

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENTS) RULE 18-07
AND ADOPTIONS TO: APPENDIX A.)
TO CHAPTER 16-19 DISCIPLINE)
OF ATTORNEYS)

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendments and adoptions relating to Appendix A. to Chapter 16-19, Discipline of Attorneys and the Court having considered the proposed amendments adoptions and being fully advised in the premises, now, therefore, it is

ORDERED that Appendix A. to Chapter 16-19, Discipline of Attorneys be and it is hereby amended to read as follows:

APPENDIX A. TO CHAPTER 16-19

DISCIPLINE OF ATTORNEYS.

SDCL 16-19-22. Supreme Court exclusive power to disbar or suspend attorney. The Supreme Court has the sole power to disbar and strike from the roster any attorney—~~or~~. The Supreme Court also has the power to suspend any attorney from the practice for such time not to exceed three years, to publicly censure an attorney, and to impose probation or conditions as shall seem just for cause shown.

SDCL 16-19-24. Disciplinary board of State Bar--Appointment and terms of members--Vacancies. There is hereby established a seven member board to be known as "the disciplinary board of the State Bar of South Dakota" (hereinafter referred to as the "board"), ~~consisting of~~. The President of the State Bar shall appoint six active members of the State Bar, and the Chief Justice shall appointed by the President of the State Bar and one lay member who. The lay member shall be a resident of South Dakota of and twenty-one years of age or more, appointed by the Chief Justice. Attorney vacancies shall be filled by the President of the State Bar, and a lay vacancy shall be filled by the Chief Justice.

The term of service for members shall be one term of five years. Except as provided herein, no member shall serve for more than five years. An appointment to fill an unexpired term shall not constitute an appointment prohibiting an appointment for a subsequent term provided that the appointment for an unexpired term does not exceed three years. It is the intent of this rule to provide for the orderly and systematic rotation of board members such that not more than two ~~lawyer~~ attorney members complete terms each calendar year. In the event of death, disability, or resignation, resulting in multiple members completing terms in a single calendar year and in order to restore the ~~orderly and~~ systematic rotation of board membership, the term of appointment by the appointing person may be either shortened or extended, not to exceed two years' deviation from a five year term.

SDCL 16-19-26. Meetings of the board-Quorum--Vote required for action. The board shall meet at least quarterly at times fixed by the chair. The board may meet by the use of audio or visual medium. Four members shall constitute a quorum. The board shall act only with the concurrence of four or more members. ~~The board may meet by the use of audio or visual medium.~~

SDCL 16-19-28. Disqualification of board members in particular proceedings--Ad hoc appointments to restore full membership. Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. In the event of recusal of attorney members of the board, the President of the State Bar shall appoint active members of the State Bar, preferably members with previous service on the board, to restore the board to full membership. In the event of the recusal of the lay member, the Chief Justice shall appoint a lay person having the qualifications set forth in ~~subdivision~~ § 16-19-24. Each such member shall fulfill all the responsibilities of the board member replaced.

SDCL 16-19-29. Powers and duties of disciplinary board generally. The board shall exercise the powers and perform the duties conferred and imposed upon it by rule of the Supreme Court, including the power and duty:

- (1) To consider and investigate any alleged ground for discipline or alleged ~~incapacity~~ medical condition of any attorney called to its attention, or upon its own motion, and to

take such action ~~with respect thereto as shall be~~ appropriate to effectuate the purposes of this chapter. As used in this chapter, "medical condition" is any condition that deprives an attorney of the ability to act in compliance with the Rules of Professional Conduct and any other standards required of practicing attorneys.

(2) To appoint a board secretary, board counsel, deputy board counsel, and such personnel and legal counsel as may from time to time be required to assist in the performance of the functions and duties of the board.

(3) To hold informal conferences

(4) To privately reprimand attorneys for misconduct.

(5) To maintain permanent records of all matters processed and the disposition thereof.

(6) To prosecute all disciplinary proceedings before the Supreme Court.

(7) To prosecute all proceedings before the Supreme Court to determine the ~~incapacity~~ medical condition of attorneys as set forth in §§ 16-19-88 to 16-19-91, inclusive.

(8) To hear applications for approval ~~or~~ and complaints for revocation of approval of disqualified persons to act as legal assistants under ~~subdivisions~~ §§ 16-18-34.4(2) to 16-18-34.4(4), inclusive.

(9) To adopt internal rules of procedure not inconsistent with this chapter and to file the same with the clerk of the Supreme Court.

~~(10) Provided, however, that j~~ Jurisdiction for complaints against members of the judiciary for conduct that occurred prior to becoming a member of the judiciary shall be vested with the Judicial Qualifications Commission.

SDCL 16-19-31. License to practice law as trust--Duty to conform to standards. A license to practice law in this state is a privilege and a continuing proclamation by the Supreme Court that a licensed attorney is an officer of the ~~court~~ Court, is fit to be entrusted with legal and judicial matters, and is able to aid in the administration of justice. It is the duty of an attorney to act, both professionally and personally, in conformity with the standards of conduct governing members of the bar.

