorneys and Public Sector Luncheon – Sheridan Room

## 12:30 pm

Municipal Attorneys Meeting – Sylvan Room II

Public Sector Section Meeting – Sheridan Room

## 1:00 pm

Real Property, Probate and Trust Law Section Executive Council – Needles Room

## 1:30 pm

CLE: In the Know: State Bar Resources That Help You Stay Connected

CLE: eCourts UJS Odyssey eAccess Solutions Training

## 2:00 pm

ALPS/Law School Foundation Golf Tournament 2<sup>nd</sup> Shotgun Start – Golf Club at Red Rock, Rapid City

Registration Closes

## 4:00 pm

SD Community Foundation, SD Bar Foundation, USD Foundation Joint Reception – Badlands Room

Women in Law Annual Gathering – Black Elk Peak Room

**4:30 pm** SD Association of Criminal Defense Lawyers – Rensch Law Office, 731 Saint Joseph Street, Rapid City

## 5:30 pm

\*Red Mass – Our Lady of Perpetual Help Cathedral, Our Lady's Chapel, 520 Cathedral Dr., Rapid City

American Board of Trial Advocates (ABOTA) Cocktails – Arrowhead County Club, 3675 Sheridan Lake Rd., Rapid City

## 6:00 pm

Class of 99, Minerva's Bar Party Room

Class of 94, Minerva's Lounge

**6:30 pm** American Board of Trial Advocates (ABOTA) Dinner – Arrowhead County Club, 3675 Sheridan Lake Rd., Rapid City

## Friday, June 21, 2019

**7:00 am** Yoga Session, 4181 Jackson Blvd., Canyon Lake Park

## 7:15 am

\*Prayer Breakfast – Badlands Room

Project Rural Practice and Solo and Small Firm Breakfast – Needles Room

Fellows of the American Bar Foundation Breakfast – Lincoln Room

Judicial-Bar Liaison Committee Meeting and Breakfast – Black Elk Peak Room



# Annual Meeting Schedule of Events

2019

**7:30 am** Road Race – 4181 Jackson Blvd., Canyon Lake Park

**8:00 am**

REGISTRATION BEGINS – Convention Center I

SD Paralegal Association Annual Meeting – Sylvan Room II

**8:00 am**

SD Court Reporters Association – Sylvan Room I

**8:15 am *State Bar Business Meeting*** – Rushmore Room

**11:30 am**

Reception for 50-Year Veterans and McKusick Award Recipient – Washington Room

SD Paralegal Association Luncheon – Sheridan Room

**12 noon** Past Presidents Luncheon – Lincoln Room

**1:15 pm *State Bar Business Meeting*** – Rushmore Room

**2:30 pm** Bar Commission Meeting – Rushmore Room (Immediately following Business Meeting)

\*This function is not sponsored by the State Bar

Times and Locations are subject to change without prior notice.

## *State Bar and Bar Foundation Audit Documents*

To view documents,  
please click the link below:

<http://www.statebarofsouthdakota.com/p/do/sd/sid=346>



## **South Dakota Paralegal Association, Inc.**

**Founded in 1989**

### **SEMI-ANNUAL MEETING & SEMINAR**

**FRIDAY, JUNE 21, 2019**

**RAMKOTA HOTEL**

**2111 N. LaCrosse Street**

**Rapid City, SD 57701**

<i><b>Time</b></i>	<i><b>Agenda</b></i>	<i><b>Speakers</b></i>
7:30-8:00 AM	Registration & Breakfast	
8:00-9:00 AM	Employment Law: #MeToo Training & Investigations	Attorney Jennifer Frank, Lynn Jackson Shultz & Lebrun, P.C.
9:00-9:10 AM	Break	
9:10-10:10 AM	Estate Law: Estate Planning Baseline	Attorney Stephen J. Wesolick, Aspen Legacy Planning / Wesolick Law Firm
10:10-10:15 AM	Break	
10:15-11:15 AM	Open Forum: Paralegals Preparing the Client	Certified Paralegal Vicki Blake
11:15 -12:15 PM	SDPA Annual Meeting	<i>SDPA Executive Committee</i>
12:15-1:15 PM	Lunch	
1:15-2:15 PM	Criminal/Family Law: TPOs and Divorce Proceedings	Attorney James G. Sword, Sword Law Office, P.C.
2:15-2:25 PM	Break	
2:25-3:25 PM	Ethics: Client Diversity	Attorney George Grassby, Whiting Hagg Hagg Dorsey & Hagg, LLP
3:25-3:35 PM	Break	
3:35-4:35 PM	Civil Litigation: Evaluating and Choosing Expert Witnesses	Attorney Lonnie R. Braun, Thomas Braun Bernard & Burke, LLP

### ***REGISTRATION FORM***

**\*\*NOTE: If planning to attend via webinar, please include the e-mail with which you can be reached if we experience technical difficulties\*\* Email:** \_\_\_\_\_

Seminar Fee enclosed (includes luncheon): \_\_\_\_\_ Member \$65 \_\_\_\_\_ Non-Member \$85 \_\_\_\_\_ Student \$30

Webinar Fee Enclosed: \_\_\_\_\_ Member \$65 \_\_\_\_\_ Non-Member \$85 \_\_\_\_\_ Student \$30

Name: \_\_\_\_\_ Designation (CP/ACP/RP/PLS/PP) \_\_\_\_\_

Firm: \_\_\_\_\_ Email: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ **Thursday Social:** \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Maybe

Send registration form and payment to Vicki Blake, c/o The Duncan Law Firm, LLP, 515 W. Landscape Place, Ste. 101, Sioux Falls, SD 57108 **by Friday, June 7, 2019**. Make checks payable to **SDPA**. To cancel your registration, please contact Vicki Blake at (605) 361-9840 or at [vicki@ddlawsd.com](mailto:vicki@ddlawsd.com). Cancellations received on or before June 7, 2019, will receive a full refund. There is a block of rooms available at the venue, the Ramkota Hotel (605-343-8550), under the SDPA, \$130.99 per night for a room with 2 queen beds or one king bed. The deadline to reserve your room is **Wednesday, May 22, 2019**.

**Continuing legal education credit from NALA has been requested as follows: 6 hours of CLE credit to include 1 hour of ethics credit and 1 hour non-substantive credit.**

The SD Young Lawyers Section and  
USD Student Bar Association Present:

# ROAD RACE

## ONE MILE OR 5K

Friday, June 21, 2019  
7:30 AM Check-in  
4181 Jackson Blvd  
Canyon Lake Park

# YOGA SESSION

30 minute session will begin at 7AM  
(just prior to race). Taught by Kelsey  
Parker, SOL VIBE (Rapid City).

RSVP to Whitney Petersen at: [whitney.reed@coyotes.usd.edu](mailto:whitney.reed@coyotes.usd.edu)





# The Young Lawyers Section and USD Student Bar Association Present The State Bar Convention Annual Road Race



**Friday, June 21<sup>nd</sup>, 2019**  
**Rapid City, SD**  
**4181 Jackson Blvd.**



**Eligible Entrants:** All members of the State Bar of South Dakota including relatives and dates, law students, court reporters, and employees of the Unified Judicial System

**Full Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
*Last First M.I.*

**Address:** \_\_\_\_\_  
*Street Address Apartment/Unit #*  
\_\_\_\_\_  
*City State ZIP Code*

**Circle Age** 12& under, 13-19, 20-29, 30-39,  
**Group:** 40-49, 50-59, 60-69, 70-79, 80-89 **Event Desired:** One Mile ☐ 5K ☐

**Please CHECK IN at Canyon Lake Park at the Registration table at entrance of the park near Viken Law Firm no later than 7:30a.m. – the race will begin at 7:45a.m.**

In consideration of your acceptance of this entry I, intending to be legally bound, for myself, my heirs, executors, and administrators, waive and release The State Bar of South Dakota, the Young Lawyers Section of the State Bar of South Dakota, any individuals participating the organization and conduct of this road race, their representative, successors and assigns from any and all rights any claims for damages I may have, arising out of any injuries and illnesses suffered by me in this event including those which may be attributed to weather conditions. I attest and verify that I will participate in this event as a foot race entrant, that I am physically fit and have sufficiently trained for the competition of this event and my physical condition has been verified by a licensed medical doctor.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Please e-mail this completed application by June 19, 2019 to:  
Whitney Petersen, SBA President  
Whitney.reed@coyotes.usd.edu

NEIL  
FULTON



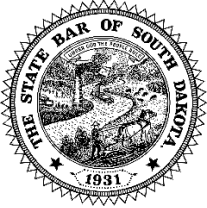
JUNE 20

2019

4:30 TO  
5:30 PM

MEET THE NEW  
USD LAW  
SCHOOL DEAN

Please join the South Dakota Bar Foundation,  
USD Foundation and SD Community  
Foundation in the Badlands Room at the  
Ramkota Hotel during the Foundations  
Reception to welcome Dean Fulton!



# State Bar of South Dakota

## Committee Assignments 2019-2020

### **ADMINISTRATIVE LAW**

Mallori Barnett, Pierre  
Steve Blair, Pierre  
Megan Borchert, Pierre  
Niclas Dahlvang, Wessington Springs  
Catherine Duenwald, Pierre  
Kristen Edwards, Pierre  
Holly Farris, Pierre  
William Golden, Hartford  
Kody Kyriss, Pierre  
Amber Mulder, Sioux Falls  
Graham Oye, Sioux Falls  
**John Richter, CH, Pierre**  
J.G. Schultz, Sioux Falls  
Roger Thomas, Apple Valley MN  
Rosa Yeager, Pierre  
Brian Zielinski, Sioux Falls

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Elliot Bloom, Rapid City  
Brian Donahoe, Sioux Falls  
Craig Evenson, Clear Lake  
Dennis Evenson, Clear Lake  
Jacob Fischer, St. Paul MN  
Amanda Gaikowski, Sioux Falls  
Thomas Geu, Vermillion  
David Larson, Chamberlain  
Jason Shanks, Sioux Falls  
Danny Smeins, Britton  
**Kelsea Sutton, Co-CH, Burke**  
Jeffrey Swett, Rapid City  
Jacob Tiede, Mitchell  
**Michael Traxinger, Co-CH, Aberdeen**  
Paul Tschetter, Sioux Falls  
Chelsea Wenzel, Pierre  
Todd Wilkinson, De Smet

### **ALTERNATIVE DISPUTE RESOLUTION**

Holly Behrens, Sioux Falls  
Patrick Burns, Minneapolis, MN  
Corey Denevan, Sioux Falls  
Charles Dorothy, Sioux Falls  
Catherine Duenwald, Pierre

Hon. David Gienapp, Madison  
Chet Groseclose, Sioux Falls  
Katie Johnson, Beresford  
James Marsh, Tripp  
**Michael McKnight, CH, Sioux Falls**  
Greg Peterson, Aberdeen  
Lori Rensick, Vermillion  
Olivia Siglin, Vermillion  
Heidi Thoennes, Sioux Falls  
Marilyn Trefz, Vermillion  
Linda Lea Viken, Rapid City

### **BUSINESS LAW**

**Amy Arndt, Co-CH, Sioux Falls**  
Frances Becker, Rapid City  
Lisa Carrico, Watertown  
James Cremer, Sioux Falls  
Thomas Deadrick, Pierre  
Matthew Dorothy, Harrisburg  
Amanda Engel, Sioux Falls  
Eric Erickson, Sioux Falls  
Patrick Goetzinger, Rapid City  
Chad Hansen, Dell Rapids  
Laura Hodson, Rapid City  
Curtis Jensen, Rapid City  
Darrell Jesse, Dakota Dunes  
**Andrew Knutson, Co-CH, Sioux Falls**  
Seth Lopour, Sioux Falls  
David Lust, Rapid City  
Carey Miller, Sioux Falls  
Heath Oberloh, Sioux Falls  
Erika Olson, Rapid City  
Aaron Pilcher, Huron  
Richard Pluimer, Spearfish  
David Rezac, Sioux Falls  
Jamison Rounds, Crooks  
Timothy Thomas, Rapid City  
Matthew Tobin, Sioux Falls  
Rodrick Tobin, Aberdeen  
Paul Tschetter, Sioux Falls  
Jordan Veurink, Sioux Falls  
Jayna Voss, Sioux Falls  
Andrew Wilka, Sioux Falls  
Sheila Woodward, Yankton

### **CONTINUING LEGAL EDUCATION**

Tara Adamski, Pierre  
**Stanton Anker, Co-CH, Rapid City**  
Alecia Fuller, Rapid City  
Eric Hanson, Sioux Falls  
Sara Hughes, Sioux Falls  
**Meghann Joyce, Co-CH, Sioux Falls**  
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Jessica Larson, Rapid City  
Sarah Richardson Larson, Sioux Falls  
Cassandra McKeown, Vermillion  
Jana Miner, Pierre  
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Hon. Craig Pfeifle, Rapid City  
Pamela Reiter, Sioux Falls  
Victoria Reker, Sioux Falls  
Brandy Rhead, Rapid City  
Carrie Sanderson, Sioux Falls  
William Sims, Sioux Falls  
Jason Sutton, Sioux Falls  
Jeffrey Tronvold, Pierre  
Jennifer Williams, Rapid City

### **CLIENT ASSISTANCE FUND**

**Pat Archer, CH, Pierre**  
Amy Bartling-Jacobsen, Gregory  
Bath Baloun, Sioux Falls  
Matt Naasz, Rapid City  
Nancy Oviatt, Watertown

### **CRIMINAL LAW**

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Eric Bogue, Faith  
Paul Brankin, Rapid City  
**Philip Carlson, Co-CH, Pierre**  
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Melissa Fiksdal, Sioux Falls  
Koln Fink, Sioux Falls  
Grant Flynn, Pierre  
Ellery Grey, Rapid City  
Raleigh Hansman, Sioux Falls  
George Johnson, Gregory  
Ryan Kolbeck, Sioux Falls



### **CRIMINAL LAW continued...**

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Katie Mallery, Sioux Falls  
Cassandra McKeown, Vermillion  
Kenneth Meyer, Madison  
Robert Pasqualucci, Rapid City  
N. Bob Pesall, Flandreau  
Amber Richey, Deadwood  
Lara Roetzel, Rapid City  
Jason Rumpca, Sioux Falls  
Eric Schlimgen, Rapid City  
Traci Smith, Sioux Falls  
Daniel VanGorp, Philip  
TJ Von Wald, Sioux Falls  
Kelsey Weber, Rapid City  
Amanda Work, Winner

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Keith Gauer, Sioux Falls  
Sara Greff-Dannen, Sioux Falls  
Steve Huff, Yankton  
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**Amanda Work, Co-CH, Winner**

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Tate Means, Pine Ridge  
Howard Pallotta, Sioux Falls  
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James Shekleton, Pierre  
Scott Swier, Avon

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Erika Campbell, Spearfish  
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Nicole Emerson, Sioux Falls  
Greg Erlandson, Rapid City  
Marc Feinstein, Sioux Falls  
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Karen Gourley, Sioux Falls  
Lindsey Harris, Sioux Falls  
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Tanner Jackson, Sioux Falls  
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Lisa Maguire, Sioux Falls

Robert Martin, Rapid City  
Martin Oyos, Sioux Falls  
Michael Porter, Rapid City  
Thomas Simmons, Vermillion  
Douglas Thesenvitz, Sioux Falls  
Bobbi Thury, Sioux Falls  
Stephen Wesolick, Rapid City  
Rebecca Wilson, Sioux Falls

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Taylor Hayes, Sioux Falls  
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Donald McCarty, Brookings  
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Stephen Landon, Sioux Falls  
Jeff Larson, Sioux Falls  
Barbara Lewis, Rapid City  
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Eric Preheim, Sioux Falls  
Lindsey Quasney, Sioux Falls  
Martha Rossiter, Rapid City  
Michael Snyder, Sioux Falls  
Gary Thimsen, Sioux Falls  
Arman Zeljkovic, Rapid City

## **FAMILY LAW**

Beth Baloun, Sioux Falls  
Mary Burd, Sioux Falls  
Margaret Gillespie, Sioux Falls  
Thomas Keller, Sioux Falls  
Kristen Kochejian, Redfield  
Kyle Krause, Rapid City  
Trinette LaFleur, Sioux Falls  
Tiffani Landeen, Sioux Falls  
Denise Langley, Pierre  
Emily Maurice, Sioux Falls  
Donald McCarty, Brookings  
Chris McClure, Sioux Falls  
Lorie Melone, Rapid City  
Melissa Neville, Aberdeen  
Melissa Nicholson Breit, Sioux Falls  
Kari Nordstrum, Rapid City  
Kylie Riggins, Rapid City  
Beth Roesler, Yankton  
Elizabeth Rosenbaum, Sioux City  
Marilyn Trefz, Vermillion  
Linda Lea Viken, Rapid City  
Dava Wermers, Mitchell  
**Terri Williams, CH, Rapid City**  
Joshua Zellmer, Sioux Falls

## **IMMIGRATION LAW**

Amanda Bahena, Sioux Falls  
Aisha Carr, Valentine, NE  
Casey Eekhoff, Sioux Falls  
Henry Evans, Sioux Falls  
Janice Godltand, Sioux Falls  
George Grassby, Rapid City  
Sandi Haeuszer, Sioux Falls  
Taneeza Islam, Sioux Falls  
Anna Kerner Andersson, Dakota  
Dunes  
Langu Okall, Sioux Falls  
**Kari Scofield, CH, Sioux Falls**

## **INDIAN LAW**

Kirk Albertson, Pierre  
Margaret Bad Warrior, Eagle Butte  
Tim Billion, Sioux Falls  
Curtis Carrol, Eagle Butte  
Kyle Chase, Sioux Falls  
Leonika Charging, Omaha, NE  
Meghan Dilges, Pierre  
**Deborah DuBray, Co-CH, Rapid City**  
Cheryl DuPris, Pierre

Angelique EagleWoman, Wilmont  
Shaun Eastman, Agency Village  
James Eirinberg, Sioux Falls  
Hon. Robert Gusinsky, Rapid City  
Dana Hanna, Rapid City  
Stacy Hegge, Pierre  
Phil Hogen, Black Hawk  
Brendan Johnson, Sioux Falls  
Megan LaFromboise, Sisseton  
Denise Langley, Pierre  
JR LaPlante, Sioux Falls  
Cheryl Laurenz-Bogue, Dupree  
Lori Miner, Lower Brule  
Troy Morley, Pierre  
Alvin Pahlke, Winner  
**Seth Pearman, Co-CH, Flandreau**  
Frank Pommersheim, Vermillion  
Shane Pullman, Rapid City  
Matthew Rappold, Mission  
Tom Simmons, Vermillion  
Marwin Smith, Parker  
Tom Sorensen, Vermillion  
Anthony Sutton, Sioux Falls  
Ron Volesky, Huron

## **IN-HOUSE COUNSEL**

Derek Bertsch, Sioux Falls  
Deb Birgen, Sioux Falls  
Sarah Bouwman, Sioux Falls  
Carla Cushman, Rapid City  
Michael Diedrich, Rapid City  
Matthew Dorothy, Harrisburg  
Elizabeth Duffy, Sioux Falls  
Joe Dylla, Sioux Falls  
David Edwards, Sioux Falls  
Justin Goetz, Watertown  
Robert Hollan, Sioux Falls  
Julie Johnson, Mina  
Tera Johnson, Sioux Falls  
Adam Kirsch, Rapid City  
Amy Koenig, Rapid City  
Joel Landeen, Rapid City  
Amy Lauck, Sioux Falls  
Lee Magnuson, Sioux Falls  
Tate Means, Pine Ridge  
Jonathan Oostra, Sioux Falls  
Ryan Petersen, Sioux Falls  
Daniel Rafferty, Yankton  
Matt Roby, Watertown  
Robert Sahr, Madison

Kristina Schaeffer, Sioux Falls  
Mrg Simon, Sioux Falls  
Torrey Sundall, Sioux Falls  
Michael Traxinger, Aberdeen  
**Nicole Tupman, CH, Sioux Falls**  
Jason Unger, Flandreau  
James Wefso, Rapid City  
Ashley Wenger-Slaba, Sioux Falls

## **JUDICIAL BAR LIAISON**

Robert Anderson, Pierre  
Mark Arndt, Sioux Falls  
Lonnie Braun, Rapid City  
Renee Christensen, Sioux Falls  
Greg Eiesland, Rapid City  
**Thomas Frankman, CH, Sioux Falls**  
William Garry, Sioux Falls  
Hon. David Gilbertson, Pierre  
Anthony Hohn, Sioux Falls  
Gary Jensen, Rapid City  
Stacy Johnson, Aberdeen  
Hon. Janine Kern, Rapid City  
Hon. Heidi Linngren, Rapid City  
David Lust, Rapid City  
Hon. Carmen Means, Watertown  
Ann Mines-Bailey, Pierre  
Thomas Nicholson, Sioux Falls  
Hon. Jane Pfeifle, Rapid City  
James Power, Sioux Falls  
Brian Radke, Sioux Falls  
Greg Sattizahn, Pierre  
Hon. Patrick Smith, Mitchell  
Hon. Marya Tellinghuisen, Rapid City  
Roy Wise, Aberdeen  
Joshua Zellmer, Sioux Falls

## **LABOR & EMPLOYMENT LAW**

Jean Bender, Sioux Falls  
A.Stevenson Bogue, Omaha  
Tyler Coverdale, Sioux Falls  
Kimberly Dorsett, Aberdeen  
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# Estate Planning

Joe Dylla, Chair

With Paul S. Lee, J.D., LL.M., the  
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## QSBS: The Quest for Quantum Exclusions (Queries, Qualms & Qualifications)

Qualified Small Business Stock (QSBS) under Section 1202 is not just for tech companies anymore. It's time to reconsider QSBS because the new tax act has paved the way for closely-held companies to benefit "bigly." QSBS provides an exciting array of benefits (and a surprising alternative) for owners of new and pre-existing business (large and small): (i) 100% gain exclusion on sale; (ii) tax-free rollover of gains; and (3) a chance to "stack" (multiply) and "pack" the exclusion by 10 times (maybe more). While the benefits of QSBS are straightforward, the qualifications and questions surrounding QSBS planning are far from it. This presentation will discuss planning opportunities, unanswered questions, potential pitfalls, and best practices in the quest for quantum QSBS exclusions.