SDCL 16-19-32. Violations by attorneys as grounds for discipline. An act or omission by an attorney, individually or in concert with others, which violates the attorney's oath of office, the laws governing attorney conduct, or the Rules of

Professional Conduct, or other disciplinary rules adopted by the Supreme Court, is misconduct and is grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

SDCL 16-19-33. Specific grounds for discipline of attorneys. The following shall similarly constitute misconduct and shall be grounds for discipline:

- (1) Conviction of a crime as set forth in § 16-19-36;
- (2) Disobedience to, or violation of an order of the court requiring the attorney to act or refrain from acting in a particular manner;
- (3) Violation of any of the duties of an attorney ~~or counselor~~ as prescribed in chapter 16-18;
- (4) Conviction of any of the offenses relating to attorneys ~~or counselors~~ set out in chapter 16-18;
- (5) Violation of ~~any bylaw, rule, or regulation duly adopted by the State Bar and approved by the Supreme Court~~ the provisions of § 16-17-10;
- (6) Engaging or attempting to engage in the practice of law in this state, while not being an active member of the State Bar in good standing;
- (7) Violation of the prohibitions of § 16-18-29;
- (8) Violation of §§ 16-18-20.1 or 20.2;
- (9) Violation of §§ 16-18-34 to 16-18-34.5, inclusive, by a supervising attorney or by a legal assistant under the attorney's supervision.
- (10) Violation of the applicable provisions of the South Dakota Code of Judicial Conduct, appendix to chapter 16-2.

SDCL 16-19-34. Deceit and collusion as grounds for disbarment--Treble damages. An attorney ~~and counselor~~ who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge, or party to an action or proceeding, is ~~liable~~ subject to discipline, and shall forfeit to the injured party treble damages to be recovered in a civil action.

SDCL 16-19-35.1. Petition by board for temporary suspension. The board may petition the Supreme Court to temporarily suspend an attorney from the practice of law or to impose restrictions or conditions on the attorney's practice pending full investigation ~~and disposition~~, where the attorney poses a risk or danger to clients, clients' property, or the public, where the board can demonstrate a substantial likelihood

that the attorney will ultimately be disciplined, and where the charges under investigation, if ultimately proven, would likely result in a suspension or disbarment. The board counsel shall serve a copy of the petition upon the ~~respondent~~ attorney by certified mail. The ~~respondent~~ attorney shall file with the Supreme Court a response within ten days of service or at such time as the Supreme Court may direct, and serve a copy of the response on the board counsel. The Supreme Court may schedule a hearing before the Supreme Court or order a hearing to be conducted by a referee. To the extent possible, these proceedings shall be conducted on an expedited basis. The Supreme Court may deny the petition, suspend the attorney pending formal proceedings, ~~or~~ impose ~~such~~ upon the attorney restrictions or conditions for the continued practice of law ~~upon the respondent attorney~~, or enter protective and remedial orders as the Supreme Court deems appropriate.

A temporarily suspended attorney shall not practice law or act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive.

SDCL 16-19-36. Attorney's conviction of serious crime to be reported to Supreme Court--Definition of serious ~~erime~~disciplinary board. Any attorney and the clerk of any court in this state in which an attorney is convicted of a serious crime, except those misdemeanor traffic offenses or traffic ordinance violations not involving the use of alcohol or drugs, shall within ten days of said conviction transmit a ~~certificate thereof~~ certified judgment of conviction to the ~~Supreme Court~~ ~~certificate~~ disciplinary board. If such certified judgment of conviction is for a serious crime as defined in §16-19-37, the board shall promptly transmit the same to the Supreme Court. ~~The term "serious crime" includes any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime.~~

SDCL 16-19-37. Suspension from practice on conviction of serious crime--Setting aside order. If any attorney has been convicted of a serious crime ~~as defined in § 16-19-36~~, the Supreme Court may enter an order immediately suspending the attorney from engaging in the practice of law, pending final

disposition of a disciplinary proceeding to be commenced upon such conviction. The term "serious crime" includes any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime. Upon good cause shown, the Supreme Court may set aside such order suspending the attorney from engaging in the practice of law when it appears in the interest of justice so to do. An order suspending an attorney from the practice of law pursuant to this section is a suspension of the attorney for the purpose of §§ 16-19-74 to 16-19-82, inclusive, unless the Supreme Court shall otherwise order.

SDCL 16-19-38. Reinstatement of suspended attorney on reversal of conviction--Pending proceedings unaffected. An attorney suspended under the provisions of § 16-19-37 will be reinstated immediately upon the filing of a certificate certified document demonstrating that the underlying conviction of a serious crime has been reversed ~~but the~~. The reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

SDCL 16-19-42. Complaint and reference for investigation and report in proceeding initiated by Attorney General. If the investigation of an attorney's conduct is initiated by the Attorney General, the Attorney General shall file a written complaint with the Supreme Court. The Supreme Court ~~which~~ shall refer the matter to the board for an investigation and report pursuant to §§ 16-19-45 to 16-19-64, inclusive.

SDCL 16-19-44. Individual complaint filed with board or Supreme Court--Reference for investigation and report.

(A) An individual may initiate an investigation of an attorney's conduct by filing a written and signed complaint with the board secretary ~~or designee~~ in such form as the board may prescribe. The complaint must allege facts. Conclusions, opinions, and suppositions shall not be considered.

(1) Board counsel or an attorney board member shall dismiss complaints outside the board's jurisdiction, frivolous complaints, and complaints that fail to state a claim upon which

relief could be granted utilizing the same standard of review as would be used by a court reviewing a matter under § 15-6-12(b)(5).

(2) Copies of such dismissals shall be provided to the board and the complainant. A complainant dissatisfied with such a dismissal may, within ten days of such dismissal, request in writing a review by the board. The board shall review the complainant's written request at its next regular or special meeting.

(3) The board shall proceed on such all other complaints in accordance with §§ 16-19-50 to 16-19-64, inclusive.

~~(B) The board secretary or designee shall dismiss complaints outside the board's jurisdiction, frivolous complaints and complaints which fail to allege facts which give rise to the board's jurisdiction utilizing summary judgment standards set forth in chapter 15-6. Conclusions, opinions, suppositions and arguments shall not be considered. Copies of such dismissals shall be provided to the board. A complainant dissatisfied with such a dismissal may, within ten days of such dismissal request in writing a review by the board which review shall be considered by the board at its next regular or special meeting.~~

(CB) In the alternative, an individual may initiate an investigation of an attorney's conduct by filing a written complaint with the clerk of the Supreme Court ~~a written complaint~~. A complaint of attorney misconduct made directly to the Supreme Court shall comply with the following requirements:

(1) The complaint shall be signed and sworn to by the complainant.

(2) The complaint shall fully state all the facts relied upon by the complainant and shall identify all sources of the factual information. Conclusions, opinions, and suppositions of the complainant shall not be considered.

(3) If the alleged misconduct arose in a criminal case, the complaint shall state the county, court, and file number of the case file, whether there was a conviction, and the status of all appellate review, including pending habeas corpus or other post-conviction relief. Copies of any final decision ~~of~~ from appellate or habeas corpus review, ~~or~~ or post-conviction proceedings, or if pending, ~~of~~ of the petition, shall be attached.

(4) The complaint shall state whether complainant has previously filed a complaint with the board alleging similar misconduct by the attorney. A copy of any ~~board's disposition~~ letter of disposition by the board shall be attached.

(DC) If the complaint fails to comply with any of the requirements of subsection (EB), the clerk of the Supreme Court shall forward the complaint to the board secretary-treasurer of the State Bar and the complaint shall be treated as if it had been initiated with the board pursuant to ~~subsection~~ § 16-19-44 (A).

(ED) In the event that all requirements of this rule have been met, the Supreme Court shall proceed as follows:

(1) If the Supreme Court shall determine the alleged facts raise an issue of noncompliance with the Rules of Professional Conduct, the Supreme Court shall refer the matter to either the board or the Attorney General for an investigation and report pursuant to §§ 16-19-45 to 16-19-64, inclusive.

(2) Complaints that are frivolous, unfounded in fact, or fail to raise an issue of noncompliance with applicable Rules of Professional Conduct shall be dismissed by the Supreme Court.

(3) Allegations of ineffective assistance of counsel or other attorney conduct which has been raised on appeal or habeas is deemed to be res judicata to the extent addressed by the reviewing court. The complaint process is neither a substitute for nor a precursor to a habeas corpus or post-conviction petition, and complaints alleging misconduct that would appropriately be alleged in a habeas corpus or post-conviction petition shall be deemed premature and dismissed by the Supreme Court.

(4) If the Supreme Court determines the board has previously investigated the complaint, the Supreme Court may, in its discretion, order the board to file a report with the ~~court reporting~~ Court on the nature and results of the board's investigation. Upon receipt of the report, the Supreme Court may determine whether the complaint presents new or additional facts which warrant further investigation. If the Supreme Court determines it is warranted, it may order further investigation, or, if not warranted, may dismiss the complaint.

SDCL 16-19-45. Investigation by board on reference-- Report and recommendation filed with Supreme Court. When an investigation of an attorney's conduct has been referred to the board for investigation ~~it~~, the board shall proceed to make a thorough investigation as provided in this chapter and file a report and recommendation with the Supreme Court.

SDCL 16-19-46. Proceedings not to be abated for failure to prosecute, or settlement or restitution. Failure of a complainant to sign a complaint or to prosecute a charge, or the settlement or compromise between the complainant and the attorney, shall not justify abatement of the processing of any complaint.

SDCL 16-19-48. Transfer to medical inactive status of respondent pleading disability for a medical condition. If, during the course of a disciplinary investigation or proceeding, the respondent attorney claims to suffer from a disability by reason of mental or physical infirmity or illness, or an addiction to drugs or intoxicants, which makes it impossible for the respondent to make an adequate defense be unable to assist in the attorney's defense to a disciplinary complaint because of a medical condition, the Supreme Court shall enter an order immediately transferring the respondent attorney to disability medical inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of § 16-19-89 attorney's ability to comply with the Rules of Professional Conduct and § 16-19-31. The determination shall be made in a proceeding instituted in accordance with the provisions of § 16-19-89. An attorney transferred to disability medical inactive status shall not ~~(be permitted to)~~ practice law ~~or~~. An attorney transferred to medical inactive status shall not act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. The Supreme Court shall enter such orders as are necessary to notify the attorney's clients of the attorney's change in status.

SDCL 16-19-49. Resumption of disciplinary proceedings when respondent not incapacitated attorney no longer on medical inactive status. If the Supreme Court ~~shall~~ determines that a respondent an attorney described by § 16-19-48 is not incapacitated from practicing law able to assist in the attorney's defense to a disciplinary complaint, it shall take such action as it deems proper and advisable necessary including a direction for the resumption of the disciplinary proceeding against the respondent attorney.

SDCL 16-19-50. Accused attorney to be given opportunity to state position. Except in matters dismissed in accordance with subsection § 16-19-44 (B) (A) (1), no disposition shall be undertaken by the board or recommendation made by the

Attorney General until the ~~accused~~ attorney shall have been afforded a reasonable opportunity to state the attorney's position with respect to the allegations.

SDCL 16-19-51. Procedure required in investigations by board or ~~attorney general~~ Attorney General. Investigations by the board or by the ~~attorney general~~ Attorney General shall be conducted as provided by §§ 16-19-52 to 16-19-62, inclusive.

SDCL 16-19-53. Methods of investigation to be used-- Informal conference. An investigation by the board or by the Attorney General may entail inquiries by mail, consultation with the ~~accused~~ attorney, taking sworn statements or depositions, and investigation by the board's counsel or the Attorney General's staff.

SDCL 16-19-54. Attorney's duty to respond to board. Every attorney shall promptly and appropriately respond to any complaint ~~or~~, letter, or inquiry provided by any member of the board. In the event of failure to respond an attorney is subject to private reprimand by the board, or, after hearing on recommendation of the board, to discipline by the Supreme Court. An attorney must appear at any hearing unless excused by the board or the Supreme Court.