## Top Tax and Estate Planning Techniques after "Tax Reform" (Sorting Through the COVFEFE)

Tax reform (whether you call it the "Tax Cuts and Jobs Act" or the "Tax COVFEFE and Jibberish Act") is here to stay... sort of. Regardless, it's clear that income tax planning, tax basis management, and planning with the temporary doubling of the applicable exclusion amount will be at the forefront of estate, tax, and family business planning. This session will discuss straightforward and innovative planning opportunities for families (and their businesses) that best take advantage of both the "expiring" and "permanent" provisions of the new tax act, along with the latest IRS guidance and court decisions.

**Brought to you by: The First National Bank, SD Continuing Legal  
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# *In Memoriam*



Luella Bruhn Cozad  
1924 – 2019

Luella Cozad died nearly 20 months after the passing of her much beloved husband, Fredric R. Cozad. Luella was held in such high esteem in the legal community the decision was made to acknowledge her passing and pay tribute to her contributions in the pages of your Bar Newsletter. Her humble obituary is reprinted below. I am honored to have been asked to tell you a bit more about Luella.

All who knew Fred and Luella marveled at their longevity in the practice of law (65 years) and their dedication to each other, which was manifested by their distinctive practice of dressing alike. They were affectionately referred to as the Twins From Martin.

Luella was not a lawyer. But she sure had a giant impact on the legal profession as a trail blazer for legal assistants. She was the 13th legal assistant certified in South Dakota. Decades ago, Luella regularly attended State Bar CLE programs with Fred. Her attendance was always preceded with a formal request by Fred for permission to have Luella attend the program “to make sure I get it right.” Luella’s regular attendance did not escape the notice of State Bar Leadership. In 1981, the State Bar adopted a policy permitting all paralegals to attend CLE programs at no cost. It was referred to as the Luella Cozad Policy.

In 1991, the State Bar drafted rules to define and regulate paralegals. Noticing a gap in the rules, the Bar added a provision acknowledging another means of attaining certified legal assistant status was through years of hands on experience. In 1992, the South Dakota Supreme Court held a hearing on the proposed rules and asked about the hands on experience provision. Tom Barnett simply responded “Luella Cozad”. The Justices nodded in recognition of Luella’s reputation and unanimously approved the rules, which remain in effect today. Clients already knew what the Justices

and Bar Leadership experienced regarding Luella’s skill. Fred often said, “It keeps me humble every time a client sticks his head in the door and asks me if Luella has time to help them.”

For the past several years, I have had the pleasure of telling Fred & Luella’s small town, rural practice story to local and national audiences in support of Project Rural Practice and the Rural Attorney Recruitment Program. Fred & Luella’s willingness to share their story in support of keeping rural communities not just viable, but thriving, has been a lynchpin to the success of PRP and resulted in a front page story featuring Fred & Luella in the NY Times. Their financial support of the program through the Cozad Challenge has assured the Bar’s portion of funding the RARP is secure for years to come.

Fred and Luella never missed a State Bar Annual Meeting until their health became a challenge for them to travel. Failing to see the Twins From Martin left us feeling a bit empty and the Annual Meeting was not complete. Their absence forced our recognition that an era was coming to an end. The Prayer Breakfast at the Annual Meeting is another legacy of the Cozad’s. Quietly and with no fanfare whatsoever, Fred and Luella annually picked up the cost of the breakfast while always imparting words of wisdom regarding their faith.

There will never be another legal dynamic duo like Fred & Luella. They were inseparable, not just metaphorically, but also in their purposeful twin appearance. It reflected total and absolute dedication to each other and a statement to the world they are, without doubt, or apology, one team. They were a symbol of unity in a less than unified world. We pay tribute to Luella for her selfless, heartfelt service to the legal profession spanning 8 decades. Luella’s passing officially, and sadly, marks the end of an era represented by the Twins From Martin.

Respectfully submitted,  
Patrick G. Goetzinger

*Luella Bruhn Cozad*

Luella Cozad passed away on April 17, 2019, at Rapid City, SD.

She was born on September 21, 1924, to Rudolph and Ida Bruhn.

Luella grew up on a farm in the vicinity of Schleswig, Iowa, and graduated from Schleswig High School. She attended and received a baccalaureate degree at Morningside College in Sioux City, Iowa and also received a Masters Degree at the University of South Dakota in Vermillion.

She married Fred Cozad and they established a home and law practice at Martin, SD. She and her husband were a team, her husband as the lawyer, Luella as the secretary/office manager.

She and her husband were married for over 68 years. They had one daughter, Catherine Cozad Albrecht of Plankinton, SD and three grandchildren, Ferra Kemp, Amy Deichert, and Justin Albrecht, seven great grandchildren, Jaylen Kemp, Jacey Kemp, Jett Kemp, Isabelle Albrecht, Ireland Albrecht, Elodie Deichert and Emmarie Deichert.

Luella was a long-time member of the Lindsey Memorial Presbyterian Church of Martin, where she served as Choir Director and Church organist for approximately 50 years.

Luella was an accomplished musician and during her college days at Morningside she played in the Sioux City Symphony.

During her involvement in the family law practice, she was certified as a Professional Legal Secretary.

After her retirement from the law practice at Martin, Luella and her husband made their home at Westhills Village in Rapid City, SD. She was grateful for having shared the love of her husband and family.



*RICHARD ALDEN CUTLER  
1941-2019*

Richard Alden Cutler, 77, of Sioux Falls passed away peacefully on May 8, 2019, after a three-year battle with Glioblastoma brain cancer. His memorial service was held at First United Methodist Church in Sioux Falls on May 13.

Rich was born on August 26, 1941, in Mitchell, South Dakota to Roland and Dorothy Cutler. Rich grew up in Wessington Springs with his sister, Liz, and brother, Jim.

Rich graduated from Wessington Springs High School in 1959 and attended the University of South Dakota, where he majored in History. He received his Bachelor of Arts degree in 1963, graduating summa cum laude. Rich was Cadet Colonel for the ROTC unit and a member of USD's championship track team. In 1965, Rich earned his law degree from USD, again graduating summa cum laude. Rich received an Honorary Doctorate of Business from Dakota Wesleyan University in 1986, and an Honorary Doctorate of Humane Letters from USD in 1997.

Following law school, Rich attended the United States Army Language Training Academy at Fort Ord, California where he learned to speak fluent German in less than 12 months. Rich served in the JAG Corps of the United States Army, attaining the rank of Major and spending his last three years assigned to the United States Embassy in Bonn, Germany.

After leaving active military duty, Rich returned to South Dakota to join the Davenport, Evans, Hurwitz & Smith law firm where he practiced for 30 years. In 1997, Rich formed the Cutler Law Firm with his son, Kent. Rich was instrumental in the growth of the Cutler Law Firm from 4 to 20 attorneys during the past 20 years. Rich served as attorney, business counselor, and friend to countless clients with whom he continued to work until he retired from the practice of law. He took great pride in the fact that his family has continuously practiced law in South Dakota for four generations beginning in 1906.

Rich was not only a well-respected attorney, but an astute entrepreneur. During his career, Rich acquired a significant real estate portfolio consisting of many commercial properties, development land, and farm land. In the early 1970's, Rich founded Satellite Cable Services, Inc. which owned and operated cable television systems in Brookings and 60 other South Dakota communities. Rich had the privilege of serving as the President and Chairman of the Board of the National Cable Television Cooperative. Because that wasn't enough to keep him busy, Rich purchased Palmer Gulch Lodge in the Black Hills in 1972 and developed the Mt. Rushmore KOA campground, which was the start of Recreational Adventures Co. Recreational Adventures Co. is now the largest KOA franchisee, owning and operating 13 campgrounds spanning the northern tier of the United States from Oregon to New York and serving hundreds of thousands of guests each year. In addition, Rich was a board member and owner of Enercept, Inc., a company located in Watertown that produces structural insulated panel systems for residential and commercial projects.

Rich was community minded and philanthropic. He served as campaign chairman for the United Way and served on many boards including the South Dakota Community Foundation, Children's Home Society, South Dakota Hall of Fame, Sunnycrest Village, Downtown Rotary, Sioux Falls Community Development Advisory Committee, and Sioux Falls Downtown Development Corp. Rich served as Chairman of the Board of Trustees of Dakota Wesleyan University, the USD Foundation, and the National Music Museum at USD. Rich also co-chaired Campaign South Dakota which raised over \$133 million for the USD Foundation. In 2007, Rich was recognized for his lifetime of accomplishments by induction into the South Dakota Hall of Fame.

Rich's proudest accomplishment was his family. As a young family, Rich and his wife, Sharon, spent as much of the summer months as possible at their Black Hills cabin with their three sons, Kent, Chris, and Justin. This allowed Rich to be personally involved in the operation and development of Palmer Gulch and to spend time riding three wheelers and motorcycles with the boys. Christmas was always a special time generally spent skiing with his family which grew to include eight grandchildren.

In more recent years, Rich became a collector of art by various South Dakota artists including Harvey Dunn and Oscar Howe for which he was a recipient of the Governor's Award for Outstanding Support of the Arts. Rich and Sharon particularly enjoyed spending the winter months at their home in LaQuinta, California, where they entertained friends and Rich played cards almost daily at LaQuinta Country Club.

Rich is survived by his caring wife of 56 years, Sharon; son, Kent (Carolyn) Cutler of Sioux Falls and their children, Dylan and Katie; son Chris (Natalie) Cutler of Hill City, South Dakota, and their children, Jac, Rebecca, and Abby; and son Justin Cutler of Hill City, South Dakota, and his children, Maddie, Miles, and Max. Rich is also survived by his sister Liz (Arlan) Barber, of San Diego, California; and his brother Jim (Joyce) Cutler of Westford, Massachusetts, and many nieces and nephews.

Memorials can be made to any of the following: First United Methodist Church, National Music Museum (USD), Sioux Falls Community Foundation, Sunnycrest Village or Ava's Hospice House.



Wayne Dean Groe, 73, of Elk Point, South Dakota passed away at Mercy Medical Center on Friday, May 17, 2019 with his family at his side.

Wayne was born on September 22, 1945 in Mason City, Iowa to Orlin Groe and Norma Madson. He was one of eight children.

He married Elizabeth Weitzel on October 2, 1965 at Sion Lutheran Church in Northwood, Iowa. To this union brought three children; Michelle, Jay, and Noel.

Wayne graduated from Northwood High School in Northwood, Iowa and later attended Morningside College in Sioux City. He completed his Doctorate of Law degree at the University of South Dakota in Vermillion.



He had worked at Hydroactive Sales Service in Sioux City, Iowa for several years. Also served as Justice of the Peace and later would own his own law firm, Stickney and Groe in Elk Point, South Dakota.

He was active around the community in many ways but the one most memorable to most would be probably his involvement with Immanuel Lutheran Church in Elk Point. Wayne had a voice that could make the Angels sing and shared that often. He was also active with the South Dakota synod.

Wayne is survived by his loving wife, Elizabeth Groe of Elk Point, South Dakota; a daughter, Michelle (Richard) Pitrolo of Cleveland, Georgia; a son, Jay (Kirsten) Groe of Brainerd, Minnesota; three brothers, John (Beverly) Groe of Boone, Iowa, Charles (Mary) Groe of Ankeny, Iowa, Brian (Diana) Groe of West Plains, Missouri; three sisters, Reverend Karen Dearchs of Algona, Iowa, Elsa Groe of Ocala, Florida, Linda (Arnold) Griffith of Northwood, Iowa; five grandchildren, Jaden, Colin, Brennan, Alek and Derek; and 2 great-grandchildren, Adeline and Blakelyn.

A special thank you to Jeanne Hanson for the photograph of Dad in his chair at the Law Office.



Ronald Ray Kappelman, 71, went to be with the Lord on Friday, May 10, 2019.

Ron was born on February 26, 1948, the first-born and only son of George and Vernice (Schlaht) Kappelman. He graduated from Winner High School in 1966 after playing football and track for four years, as well as starring in the junior and senior class plays. He was appointed to West Point, where he played football. Ron left West Point after one year and moved to Vermillion to attend the University of South Dakota. He first earned a degree in history followed by his Juris Doctorate in 1975. He took time off between

undergraduate and law school to work in Alaska as a firefighter and surveyor. Alaska forever held a special place in Ron's heart.

Ron married the love of his life, Janice Boen, on April 5, 1975, in Colton, SD. He began his career as a law clerk for the 7th Judicial Circuit Court in Rapid City, followed by the Pennington County State's Attorney's Office. For the past 40 years, Ron was a trial attorney, practicing most recently at Banks, Kappelman, and Strommen until the time of his death. A highlight of Ron's career was having his case argued before the United States Supreme Court in 2014.

Family meant everything to Ron. He adored his six grandchildren and they adored their "Baba," including frequent FaceTime sessions. He coached midget football for eight years and was proud that his teams went undefeated in his last three consecutive seasons. Ron was a constant figure at his sons' sporting events, where you could always hear his deep voice bellowing from the bleachers. Additionally, Ron was an avid tennis, Post 22, and Yankee fan. Ron officiated multiple weddings including two of his sons, as well as a nephew and brother-in-law. He was known in the family as Reverend or Rabbi Ron.

Ron was a devout Christian and was actively involved at Trinity Lutheran Church. He served on the Trinity Foundation, sang in the choir, served communion and was a lector.

Survivors include his wife of 44 years, Janice; a son, Barry, his partner Brittney and grandchildren Bianka and Brixton, Los Angeles, CA; a son Alexander, his wife Sarah and grandchildren Esther and George, Portland, ME; a son, Mark, his wife Kimberly and grandchildren Grayson and Wesley, Chicago, IL; two sisters, JoAnn Borst and daughter Emily, Dallas, TX and Caryl (Bob) Hesslink, Verona, WI, and many Boen in-laws, nieces and nephews.

He was preceded in death by his parents and brother-in-law, Ray Borst.

Memorials may be directed to Trinity Lutheran Church Radio Broadcast, VFW or Christian Life Ministries.





## Thomas Robert Pardy

Howard formerly of Madison, SD

Thomas Robert Pardy "TR" (86) passed away May 23, 2019 peacefully in his sleep at Whispering Winds Assisted Living Center with his wife Connie Lou

by his side. Memorial services with Military rites will be Friday, May 31, 2019 at St. Agatha Catholic Church, Howard with burial in St. Thomas Catholic Cemetery, Madison. A visitation will be one hour prior to the services.

Tom was born August 1, 1932 to James and Inez Pardy in Madison, SD at the Madison Community Hospital. He attended St. Thomas Moore elementary and high schools in Madison, S.D.

Tom joined the U.S. Air Force January 25, 1952 in Sioux Falls, SD as a Grand Radio Operator. He completed a 32-week Grand Radio Operator major course at Keesler Air Force Base in Mississippi and served as a radio operator "a Code Talker" until he was released from active duty November 18, 1955. He was awarded the National Defense Service Medal and shockingly, the Good Conduct Medal.

Tom married Connie Lou Tucker November 26, 1960 at the Cathedral of the Immaculate Conception church in Rapid City, SD. He then went to work for the Otis Elevator Company where he was employed as a welder and construction worker building ballistic missile silos during the Cold War. The family then moved to Vermillion where Tom attended the University of South Dakota (GO YOTES). He received a Bachelor of Arts Degree on August 10th of 1963 and obtained his Juris Doctorate from the USD Law School June 6, of 1966. He was a member of the Delta Theta Phi Law Fraternity.

While obtaining his law degree Tom won the prestigious Nathan Burkan Memorial Competition at the USD School of Law. His paper was entitled, "Protection or Piracy- The Thinkers Dilemma." After law school he and his family moved to Howard, S.D. where he served as a country lawyer for the next fifty years.

Appointed by Governor Boe, Tom served as Miner County Judge from 1966-1968. He joined the firm of Mumford, Protsch & Sage on January 15 of 1969 and then became partner and practiced law with the firm until he retired.

He was a true trial lawyer serving as both a prosecutor and defense attorney. He also served as the President of the South Dakota Trial Lawyers Association, a group of which he was proud to be a part of.

Tom was a "country lawyer", storyteller, avid reader, Judge, traveler, fisherman, hunter, sports fan (GO PACKERS), pilot, sky watcher, and Irishman. He loved to attend the Indianapolis 500 and air-shows whenever he could. He was a proud military supporter, a veteran himself, and the son of a WWI and WWII veteran. Tom lost two brothers in WWII and his mother was the last living double gold star mother in South Dakota at the time of her death. He was very proud of the fact that all five of his sons served in the military.

He was a father who took great pride in his children and grandchildren. His crowning achievement was his 58-year marriage to the love of his life, Connie Lou. Tom is survived by all of his children: Jack (Sandy) Pardy of Oconto Falls, WI; Thomas (Crystal) Pardy of Billings, MT; Mike Pardy of Yankton, SD; Kimberly (Duane) Cantrell of Londonderry, NH; Patrick (Tracy) Pardy of Howard, SD, Matt (Paula) Pardy of Sioux Falls, SD, his 18 grandkids, 4 great grandchildren (one on the way) his brothers Daniel Pardy, FL, Bros. Stephen Pardy, CA and one sister Patricia Fueger, CA. He is predeceased in death by his parents James and Inez Pardy, his brothers Jim, Jack, Mark, Jerry, and Dick, and sisters Peg Koch, Sr. Mary Pardy, and a daughter-in-law Cathi (Mike) Pardy and one grandchild Benjamin (Thomas & Crystal) Pardy.

In lieu of flowers or cash gifts, please send memorials to the Smiles For Miles program to help children in need across the state of South Dakota. Memorials can be sent to the Horizon Health Foundation, PO Box 728, Howard, SD 57349



Rule: 1.14

Subject: Client with diminished capacity

Summary: Lawyer may not independently seek appointment of a guardian and conservator for client with diminished capacity when family have been informed of possible need and lawyer does not perceive a substantial risk to client.