SDCL 16-19-55. Subpoena power of board and Attorney General--Disobedience as contempt. A member of the board, the ~~board secretary,~~ its counsel or the Attorney General may issue a subpoena requiring any witness to attend at any place within the state and requiring such witness to produce pertinent books, papers, and documents, including client files and records of client funds, and may administer oaths and take testimony in regard to such matters. The willful failure of any person to respond to a subpoena, or the willful refusal of any person to testify, is a contempt against the Supreme Court and may be punished accordingly.

SDCL 16-19-58. ~~Certificate~~ Certified judgment of conviction as evidence against attorney. A ~~certificate~~ certified judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding based upon the conviction.

SDCL 16-19-59. Dismissal of complaint on finding not meritorious. If the board determines after an investigation that

the complaint is not meritorious, it shall dismiss the complaint and notify the complainant, the ~~accused~~ attorney, and such other persons as the board may deem appropriate. If the Attorney General determines after an investigation that the complaint is not meritorious, the Attorney General shall report such findings to the Supreme Court and recommend dismissal.

SDCL 16-19-60. Conditions imposed on attorney on finding of meritorious complaint--Dismissal on compliance. If it is determined after an investigation by the board that the complaint is meritorious, but that formal disciplinary proceedings are not warranted, the board and the attorney may agree in writing to hold the proceedings in abeyance for an appropriate period, provided the attorney ~~throughout the period~~ complies with specified reasonable conditions, ~~including throughout the period.~~ If it is determined that a medical condition as defined in § 16-19-29(1) is relevant to such complaint, the specified reasonable conditions shall include board access to the attorney's healthcare and medical information records relevant to the medical condition. Upon satisfactory compliance, the board may thereafter dismiss the proceedings and notify the complainant and such other persons as the board deems appropriate. If, after an investigation, the Attorney General finds such action warranted, the Attorney General shall report the Attorney General's findings to the Supreme Court and recommend that such action be taken by the board.

SDCL 16-19-61. Notice to attorney of report and proposal for private reprimand. If it is determined after an investigation and hearing that the complaint is meritorious and a private reprimand is warranted, a written report of the findings and proposed action shall be prepared and sent by certified mail to ~~an accused~~ the attorney by the board.

SDCL 16-19-62. Response by attorney to proposal for private reprimand--Report and findings by board. ~~An accused--The~~ attorney shall have twenty days in which to agree ~~to,~~ or object to the findings and proposed action and demand that formal proceedings be initiated in lieu of a private reprimand. Silence shall be deemed to be an agreement with the findings and proposed action. After twenty days or upon the ~~accused~~ attorney's agreement, the board shall report its findings to the Supreme Court. Upon filing, the findings constitute a private reprimand.

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SDCL 16-19-65. Consent by attorney to disbarment--
Contents of affidavit. An attorney who is the subject of an investigation into, or a pending proceeding involving allegations of misconduct, may consent to disbarment, but only by delivering to the board an affidavit to be prepared by the board in the following form:

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

In Re:)
)
_____) RESIGNATION
(Name))
)

Rule 18-07

State of _____) ss
)
)
County of _____)

I, _____, being duly sworn on oath, depose and say that my business address is _____ (Building No. and Name, if any, or Box No.), _____ (Street address, if any), _____ (City), _____ (State), _____ (Zip Code); and that my residence address is _____ (No. Street), _____ (City), _____ (State), _____ (Zip Code). ~~and that I~~ hereby tender my resignation from membership in the State Bar of South Dakota and request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the State Bar.

I am aware that there is pending against me a formal complaint concerning alleged misconduct and/or that complaints, allegations, or instances of alleged misconduct by me are under investigation by the State Bar Disciplinary Board and that such complaints, allegations, and/or instances include:

(Brief description of alleged misconduct, including designation of provisions of the South Dakota Rules of Professional Conduct and statutes, if any, violated ~~and~~. Also, incorporate ~~incorporation~~ by reference of any formal complaint in a pending disciplinary proceeding.)

I do not desire to contest or defend against the above-described complaints, allegations, or instances of alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of the State Bar of South

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Dakota with respect to admission, discipline, resignation, and reinstatement of members of the State Bar, including SDCL 16-19-80. I understand that I shall not be permitted to practice law or act as a legal assistant within the State of South Dakota except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. I understand that any future application by me for reinstatement will be treated as an application by one who has been disbarred for misconduct, and that, on such application, I shall not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct upon which this resignation is predicated. I am aware that the Supreme Court may impose judgment for costs pursuant to SDCL 16-19-70.1.

Dated at _____, this ____ day of _____, 20 ____.

(Signature of Attorney)

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary Public
My Commission Expires: _____

SDCL 16-19-66. Disbarment by consent--Public disclosure of order. Upon receipt of an affidavit required by § 16-19-65, the board shall file it with the Supreme Court, and the ~~court~~ Court shall enter an order disbarring the attorney on consent. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of § 16-19-65 shall not be publicly disclosed or made available for use in any other proceeding except upon order of the Supreme Court. The clerk of the Supreme Court shall ~~order that redact~~ the portions of the affidavit which may identify the complainant or other persons whose privacy interests have not been waived or otherwise made public ~~be redacted by the clerk of the court~~ before public disclosure.

SDCL 16-19-67. Findings of fact, conclusions of law, and recommendation of investigating agency shall constitute a formal accusation. Formal disciplinary proceedings shall be conducted as follows:

(1) After investigation as provided in this chapter, the investigating agency may file with the Supreme Court findings of fact, conclusions of law or conclusions pertaining to violations of applicable Rules of Professional Conduct, and a

recommendation for formal discipline. Such filing constitutes a formal accusation against the ~~respondent~~-attorney.

(2) A copy of the formal accusation shall be served upon the ~~respondent~~ attorney by certified mail. Unless otherwise directed by the Supreme Court, the investigating agency shall continue to prosecute the formal proceedings. If the recommendation is for suspension or disbarment, it shall also include a finding as to the qualifications of the ~~accused~~ attorney to act as a legal assistant and a recommendation as to the restrictions or conditions of employment and supervision if the accused is allowed to act as a legal assistant under §§ 16-18-34.4 to 16-18-34.7, inclusive.

(3) The ~~respondent~~-attorney shall answer the formal accusation within thirty days and admit or deny the allegations therein. If the ~~accused~~-attorney admits the allegations or fails to answer, the Supreme Court may proceed to render judgment.

(4) If the ~~issue is joined it~~ attorney denies the allegations, the matter shall be tried by the Supreme Court which, or the Court may refer the matter for the taking of testimony and the making of findings and recommendations.

(5) A reference may be to any circuit court judge or to a referee appointed by the Supreme Court in the same manner as provided for reference of cases in the circuit court so far as applicable.

(6) The reference shall include the files and records of the board's investigation of the ~~accused~~-attorney, including the transcript of any hearing conducted by the board.

(7) If the referee recommends suspension or disbarment, the referee shall also make a finding as to the qualifications of the ~~accused~~-attorney to act as a legal assistant and a recommendation as to restrictions or conditions or employment and supervision if the ~~accused~~-attorney is allowed to act as a legal assistant under §§ 16-18-34.4 to 16-18-34.7, inclusive.

SDCL 16-19-68.1. Accused attorney to appear before Supreme Court. At any hearing before the Supreme Court, the ~~accused~~-attorney shall appear in person unless the attorney's presence is excused by the Court.

SDCL 16-19-70.1. Costs and expenses of disciplinary proceedings.

(a) State Bar of South Dakota. Costs and expenses incurred by the ~~Disciplinary Board of the State Bar of South Dakota~~ board in the investigation or prosecution of any disciplinary or reinstatement proceeding under this chapter shall be paid by the

State Bar, provided, however, that the expenses of a disciplinary proceeding may, in the discretion of the Supreme Court, be assessed against the attorney who is the subject of such proceeding.

(b) Attorney General. The Attorney General shall pay the costs and expenses ~~his~~ the Attorney General's office incurs in the investigation or prosecution of any disciplinary proceeding under this chapter.

(c) Unified Judicial System. The Unified Judicial System shall pay the costs and expenses incurred by the referee, the court reporter, and witnesses when a disciplinary action is referred to a referee under § 16-19-~~68~~67.

SDCL 16-19-70.2. Allowable costs and expenses. Expenses incurred by the board, the Attorney General, or the Unified Judicial System that were not covered by advance deposit and that have not been previously paid by the attorney who is the subject of a disciplinary or reinstatement proceeding, may be assessed by the Supreme Court against said attorney in favor of the State of South Dakota and/or the State Bar of South Dakota according to their respective interests ~~to~~. The assessments may cover the costs of a referee's mileage, meals, and rooms; a court reporter's mileage, meals, rooms, and transcript preparation; disciplinary counsel's mileage, meals, rooms, telephone charges, copying fees, and hourly charges for investigation and preparation for hearings, trials, and appeals, and appearances at hearings, trials, and appeals; witnesses' fees and mileage; and the board members' mileage, meals, and rooms, provided that proof of such costs shall be made as hereafter provided in § 16-19-70.3.

SDCL 16-19-70.3. Proof of costs and expenses required. An assessment for costs and expenses against an attorney requires the following proof:

(a) State Bar of South Dakota. A sworn statement of unreimbursed allowable costs filed with the clerk of the Supreme Court by the ~~state bar~~ State Bar prior to issuance of a final judgment.

(b) Attorney General and Unified Judicial System. Copies of approved expense vouchers for reimbursement of allowable costs and expenses associated with the disciplinary proceeding filed with the clerk of the Supreme Court by the ~~attorney general~~ Attorney General or the finance office of the Unified Judicial System prior to issuance of a final judgment.

SDCL 16-19-70.4. Judgment for costs against attorney. When judgment is rendered against an ~~accused~~ ~~the~~ attorney or whenever judgment for reinstatement of an attorney is entered, said attorney may, at the discretion of the Supreme Court, be directed to make appropriate reimbursement of costs and expenses as provided in §§ 16-19-70.1 and 16-19-70.2.

SDCL 16-19-72. Notice to attorney of disciplinary order from other jurisdiction. Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this state has been disciplined in another jurisdiction, the Supreme Court shall ~~forthwith~~ issue a notice directed to the attorney and a copy to the board containing:

- (1) A copy of the order from the other jurisdiction; and
- (2) An order directing that the attorney inform the Supreme Court, within thirty days from service of the notice, of any claim by the attorney predicated upon the grounds set forth in § 16-19-74 that the imposition of the identical discipline in this state would be unwarranted and the reasons therefor.
- (3) Any claim by the attorney that imposition of identical discipline is unwarranted may be referred to the board for an investigation and report to the Supreme Court.
- (4) In the event discipline imposed in another jurisdiction has been stayed, any reciprocal discipline in this state shall be deferred until such stay expires.

SDCL 16-19-74. Imposition of identical reciprocal discipline--Grounds for other disposition. The Supreme Court shall impose the identical discipline imposed in another jurisdiction unless the board or the attorney demonstrates, and the Supreme Court finds that on the record upon which the discipline is predicated, it clearly appears:

- (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) That there was such an infirmity of proof establishing the misconduct ~~as to give rise to the clear conviction~~ that the Supreme Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) That the misconduct established warrants substantially different discipline in this state; or
- (4) That the attorney's conduct subject of discipline in another jurisdiction has been or is currently under investigation by the board.