### **BACKGROUND**

Lawyer represents, and has for many years represented, an elderly client. Lawyer has drafted a variety of estate planning documents for Client over nearly a decade.

Until recently, Lawyer has not had concerns about Client's mental capacity. While Client had periodic memory lapses, which did become more common as Client aged, Lawyer always believed Client was capable of independent decisions. Lawyer confirmed this with the results of psychosocial examinations administered by Client's physician.

Client's has relied heavily on Son in managing affairs. She has also demonstrated greater favor to Son than Other Children. At various times, Other Children have expressed concern that Son is "mooching" from Client.

In the past year Son's behavior has become erratic. Son agreed to resign as Client's financial power of attorney, co-trustee of Client's trust, and to remove himself from Client's various bank accounts. While a local bank is sole trustee of Client's trust, Lawyer cannot verify the status of Client's other accounts. Other Children have expressed concern, although without any supporting evidence, that Son has not removed himself from Client's accounts and is actually siphoning money from them for his personal needs.

Client has now been diagnosed with dementia and entered a nursing home. Lawyer believes Client needs a guardian and conservator appointed. Lawyer has identified institutions who could occupy both roles. Son has indicated he cannot afford a lawyer to pursue the appointment. Other Children have indicated they are unwilling to seek appointment despite Lawyer suggesting that they do so.

Lawyer has now asked if it is permissible to seek appointment of the guardian and conservator. At this time, Lawyer has not identified a substantial risk of physical or financial harm to Client if a guardian or conservator is not appointed. Lawyer has raised the issue of seeking appointment to each of Client's children who have indicated they are unable or unwilling to seek appointment.



## ANALYSIS

Lawyer's situation is governed by Rule 1.14. That rule provides:

### Rule 1.14. Client With Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Lawyer's options are constrained by the precise requirements of Rule 1.14. Lawyer is first required to exhaust the ability to maintain a normal client-lawyer relationship "as far as reasonably possible" in light of Client's diminished mental capacity. It does appear that, given Lawyer's observations of Client's diminished capacity and the diagnosis of dementia, Lawyer cannot revise existing estate documents or draft new ones on Client's behalf. Lawyer is not engaged in daily management of Client's affairs, however. It appears Lawyer has, to this point, tried to maintain a normal relationship with client and has done so.

Lawyer now asks if it is necessary, or permissible, to take "reasonably necessary protective action" such as seeking appointment of a guardian or conservator. Under the circumstances, it does not appear that it is "reasonably necessary" for Lawyer to do so.

Lawyer has consulted with Client's children about Client's dementia and, among themselves, they are aware of Son's relationship to Client's property and the inability to verify Son's statements about his management of it. Although Son has indicated that he cannot pay to appoint a guardian, Other Children have simply said they are unwilling to do so, not unable. Lawyer has consulted with institutional actors who could fulfill those roles and informed Client's children. It therefore does not appear that it is "reasonably necessary" for Lawyer to

step in and seek the appointment. Rule 1.14. This is particularly true since lawyers should respect client autonomy and family connections to the greatest degree possible when acting under Rule 1.14. *See* Rule 1.14, Note 5.

Lawyer is likewise not faced with a “substantial risk” to Client. To be “substantial” under the Rules, the fact at issue must be “clear and weighty.” Rule 1.0(l). While Other Children have speculated that Son has converted Client’s funds to his personal use, no one has provided any meaningful support of those concerns. Lawyer has not indicated a belief of the allegations either. Under those circumstances, the Committee does not believe there is a “substantial risk” which supports Lawyer taking independent action to seek appointment of a guardian or conservator.

This conclusion is supported by the opinions of others to have considered similar situations. The ABA has indicated that “reasonably necessary” steps must be the least restrictive available. *See* ABA Formal Ethics Op. 96-404. Others have agreed. *See* Vermont Ethics Op. 2006-1 (2006), Connecticut Informal Ethics Op. 04-10 (2004). Independently seeking a guardian or conservator has been rejected when the lawyer could instead consult with family members of the client who could do so. *See* ABA Formal Ethics Op. 96-404; Oregon Ethics Op. 2005-41 (2005). That action has even been called a “last resort.” *See* Missouri Informal Ethics Op. 990095 (1999).

This certainly demonstrates that Rule 1.14 imposes a difficult burden for a lawyer considering independent action to protect a client. That is intended. Client agency and autonomy are to be respected to the degree it can be. *See* Rule 1.14, Note 1 (client direction and opinions should be at least considered). Where, as here, a lawyer has realistic questions and concerns, but not reasonable certainty of a need to pursue greater than necessary infringements of client autonomy in the face of a less than substantial risk, client independence controls.

## **CONCLUSION**

Lawyer is not faced with a substantial risk to Client. Additionally, having informed family members and others of the potential risks and possible responses, Lawyer taking independent action to obtain a guardian and conservator is not reasonably necessary. Lawyer therefore should not pursue appointment of a guardian and conservator based on Rule 1.14.

Rules: 1.2, 1.14

Subject: Determining representation objectives; clients with diminished capacity

Summary: Lawyer appointed to represent a child in abuse and neglect proceedings does not have to follow ABA standards which conflict with South Dakota law and can try to protect the interests of a minor child inconsistent with the child's wishes

### **BACKGROUND**

Lawyer is appointed to represent a child in an abuse and neglect proceeding. Child has been adjudicated abused and neglected. A recommendation to terminate parental rights has been made to the court.

Child has expressed a desire to return to Child's parents or to be placed with certain relatives if parental reunification is impossible. Child authorized Lawyer to communicate Child's preferences. Under SDCL § 26-8A-18, Lawyer is required to "represent the child's best interests" in the proceeding. Lawyer believes that termination of parental rights is in the best interests of Child.

Interested Party is also appearing in the proceeding. With leave of the Court, Interested Party asked Lawyer what Child preferred. Based on Child's waiver of any client-lawyer privilege, Lawyer stated Child's desire to reunite or be placed with particular relatives.

Interested Party then asserted that Lawyer had a conflict of interest because of the divergence of Child's preference and Lawyer's assessment of Child's best interest. Interested Party argued that the Lawyer's statutory mandate to represent Child's best interests was trumped by the ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases which direct lawyers to advocate the preference of the child. The Court denied a request by Interested Party to appoint a guardian ad litem for Child.

Lawyer identified Ethics Opinion 2004-05 wherein this Committee concluded that the requirement of SDCL § 26-8A-18 to "represent the child's best interests" allows a lawyer to advocate for a disposition inconsistent with a child's stated wishes. The Committee relied on the fact that, while Rule 1.2 requires a lawyer to follow a client's stated objectives of representation, Rule 1.14 allows lawyers to modify a normal client-lawyer relationship, given the diminished capacity of a minor.

Lawyer has now asked if there is an ethical obligation to comply with the ABA Standards rather than the mandate of SDCL § 26-8A-18.



## ANALYSIS

The question Lawyer presents is simple and specific: is there an ethical obligation to follow the ABA Standards rather than the command of SDCL § 26-8A-18 as to what position to advocate, Child's preference or what Lawyer identifies as Child's best interest? To that question, the Committee can give a simple and specific answer: no. SDCL § 26-8A-18 imposes a substantive obligation on Lawyer to advocate Child's best interests; the non-mandatory guidance of the ABA Standards is not an ethical trump. Failing to comply with the statutory mandate would be less than fully compliant with the duty of candor Lawyer has under Rule 3.3.

The Committee gives a simple answer to this simple question. It also writes, not on a blank slate, but in light of Opinion 2004-05 which dealt much of the substance of this issue. More must be said, however, because Lawyer faces an inherently contradictory choice by virtue of what SDCL § 26-8A-18 requires.

SDCL § 26-8A-18 allows lawyers to be appointed to represent children involved in abuse and neglect proceedings. It then mandates that lawyers so appointed "represent the child's best interests." It is readily foreseeable that, as here, those positions diverge on perhaps the most important issue in a child's life—who will be their primary guardian.

Rule 1.2 assigns the objectives of representation to the client, the means of achieving it to the lawyer in consultation with the client. So, for example, the client decides to take a case to trial, the lawyer discusses a trial strategy but ultimately selects the order of witnesses. In abuse and neglect proceedings, one would expect the child to have control of the objective: whether they remain in the custody of their parents or someone else. But SDCL § 26-8A-18 specifically takes that decision from the child.

Lawyers will often struggle to comply with both client selected objectives or the command of substantive law in this situation. Rule 1.14 provides a means to resolve the tension although not avoid it. A lawyer for a client with diminished capacity, including because of minority, should "as far as reasonably possible" maintain a normal client-lawyer relationship. Rule 1.14(a). Note 5 goes further to discuss what protective steps a lawyer may take to protect a client with diminished capacity. The note indicates that lawyers should consider the wishes of the client, the client's best interests, and attempt to intrude upon client decision making as little as possible. SDCL § 26-8A-18 requires a lawyer to disregard client wishes when they conflict with the lawyer's assessment of the best interests of the client. While the Committee continues to agree that Rule 1.14 allows this ethically, the statute creates an inherent potential for ethical conflict and confusion.

The Committee highlights this for two reasons. First, even when proceeding under Rule 1.14 a lawyer has an obligation to try and protect both the best interests and autonomy of the client. Lawyer has done so here by sharing both Child's preference and Lawyer's assessment of best interests. Second, a revision to SDCL § 26-8A-18 may be appropriate. If lawyers were appointed under that statute as special advocates to the court to assess the best interests of a child, there

would be no conflict. So too if the lawyer, specifically appointed to represent the child, advocated the child's wishes and best interests were addressed by the State or another advocate. While it is not the Committee's place to amend this law, it calls it to the attention of those who can.

## CONCLUSION

Lawyer is not ethically obligated to follow the ABA Standards over South Dakota law. Lawyer should balance the mandate of SDCL § 26-8A-18 to represent Child's best interest while, to the degree reasonably possible under Rule 1.14, respecting Child's decision making autonomy and selection of objectives of the representation.

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## 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.

# June 2019

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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## 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 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.

## Caribou Coffee Club

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.

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.

# 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.

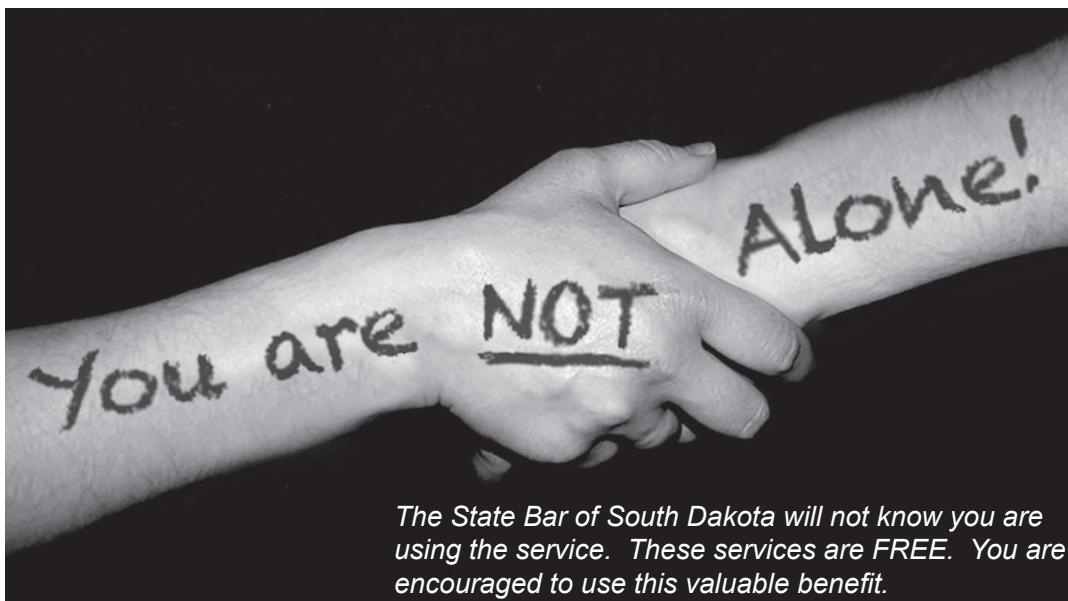
Confidentiality is the bedrock of a Member Assistance Program. All discussions and services are kept strictly confidential. The State Bar of South Dakota will not know that you are using the services. We encourage you to use this valuable benefit.

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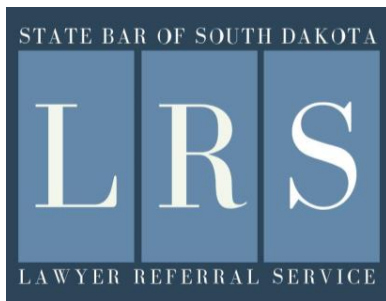
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*The State Bar of South Dakota will not know you are using the service. These services are FREE. You are encouraged to use this valuable benefit.*





## South Dakota Lawyer Referral Service ENROLLMENT AGREEMENT

Mail completed form and payment to:  
State Bar of South Dakota - SDLRS  
222 East Capitol Avenue, #3  
Pierre, SD 57501

Or pay online at: [www.findalawyerinsd.com](http://www.findalawyerinsd.com)

If you pay online, scan and email this completed form to: [findalawyer@sdbar.net](mailto:findalawyer@sdbar.net)

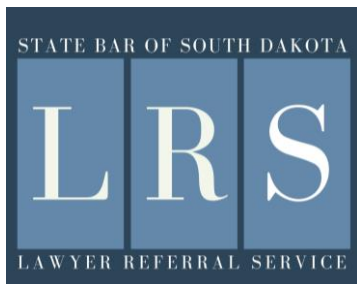
1. I am an active member in good standing of the State Bar of South Dakota.
2. I wish to be a member of the South Dakota Lawyer Referral Service ("SDLRS") and agree to pay a \$50 service fee on an annual basis.
3. Once I receive notice that my payment to SDLRS was received and processed, I will create my referral profile at [www.findalawyerinsd.com](http://www.findalawyerinsd.com).
4. The service fee is invoiced to participating attorneys in August. I understand that failure to pay the \$50 fee within 30 days will result in a suspension of referrals until the fee is received.
5. In the event I am suspended from the SDLRS for nonpayment of the invoiced amount, I agree that in order to be reinstated to the SDLRS I will pay the balance owed.
6. My practice is covered by Errors and Omissions Insurance totaling at least \$100,000/\$300,000. My policy is issued through:  
Name: \_\_\_\_\_  
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I will maintain such insurance at all times while participating in SDLRS. (You will be required to upload a pdf copy of your insurance declaration page to the SDLRS website to begin receiving referrals.)
7. I will promptly inform the State Bar of South Dakota Bar of any change in my address or phone number.
8. Enclosed is the total amount of \$50, to cover the registration fee for the following Practice Panels:
  1. \_\_\_\_\_
  2. \_\_\_\_\_
  3. \_\_\_\_\_
9. I would like to add the following Practice Panels at the rate of an additional \$20 per panel:
  1. \_\_\_\_\_ (add \$20)
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  - b. I transfer to inactive status for any reason;
  - c. Formal disciplinary proceedings are initiated against me; or
  - d. A criminal complaint is filed or an indictment returned against me alleging a serious crime as defined in SDCL 16-19-37.
11. In the event I receive a referral through the SDLRS that results in attorney fees, I understand it is strongly encouraged I contribute 7% of those fees to the SD Bar Foundation.

I have read the foregoing and hereby certify that the answers are complete and true to the best of my knowledge.

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Date: \_\_\_\_\_ Member No.: \_\_\_\_\_ Amount Enclosed: \_\_\_\_\_





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- ☐ Debt Collection (Debtor)
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- ☐ Small Claims Court
- ☐ Unfair and Deceptive Sales and Practices

### **CRIMINAL**

- ☐ Appeals
- ☐ Criminal Record
- ☐ DWI/DUI
- ☐ Drugs
- ☐ Federal Criminal Defense
- ☐ Felony (non-homicide)
- ☐ Homicide
- ☐ Juvenile Delinquency
- ☐ Misdemeanor
- ☐ Probation Violation
- ☐ Property Forfeiture
- ☐ Traffic

### **DISPUTE RESOLUTION**

- ☐ Arbitration
- ☐ Mediation

### **EDUCATION**

- ☐ Academics
- ☐ Access (including bilingual and testing)
- ☐ Bullying
- ☐ Discipline (including Expulsion and Suspension)
- ☐ Special Education & Learning Disabilities
- ☐ Teachers and Other Educational Professionals

### **EMPLOYMENT**

- ☐ Civil Service
- ☐ Employee Benefits
- ☐ Employer Representation
- ☐ Employment Contracts
- ☐ Employment Discrimination
- ☐ Medical Leave
- ☐ Non-compete/Non-disclosure Agreements
- ☐ Professional Licensing
- ☐ Safe Working Conditions
- ☐ Separation Agreement
- ☐ Sexual Harassment
- ☐ Wage and Labor Standards
- ☐ Whistleblower
- ☐ Wrongful Termination

### **FAMILY**

- ☐ Adoption
- ☐ Alimony/Marital Support
- ☐ Annulment
- ☐ Child Abuse and Neglect
- ☐ Child Support and Custody
- ☐ Divorce (complex/contested)
- ☐ Divorce (simple/uncontested)
- ☐ Domestic Violence/Protection Order (Petitioner)
- ☐ Domestic Violence/Protection Order (respondent)
- ☐ Emancipation
- ☐ Family Mediation
- ☐ Guardianship
- ☐ Conservatorship
- ☐ Interstate/International
- ☐ Name Change
- ☐ Parental Rights Termination
- ☐ Paternity
- ☐ Post-nuptial Agreement
- ☐ Pre-nuptial Agreement
- ☐ Separation
- ☐ Visitation

## **HOUSING & APARTMENT**

- ☐ Home Construction/Improvement
- ☐ Housing Discrimination
- ☐ Landlord Representation
- ☐ Mortgage Foreclosures (Not Predatory Lending)
- ☐ Predatory Mortgage Lending Practices
- ☐ Tenant Representation

## **IMMIGRATION**

- ☐ Asylum
- ☐ Consular Practices
- ☐ Criminal Issues
- ☐ Employer Sanctions
- ☐ Employment-based immigration
- ☐ Family-based immigration
- ☐ Investors
- ☐ Naturalization
- ☐ Juvenile Status
- ☐ Removal Defense

## **INDIAN LAW**

- ☐ Business
- ☐ Family Law
- ☐ Federal Government
- ☐ Housing
- ☐ Land
- ☐ Probate/Will
- ☐ Tribal Court
- ☐ Tribal Enrollment/Status
- ☐ Tribal Government

## **INSURANCE**

- ☐ Automobile/Property Insurance
- ☐ Bad Faith
- ☐ Employer-provided insurance (disability, health, life, accident)
- ☐ Health Insurance
- ☐ Homeowner Insurance
- ☐ Life Insurance

## **INTELLECTUAL PROPERTY**

- ☐ Copyrights
- ☐ Patents
- ☐ Trademarks

## **LOBBYING**

- ☐ Federal
- ☐ State

## **PERSONAL INJURY & RIGHTS VIOLATIONS**

- ☐ Accountant Malpractice (Defendant)
- ☐ Accountant Malpractice (Plaintiff)
- ☐ Animals
- ☐ Assault and Battery (Defendant)
- ☐ Assault and Battery (Plaintiff)
- ☐ Auto Collision (Defendant)
- ☐ Auto Collision (Plaintiff)
- ☐ Civil Rights
- ☐ Discrimination
- ☐ False Arrest/false imprisonment
- ☐ Jail/Prison Injuries
- ☐ Legal Malpractice (Defendant)
- ☐ Legal Malpractice (Plaintiff)
- ☐ Libel, Slander, or harassment (Defendant)
- ☐ Libel, Slander, or harassment (Plaintiff)
- ☐ Medical Malpractice (Defendant)
- ☐ Medical Malpractice (Plaintiff)
- ☐ Negligence (Defendant)
- ☐ Negligence (Plaintiff)
- ☐ Police misconduct
- ☐ Product liability (Defendant)
- ☐ Product liability (Plaintiff)
- ☐ Property Damage (Defendant)
- ☐ Property Damage (Plaintiff)
- ☐ Slip, trip and fall (Defendant)
- ☐ Slip, trip and fall (Plaintiff)
- ☐ Toxic tort (Defendant)
- ☐ Toxic tort (Plaintiff)
- ☐ Wrongful death or catastrophic injuries (Defendant)
- ☐ Wrongful death or catastrophic injuries (Plaintiff)

## **REAL ESTATE**

- ☐ Commercial real estate litigation
- ☐ Commercial real estate transactions
- ☐ Condemnation, eminent domain & annexation
- ☐ Land Use & Zoning
- ☐ Natural Resources
- ☐ Neighborhood, Coop & Condominium Associations
- ☐ Residential real estate litigation
- ☐ Residential real estate transactions

## **TAX**

- ☐ Business
- ☐ Personal
- ☐ Estate Tax
- ☐ Tax Litigation/Audits

## **WILLS, TRUSTS, ELDER**

- ☐ Conservatorship
- ☐ Elder Abuse/Neglect
- ☐ Estate Administration
- ☐ Estate Court/Probate
- ☐ Estate Planning
- ☐ Estate Tax
- ☐ Guardianship
- ☐ Living Will/Advanced Directive
- ☐ Medicaid/Medicare/Nursing Home Planning
- ☐ Power of Attorney
- ☐ Simple Will
- ☐ Specialty Trusts
- ☐ Estate Dispute (Petitioner)
- ☐ Estate Dispute (Respondent)
- ☐ Trust Dispute (Petitioner)
- ☐ Trust Dispute (Respondent)

## **WORKERS COMPENSATION**

- ☐ Federal Employee
- ☐ Private Employee
- ☐ Private Employer
- ☐ State Employee

STATE OF SOUTH DAKOTA

In the Supreme Court

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

15<sup>th</sup> day of May, 2019

*[Signature]*  
Clerk of Supreme Court

Deputy

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

\* \* \* \*

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAY - 1 2019

*[Signature]*  
Clerk

IN THE MATTER OF THE AMENDMENT )  
TO SDCL 16-6-1. )

RULE 19-14

-----  
A hearing was held on April 30, 2019, at Pierre, South Dakota, relating to the amendment to SDCL 16-6-1, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-6-1 be and it is hereby amended to read in its entirety as follows:

**SDCL 16-6-1. Number of judges in judicial circuits.**  
The number of circuit judges of each of the judicial circuits established by § 16-5-1.2 is as follows:

- (1) First Circuit: Six circuit judges;
- (2) Second Circuit: ~~Eleven~~ Twelve circuit judges;
- (3) Third Circuit: Six circuit judges;
- (4) Fourth Circuit: Four circuit judges;
- (5) Fifth Circuit: Four circuit judges;
- (6) Sixth Circuit: Four circuit judges;
- (7) Seventh Circuit: Eight circuit judges.