Where the Supreme Court determines that any of said elements exist, the Supreme Court shall enter such other order as it deems appropriate.

SDCL 16-19-75. Newspaper publication of suspension or disbarment. The clerk of the Supreme Court shall cause a notice of every suspension or disbarment to be published in a newspaper of general circulation in the judicial circuit or circuits in which the disciplined attorney maintained an office for the practice of law.

SDCL 16-19-78. Notice to office clients of disbarment or suspension. A disbarred or suspended attorney shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the attorney's disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension ~~and~~. The notice shall advise such clients to seek legal advice of the client's own choice elsewhere.

SDCL 16-19-79. Notice to opposing counsel and clients involved in litigation of ~~disbarment or suspension~~ or administrative proceedings--Leave of court or agency to withdraw. A disbarred or suspended attorney shall promptly notify, or cause to be notified, by certified mail, return receipt requested, each client who is involved in pending litigation or administrative proceedings, and each attorney for an adverse party in such cases, of the disbarment or suspension and the attorney's consequent inability to act as an attorney after the effective date of the disbarment or suspension. The notice to be given to the client shall advise the client of the ~~desirability and~~ importance of prompt substitution of another attorney of the client's own choice.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, the disbarred or suspended attorney shall move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the mailing address and place of residence of the client of the disbarred or suspended attorney.

SDCL 16-19-80. Affidavit of compliance filed by disbarred or suspended attorney. Within ten days after the effective date of disbarment or suspension the disbarred or

suspended attorney shall file with the Supreme Court an affidavit showing:

(1) That the attorney has fully complied with the provisions of the order and with this chapter; and with

(2) All That the attorney has fully complied with all requirements of other state, federal, and administrative jurisdictions to which the attorney is admitted to practice.

(3) Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications to the attorney may thereafter be directed.

SDCL 16-19-82. Noncompliance by attorney as contempt. The failure of an attorney, including an attorney who has been disbarred or suspended, to comply fully and promptly with any of the provisions of this chapter or with any order or judgment entered in disciplinary proceedings, shall constitute contempt and shall be punishable as such by the Supreme Court.

SDCL 16-19-83. Reinstatement order required before resumption of practice--Time of application--Waiting period after denial of reinstatement. No attorney suspended for more than three months or disbarred may resume practice until reinstated by order of the Supreme Court. ~~A person~~ An attorney who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. No petition for reinstatement under § 16-19-87 may be filed within one year following denial of a petition for reinstatement filed by or on behalf of the same person. An attorney suspended or disbarred shall not be permitted to act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive.

SDCL 16-19-84. Petition and hearing on reinstatement--Advance cost deposit--Burden of proof. A petition for reinstatement by a disbarred or suspended attorney under § 16-19-87 may be filed with the board secretary. ~~or designee of the board and~~ The petition shall be accompanied by a deposit in an amount to be set by the board to cover prior proceedings and anticipated expenses of the reinstatement proceeding. Upon receipt of the petition and the deposit, the board shall promptly schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that the petitioner has the moral qualifications, competency, and learning in law required for admission to practice law in this state and that petitioner's resumption of the practice of

law within the state will not be detrimental to the integrity and standing of the bar, ~~or~~ the administration of justice, or subversive of the public interest.

16-19-86. Board findings and recommendation on reinstatement--Placement on ~~court~~ Court calendar. After conducting a hearing on reinstatement, the board shall promptly file a report with the Supreme Court containing its findings and recommendations, together with the record. The Supreme Court shall then place the petition on the calendar for argument.

SDCL 16-19-88. Transfer to ~~disability~~ medical inactive status of attorney ~~judicially found incompetent~~ subject to certain judicial determinations or orders. ~~Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability inactive status effective immediately and for an indefinite period until the further order of the court. Where there is a determination by a court in any state that an attorney is a protected person as that term is defined in § 29A-5-102 or is the subject of a court order directing commitment to or inpatient treatment in a healthcare or treatment facility for a medical condition, the Supreme Court, upon proof of that fact, shall enter an order transferring such attorney to medical inactive status effective immediately and until the further order of the Court. A copy of such order shall be served upon such attorney, his the attorney's guardian, and/or the director of the institution to which the attorney he has been committed in such manner as the court Court may direct. The Supreme Court shall enter such orders as are necessary to notify the attorney's clients of the attorney's change in status.~~

SDCL 16-19-89. Petition by board for determination of ~~impairment of attorney's competency to practice law~~--Directions for investigation. The Disciplinary Board may petition the Supreme Court to suspend an attorney from the practice of law pending final hearing and disposition by the Supreme Court, upon good cause shown that the ~~attorney, by reason of physical, mental, or other condition, including the abuse of drugs or alcohol, is impaired and that the impairment substantially adversely affects the attorney's ability to competently practice law. The court may take or direct such action as it deems necessary or proper to determine whether the attorney is so~~

~~impaired, including the examination of the attorney by such qualified medical experts as the court shall designate.~~
attorney's ability to competently practice law is adversely affected by a medical condition as defined by § 16-19-29(1). The Court may take or direct such action as it deems necessary to determine whether the medical condition adversely affects the attorney's ability to competently practice law, including the examination of the attorney by such qualified medical experts as the Court shall designate.

SDCL 16-19-90. Notice to ~~respondent~~attorney of disability medical inactive status proceedings--Representation of ~~respondent~~attorney. The Supreme Court shall provide for such notice to the attorney ~~respondent~~ of proceedings in the matter as it deems proper and advisable~~necessary~~ and may appoint an attorney to represent the ~~respondent~~ attorney if ~~he~~ the attorney is without adequate representation.

SDCL 16-19-91. Burden of proof in ~~disability~~medical inactive status and reinstatement proceedings. In a proceeding seeking a transfer an attorney to ~~disability~~medical inactive status under § 16-19-92, the burden of proof shall rest with the board. In a proceeding seeking an order of reinstatement to active status under § 16-19-98, the burden of proof shall rest with the attorney. In either case, the burden of proof shall be by clear and convincing evidence.

SDCL 16-19-92. Order transferring ~~disabled~~ attorney to medical inactive status--Pending disciplinary proceedings. If, upon due consideration of the matter, the Supreme Court concludes that the attorney is ~~incapacitated from continuing~~ not competent to continue to practice law because of a medical condition as defined by § 16-19-29(1), it shall enter an order transferring him the attorney to ~~disability~~medical inactive status ~~on the grounds of such disability for an indefinite period and until the further order of the court~~Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance. An attorney transferred to ~~disability~~ medical inactive status shall not be permitted to practice law or act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. The Supreme Court shall enter such orders as are necessary to notify the attorney's clients of the attorney's change in status.

SDCL 16-19-93. Reinstatement order required before ~~disabled attorney on medical inactive status resumes practice.~~ No attorney transferred to ~~disability medical~~ inactive status under the provisions of §§ 16-19-88 or 16-19-92 may resume active status until reinstated by order of the Supreme Court.

SDCL 16-19-94. Petition for reinstatement by attorney ~~in disability on medical inactive status.~~ Any attorney transferred to ~~disability medical~~ inactive status under the provisions of §§ 16-19-88 or 16-19-92 shall be entitled to petition for reinstatement to active status once a year or at such shorter intervals as the Supreme Court may direct in the order transferring the ~~respondent attorney to disability medical~~ inactive status ~~or any modification thereof.~~ An attorney who has been placed on ~~medical disability~~ inactive status may not apply for reinstatement until any pending disciplinary investigation or proceeding has been concluded.

SDCL 16-19-95. Reinstatement of ~~disabled attorney on judicial declaration of competency to active status.~~ Where an attorney has been transferred to ~~disability medical~~ inactive status by an order in accordance with the provisions of § 16-19-88 and, thereafter, ~~in proceedings duly taken, he has been judicially declared to be competent, the Supreme Court may dispense with further evidence that his disability has been removed and may direct his reinstatement to active status upon such terms as are deemed proper and advisable~~ the attorney has shown that the attorney's ability to competently practice law is no longer adversely affected by the medical condition giving rise to the judicial determination or order, the Supreme Court may direct reinstatement to active status upon such terms as are deemed necessary.

SDCL 16-19-96. Waiver of physician-patient privilege by petition for reinstatement of ~~disabled attorney--Disclosure of names by petitioner.~~ The filing of a petition for reinstatement to active status by an attorney transferred to ~~disability medical~~ inactive status because of ~~disability a medical condition that adversely affected the attorney's competency to practice law~~ shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any ~~treatment of the attorney received that is relevant to that medical condition during the period of his disability medical~~ inactive status. The attorney shall be required to disclose the\

name of every psychiatrist, psychologist, physician, and hospital or other institution by whom or in which the attorney has had been examined or treated for the medical condition since this the attorney's transfer to disability medical inactive status and he the attorney shall furnish to the Supreme Court written consent to each to divulge such information and records as requested by court-appointed medical experts.

SDCL 16-19-97. Examination of petitioner for reinstatement--Expense of examination--Additional proof of competence required to practice law. Upon application for reinstatement by an attorney in disability on medical inactive status, the Supreme Court may take or direct such action as it deems necessary or proper to a determine determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the court shall designate. In its discretion, the court may direct that the expense of such an examination shall be paid by the attorney, and that the attorney establish proof of competence and learning in law, which proof may include certification by the bar examiners of his successful completion of an examination for admission to practice medical condition no longer affects the attorney's ability to competently practice law, including an examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination be paid by the attorney. The Supreme Court may require that the attorney establish further proof of competence and learning in law, which proof may include providing certification by the board of bar examiners that the attorney successfully completed all or any portion of the South Dakota bar examination after transfer to medical inactive status.

SDCL 16-19-98. Order of reinstatement on removal of disability to active status from medical inactive status. A petition for reinstatement of an attorney in disability on medical inactive status shall be granted by the Supreme Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he is fit competent to resume the practice of law. An attorney who has been placed on disability medical inactive status may not be reinstated until any pending disciplinary investigation or proceeding has been concluded.

SDCL 16-19-99. Attorney discipline--Proceedings confidential--Violation as contempt--Exceptions. All proceedings involving allegations of misconduct by an attorney or the disability of an attorney's competency to practice law because of a medical condition as defined by § 16-19-48 shall be kept confidential until

(a) a formal complaint asking for disciplinary action is filed with the Supreme Court by the board or the attorney general~~Attorney General, or the respondent attorney requests that the matter be public, or the investigation is predicated upon a conviction of the respondent attorney for a crime or, in matters involving alleged disability,~~

(b) upon the request of the attorney to have the matter be public, or

(c) if the investigation into the attorney's alleged misconduct is predicated upon a conviction for a crime reportable under § 16-19-37.

If the disciplinary proceeding involves alleged misconduct due to an attorney's medical condition as defined by § 16-19-29(1) and the Supreme Court enters an order transferring the respondent attorney to disability medical inactive status pursuant to §§ 16-19-88 or 16-19-92, only the order shall be public. The record shall remain confidential absent a written waiver by the attorney or an order of the Supreme Court. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. Any violation by any person of the requirement of confidentiality shall constitute contempt and shall be punishable as such by the Supreme Court. An attorney on medical inactive status shall be permitted to relate necessary information from the proceedings to the attorney's treating healthcare or medical practitioners for the purpose of restoring the attorney to active status. This section shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, the board of bar examiners, or to other jurisdictions investigating qualifications for admission to practice; or to an agency acting pursuant to order of the Chief Judge of the United States District Court for South Dakota concerning reciprocal discipline; or to law enforcement agencies investigating qualifications for government employment. In addition, the clerk of the Supreme Court shall transmit notice of all public discipline imposed by the Supreme Court on an attorney or the transfer to medical inactive status ~~due to disability of an~~

attorney to the national discipline data bank maintained by the American Bar Association.