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 1st day of May, 2019.

BY THE COURT:

*[Signature]*

David Gilbertson, Chief Justice

ATTEST:

*[Signature]*  
Clerk of the Supreme Court  
(SEAL)



STATE OF SOUTH DAKOTA

In the Supreme Court

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

1st day of May, 2019.

Shirley A. Jamieson-Fergel  
Clerk of Supreme Court

Deputy

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

\* \* \* \*

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAY - 1 2019

Shirley A. Jamieson-Fergel  
Clerk

IN THE MATTER OF THE AMENDMENT )  
TO SDCL 16-12B-1.1. )

RULE 19-15

-----  
A hearing was held on April 30, 2019, at Pierre, South Dakota, relating to the amendment to SDCL 16-12B-1.1, and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-12B-1.1 be and it is hereby amended to read in its entirety as follows:

**SDCL 16-12B-1.1. Number of magistrate judges.** The number of magistrate judges in the judicial circuits established by § 16-5-1.2 is fixed as follows:

- (1) First Circuit: Two full-time magistrate judges;
- (2) Second Circuit: Four full-time magistrate judges;
- (3) Third Circuit: Two full-time magistrate judges;
- (4) Fourth Circuit: Two full-time magistrate judges;  
~~One full-time and one part-time magistrate judge~~
- (5) Fifth Circuit: One full-time magistrate judge;
- (6) Sixth Circuit: One full-time magistrate judge; and
- (7) Seventh Circuit: Four full-time magistrate judges.

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 1st day of May, 2019.

BY THE COURT:

David Gilbertson

David Gilbertson, Chief Justice

ATTEST:

Shirley A. Jamieson-Fergel  
Clerk of the Supreme Court  
(SEAL)

## **PUBLIC NOTICE**

### **REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE**

The current appointment of Magistrate Judge Leo Disburg is due to expire on November 9, 2019. Magistrate Judge Leo Disburg serves in the Sixth Judicial Circuit.

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

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

Chief Justice David Gilbertson  
Supreme Court  
500 East Capitol  
Pierre, SD 57501

**Comments must be received by August 27, 2019.**

# 2019 Annual Meeting Proposals

THE FOLLOWING ARE THE COMPLETE TEXT OF THE RESOLUTIONS, PROPOSED LEGISLATION  
AND PROPOSED RULES TO BE VOTED ON BY MEMBERSHIP  
DURING BUSINESS MEETING ON  
FRIDAY, JUNE 21, 2019

## Family Law Committee:

### **SOUTH DAKOTA PARENTING GUIDELINES**

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.

#### **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.~~

~~**1.7**~~ **6 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.

~~**1.8**~~ **7 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.

**1.9-8 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.

**1.10-9 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.

**1.11-10 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. ~~A-Either~~ parent may ~~wish to provide an older~~ 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.

**1.12—11 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.

**1.132 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.

**1.154 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.

**1.165 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.

**1.176 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.

## **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 ~~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 1.16 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 1.176 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 ~~eighteen~~ twelve -hours period, if the child is not breastfeeding and the noncustodial parent is capable of personally providing primary care. See exceptions in Paragraph 1.176 F (~~breastfeeding~~).~~(a) and (b)~~.

**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 1.176 F~~(a) and (b)~~. Arrangement (3) ~~should be considered only for mature, requires an~~ adaptable child~~ren 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.

**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 holiday 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 3:00pm and end at 8:00pm on the day of. 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.

**3.101 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.

**3.121 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.~~

#### **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 and Holidays.** 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.~~

~~**4.2-3**~~ **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.

**~~4.3-4~~ 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.

**~~4.4-5~~ 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.

## **5. SHARED PARENTING.**

**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.

Approved by the South Dakota Supreme Court April 18, 2012. SDCL 25-4A-10.



PROPOSAL TO AMEND SDCL 25-4A-19 AND SDCL 25-5-13 (RELOCATION LAWS) AS FOLLOWS:

25-4A-19. Request for hearing on relocation--Presumption of consent. At the request of the nonrelocating parent, made within thirty days of the notice of relocation, the court shall hold a hearing on the relocation. If no request for hearing is made within thirty days of notice, the relocation is presumed to be consented to by the nonrelocating parent. If an objection to the relocation is filed, the Court shall consider the traditional best interest of the child factors including, but not limited to, fitness, stability, primary caretaker, harmful parental misconduct, and separating siblings when determining the best interests of a minor child in any relocation that would result in a substantial alteration to the existing parenting time arrangement. If the child is of a sufficient age to form an intelligent preference, the Court may also consider that preference in determining the question.

25-5-13. Power to change residence of child--Restraining power of circuit court. A parent entitled to the custody of a child has the right to change his residence, subject to the power of the circuit court to restrain a removal which would prejudice the rights or welfare of the child. A parent desiring to relocate a minor child shall follow the provisions of SDCL 25-4A-17 through 19 and provide notice.

Proposal for a 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.

**South Dakota Uniform Power of Attorney Act Proposed Bill**

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding power of attorney.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That the code be amended by adding a NEW SECTION to read:

4 Terms used in this Act mean:

5 (1) "Agent," a person granted authority to act for a principal under a power of attorney,  
6 whether denominated an agent, attorney-in-fact, or otherwise. The term includes an  
7 original agent, co-agent, successor agent, and a person to whom an agent's authority  
8 is delegated;

9 (2) "Durable," not terminated by the principal's incapacity;

10 (3) "Electronic," relating to technology having electrical, digital, magnetic, wireless,  
11 optical, electromagnetic, or similar capabilities;

12 (4) "Good faith," honesty in fact;

13 (5) "Incapacity," inability of an individual to manage property, business, or financial  
14 affairs because the individual:

15 (a) Has an impairment or other deficit in the ability to receive and evaluate

Insertions into existing statutes are indicated by underscores.  
Deletions from existing statutes are indicated by ~~overstrikes~~.



1 information or to make or communicate any decision even with the use of  
2 technological assistance; or 3

(b) Is:

4 (i) Missing or has disappeared;

5 (ii) Detained, including incarcerated in a penal system; or

6 (iii) Outside the United States and unable to return;

7 (6) "Person," an individual, corporation, business trust, estate, trust, partnership, limited  
8 liability company, association, joint venture, public corporation, government or  
9 governmental subdivision, agency or instrumentality, or any other legal or  
10 commercial entity;

11 (7) "Power of attorney," a writing or other record that grants authority to an agent to act  
12 in the place of the principal, whether or not the term, power of attorney, is used;

13 (8) "Presently exercisable general or limited power of appointment," regarding  
14 interest in property that is subject to a power of appointment, a power to vest absolute  
15 ownership in a principal individually, a principal's estate, a principal's creditors, or  
16 the creditors of a principal's estate. The term includes a power of appointment not  
17 exercisable until the occurrence of a specified event, the satisfaction of an  
18 ascertainable standard, or the passage of a specified period only after the occurrence  
19 of the specified event, the satisfaction of the ascertainable standard, or the passage  
20 of the specified period. The term does not include a power exercisable in a fiduciary  
21 capacity or only by will;

22 (9) "Principal," an individual who grants authority to an agent in a power of attorney;

23 (10) "Property," anything that may be the subject of ownership, whether real or personal,  
24 legal or equitable, or any interest or right in the subject;

(11) "Record," information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(12) "Sign," with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic sound, symbol, or process;

(13) "State," a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(14) "Stocks and bonds," stocks, bonds, mutual funds, and any other type of securities and financial instrument, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

**Section 2.** That the code be amended by adding a NEW SECTION to read:

This Act applies to all powers of attorney other than:

(1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(2) A power to make health care decisions;

(3) A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(4) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

**Section 3.** That the code be amended by adding a NEW SECTION to read:

1 If a principal designates another as the principal's agent by a written power of attorney which  
contains the words "This power of attorney shall not be affected by disability of the  
principal," or "This power of attorney shall become effective upon the disability of the  
principal," or similar words showing the intent of the principal that the authority conferred is  
exercisable notwithstanding the principal's disability, the authority of the power of attorney is  
exercisable by the agent as provided in the power on behalf of the principal notwithstanding  
any later disability or incapacity of the principal or later uncertainty as to whether or not the  
principal is dead or alive.

2 **Section 4.** That the code be amended by adding a NEW SECTION to read:

3 A power of attorney shall be signed by the principal or in the principal's conscious presence  
4 by another individual directed by the principal to sign the principal's name on the power of  
5 attorney. Any signature under this section shall be witnessed by two other adult individuals or  
6 acknowledged before a notary public or other individual authorized by law to take  
7 acknowledgments, or both.

8 **Section 5.** That the code be amended by adding a NEW SECTION to read:

9 (1) A power of attorney executed in this state on or after July 1, 2020, is valid if its  
10 execution complies with section 4 of this Act.

11 (2) A power of attorney executed in this state before July 1, 2020, is valid if its execution  
12 complied with the law of this state as it existed at the time of execution.

13 (3) A power of attorney executed other than in this state is valid in this state if, when the  
14 power of attorney was executed, the execution complied with:

15 (a) The law of the jurisdiction that determines the meaning and effect of the  
16 power of attorney pursuant to section 6 of this Act; or

17 (b) The requirements for a military power of attorney pursuant to 10 U.S.C.  
18 § 1044(b).

19 (4) Except as otherwise provided by law, a photocopy or electronically transmitted copy  
20 of an original power of attorney has the same effect as the original.

21 **Section 6.** That the code be amended by adding a NEW SECTION to read:

22 The meaning and effect of a power of attorney is determined by the law of the jurisdiction  
23

indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

**Section 7.** That the code be amended by adding a NEW SECTION to read:

(1) In a power of attorney, a principal may nominate a conservator or guardian for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination. A guardian appointed under this section shall be subject to the provisions of § 59-7-11.

(2) If, after a principal executes a power of attorney, a court appoints a conservator or other fiduciary charged with the management of some or all of the principal's property, the power of attorney is terminated and the agent shall account to the conservator or other court-appointed fiduciary and promptly deliver any property of the principal in the agent's possession to the conservator or other court-appointed fiduciary unless otherwise ordered by the court.

**Section 8.** That the code be amended by adding a NEW SECTION to read:

(1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is



incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(a) A physician or licensed psychologist that the principal is incapacitated within the meaning of subsection (5)(a) of section 1 of this Act; or

(b) An attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of subsection (5)(b) of section 1 of this Act.

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320(d), and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

**Section 9.** That the code be amended by adding a NEW SECTION to read:

(1) A power of attorney terminates when:

(a) The principal dies;

(b) The principal becomes incapacitated, if the power of attorney is not durable;

(c) The principal revokes the power of attorney;

(d) The power of attorney provides that it terminates;

(e) The purpose of a limited or special power of attorney is accomplished;

(f) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney; or

1 (g) Pursuant to subdivision (2) of section 7 of this Act.

2 (2) An agent's authority terminates when:

3 (a) The principal revokes the authority;

4 (b) The agent dies, becomes incapacitated, or resigns;

5 (c) An action is filed for divorce or annulment of the agent's marriage to the  
6 principal, or for their legal separation, unless the power of attorney otherwise  
7 provides; or

8 (d) The power of attorney terminates.

9 (3) Unless the power of attorney otherwise provides, an agent's authority is exercisable  
10 until the authority terminates under subdivision (2) of this section, notwithstanding  
11 a lapse of time since the execution of the power of attorney.

12 (4) Termination of an agent's authority or of a power of attorney is not effective as to the  
13 agent or any other person that, without actual knowledge of the termination, acts in  
14 good faith under the power of attorney. An act performed under this section, unless  
15 otherwise invalid or unenforceable, binds the principal and the principal's successors  
16 in interest.

17 (5) Incapacity of the principal of a power of attorney that is not durable does not revoke  
18 or terminate the power of attorney as to an agent or other person that, without actual  
19 knowledge of the incapacity, acts in good faith under the power of attorney. An act  
20 performed under this section, unless otherwise invalid or unenforceable, binds the  
21 principal and the principal's successors in interest.

22 (6) The execution of a power of attorney does not revoke a power of attorney previously  
23 executed by the principal unless the subsequent power of attorney provides that the  
24 previous power of attorney is revoked or that all other powers of attorney are

1           revoked.

2       **Section 10.** That the code be amended by adding a NEW SECTION to read:

3       (1)   A principal may designate two or more persons to act as co-agents. If two or more  
persons are appointed as co-agents, and unless the power of attorney otherwise provides,  
the concurrence of a majority is required on all acts connected with the power of attorney.  
This restriction does not apply when any co-agent receives and receipts for property due the  
principal, when the concurrence of a majority cannot readily be obtained in the time  
reasonably available for emergency action necessary to act in the principal's best interest, or  
when a co-agent has been delegated to act for the others. Persons dealing with a co-agent if  
actually unaware that another has been appointed to serve or if advised by the agent with  
whom they deal that the agent has authority to act alone for any of the reasons mentioned  
herein, are as fully protected as if the person with whom they dealt has been the sole agent.

4       (2)   A principal may designate one or more successor agents to act if an agent resigns,  
5           dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal  
6           may grant authority to designate one or more successor agents to an agent or other  
7           person designated by name, office, or function. Unless the power of attorney  
8           otherwise provides, a successor agent:

9           (a)   Has the same authority granted to the original agent; and

10          (b)   May not act until all predecessor agents have resigned, died, become  
11           incapacitated, are no longer qualified to serve, or have declined to serve.

12       (3)   Except as otherwise provided in the power of attorney and subdivision (4), an agent  
13           that does not participate in or conceal a breach of fiduciary duty committed by  
14           another agent, including a predecessor agent, is not liable for the actions of the other  
15           agent.

16       (4)   An agent that has actual knowledge of a breach or imminent breach of fiduciary duty  
17           by another agent shall notify the principal and, if the principal is incapacitated, take  
18           any action reasonably appropriate in the circumstances to safeguard the principal's  
19           best interest. An agent that fails to notify the principal or take action as required by  
20           this subdivision is liable for any reasonably foreseeable damages that could have  
21           been avoided if the agent had notified the principal or taken any action under this

22 section.

1 **Section 11.** That the code be amended by adding a NEW SECTION to read:

2 An agent is entitled

3 to reimbursement of expenses reasonably incurred on behalf of the principal. An agent is  
entitled to reasonable

4 compensation for services rendered on behalf of the principal unless the power of attorney  
otherwise provides. Any compensation shall be reasonable

5 under the circumstances.

6 **Section 12.** That the code be amended by adding a NEW SECTION to read:

7 Except as otherwise provided in the power of attorney, a person accepts appointment as an  
8 agent under a power of attorney by exercising authority or performing duties as an agent or by  
9 any other assertion or conduct indicating acceptance.

10 **Section 13.** That the code be amended by adding a NEW SECTION to read:

11 (1) Notwithstanding provisions in the power of attorney, an agent that has accepted  
12 appointment shall:

13 (a) Act in accordance with the principal's reasonable expectations to the extent  
14 actually known by the agent and otherwise in the principal's best interest;

15 (b) Act in good faith;

16 (c) Act only within the scope of authority granted in the power of attorney; and

17 (d) If feasible, encourage the principal to participate in decisions, to act on the  
18 principal's own behalf, and to develop or regain the capacity to manage the  
19 principal's own affairs, if the principal is incapacitated.

20 (2) Except as otherwise provided in the power of attorney, an agent that has accepted  
21 appointment shall:

22 (a) Act loyally for the principal's benefit;

23 (b) Act so as not to create a conflict of interest that impairs the agent's ability to



1 act impartially in the principal's best interest;

2 (c) Act with the care, competence, and diligence ordinarily exercised by agents  
3 in similar circumstances;

4 (d) Keep an accurate and contemporaneous record of any receipt, disbursement,  
5 and transaction made on behalf of the principal including any reimbursement  
6 or compensation pursuant to section 11 of this Act;

7 (e) Cooperate with a person that has authority to make health care decisions for  
8 the principal to carry out the principal's reasonable expectations to the extent  
9 actually known by the agent and otherwise act in the principal's best interest;  
10 and

11 (f) Attempt to preserve the principal's estate plan, to the extent actually known by  
12 the agent, if preserving the plan is consistent with the principal's best interest  
13 based on all relevant factors, including but not limited to:

14 (i) The value and nature of the principal's property;

15 (ii) The principal's foreseeable obligations and need for maintenance;

16 (iii) Minimization of taxes, including income, estate, inheritance,  
17 generation-skipping transfer, and gift taxes; and

18 (iv) Eligibility for a benefit, a program, or assistance under a statute or  
19 regulation.

20 (3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate  
21 plan for failure to preserve the plan.

22 (4) An agent that acts with care, competence, and diligence for the best interest of the  
23 principal is not liable solely because the agent also benefits from the act or has an  
24 individual or conflicting interest in relation to the property or affairs of the principal.

1 (5)  
2 (5) Absent a breach of duty to the principal, an agent is not liable if the value of the  
3 principal's property declines.

4 (6) An agent that exercises authority to delegate to another person the authority granted  
5 by the principal or that engages another person on behalf of the principal is not liable  
6 for an act, error of judgment, or default of that person if the agent exercises care,  
7 competence, and diligence in selecting, instructing, and monitoring the person.

8 (7) Except as otherwise provided in the power of attorney, an agent is not required to  
9 disclose receipts, disbursements, or transactions conducted on behalf of the principal  
10 unless ordered by a court or requested by the principal, a guardian, a conservator,  
11 another fiduciary acting for the principal, a governmental agency having authority to  
12 protect the welfare of the principal, or, upon the death of the principal, by the  
13 personal representative or successor in interest of the principal's estate. The agent  
14 shall comply within thirty days with the request under this section or provide a  
15 writing or other record explaining why additional time is needed and shall comply  
16 with the request under this section within thirty days from the writing or other record.

17 **Section 14.** That the code be amended by adding a NEW SECTION to read:

18 A provision in a power of attorney relieving an agent of liability for breach of duty is  
19 binding on the principal and the principal's successors in interest except to the extent the  
20 provision:

21 (1) Relieves the agent of liability for breach of duty committed dishonestly, with an

improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

- (2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

**Section 15.** That the code be amended by adding a NEW SECTION to read:

- (1) In addition to any petition under chapter 21-65, the following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

- (a) The principal or the agent;
- (b) A guardian, conservator, or other fiduciary acting for the principal;
- (c) A person authorized to make health care decisions for the principal;
- (d) The principal's spouse, parent, or descendant;
- (e) An individual who would qualify as a presumptive heir of the principal;
- (f) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;
- (g) A governmental agency having regulatory authority to protect the welfare of the principal;
- (h) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and
- (i) A person asked to accept the power of attorney.

- (2) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

**Section 16.** That the code be amended by adding a NEW SECTION to read:

An agent that violates the provisions of this Act is liable to the principal or the principal's successors in interest for the amount required to:

- (1) Restore the value of the principal's property to its value had the violation not occurred; and
- (2) Reimburse the principal or the principal's successors in interest for any attorney's fees and costs paid on the agent's behalf.

**Section 17.** That the code be amended by adding a NEW SECTION to read:

Unless otherwise provided in the power of attorney, an agent may resign by giving notice to the principal and, if the principal is incapacitated, to the guardian, if any, and any co-agent or successor agent, or to:

- (1) The principal's caregiver; or
- (2) If there is no principal caregiver, to:
  - (a) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or
  - (b) A governmental agency having authority to protect the welfare of the principal.

**Section 18.** That the code be amended by adding a NEW SECTION to read:

- (1) For purposes of this section and section 19 of this Act, the term, South Dakota compliant, means a power of attorney signed by the principal and substantially in the form provided in section 41 of this Act and witnessed by two or more other adult individuals, or purportedly verified before a notary public or other individual authorized to take acknowledgements, or both.
- (2) A person that in good faith accepts a South Dakota compliant power of attorney



1 without actual knowledge that the signature is not genuine may rely upon the  
2 power of attorney as being valid.

3 (3) A person that in good faith accepts a South Dakota compliant power of attorney  
4 without actual knowledge that the power of attorney is void, invalid, or terminated;  
5 that the purported agent's authority is void, invalid, or terminated; or that the agent  
6 is exceeding or improperly exercising the agent's authority may rely upon the power  
7 of attorney as if the power of attorney were genuine, valid, and still in effect; the  
8 agent's authority were genuine, valid, and still in effect; and the agent had not  
9 exceeded and had properly exercised the authority.

10 (4) A person that is asked to accept a South Dakota compliant power of attorney may  
11 request, and rely upon, without further investigation:

12 (a) An agent's certification under penalty of perjury of any factual matter  
13 concerning the principal, agent, or power of attorney;

14 (b) An English translation of the power of attorney if the power of attorney  
15 contains, in whole or in part, language other than English; and

16 (c) An opinion of counsel as to any matter of law concerning the power of  
17 attorney if the person making the request provides in a writing or other record  
18 the reason for the request.

19 (5) An English translation or an opinion of counsel requested under this section shall be  
20 provided at the principal's expense unless the request is made more than ten  
21 business days after the power of attorney is presented for acceptance.

22 (6) For purposes of this section and section 19 of this Act, a person that conducts  
23 activities through employees is without actual knowledge of a fact relating to a power  
of attorney, a principal, or an agent if the employee conducting the transaction

involving the power of attorney is without actual knowledge of the fact.

**Section 19.** That the code be amended by adding a NEW SECTION to read:

(1) A person shall accept a South Dakota compliant power of attorney or request a certification, a translation, or an opinion of counsel under subdivision (4) of section 18 of this Act no later than ten business days after presentation of the power of attorney for acceptance. If a person requests a certification, a translation, or an opinion of counsel under subdivision (4) of section 18 of this Act, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel. A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept a South Dakota compliant power of attorney if:

- (a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;
- (b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;
- (c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;
- (d) A request for a certification, a translation, or an opinion of counsel under subdivision (4) of section 18 of this Act is refused;
- (e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subdivision (4) of section 18 of this Act has been requested or provided; or

(f) The person makes, or has actual knowledge that another person has made, a report to the South Dakota Department of Social Services or an office of a state's attorney stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A person that refuses in violation of this section to accept a South Dakota compliant power of attorney is subject to:

(a) A court order mandating acceptance of the power of attorney; and

(b) Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

**Section 20.** That the code be amended by adding a NEW SECTION to read:

Unless otherwise required under this Act, the principles of law and equity apply to the provisions of this Act.

**Section 21.** That the code be amended by adding a NEW SECTION to read:

Nothing in this Act may be interpreted to amend or supersede any other law applicable to financial institutions or other entities.

**Section 22.** That the code be amended by adding a NEW SECTION to read:

The remedies under this Act are not exclusive and do not abrogate any right or remedy under the laws of this state.

**Section 23.** That the code be amended by adding a NEW SECTION to read:

(1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by

another agreement or instrument to which the authority or property is subject:

- (a) Create, amend, revoke, or terminate an inter vivos trust;
- (b) Make a gift;
- (c) Create or change rights of survivorship;
- (d) Create or change a beneficiary designation;
- (e) Delegate authority granted under the power of attorney;
- (f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (g) Exercise fiduciary powers that the principal has authority to delegate;
- (h) Exercise authority over the content of electronic communications, as defined in 18 U.S.C. § 2510(12) and as provided under chapter 55-19, which are sent or received by the principal; or
- (i) Disclaim property, including a power of appointment.

(2) Notwithstanding a grant of authority to do an act described in subdivision (1), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal, may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(3) Subject to subdivisions (1), (2), (4), and (5) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 26 to 38 of this Act, inclusive.

(4) Unless otherwise provided by the power of attorney, a grant of authority to make a gift is subject to section 39 of this Act.



(5) Subject to subdivisions (1), (2), and (4) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(7) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

(8) Notwithstanding the provisions of subdivision (1), an agent may amend, terminate, or revoke an inter vivos revocable trust only when the settlor is incapacitated or not reasonably available and to the extent expressly authorized by the power of attorney and by the terms of the governing trust instrument.

**Section 24.** That the code be amended by adding a NEW SECTION to read:

(1) An agent has authority described in this Act if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in sections 26 to 39 of this Act, inclusive, or cites the section in which the authority is described.

(2) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in sections 26 to 39 of this Act, inclusive, or a citation to a section of sections 26 to 39 of this Act, inclusive, incorporates the entire section as if it were set out in full in the power of attorney.

(3) A principal may modify authority incorporated by reference.

**Section 25.** That the code be amended by adding a NEW SECTION to read:

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 26 to 39 of this Act, inclusive, or that grants to an agent authority to do all acts that a principal could do pursuant to subdivision (3) of section 23 of this Act, a principal authorizes the agent, regarding that subject, to:

- (1) Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;
- (2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;
- (3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;
- (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;
- (5) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;
- (6) Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;
- (7) Prepare, execute, and file a record, report, or other document to safeguard or promote

1 the principal's interest under a statute or regulation;

2 (8) Communicate with any representative or employee of a government or governmental  
3 subdivision, agency, or instrumentality, on behalf of the principal;

4 (9) Access communications intended for, and communicate on behalf of the principal,  
5 whether by mail, electronic transmission, telephone, or other means; and

6 (10) Do any lawful act with respect to the subject and all property related to the subject.

7 **Section 26.** That the code be amended by adding a NEW SECTION to read:

8 Unless the power of attorney otherwise provides, language in a power of attorney granting  
9 general authority with respect to real property authorizes the agent to:

10 (1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit,  
11 or otherwise acquire or reject an interest in real property or a right incident to real  
12 property;

13 (2) Sell; exchange; convey with or without covenants, representations, or warranties;  
14 quitclaim; release; surrender; retain title for security; encumber; partition; consent to  
15 partitioning; subject to an easement or covenant; subdivide; apply for zoning or other  
16 governmental permits; plat or consent to platting; develop; grant an option  
17 concerning; lease; sublease; contribute to an entity in exchange for an interest in that  
18 entity; or otherwise grant or dispose of an interest in real property or a right incident  
19 to real property;

20 (3) Pledge or mortgage an interest in real property or right incident to real property as  
21 security to borrow money or pay, renew, or extend the time of payment of a debt of  
22 the principal or a debt guaranteed by the principal;

23 (4) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of  
24 trust, conditional sale contract, encumbrance, lien, or other claim to real property

1 which exists or is asserted;

2 (5) Manage or conserve an interest in real property or a right incident to real property  
3 owned or claimed to be owned by the principal, including:

4 (a) Insuring against liability or casualty or other loss;

5 (b) Obtaining or regaining possession of or protecting the interest or right by  
6 litigation or otherwise;

7 (c) Paying, assessing, compromising, or contesting taxes or assessments or  
8 applying for and receiving refunds in connection with them; and

9 (d) Purchasing supplies, hiring assistance or labor, and making repairs or  
10 alterations to the real property;

11 (6) Use, develop, alter, replace, remove, erect, or install structures or other improvements  
12 upon real property in or incident to which the principal has, or claims to have, an  
13 interest or right;

14 (7) Participate in a reorganization with respect to real property or an entity that owns an  
15 interest in or right incident to real property and receive, and hold, and act with respect  
16 to stocks and bonds or other property received in a plan of reorganization, including:

17 (a) Selling or otherwise disposing of them;

18 (b) Exercising or selling an option, right of conversion, or similar right with  
19 respect to them; and

20 (c) Exercising any voting rights in person or by proxy;

21 (8) Change the form of title of an interest in or right incident to real property; and

22 (9) Dedicate to public use, with or without consideration, easements or other real  
23 property in which the principal has, or claims to have, an interest.

24 **Section 27.** That the code be amended by adding a NEW SECTION to read:



1 Unless the power of attorney otherwise provides, language in a power of attorney granting  
2 general authority with respect to tangible personal property authorizes the agent to:

3 (1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or  
4 otherwise acquire or reject ownership or possession of tangible personal property or  
5 an interest in tangible personal property;

6 (2) Sell; exchange; convey with or without covenants, representations, or warranties;  
7 quitclaim; release; surrender; create a security interest in; grant options concerning;  
8 lease; sublease; or otherwise dispose of tangible personal property or an interest in  
9 tangible personal property;

10 (3) Grant a security interest in tangible personal property or an interest in tangible  
11 personal property as security to borrow money or pay, renew, or extend the time of  
12 payment of a debt of the principal or a debt guaranteed by the principal;

13 (4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien,  
14 or other claim on behalf of the principal, with respect to tangible personal property  
15 or an interest in tangible personal property;

16 (5) Manage or conserve tangible personal property or an interest in tangible personal  
17 property on behalf of the principal, including:

18 (a) Insuring against liability, casualty, or other loss;

19 (b) Obtaining or regaining possession of or protecting the property or interest by  
20 litigation or otherwise;

21 (c) Paying, assessing, compromising, or contesting taxes or assessments, or  
22 applying for and receiving refunds in connection with taxes or assessments;

23 (d) Relocating the property;

24 (e) Storing the property for hire or on a gratuitous bailment; and

- 1           (f)    Using and making repairs, alterations, or improvements to the property; and  
2       (6)    Change the form of title of an interest in tangible personal property.

3       **Section 28.** That the code be amended by adding a NEW SECTION to read:

4       Unless the power of attorney otherwise provides, language in a power of attorney granting  
5   general authority with respect to stocks and bonds authorizes the agent to:

- 6       (1)    Buy, sell, and exchange stocks and bonds;  
7       (2)    Establish, continue, modify, or terminate an account with respect to stocks and  
8           bonds;  
9       (3)    Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of  
10       payment of a debt of the principal;  
11       (4)    Receive certificates and other evidences of ownership with respect to stocks and  
12       bonds; and  
13       (5)    Exercise voting rights with respect to stocks and bonds in person or by proxy, enter  
14       into voting trusts, and consent to limitations on the right to vote.

15       **Section 29.** That the code be amended by adding a NEW SECTION to read:

16       Unless the power of attorney otherwise provides, language in a power of attorney granting  
17   general authority with respect to commodities and options authorizes the agent to:

- 18       (1)    Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call  
19           or put options on stocks or stock indexes traded on a regulated option exchange; and  
20       (2)    Establish, continue, modify, and terminate option accounts.

21       **Section 30.** That the code be amended by adding a NEW SECTION to read:

22       Unless the power of attorney otherwise provides, language in a power of attorney granting  
23   general authority with respect to banks and other financial institutions authorizes the agent to:

- 24       (1)    Continue, modify, and terminate an account or other banking arrangement made by

1 or on behalf of the principal;

2 (2) Establish, modify, and terminate an account or other banking arrangement with a  
3 bank, trust company, savings and loan association, credit union, thrift company,  
4 brokerage firm, or other financial institution selected by the agent;

5 (3) Contract for services available from a financial institution, including renting a safe  
6 deposit box or space in a vault;

7 (4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property  
8 of the principal deposited with or left in the custody of a financial institution;

9 (5) Receive statements of account, vouchers, notices, and similar documents from a  
10 financial institution and act with respect to them;

11 (6) Enter a safe deposit box or vault and withdraw or add to the contents;

12 (7) Borrow money and pledge as security personal property of the principal necessary to  
13 borrow money or pay, renew, or extend the time of payment of a debt of the principal  
14 or a debt guaranteed by the principal;

15 (8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes,  
16 checks, drafts, and other negotiable or nonnegotiable paper of the principal or  
17 payable to the principal or the principal's order, transfer money, receive the cash or  
18 other proceeds of those transactions, and accept a draft drawn by a person upon the  
19 principal and pay it when due;

20 (9) Receive for the principal and act upon a sight draft, warehouse receipt, or other  
21 document of title whether tangible or electronic, or other negotiable or nonnegotiable  
22 instrument;

23 (10) Apply for, receive, and use letters of credit, credit and debit cards, electronic  
24 transaction authorizations, and traveler's checks from a financial institution and give

1 an indemnity or other agreement in connection with letters of credit; and

2 (11) Consent to an extension of the time of payment with respect to commercial paper or  
3 a financial transaction with a financial institution.

4 **Section 31.** That the code be amended by adding a NEW SECTION to read:

5 Subject to the terms of the governing instrument of an entity or an entity ownership interest,  
6 and unless the power of attorney otherwise provides, language in a power of attorney granting  
7 general authority regarding operation of an entity or business authorizes the agent to:

8 (1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

9 (2) Perform a duty or discharge a liability and exercise in person or by proxy a right,  
10 power, privilege, or option that the principal has, may have, or claims to have;

11 (3) Enforce the terms of an ownership agreement;

12 (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
13 propose or accept a compromise with respect to litigation to which the principal is  
14 a party because of an ownership interest;

15 (5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,  
16 privilege, or option the principal has or claims to have as the holder of stocks and  
17 bonds;

18 (6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
19 propose or accept a compromise with respect to litigation to which the principal is  
20 a party concerning stocks and bonds;

21 (7) With respect to an entity or business owned solely by the principal:

22 (a) Continue, modify, renegotiate, extend, and terminate a contract made by or on  
23 behalf of the principal with respect to the entity or business;



- 1 (b) Determine:
  - 2 (i) The location of its operation;
  - 3 (ii) The nature and extent of its business;
  - 4 (iii) The methods of manufacturing, selling, merchandising, financing,  
5 accounting, and advertising employed in its operation;
  - 6 (iv) The amount and types of insurance carried; and
  - 7 (v) The mode of engaging, compensating, and dealing with its employees  
8 and accountants, attorneys, or other advisors;
- 9 (c) Change the name or form of organization under which the entity or business  
10 is operated and enter into an ownership agreement with other persons to take  
11 over all or part of the operation of the entity or business; and
- 12 (d) Demand and receive money due or claimed by the principal or on the  
13 principal's behalf in the operation of the entity or business and control and  
14 disburse the money in the operation of the entity or business;
- 15 (8) Put additional capital into an entity or business in which the principal has an interest;
- 16 (9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger  
17 of the entity or business;
- 18 (10) Sell or liquidate all or part of an entity or business;
- 19 (11) Establish the value of an entity or business under a buy-out agreement to which the  
20 principal is a party;
- 21 (12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other  
22 papers with respect to an entity or business and make related payments; and
- 23 (13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any  
24 other act to protect the principal from illegal or unnecessary taxation, assessments,

1 fines, or penalties, with respect to an entity or business, including attempts to recover,  
2 in any manner permitted by law, money paid before or after the execution of the  
3 power of attorney.

4 **Section 32.** That the code be amended by adding a NEW SECTION to read:

5 Unless the power of attorney otherwise provides, language in a power of attorney granting  
6 general authority with respect to insurance and annuities authorizes the agent to:

- 7 (1) Continue, pay the premium or make a contribution on, modify, exchange, rescind,  
8 release, or terminate a contract procured by or on behalf of the principal that insures  
9 or provides an annuity to either the principal or another person, whether or not the  
10 principal is a beneficiary under the contract;
- 11 (2) Procure new, different, and additional contracts of insurance and annuities for the  
12 principal and the principal's spouse, children, and other dependents, and select the  
13 amount, type of insurance or annuity, and mode of payment;
- 14 (3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or  
15 terminate a contract of insurance or annuity procured by the agent;
- 16 (4) Apply for and receive a loan secured by a contract of insurance or annuity;
- 17 (5) Surrender and receive the cash surrender value on a contract of insurance or annuity;
- 18 (6) Exercise an election;
- 19 (7) Exercise investment powers available under a contract of insurance or annuity;
- 20 (8) Change the manner of paying premiums on a contract of insurance or annuity;
- 21 (9) Change or convert the type of insurance or annuity with respect to which the  
22 principal has or claims to have authority described in this section;
- 23 (10) Apply for and procure a benefit or assistance under a statute or regulation to  
24 guarantee or pay premiums of a contract of insurance on the life of the principal;

- 1       (11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the  
2           principal in a contract of insurance or annuity;
- 3       (12) Select the form and timing of the payment of proceeds from a contract of insurance  
4           or annuity; and
- 5       (13) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in  
6           connection with, a tax or assessment levied by a taxing authority with respect to a  
7           contract of insurance or annuity or its proceeds or liability accruing by reason of the  
8           tax or assessment.

9       **Section 33.** That the code be amended by adding a NEW SECTION to read:

- 10      (1) For purposes of this section, the terms, estate, trust, or other beneficial interest, mean  
11           a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a  
12           fund from which the principal is, may become, or claims to be, entitled to a share or  
13           payment.
- 14      (2) Unless the power of attorney otherwise provides, language in a power of attorney  
15           granting general authority with respect to estates, trusts, and other beneficial interests  
16           authorizes the agent to:
  - 17           (a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or  
18               payment from an estate, trust, or other beneficial interest;
  - 19           (b) Demand or obtain money or another thing of value to which the principal is,  
20               may become, or claims to be, entitled by reason of an estate, trust, or other  
21               beneficial interest, by litigation or otherwise;
  - 22           (c) Exercise for the benefit of the principal a presently exercisable general or  
23               limited power  
24               of appointment held by the principal;
  - (d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose,

1 or propose or accept a compromise with respect to litigation to ascertain the  
2 meaning, validity, or effect of a deed, will, declaration of trust, or other  
3 instrument or transaction affecting the interest of the principal;

4 (e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose,  
5 or propose or accept a compromise with respect to litigation to remove,  
6 substitute, or surcharge a fiduciary;

7 (f) Conserve, invest, disburse, or use anything received for an authorized purpose;

8 (g) Transfer an interest of the principal in real property, stocks and bonds,  
9 accounts with financial institutions or securities intermediaries, insurance,  
10 annuities, and other property to the trustee of a trust; and

11 (h) Act as a representative pursuant to subdivision 55-18-9(8), except as otherwise  
12 provided in subdivision (8) of section 23 of this Act.