SDCL 16-19-100. Retention of files and records of disbarred, suspended, or reinstated attorney. The board shall, unless otherwise ordered by the Supreme Court, retain its files and records of any attorney who has been disbarred, suspended, placed on probationary status, placed on medical inactive status pursuant to §§ 16-19-89 or 16-19-92, publicly censured, or who has been later reinstated after a prior discipline until such time as the attorney dies, at which time the records may be expunged.

**RULES OF PROCEDURE OF THE DISCIPLINARY BOARD
OF THE STATE BAR OF SOUTH DAKOTA**

These rules describe the usual procedures employed by the board in the discharge of its duties to investigate complaints alleging attorney misconduct. However, procedures may vary in individual cases as the board may in its discretion determine necessary according to the circumstances ~~of the matter being investigated and the conduct of the respondent attorney as the board may in its discretion determine to be appropriate.~~ Questions or requests for variance should be addressed to the member to whom a complaint has been assigned.

1. Each complaint received by the board secretary ~~or designee~~ that is not dismissed pursuant § 16-19-44 shall be distributed to the members of the board and board counsel for investigation and assigned ~~by the secretary or designee~~ to one member of the board who shall administer the initial investigation. The board secretary or designee shall

(a) Acknowledge receipt and notify the complainant of the name and address of the board member to whom the complaint has been assigned;

(b) Provide a copy of the complaint to the ~~respondent~~ attorney who is the subject of the complaint along with the name and address of the assigned board member;

(c) Instruct the ~~respondent~~ attorney to respond in writing, not to exceed ten pages, to the assigned board member within ten days along with nine copies of the response for distribution; and

(d) Advise the complainant and the ~~respondent~~ attorney of the provisions of § 16-19-99 concerning confidentiality.

2. Upon receipt of the ~~respondent~~ attorney's written response the assigned board member shall distribute copies to

the board members and board counsel and shall mail a copy to the complainant for a written reply.

3. The assigned board member shall continue the investigation by mail or in person until the matter is ready for board determination and may engage the assistance of board counsel.

4. The board may act on the complaint by mail or at a regular or special meeting as follows:

(a) Dismiss the complaint if the alleged facts do not constitute a violation of the rules governing attorney conduct or the ~~attorneys'~~attorney's oath. The board may, by a separate and unanimous vote, expunge the ~~respondent~~-attorney's record of the dismissed complaint.

(b) Continue the investigation or take such further action with respect to the attorney's conduct as the board deems appropriate.

5. In the event that the board deems it appropriate to have a hearing before the board concerning the ~~respondent~~-attorney's alleged conduct, the hearing shall be conducted in the following manner:

(a) Notice shall be given to the ~~respondent~~-attorney by board counsel by certified mail, return receipt requested, not less than ten days prior to the hearing and shall include a reference to these rules and to the Rules of Professional Conduct.

(b) A transcript shall be kept by a court reporter.

(c) The chair or a board member designated by the chair shall conduct the hearing with a quorum of the board present.

(d) The chair shall advise the ~~respondent~~-attorney of the right to be heard, to offer witnesses, to be represented by counsel, and to have a record of the proceedings kept. The procedure shall be as follows:

(1) The ~~respondent~~-attorney, after being sworn or the ~~respondent's~~attorney's counsel may make a statement and may examine the ~~respondent~~-attorney.

(2) Witnesses on behalf of the ~~respondent~~-attorney may testify after being sworn. Witnesses will be ~~first~~ examined first by ~~respondent~~ the attorney or ~~respondent's~~ the attorney's counsel and thereafter by board counsel and members of the board.

(3) ~~Respondent~~ The attorney shall be examined by board counsel and board members.

(4) The complainant or other witnesses may be called and examined by board counsel and members of the board

~~with cross examination by respondent or respondent's counsel.~~
The attorney or the attorney's counsel may cross-examine the complainant or other witnesses called by the board.

(5) ~~Respondent or respondent's~~ The attorney or the attorney's counsel or both may make a closing statement subject to such time limits as the board may require.

(6) The board shall consider the matter off the record and out of hearing of the ~~respondent~~ attorney and in closed session.

(e) The board may dismiss the complaint, caution or admonish the ~~respondent~~ attorney, impose conditions on ~~respondent~~ the attorney pursuant to § 16-19-60, impose a private reprimand pursuant to § 16-19-61, or commence formal disciplinary proceedings pursuant to § 16-19-67, et seq.

(f) If the board's decision is within the purview of § 16-19-61, the ~~respondent~~ attorney may, within ten days of receipt of the board's decision, file written objections. The objections will be considered by the board by means of written or electronic correspondence among the members or at a special meeting if deemed appropriate.

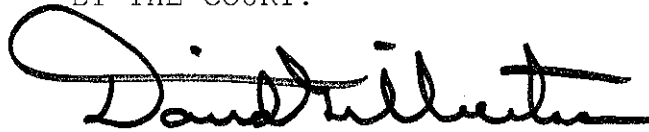
(g) The board shall notify the ~~respondent~~ attorney by mail of changes, if any, in the findings and recommendations made as a result of the objections.

(h) The board shall notify the complainant of the board's decision when it is final.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

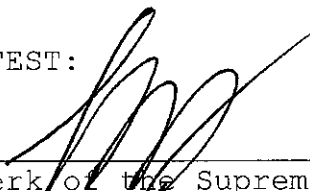
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018


Clerk