13 **Section 34.** That the code be amended by adding a NEW SECTION to read:

14 Unless the power of attorney otherwise provides, language in a power of attorney granting  
15 general authority with respect to claims and litigation authorizes the agent to:

16 (1) Assert and maintain before a court or administrative agency a claim, claim for relief,  
17 cause of action, counterclaim, offset, recoupment, or defense, including an action to  
18 recover property or other thing of value, recover damages sustained by the principal,  
19 eliminate or modify tax liability, or seek an injunction, specific performance, or other  
20 relief;

21 (2) Bring an action to determine adverse claims or intervene or otherwise participate in  
22 litigation;

23 (3) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional,



1 or intermediate relief and use an available procedure to effect or satisfy a judgment,  
2 order, or decree;

3 (4) Make or accept a tender, offer of judgment, or admission of facts, submit a  
4 controversy on an agreed statement of facts, consent to examination, and bind the  
5 principal in litigation;

6 (5) Submit to alternative dispute resolution, settle, and propose or accept a compromise;

7 (6) Waive the issuance and service of process upon the principal, accept service of  
8 process, appear for the principal, designate persons upon which process directed to  
9 the principal may be served, execute and file or deliver stipulations on the principal's  
10 behalf, verify pleadings, seek appellate review, procure and give surety and  
11 indemnity bonds, contract and pay for the preparation and printing of records and  
12 briefs, receive, execute, and file or deliver a consent, waiver, release, confession of  
13 judgment, satisfaction of judgment, notice, agreement, or other instrument in  
14 connection with the prosecution, settlement, or defense of a claim or litigation;

15 (7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or  
16 involuntary, concerning the principal or some other person, or with respect to a  
17 reorganization, receivership, or application for the appointment of a receiver or  
18 trustee which affects an interest of the principal in property or other thing of value;

19 (8) Pay a judgment, award, or order against the principal or a settlement made in  
20 connection with a claim or litigation; and

21 (9) Receive money or other thing of value paid in settlement of or as proceeds of a claim  
22 or litigation.

23 **Section 35.** That the code be amended by adding a NEW SECTION to read:

24 (1) Unless the power of attorney otherwise provides, language in a power of attorney

granting general authority with respect to personal and family maintenance authorizes the agent to:

(a) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:

(i) The principal's minor children;

(ii) Other individuals legally entitled to be supported by the principal; and

(iii) The individuals whom the principal has customarily supported or indicated the intent to support;

(b) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(c) Provide living quarters for the individuals described in subsection (1)(a) by:

(i) Purchase, lease, or other contract; or

(ii) Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

(d) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subsection (1)(a);

(e) Pay expenses for necessary health care and custodial care on behalf of the

individuals described in subsection (1)(a);

- (f) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, sections 1171 to 1179, inclusive, of the Social Security Act, 42 U.S.C. § 1320(d), and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;
- (g) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subsection (1)(a);
- (h) Maintain credit and debit accounts for the convenience of the individuals described in subsection (1)(a) and open new accounts; and
- (i) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

- (2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this Act.

**Section 36.** That the code be amended by adding a NEW SECTION to read:

- (1) For purposes of this section, the terms, benefits from governmental programs, or civil or military service, mean any benefit, program, or assistance provided under a statute or regulation including but not limited to, Social Security, Medicare, and Medicaid.
- (2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or

civil or military service authorizes the agent to:

- (a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or political subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subsection (1)(a) of section 35 of this Act, and for shipment of their household effects;
- (b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;
- (c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;
- (d) Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;
- (e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and
- (f) Receive the financial proceeds of a claim described in paragraph (d) and conserve, invest, disburse, or use for a lawful purpose anything so received.

**Section 37.** That the code be amended by adding a NEW SECTION to read:



(1) For purposes of this section, the term, retirement plan, means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

- (a) An individual retirement account under 26 U.S.C. § 408;
- (b) A Roth individual retirement account under 26 U.S.C. § 408A;
- (c) A deemed individual retirement account under 26 U.S.C. § 408(q);
- (d) An annuity or mutual fund custodial account under 26 U.S.C. § 403(b);
- (e) A pension, profit-sharing, stock bonus, or other retirement plan qualified under 26 U.S.C. § 401(a);
- (f) A plan under 26 U.S.C. § 457(b); and
- (g) A nonqualified deferred compensation plan under 26 U.S.C. § 409A.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

- (a) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;
- (b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;
- (c) Establish a retirement plan in the principal's name;
- (d) Make contributions to a retirement plan;
- (e) Exercise investment powers available under a retirement plan; and
- (f) Borrow from, sell assets to, or purchase assets from a retirement plan.

**Section 38.** That the code be amended by adding a NEW SECTION to read:

1 Unless the power of attorney otherwise provides, language in a power of attorney granting  
2 general authority with respect to taxes authorizes the agent to:

- 3 (1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property,  
4 Federal Insurance Contributions Act, and other tax returns, claims for refunds,  
5 requests for extension of time, petitions regarding tax matters, and any other  
6 tax-related documents, including receipts, offers, waivers, consents, including  
7 consents and agreements under 26 U.S.C. § 2032A, closing agreements, and any  
8 power of attorney required by the Internal Revenue Service or other taxing authority  
9 with respect to a tax year upon which the statute of limitations has not run and the  
10 following twenty-five tax years;
- 11 (2) Pay taxes due, collect refunds, post bonds, receive confidential information, and  
12 contest deficiencies determined by the Internal Revenue Service or other taxing  
13 authority;
- 14 (3) Exercise any election available to the principal under federal, state, local, or foreign  
15 tax law; and
- 16 (4) Act for the principal in all tax matters for all periods before the Internal Revenue  
17 Service, or other taxing authority.

18 **Section 39.** That the code be amended by adding a NEW SECTION to read:

- 19 (1) For purposes of this section, a gift "for the benefit of" a person includes a gift to a  
20 trust, an account under the Uniform Transfers to Minors Act (1983/1986), and a  
21 tuition savings account or prepaid tuition plan as defined under 26 U.S.C. § 529.
- 22 (2) Unless the power of attorney otherwise provides, language in a power of attorney  
23 granting general authority with respect to gifts authorizes the agent only to:
  - 24 (a) Make outright to, or for the benefit of, a person, a gift of any of the principal's

property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under 26 U.S.C.

§ 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to 26 U.S.C. § 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) Consent, pursuant to 26 U.S.C. § 2513, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(3) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including but not limited to:

(a) The value and nature of the principal's property;

(b) The principal's foreseeable obligations and need for maintenance;

(c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

(d) Eligibility for a benefit, a program, or assistance under a statute or regulation;

and

(e) The principal's personal history of making or joining in making gifts.

**Section 40.** That the code be amended by adding a NEW SECTION to read:

Except as otherwise provided in this Act:

(1) This Act applies to a power of attorney created on, or after July 1, 2020;

(2) This Act applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2020;

(3) This Act applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2020, unless the court finds that application of a provision of this Act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) An act done before July 1, 2018 is not affected by this Act.

**Section 41.** That the code be amended by adding a NEW SECTION to read:

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this Act. The provisions of §§ 43-28-23 and 7-9-1 apply to any power of attorney that is to be recorded with the register of deeds.

## SOUTH DAKOTA

### STATUTORY FORM POWER OF ATTORNEY

#### IMPORTANT INFORMATION

*This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the South Dakota Uniform Power of Attorney Act.*

*This power of attorney does not authorize the agent to make health-care decisions for you.*

*You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the*

*1 agent resigns or is unable to act for you.*

2      *Your agent is entitled to reasonable compensation unless you state otherwise in the Special*  
3      *Instructions.*

4        *This form provides for designation of one agent. If you wish to name more than one agent*  
5        *you may name a co-agent in the Special Instructions. Co-agents are required to have a majority vote*  
6        *unless you include otherwise in the Special Instructions.*

7        *If your agent is unable or unwilling to act for you, your power of attorney will end unless*  
8        *you have named a successor agent. You may also name a second successor agent.*

9        *This power of attorney becomes effective immediately unless you state otherwise in the*  
10    *Special Instructions.*

11 *If you have questions about the power of attorney or the authority you are granting to*  
12 *your agent, you should seek legal advice before signing this form.*

## 13 DESIGNATION OF AGENT

14 I \_\_\_\_\_ name the following person as my agent:

15 (Name of Principal)

16 Name of Agent: \_\_\_\_\_

17 Agent's Address: \_\_\_\_\_

18 Agent's Telephone Number: \_\_\_\_\_

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

20 If my agent is unable or unwilling to act for me, I name as my successor agent:

21 Name of Successor Agent: \_\_\_\_\_

22 Successor Agent's Address: \_\_\_\_\_

23 Successor Agent's Telephone Number: \_\_\_\_\_

24 If my successor agent is unable or unwilling to act for me, I name as my second successor agent:



1 Name of Second Successor Agent: \_\_\_\_\_

2 Second Successor Agent's Address: \_\_\_\_\_

3 Second Successor Agent's Telephone Number: \_\_\_\_\_

4 GRANT OF GENERAL AUTHORITY

5 I grant my agent and any successor agent general authority to act for me with respect to the  
6 following subjects as defined in the South Dakota Uniform Power of Attorney Act:

7 (INITIAL each subject you want to include in the agent's general authority. If you wish to grant  
8 general authority over all of the subjects you may initial "All Preceding Subjects" instead of  
9 initialing each subject.)

10 ☐ Real Property (section 26 of this Act)

11 ☐ Tangible Personal Property (section 27 of this Act)

12 ☐ Stocks and Bonds (section 28 of this Act)

13 ☐ Commodities and Options (section 29 of this Act)

14 ☐ Banks and Other Financial Institutions (section 30 of this Act)

15 ☐ Operation of Entity or Business (section 31 of this Act)

16 ☐ Insurance and Annuities (section 32 of this Act)

17 ☐ Estates, Trusts, and Other Beneficial Interests (section 33 of this Act)

18 ☐ Claims and Litigation (section 34 of this Act)

19 ☐ Personal and Family Maintenance (section 35 of this Act)

20 ☐ Benefits from Governmental Programs or Civil or Military Service (section 36 of this  
21 Act)

22 ☐ Retirement Plans (section 37 of this Act)

23 ☐ Taxes (section 38 of this Act)

24 ☐ All Preceding Subjects (section 26 to 38 of this Act, inclusive)

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

☐ Create an inter vivos trust or amend, revoke, or terminate a trust

☐ Make a gift, subject to the limitations of the South Dakota Uniform Power of Attorney Act section 39 and any special instructions in this power of attorney

☐ Create or change rights of survivorship

☐ Create or change a beneficiary designation

☐ Authorize another person to exercise the authority granted under this power of attorney

☐ Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan

☐ Exercise fiduciary powers that the principal has authority to delegate

☐ Access the content of electronic communications

☐ Disclaim or refuse an interest in property, including a power of appointment

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

(INITIAL if you wish for the agent to only have authority upon your incapacity instead of

1 immediately.)

2 (\_\_\_\_) My agent(s) shall only have the authority to act upon my later incapacity.

3 You may give additional special instructions on the following lines:

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_

7 EFFECTIVE DATE

8 This power of attorney is effective immediately unless I have stated otherwise in the Special  
9 Instructions.

10 NOMINATION OF CONSERVATOR AND/OR GUARDIAN (OPTIONAL)

11 If it becomes necessary for a court to appoint a conservator of my estate, I nominate the  
12 following person(s) for appointment:

13 Name of Nominee for conservator of my estate:

14 \_\_\_\_\_

15 Nominee's Address: \_\_\_\_\_

16 Nominee's Telephone Number: \_\_\_\_\_

17 If it becomes necessary for a court to appoint a guardian of my person, I nominate the following  
18 person(s) for appointment:

19 Name of Nominee for guardian of my person:

20 \_\_\_\_\_

21 Nominee's Address: \_\_\_\_\_

22 Nominee's Telephone Number: \_\_\_\_\_

23 RELIANCE ON THIS POWER OF ATTORNEY

24 Any person, including my agent, may rely upon the validity of this power of attorney or a copy

1 of it unless that person knows it has terminated or is invalid.

2 SIGNATURE AND ACKNOWLEDGMENT

3 \_\_\_\_\_, 2\_\_\_\_\_

4 Your Signature Date

5 \_\_\_\_\_

6 Your Name Printed

7 \_\_\_\_\_

8 Your Address

9 \_\_\_\_\_

10 Your Telephone Number

11 State of \_\_\_\_\_)

12 \_\_\_\_\_)SS.

13 County of \_\_\_\_\_)

14 This Statutory Form Power of Attorney document was acknowledged before me on

15 \_\_\_\_\_, 2\_

\_\_\_\_\_ by \_\_\_\_\_.

16 (Date) (Name of Principal)

17 \_\_\_\_\_ (Seal)

18 Signature of Notary Public

19 My commission expires:

20 *IMPORTANT INFORMATION FOR AGENT*

21 *Agent's Duties*

22 *When you accept the authority granted under this power of attorney, a special legal relationship*  
23 *is created between you and the principal. This relationship imposes upon you legal duties that*  
24 *continue until you resign or the power of attorney is terminated or revoked. You must:*

1       (1)    *Do what you know the principal reasonably expects you to do with the principal's*  
2               *property or, if you do not know the principal's expectations, act in the principal's*  
3               *best interest;*

4       (2)    *Act in good faith;*

5       (3)    *Do nothing beyond the authority granted in this power of attorney; and*

6       (4)    *Disclose your identity as an agent whenever you act for the principal by writing or*  
7               *printing the name of the principal and signing your own name as "agent" in the*  
8               *following manner:*

9               *(Principal's Name) by (Your Signature) as Agent under POA dated (Date)*

10      *Unless the Special Instructions in this power of attorney state otherwise, you must also:*

11       (1)    *Act loyally for the principal's benefit;*

12       (2)    *Avoid conflicts that would impair your ability to act in the principal's best interest;*

13       (3)    *Act with care, competence, and diligence;*

14       (4)    *Keep a record of all receipts, disbursements, and transactions made on behalf of the*  
15               *principal;*

16       (5)    *Cooperate with any person that has authority to make health-care decisions for the*  
17               *principal to do what you know the principal reasonably expects or, if you do not*  
18               *know the principal's expectations, to act in the principal's best interest; and*

19       (6)    *Attempt to preserve the principal's estate plan if you know the plan and preserving*  
20               *the plan is consistent with the principal's best interest.*

21      *Termination of Agent's Authority*

22      *You must stop acting on behalf of the principal if you learn of any event that terminates this*  
23      *power of attorney or your authority under this power of attorney. Events that terminate a power*  
24      *of attorney or your authority to act under a power of attorney include:*



1       (1)   *Death of the principal;*

2           (2)    *The principal's revocation of the power of attorney or your authority;*

3 (3) *The occurrence of a termination event stated in the power of attorney;*

4           (4)    *The purpose of the power of attorney is fully accomplished; or*

5       (5)    If you are married to the principal, a legal action is filed with a court to end your  
6           marriage, or for your legal separation, unless the Special Instructions in this power  
7           of attorney state that such an action will not terminate your authority.

## 8 Liability of Agent

9     *The meaning of the authority granted to you is defined in the South Dakota Uniform Power of*  
10    *Attorney Act. If you violate the South Dakota Uniform Power of Attorney Act or act outside the*  
11    *authority granted, you may be liable for any damages caused by your violation.*

12     *In addition to civil liability, failure to comply with your duties and authority granted under this*  
13     *document could subject you to criminal prosecution for grand theft, embezzlement of property*  
14     *received in trust, among other criminal charges.*

15     *If the principal is 65 years of age or older, or an adult with a disability, you could also be*  
16     *prosecuted for elder abuse and financial exploitation.*

17    **If there is anything about this document or your duties that you do not understand, you**  
18    **should seek legal advice.**

19       **Section 42.** That the code be amended by adding a NEW SECTION to read:

20 The following optional form may be used by an agent to certify facts concerning a power  
21 of attorney. The provisions of §§ 43-28-23 and 7-9-1 apply to any power of attorney that is to  
22 be recorded with the register of deeds.

23 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND

24 AGENT'S AUTHORITY

1 State of \_\_\_\_\_)

2 )SS. AFFIDAVIT

3 County of \_\_\_\_\_)

4 I, \_\_\_\_\_ (Name of Agent), certify under

5 penalty of perjury that \_\_\_\_\_ (Name of Principal)

6 granted me authority as an agent or successor agent in a power of attorney dated

7 \_\_\_\_\_, 2\_.

8 I further certify that to my knowledge:

9 (1) The Principal is alive and has not revoked the Power of Attorney or my authority to  
10 act under the Power of Attorney and the Power of Attorney and my authority to act  
11 under the Power of Attorney have not terminated;

12 (2) If the Power of Attorney was drafted to become effective upon the happening of an  
13 event or contingency, the event or contingency has occurred;

14 (3) If I was named as a successor agent, the prior agent is no longer able or willing to  
15 serve; and

16 (4) \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 (Insert other relevant statements)

20 SIGNATURE AND ACKNOWLEDGMENT

21 \_\_\_\_\_, 2\_

22 Agent's Signature

Date

23 \_\_\_\_\_

24 Agent's Name Printed

1 Agent's Address \_\_\_\_\_  
2 Agent's Telephone Number \_\_\_\_\_  
3 State of \_\_\_\_\_ )  
4 )SS.  
5 County of \_\_\_\_\_ )

6 This Agent's Certification as to the Validity of Power of Attorney and Agent's Authority  
7 document was acknowledged before me on \_\_\_\_\_, 2\_\_\_\_\_ by  
8 \_\_\_\_\_ (Date)

9 (Name of Agent)

10 \_\_\_\_\_ (Seal)

11 Signature of Notary Public

12 My commission expires:

13 **Section 43.** That the code be amended by adding a NEW SECTION to read:

14 A document substantially in the following form may be used to create a statutory form  
15 revocation of power of attorney that has the meaning and effect prescribed by this chapter. The  
16 provisions of §§ 43-28-23 and 7-9-1 apply to any power of attorney that is to be recorded with  
17 the register of deeds.

18 SOUTH DAKOTA

19 STATUTORY FORM REVOCATION OF POWER OF ATTORNEY

20 *IMPORTANT INFORMATION*

21 *This revocation of power of attorney revokes a previously executed power of attorney including*  
22 *any nominations of guardian or conservator made within that instrument. This revocation does*  
23 *not revoke any power of attorney authorizing the agent to make health-care decisions for you.*  
24 *You should immediately deliver copies of this revocation to any person, institution, or company*

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1 \_\_\_\_\_

2 Your Address

3 \_\_\_\_\_

4 Your Telephone Number

5 State of \_\_\_\_\_)

6 \_\_\_\_\_)SS.

7 County of \_\_\_\_\_)

8 This Statutory Form Revocation of Power of Attorney document was acknowledged before me

9 on \_\_\_\_\_, 2 \_\_\_\_\_ by \_\_\_\_\_.

10 (Date) (Name of Principal)

11 \_\_\_\_\_ (Seal)

12 Signature of Notary Public

13 My commission expires:

14 **Section 44.** That § 59-7-2.1 be amended to read:

15 59-7-2.1. Notwithstanding § 59-7-2, if a principal designates another as the principal's  
16 attorney in fact or agent by a written power of attorney which contains the words "This power  
17 of attorney shall not be affected by disability of the principal," or "This power of attorney shall  
18 become effective upon the disability of the principal," or similar words showing the intent of  
19 the principal that the authority conferred is exercisable notwithstanding the principal's disability,  
20 the authority of the attorney in fact or agent is exercisable by the attorney in fact or agent as  
21 provided in the power on behalf of the principal notwithstanding any later disability or  
22 incapacity of the principal or later uncertainty as to whether or not the principal is dead or alive.  
23 — The a principal may designate another as the principal's attorney-in-fact or agent pursuant  
24 to the provisions of section 3 of this Act.



1     A principal may designate any other person as the principal's attorney-in-fact or agent for  
2     health care decisions, and the attorney-in-fact shall have the authority to make any health care  
3     decision at any time during which the principal lacks capacity. Any durable power of attorney  
4     ~~must~~ for health care shall be signed by the principal or in the principal's conscious presence by  
5     another individual directed by the principal to sign the principal's name on the power of  
6     attorney. The signature ~~must~~ shall be witnessed by two other adult individuals or by a notary  
7     public. A power of attorney granted pursuant to this section may authorize the attorney-in-fact  
8     to consent to, to reject, or to withdraw consent for health care, including any care, service, or  
9     procedure to maintain, diagnose, or treat a person's physical or mental condition.

10     **Section 45.** That § 59-7-2.4 be amended to read:

11     59-7-2.4. A principal may nominate; by a durable power of attorney, for health care a  
12     guardian of the principal's person or conservator of the principal's estate for consideration by  
13     the court ~~should guardianship or conservatorship proceedings for the principal's person or estate~~  
14     ~~be later commenced~~ if protective proceedings for the principal's estate or person are begun after  
15     the principal executes the power of attorney for health care. Except for good cause shown or  
16     disqualification, the court shall make an appointment under this section in accordance with the  
17     principal's most recent nomination.

18     **Section 46.** That subdivision (1) of § 21-65-1 be amended to read:

19     (1)    ~~"Attorney in fact~~ Attorney-in-fact," an agent under a power of attorney pursuant to  
20            chapter 59-2 or an ~~attorney in fact~~ attorney-in-fact under a durable power of attorney  
21            pursuant to § 59-7-2.1 or the provisions of this Act;

22     **Section 47.** That § 59-6-11 be amended to read:

23     59-6-11. A durable power of attorney ~~that purports to be signed by the principal named in~~  
24     ~~the durable power of attorney~~ for health care designated under the provisions of § 59-7-2.1 is

1 presumed valid. Another person may rely on the presumption of validity unless the person has  
2 actual knowledge that the power was not validly executed or that the power was revoked.

3 Except as provided in this section, any person who refuses to accept the authority of the  
4 agent to exercise a power granted under the durable power of attorney for health care is liable  
5 to the principal and to the principal's heirs, assigns, and the personal representative or successor  
6 in interest of the principal's estate in the same manner as the person would be liable had the  
7 person refused to accept the authority of the principal to act on the principal's own behalf. The  
8 person found liable for refusing to accept the authority of an agent is liable for damages and  
9 costs, including reasonable attorney's fees.

10 A person who refuses to accept the authority of an agent to exercise a power granted under  
11 a durable power of attorney for health care is not liable pursuant to this section if:

- 12 (1) The person has actual knowledge of the revocation of the durable power of attorney  
13 before the exercise of the power;
- 14 (2) The duration of the durable power of attorney specified in the durable power of  
15 attorney has expired;
- 16 (3) The person has actual knowledge of the death of the principal;
- 17 (4) The person reasonably believes that the durable power of attorney is not valid under  
18 the law of this state;
- 19 (5) The person reasonably believes that the durable power of attorney does not grant the  
20 agent authority to perform the transaction requested; or
- 21 (6) The person reasonably believes that a course of conduct or refusal to act as proposed  
22 by the agent is contrary to the wishes of the principal as expressed to the person.

23 This section does not negate the liability that a person would have to the principal or the  
24 agent under another form of power of attorney, under the common law, or otherwise.

**Section 48.** That § 59-7-8 be amended to read:

59-7-8. A physician or other health care provider as defined in subdivision 34-12C-1(5) acting in reliance on a health care decision by an attorney-in-fact or agent whom the physician or health care provider believes in good faith is authorized by this chapter to make a health care decision for the principal or a physician or other health care provider declining to act in reliance on a health care decision by an attorney-in-fact or agent whom the physician or health care provider believes in good faith is not authorized by this chapter to make a health care decision for the principal is not subject to criminal prosecution, civil liability, or professional disciplinary action on the ground that the attorney-in-fact or agent either had or did not have authority to make a health care decision or for disclosing to the attorney-in-fact or agent medical records or other information.

A physician or other health care provider who in good faith believes that the principal has or does not have decisional capacity under § 59-7-2.6 is not subject to criminal prosecution, civil liability, or professional disciplinary action for making that determination.

A physician or other health care provider who in good faith makes a determination in a writing or other record that a principal is incapacitated within the meaning of subsection (5)(a) of section 1 of this Act is not subject to criminal prosecution, civil liability, or professional disciplinary action for making that determination.

An attorney, judge, or governmental official who in good faith makes a determination in a writing or other record that a principal is incapacitated within the meaning of subsection (5)(b) of section 1 of this Act is not subject to criminal prosecution, civil liability, or professional disciplinary action for making that determination.

**Section 49.** That subdivision (2) of § 55-19-1 be amended to read:

(2) "Agent," any ~~attorney-in-fact~~ attorney-in-fact granted authority under a ~~durable~~ power

1 of attorney pursuant to ~~§ 59-7-2.1~~ the provisions of this Act or nondurable power of  
2 attorney pursuant to chapter 59-2;

3 **Section 50.** That §§ 59-7-2.2 and 59-7-2.3, §§ 59-7-3 to 59-7-7, inclusive, and  
4 § 59-7-10 be repealed.

5 **Section 51.** That § 29A-5-118 be amended to read:

6 29A-5-118. The appointment of a guardian or conservator of a protected person does not  
7 constitute a general finding of legal incompetence unless the court so orders, and the protected  
8 person shall otherwise retain all rights which have not been granted to the guardian or  
9 conservator, with the exception of the ability to create an agency and confer authority on another  
10 person to do any act that the protected person might do, pursuant to § 59-2-1. Unless prior  
11 authorization of the court is first obtained, a guardian or conservator may not change the  
12 residence of the minor or protected person to another state, terminate or consent to a termination  
13 of the minor's or protected person's parental rights, initiate a change in the minor's or protected  
14 person's marital status, or revoke or amend a durable power of attorney of which the protected  
15 person is the principal, except as provided in ~~§§ 59-7-10 and~~ § 59-7-11.

**SDCL 47-34A-701 Designated series of members, managers, or limited liability interests permitted — requirements.**

An operating agreement may establish or provide for the establishment of a designated series of members, managers, or limited liability company interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations. To the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

**SDCL 47-34A-702**

(a) Notwithstanding any other provisions of law to the contrary, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, if all of the following apply:

- (1) The operating agreement creates one or more series;
- (2) Separate and distinct records are maintained for or on behalf of any such series;
- (3) The assets associated with any such series, whether held directly or indirectly, including through a nominee or otherwise, are accounted for separately from the other assets of the limited liability company or of any other series;
- (4) The operating agreement provides for the limitations on liabilities of a series described in this subdivision;
- (5) Notice of the limitation on liabilities of a series described in this subdivision is included in the limited liability company's articles of organization; and
- (6) The limited liability company has filed a certificate of designation for each series which is to have limited liability under this section.

(b) Such particular series shall be deemed to have possession, custody, and control only of the books, records, information, and documentation related to such series and not of the books, records, information, and documentation related to the limited liability company as a whole or any other series thereof.

(c) With respect to a particular series, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations, and expenses incurred, contracted for or otherwise existing with respect to a limited liability company generally, or any other series thereof, shall be enforceable against the assets of such series, subject to the provisions of paragraph (a) of this section 702.

(d) Compliance with paragraphs (5) and (6) of SDCL 47-34A-702(a) shall constitute notice of such limitation of liability of a series.



(e) A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, including real and personal property, whether tangible or intangible, grant security interests, sue and be sued, and otherwise conduct business and exercise the powers of a limited liability company under this chapter. The limited liability company and any of its series may elect to consolidate its operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly, or elect to be treated as a single business for the purposes of qualification or authorization to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this section except to the extent that the series have specifically accepted joint liability by contract.

#### **SDCL 47-34A-703**

Except in the case of a foreign limited liability company that has adopted a name that is not the name under which it is registered in its jurisdiction of organization, as permitted under SDCL 47-34A-1005, the name of the series with limited liability is required to contain the entire name of the limited liability company and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted a name that is not the name under which it is registered in its jurisdiction of organization, as permitted under SDCL 47-34A-1005, the name of the series with limited liability must contain the entire name under which the foreign limited liability company has been admitted to transact business in this state.

#### **SDCL 47-34A-704**

(a) (1) Upon filing of a certificate of designation setting forth the name of the series with limited liability, in compliance with SDCL 47-34A-203 or amendments under SDCL 47-34A-204, the series' existence shall begin.

(2) Each copy of the certificate of designation stamped "Filed" and marked with the filing date shall be conclusive evidence that all required conditions have been met and that the series has been or shall be legally organized and formed under this section and is notice for all purposes of all other facts required to be set forth therein.

(3) The name of a series with limited liability under this section may be changed by filing a new certificate of designation with the secretary of state pursuant to SDCL 47-34A-204, identifying the series whose name is being changed and the new name of such series. If the managers of a series are not the same as the managers of the limited liability company, the names of the managers of a manager-managed series may be changed by filing a certificate of designation with the secretary of state.

(4) A series with limited liability under this section may be dissolved (i) upon the occurrence of any of the events referenced in SDCL 47-34A-801 with respect to the series or (ii) by the dissolution of the limited liability company as provided in SDCL 47-34A-801. Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company or any other series. The dissolution of a series established in accordance with SDCL 47-34A-702 shall not

affect the limitation on liabilities of such series provided by SDCL 47-34A-702. A series will be terminated (i) upon the dissolution and winding up of the limited liability company and the filing of articles of termination pursuant to SDCL 47-34A-805, or (ii) upon the dissolution and winding up of the series and filing of a certificate of designation identifying the series being terminated.

(5) Articles of organization, articles of amendment, articles of termination or certificates of designation described under this subdivision may be executed by the limited liability company or any manager, person, or entity designated in the operating agreement for the limited liability company.

(b) If different from the limited liability company, the certificate of designation shall list the names of the managers if the series is manager-managed.

(c) A series of a limited liability company shall be deemed to be in good standing as long as the limited liability company is in good standing.

(d) The registered agent and registered office for the limited liability company appointed under SDCL 47-34A-108 shall serve as the agent and office for service of process for each series in this state.

#### **SDCL 47-34A-705**

(a) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as an operating agreement may provide and may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior and subordinate to or different from existing classes and groups of members or managers associated with the series.

(b) A series may be managed either by the member or members associated with the series or by the manager or managers chosen by the members of such series, as provided in the operating agreement. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series.

(c) An operating agreement may grant to all or certain identified members or managers, or to a specified class or group of the members or managers associated with a series, the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights or ability to otherwise participate in the management or governance of such series, but any such member or class or group of members are owners of the series.

(d) Except as modified in this section, the provisions of this chapter which are generally applicable to limited liability companies and their managers, members, and transferees shall be applicable to each particular series with respect to the operation of such series. Except as otherwise provided in an operating agreement, a manager of a manager-managed series owes the duties referenced in SDCL 47-34A-409 only to the series for which the manager serves as a

manager. A manager of a manager-managed series does not owe any duty (i) to any series for which the manager does not serve as a manager, (ii) to the members of another series for which the manager does not serve as a manager, in their capacity as members of another series, (iii) to the limited liability company, or (iv) to the members of the limited liability company, in their capacity as members of the limited liability company. Except as otherwise provided in an operating agreement, a member of a member-managed series owes the duties referenced in SDCL 47-34A-409 only to the series of which the member is a member. A member of a member-managed series does not owe any duty (i) to any series of which the member is not a member, (ii) to the members of another series of which the member is not a member, in their capacity as members of another series, (iii) to the limited liability company, or (iv) to the members of the limited liability company, in their capacity as members of the limited liability company.

(e) Except as otherwise provided in an operating agreement, any event specified in this chapter or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(f) Except as otherwise provided in an operating agreement, any event specified in this chapter or in an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series, terminate the continued membership of a member in the limited liability company, or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(g) An operating agreement may impose restrictions, duties, and obligations on members of the limited liability company or any series thereof as a matter of internal governance, including, without limitation, those with regard to:

- (1) Choice of law, forum selection, or consent to personal jurisdiction;
- (2) Capital contributions;
- (3) Restrictions on, or terms and conditions of, the transfer of membership interests;
- (4) Restrictive covenants, including noncompetition, nonsolicitation, and confidentiality provisions;
- (5) Fiduciary duties; and
- (6) Restrictions, duties, or obligations to or for the benefit of the limited liability company, other series thereof, or their affiliates.

#### **SDCL 47-34A-706**

(a) If a limited liability company with the ability to establish series does not register to do business in a foreign jurisdiction for itself and its series, a series of a limited liability company

may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

(b) If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers, or duties and has limited the liabilities of such series so that the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on its own behalf may register to do business in this state in accordance with this chapter. The limitation of liability shall also be stated on the application for registration. In addition to the requirements of SDCL 47-34A-1002, the registration application filed shall identify each series being registered to do business in the state by the limited liability company. Unless otherwise provided in the operating agreement, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series of such a foreign limited liability company shall be enforceable against the assets of such series only and not against the assets of the foreign limited liability company generally or any other series thereof, and none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to such a foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

## State Bar Commission:

### Proposal to Add a New Subsection to Rule 8.4 (Misconduct) of the South Dakota Rules of Professional Conduct (Supreme Court Rule)

#### 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.



**Judges Association Ad Hoc Committee on Judicial Compensation:**

**RESOLUTION  
OF THE STATE BAR OF SOUTH DAKOTA**

WHEREAS, the State Bar of South Dakota is created for, among other things, the betterment of the administration of justice in South Dakota, and directed under SDCL 16-17-2 “to furnish a legal entity through which the considered judgment of its members on matters affecting the judicial system of the state may be ascertained and made available to the courts and the Legislature”;

WHEREAS, the State Bar of South Dakota acknowledges that the judiciary serves a substantial and important role in our democratic way of life, including the resolution of civil and criminal disputes, which improves commerce and economic opportunities for our citizens, preserves order, and ensures justice;

WHEREAS, compensation for South Dakota’s judges, justices, and other judicial employees has fallen significantly behind inflation despite a state-wide, exponential growth in the need for judicial services;

WHEREAS, recent national studies indicate judges and justices in the State of South Dakota are among the lowest paid members of the judiciary in the nation;

WHEREAS, continuing a strong and highly qualified judiciary is crucial to providing a fair, efficient, and co-equal judiciary, as well as an efficient system of justice;

WHEREAS, the Judicial Qualifications Commission has reported a reduction in the number of applicants for judicial positions in the past decade caused primarily by the current inadequate compensation;

WHEREAS, restoring judicial pay deficiencies will enable the judicial system to continue to effectively recruit exceptional talent and highly qualified individuals to fill judicial positions for the betterment of the administration of justice in South Dakota;

**BASED UPON THE ABOVE AND FOREGOING, IT IS HEREBY**

**RESOLVED** that the State Bar of South Dakota supports the efforts of the judiciary to request that the South Dakota Legislature increase compensation for judges, justices, and other judicial employees so that highly qualified individuals will continue to apply to fill judicial positions and other important roles in our judicial system; **AND IT IS FURTHER**

**RESOLVED** that the State Bar of South Dakota will task the Judicial Bar Liaison Committee to support the judiciary’s endeavor to obtain increased compensation from the Legislature.

This **RESOLUTION** was approved by the membership of the South Dakota State Bar at its annual meeting on June 21, 2019.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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President, South Dakota State Bar Association



# CAREER CENTER

## West Dakota Water Development District Request for Proposals Legal Services

West Dakota Water Development District (WDWDD), a political subdivision of the State of South Dakota, seeks to enter into a contractual relationship with a South Dakota licensed attorney with administrative law and contract experience to serve as an as-needed General Counsel. Counsel will provide legal advice and services to the WDWDD and assist the Board of Directors as requested in accordance with WDWDD bylaws and policies. The contractual relationship between the WDWDD and attorney will be a fee for services basis with no retainer.

WDWDD encourages those seeking to present proposals to be familiar with the mission and objectives of the District: [www.westdakotawater.com](http://www.westdakotawater.com) and have an interest in water conservation and management.

Legal services will may include, but are not limited to:

- Drafting and reviewing contracts and agreements
- Rendering general legal advice
- Drafting and reviewing Board policies
- Providing other legal services as directed by the Board

WDWDD typically has entered into contractual relationships with entities such as those listed below but not to exclude others:

- South Dakota School of Mines and Technology
- United States Geological Survey
- State of South Dakota agencies
- City of Rapid City
- United States Bureau of Reclamation

The deadline for receiving proposals is three weeks from the publication date in the June 2019 South Dakota State Bar Association Newsletter and publication of the request for proposal in the WDWDD official newspapers: Rapid City Journal, Hill City Prevailor, and Wall Courant.

Proposals will be received via USPS mail at:

Mr. Daniel Mulally  
Project Administrator  
West Dakota Water Development District  
402 St. Joseph St., Suite 6  
Rapid City, SD 57703

Or by email at: [wdwdd0@outlook.com](mailto:wdwdd0@outlook.com)

All proposals shall include a cover letter and resume. The cover letter should set forth the rationale and interest in holding the position to assist the WDWDD. Each proposal should include an hourly rate and any minimum fee for services. A rate sheet should be included for other costs such as travel, copying, para-legal work and other items anticipated to be billed separately from the hourly legal rate.

**POSITION VACANCY ANNOUNCEMENT**  
**FEDERAL PUBLIC DEFENDER**  
**NORTHERN AND SOUTHERN DISTRICTS OF IOWA**

The U.S. Court of Appeals for the Eighth Circuit is accepting applications [under authority of 18 U.S.C. ' 3006A(g)(2)(A)] from all qualified persons for the position of Federal Public Defender for the Northern and Southern Districts of Iowa headquartered in Des Moines. The term of appointment is four years; annual salary at an amount not to exceed the salary of the U.S. Attorney for the district, currently \$166,500. The Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel. An applicant must be/have been: (1) admitted to practice before the highest court of at least one state; (2) a member in good standing of every other state bar of which he/she is a member; (3) a minimum of five years= criminal practice, preferably with significant criminal trial experience; (4) administrative expertise; (5) reputation for integrity; and (6) a commitment to the representation of those unable to afford counsel. Federal Public Defenders may not engage in the private practice of law and are subject to judiciary financial disclosure requirements. A background investigation is required.

Application forms may be obtained on line or in hard copy from the Clerk of the U.S. District Court in the Northern District of Iowa at [www.iand.uscourts.gov](http://www.iand.uscourts.gov), Clerk of the U.S. District Court in the Southern District of Iowa at [www.iasd.uscourts.gov](http://www.iasd.uscourts.gov), or Circuit Executive=s Office in St. Louis, Missouri by e-mail at [CE8employment@ca8.uscourts.gov](mailto:CE8employment@ca8.uscourts.gov) or by phone 314-244-2600. Applications should be submitted only by the applicant personally and should indicate the applicant's willingness to serve if selected. Applications should be submitted to Ms. Millie B. Adams, Circuit Executive, 111 South 10<sup>th</sup> Street, Suite 26.325, St. Louis, Missouri 63102-1116, and must be received by **July 1, 2019**. The U.S. Courts are equal opportunity employers.

**POSITION VACANCY ANNOUNCEMENT**  
**FEDERAL PUBLIC DEFENDER**  
**DISTRICTS OF NORTH AND SOUTH DAKOTA**

The U.S. Court of Appeals for the Eighth Circuit is accepting applications [under authority of 18 U.S.C. ' 3006A(g)(2)(A)] from all qualified persons for the position of Federal Public Defender for the Districts of North and South Dakota headquartered in Pierre. The term of appointment is four years; annual salary at an amount not to exceed the salary of the U.S. Attorney for the district, currently \$166,500. The Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel. An applicant must be/have been: (1) admitted to practice before the highest court of at least one state; (2) a member in good standing of every other state bar of which he/she is a member; (3) a minimum of five years= criminal practice, preferably with significant criminal trial experience; (4) administrative expertise; (5) reputation for integrity; and (6) a commitment to the representation of those unable to afford counsel. Federal Public Defenders may not engage in the private practice of law and are subject to judiciary financial disclosure requirements. A background investigation is required.

Application forms may be obtained on line or in hard copy from the Clerk of the U.S. District Court in the District of North Dakota at [www.ndd.uscourts.gov](http://www.ndd.uscourts.gov), Clerk of the U.S. District Court in the District of South Dakota at [www.sdd.uscourts.gov](http://www.sdd.uscourts.gov), or Circuit Executive=s Office in St. Louis, Missouri by e-mail at [CE8employment@ca8.uscourts.gov](mailto:CE8employment@ca8.uscourts.gov) or by phone 314-244-2600. Applications should be submitted only by the applicant personally and should indicate the applicant's willingness to serve if selected. Applications should be submitted to Ms. Millie B. Adams, Circuit Executive, 111 South 10<sup>th</sup> Street, Suite 26.325, St. Louis, Missouri 63102-1116, and must be received by **July 1, 2019**. The U.S. Courts are equal opportunity employers.

# CAREER CENTER

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

## ATTORNEYS

### Family Law Attorney - Sioux Falls

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

### STAFF ATTORNEY: MISSION

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

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

**SALARY:** Competitive, depending on experience.

DPLS has excellent fringe benefits, including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

**CLOSING DATE:** Open until filled.

**APPLICATION INFORMATION:** Please submit a letter of interest and resume to: John J. Buchy, Executive Director, Dakota Plains Legal Services, PO Box 727, Mission, SD 57555, (605) 856-4444, [dpls1@gwtc.net](mailto:dpls1@gwtc.net).

Native Americans, Women and Minorities are

encouraged to apply. Dakota Plains Legal Services is an Equal Opportunity Employer.

### MANAGING ATTORNEY: EAGLE BUTTE

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

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

Applicant must have at least one year's experience in the practice of poverty law or Indian law, with trial and appellate experience in state and federal courts or two years' experience in the general practice of law. If Applicant does not possess this experience we would consider Applicant for a staff attorney position until qualified to be a Managing Attorney.

**SALARY:** Competitive, depending on experience.

DPLS has an excellent fringe benefits package including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

**CLOSING DATE:** Open until filled.

**APPLICATION INFORMATION:** Please submit a letter of interest and resume to: John J. Buchy, Executive Director, Dakota Plains Legal Services, PO Box 727, Mission, SD 57555, (605) 856-4444, [dpls1@gwtc.net](mailto:dpls1@gwtc.net)

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



## **MANAGING ATTORNEY - PINE RIDGE**

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

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

Applicant must have at least one-year experience in the practice of poverty law or Indian law, with trial and appellate experience in state and federal courts or two years' experience in the general practice of law.

**SALARY:** Competitive, depending on experience.

DPLS has an excellent fringe benefits package including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

**CLOSING DATE:** Open until filled.

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

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

## **Manager, Corporate Coverage Attorney: South Sioux City**

Due to recent promotions within Great West, we currently have an opening for an experienced Manager, Corporate Coverage in our South Sioux City, Nebraska, location. In this position, you will provide guidance and support to manage a top-notch team of coverage attorneys handling corporate coverage opinions for trucking claims across the country. This position qualifies for our robust, nationwide relocation package!

### **Key Responsibilities:**

- Advise claims management and employees with respect to legal issues that apply to their claims.
- Assist coverage attorneys with preparing coverage opinions and provide guidance as needed.
- Educate and train staff on coverage issues and claims handling practices based on company standards.
- Foster efficient and appropriate claims practices across the company.
- Oversee litigation, collaborate with claims managers, and supervise outside counsel on complex claims.

We are looking for candidates with:

- Juris Doctor degree. You must be licensed to practice in at least one state. CPCU/AIC designations helpful.
- 10+ years of experience in a progressive, legal role, preferably in the insurance industry.
- Minimum of 5 years in a supervisory or management position with an emphasis on coaching and developing staff.
- Excellent communication and public speaking skills.
- Exposure to bodily injury claims and corporate coverage opinions.

• Strong attention to detail with the ability to adapt quickly to situations that require immediate attention. We offer you a challenging career with a competitive compensation and benefits package including:

- A 37.5 hour work week
- Paid vacation and paid sick leave
- A formalized training program
- Paid study materials, exam fees, study day, and monetary awards for professional development
- Opportunities to impact the organization through participation in committees (Green Team, Safety, and Wellness, etc.)
- Support of a healthy lifestyle through a wellness program and gym subsidies

. To apply visit [https://recruiting.adp.com/srccar/public/RTI.home?c=1111841&d=GWCC\\_Careers&r=5000484262806#/](https://recruiting.adp.com/srccar/public/RTI.home?c=1111841&d=GWCC_Careers&r=5000484262806#/).

## **Attorney – Department of Revenue: Pierre**

**Innovation** –We are always looking for new ways to push forward and evolve.

**Professional growth**– We provide new challenges for you to tackle and provide valuable trainings.

**Career development** – Investing in our employees' development through our onboarding, mentoring, and leadership programs.

**Who we want**

- An attorney interested in practicing within a broad

range of legal subjects, including, but not limited to: taxation, Indian law, motor vehicle, alcoholic beverages, tobacco, lottery, and gaming.

- A highly motivated and experienced attorney with a passion for service and desire to make a difference.
- A dedicated individual who will represent the Department of Revenue with strong leadership skills and legal advice on a wide range of highly visible and sensitive issues.

What you will do

The duties of the Attorney include:

- Representing the department before state and federal court.
- Preparing briefs and participating in oral arguments.
- Providing legal services to all divisions with the department.
- Drafting administrative rules and assisting with the promulgation process.
- Providing legal advice to the Secretary, Deputy Secretary, and Division Directors of the department.
- Drafting and reviewing contracts and Requests for Proposals.
- Collaborating with other State agencies and departments.

What you need

Education/Licenses:

- Graduate of an accredited law school.
- Licensed to practice law in South Dakota or ability to become licensed within six months of employment.

The ideal candidate will have:

- Experience in state and federal court.
- Knowledge of litigation practice and strategies.
- Prior experience or interest in Indian law.
- Excellent written and verbal communication skills.
- Ability to analyze complex technical issues, facts, evidence and precedents to arrive at a logical interpretation.
- Ability to develop and maintain strong relationships with diverse groups.

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

Salary: \$65,000 - \$85,000 annually, depending on experience. Apply on line at <http://bhr.sd.gov/workforus> and reference job #11916.

### **Experienced Litigation Attorney: Sioux Falls**

Lynn, Jackson, Shultz & Lebrun, P.C., is a progressive and diverse full-service law firm with three offices in South Dakota, serving clients locally, regionally, and nationally. Our Sioux Falls office is seeking to add an experienced attorney to its litigation group. Our Firm's litigation group not only does insurance defense work, but also personal injury, commercial, construction, and trust litigation. The ideal candidate for this position must have at least five years of litigation experience, including trial work, and must be a problem solver and detail-oriented. Candidates for this position must possess excellent written and verbal communication skills, and must be licensed in South Dakota or willing to sit for the next South Dakota bar exam. Lynn Jackson offers a competitive salary, as well as an excellent benefit package, and our attorneys are provided with the latest in technology and continuing education to assist in their practice area. All applications will be confidential and should be directed to Eric Kerkvliet, 110 N. Minnesota Ave., Suite 400, Sioux Falls, SD 57104 or [ekerkvliet@lynnjackson.com](mailto:ekerkvliet@lynnjackson.com)

### **STAFF ATTORNEY: SISSETON**

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Sisseton, South Dakota, office. The Sisseton office serves the Lake Traverse, Flandreau and Yankton Indian Reservations in South Dakota and Grant, Roberts and Charles Mix counties in South Dakota, as well as Native Americans in the eastern half of South Dakota.

#### **QUALIFICATIONS/RESPONSIBILITIES:**

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

**SALARY:** Competitive, depending on experience.

DPLS has excellent fringe benefits, including generous leave benefits and employee insurance coverage

(medical, dental, life, disability).

CLOSING DATE: Open until filled.

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

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

### **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.

### **Practicing Attorney Level 4: Cheyenne, WY**

You must be licensed to practice law in Wyoming.

Provides legal representation to indigent clients charged with crime(s); conducts interviews with clients and witnesses; prepares motions, briefs, memoranda and other legal documents; argues motions before trial court; represents clients at court hearings and trial.

The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level.

Analyzes cases and advises clients on best course of action; prepares legal documents and appears at trial on behalf of client.

Consults with other attorneys in the office to formulate case strategy, plans for case, and agency work.

Stays current in legal literature in all aspects of relevant law to provide current assistance to clients and staff attorneys, including meeting CLE requirements.

Preference may be given to applicants who are active members of the Wyoming State Bar and licensed to practice as an attorney in this State.

#### **KNOWLEDGE:**

Ability to manage multiple cases/tasks; manage time, and prioritize tasks.

Knowledge of trial and hearing procedure and rules of evidence - must have the ability to present statements of fact, law, and argument clearly and logically in written and oral form.

Knowledge of criminal statutes, court procedures and legal research methods.

Skilled in managing caseload and responding quickly to changing priorities.

Knowledge of substantive and procedural laws in criminal justice, including state, federal, and administrative law.

#### **MINIMUM QUALIFICATIONS:**

Education:

Juris Doctorate

Experience:

7+ years of relevant legal experience

To apply please visit: [https://www.governmentjobs.com/careers/wyoming/jobs/2431985/atpa04-10466-practicing-attorney-level-4-cheyenne?department\[0\]=008-Trial&sort=PostingDate%7CDescending&pagetype=jobOpportunitiesJobs](https://www.governmentjobs.com/careers/wyoming/jobs/2431985/atpa04-10466-practicing-attorney-level-4-cheyenne?department[0]=008-Trial&sort=PostingDate%7CDescending&pagetype=jobOpportunitiesJobs)

### **Attorney: Rock Springs/Green River, WY**

You must be licensed to practice law in Wyoming. Provides legal representation to indigent clients charged with crime(s); conducts interviews with clients and witnesses; prepares motions, briefs, memoranda and other legal documents; argues motions before trial court; represents clients at court hearings and trial.

The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level.

Analyzes cases and advises clients on best course of action; prepares legal documents and appears at trial on behalf of client.

Consults with other attorneys in the office to formulate case strategy, plans for case, and agency work.

Stays current in legal literature in all aspects of relevant law to provide current assistance to clients and staff attorneys, including meeting CLE requirements.

Preference may be given to applicants who are active members of the Wyoming State Bar and licensed to practice as an attorney in this State.

#### **KNOWLEDGE:**

Ability to manage multiple cases/tasks; manage time, and prioritize tasks.

Knowledge of trial and hearing procedure and rules of evidence - must have the ability to present statements of fact, law, and argument clearly and logically in written and oral form.

Knowledge of criminal statutes, court procedures and legal research methods.

Skilled in managing caseload and responding quickly to changing priorities.

Knowledge of substantive and procedural laws in criminal justice, including state, federal, and administrative law.

#### **MINIMUM QUALIFICATIONS:**

Education:

Juris Doctorate

To apply please visit: [https://www.governmentjobs.com/careers/wyoming/jobs/2413432/atty99-10337-attorney-rock-springs-green-river?department\[0\]=008-Trial&sort=PostingDate%7CDescending&pagetype=jobOpportunitiesJobs](https://www.governmentjobs.com/careers/wyoming/jobs/2413432/atty99-10337-attorney-rock-springs-green-river?department[0]=008-Trial&sort=PostingDate%7CDescending&pagetype=jobOpportunitiesJobs)

### **Attorney: Casper, WY**

You must be licensed to practice law in Wyoming. Provides legal representation to indigent clients charged with crime(s); conducts interviews with clients and witnesses; prepares motions, briefs, memoranda and other legal documents; argues motions before trial court; represents clients at court hearings and trial.

The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level.

Analyzes cases and advises clients on best course of action; prepares legal documents and appears at trial on behalf of client.

Consults with other attorneys in the office to formulate case strategy, plans for case, and agency work.

Stays current in legal literature in all aspects of relevant law to provide current assistance to clients and staff attorneys, including meeting CLE requirements.

Preference may be given to applicants who are active members of the Wyoming State Bar and licensed to practice as an attorney in this State.

#### **KNOWLEDGE:**

Ability to manage multiple cases/tasks; manage time, and prioritize tasks.

Knowledge of trial and hearing procedure and rules of evidence - must have the ability to present statements of fact, law, and argument clearly and logically in written and oral form.

Knowledge of criminal statutes, court procedures and legal research methods.

Skilled in managing caseload and responding quickly to changing priorities.

Knowledge of substantive and procedural laws in criminal justice, including state, federal, and administrative law.

#### **MINIMUM QUALIFICATIONS:**

Education:

Juris Doctorate

To apply please visit: [https://www.governmentjobs.com/careers/wyoming/jobs/2414523/atty99-10356-attorney-casper?department\[0\]=008-Trial&sort=-PostingDate%7CDescending&pagetype=jobOpportunitiesJobs](https://www.governmentjobs.com/careers/wyoming/jobs/2414523/atty99-10356-attorney-casper?department[0]=008-Trial&sort=-PostingDate%7CDescending&pagetype=jobOpportunitiesJobs)

### **Practicing Attorney Level I: Casper, WY**

With oversight, handles a variety of misdemeanors and some lower level felonies such as repeat DUI, possession of controlled substance, and repeat domestic violence.

The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level.

Initial meeting with clients. Review charges, potential penalties, and evidence asserted against the client. Explain case process and procedure. Answer questions posed by client.

Meet with prosecutor and determine their position.

Review discovery / police reports/witness report in the case.

Review the evidence with the client and understand their position and what new evidence needs to be developed or investigated. Determine the client's position regarding a possible plea agreement.

Prepare potential motions to suppress evidence, or other pretrial motions.

Meet/conference with client prior to court appearances. Appear in Court with client. Resolve and finalize case through change of plea hearing, suppression hearing, or trial.

Preference will be given to those applicants who have handled a variety of misdemeanors.

#### **KNOWLEDGE:**

Wyoming Criminal Law

United State Constitution

#### **MINIMUM QUALIFICATIONS:**

Education:

Juris Doctorate

Experience:

0-2 years of relevant legal experience.

To apply please visit: [https://www.governmentjobs.com/careers/wyoming/jobs/2363398/atpa01-10007-practicing-attorney-level-i-casper?department\[0\]=008-Trial&sort=PostingDate%7CDescending&pagetype=jobOpportunitiesJobs](https://www.governmentjobs.com/careers/wyoming/jobs/2363398/atpa01-10007-practicing-attorney-level-i-casper?department[0]=008-Trial&sort=PostingDate%7CDescending&pagetype=jobOpportunitiesJobs)

### **Practicing Attorney Level I: Gillette, WY**

With oversight, handles a variety of misdemeanors and some lower level felonies such as repeat DUI, possession of controlled substance, and repeat domestic violence.

The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level.

Initial meeting with clients. Review charges, potential penalties, and evidence asserted against the client. Explain case process and procedure. Answer questions posed by client.

Meet with prosecutor and determine their position.

Review discovery / police reports/witness report in the case.

Review the evidence with the client and understand their position and what new evidence needs to be developed or investigated. Determine the client's position regarding a possible plea agreement.

Prepare potential motions to suppress evidence, or other pretrial motions.

Meet/conference with client prior to court appearances. Appear in Court with client. Resolve and finalize case through change of plea hearing, suppression hearing, or trial.

Preference will be given to those applicants who have handled a variety of misdemeanors.

#### **KNOWLEDGE:**

Knowledge of Wyoming Criminal Law

Knowledge of the United States Constitution

#### **MINIMUM QUALIFICATIONS:**

Education:

Juris Doctorate

Experience:

0-2 years of relevant legal experience.

To apply please visit: [https://www.governmentjobs.com/careers/wyoming/jobs/2335521/atpa01-09856-practicing-attorney-level-i-gillette?department\[0\]=008-Trial&sort=PostingDate%7CDescending&pagetype=jobOpportunitiesJobs](https://www.governmentjobs.com/careers/wyoming/jobs/2335521/atpa01-09856-practicing-attorney-level-i-gillette?department[0]=008-Trial&sort=PostingDate%7CDescending&pagetype=jobOpportunitiesJobs)



## COMPLIANCE MANAGER

Operations/Compliance Manager - Pierre

Reports to: Chief Financial Officer

The Operations/Compliance Manager is a newly created position responsible for the policies, systems, and practices that drive the work of the Foundation. Leading the Foundation's administrative practices and compliance protocols while challenging the Foundation to complete continuing systems improvement requires high attention to detail and an ability to zoom out to see and apply best practices in the industry. This individual must be comfortable working in a fast-paced environment and possess the ability to be proactive in managing competing priorities. The successful candidate will have excellent interpersonal skills and a high level of integrity and professionalism.

### Compliance

- Provide structure and oversight to fund administration ensuring accuracy is maintained and donor intent is followed
- Ensure funds are administered in accordance with fund agreements
- Ensure the expenditure of funds complies with the terms of the gift instrument, applicable legal and accounting standards, and Foundation policy
- Review and approve all fund agreements prior to execution
- Review and approve changes to existing fund agreements
- Maintain endowment and gift documentation and its accessibility to end users
- Promote best practices that result in greatest utilization of gift funds consistent with applicable legal standards and foundation policies
- Provide interpretations of donor intent as matters arise
- Coordinate with development team on periodic stewardship reports as needed
- Provide oversight of fee structure for funds

### Systems Management

- Oversee administrative processes and ensure efficient operating systems
- Construct and monitor reliable risk management systems including disaster preparedness
- Create, monitor, and refine policies and procedures to provide responsive customer service within control structure and applicable laws and regulations
- Ensure key processes and timelines are documented

in all departments

- Act as an advisor to SDCF's business operations
- Assist with internal control processes to ensure adequate control environment
- Maintain official records of SDCF and ensure directors have resources and information required to fulfill fiduciary duty
- Monitor administrative policies and procedures in human resources
- Oversee maintenance and updating of employee policies and handbook
- Lead in assuring physical plant, technology, and capital equipment plan are keeping pace with Foundation growth

### Program Administration

- Provide input, structure, and process for Foundation grantmaking programs, including Nonprofit Savings Account (NSA) and, Community Savings Account (CSA) programs to help ensure efficient and successful programs
- Assist with ad hoc reporting required by third party funding agencies, fundholders, and other constituent groups
- Ensure that SDCF remains in compliance with national standards for community foundations

### Desired Education and Experience

- Minimum Bachelors level degree, masters preferred
  - At least five years of progressive professional work experience
  - Legal, business, finance, project management, philanthropy or related field with demonstrated experience in policy, procedures, practices, and systems improvement applications is desired
- This position is based in Pierre. For a complete job description and required qualifications, please email [info@sdcommunityfoundation.org](mailto:info@sdcommunityfoundation.org).



# JUNE



Disciplinary Board.....	June 17-18.....	Ramkota, Rapid City
2019 Annual Meeting.....	June 19-21.....	Ramkota, Rapid City
Bar Commission Retreat.....	July 23-24.....	Pierre
2019 Estate Planing CLE.....	September 20.....	Ramkota, Sioux Falls
Swearing In Ceremony.....	October 18.....	Pierre

*NOTICE IS HEREBY GIVEN that the Annual Meeting of The State Bar of South Dakota will be held at the Ramkota Hotel in Rapid City, South Dakota, on June 21, 2019, commencing at the hour of 8:15 a.m.*

*This notice is given pursuant to Section 24 of the Bylaws of The State Bar to all Active and Inactive members thereof.*

*Dated at Pierre, South Dakota, this 30th day of April, 2019.*

Andrew L. Fergel  
Secretary-Treasurer  
The State Bar of South Dakota