

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF THE)
BY-LAWS OF THE STATE BAR OF SOUTH)
DAKOTA)
)

RULE 01-2

A Hearing having been held on February 15, 2001, at Pierre, South Dakota, relating to the amendment of the by-laws of the State Bar of South Dakota, and the Court having considered the proposed amendments, and oral presentation relating thereto, and being fully advised in the premises, now, therefore, it is hereby

ORDERED that the by-laws of the State Bar of South Dakota are hereby amended to read in their entirety as follows:

NAME

Section 1. The name of this association shall be "The State Bar of South Dakota."

MEMBERSHIP

Section 2. The membership of the State Bar shall consist of all persons who are now, or may hereafter be, entitled to practice law in this state, and all persons who, though not engaged in the practice of law, are qualified for membership by virtue of their positions as full-time teachers in the Law School of the University of South Dakota. Every person so qualified who is engaged in the active practice of law in this state shall be required to be an active member of the State Bar.

Section 3. Persons otherwise qualified to become active members of the State Bar, but who are no longer residents of the State of South Dakota, or who, though residing within the State of South Dakota, are no longer engaged in the active practice of law, may become inactive members of the State Bar by paying the annual fee prescribed for an

inactive member and by requesting the Secretary of the State Bar to so enroll them.

Section 4. Supreme Court Justices, Circuit Court Judges, and Full-Time Law Trained Magistrates shall be active members of the State Bar and shall be required to pay the annual basic Bar dues, provided, however, said Justices, Judges, and Full-Time Law Trained Magistrates shall be exempt from the payment of any annual fees or dues for continuing legal education programs or other special fees, dues, or assessments.

Section 5. Any person who has been duly licensed to practice law in this state, but who has not maintained status as an active member of the State Bar, may become such active member upon establishing, as hereinafter provided, that throughout at least one of the five years immediately preceding the application for such active status, the applicant was duly admitted to practice law in the highest court of a state or territory of the United States, or of the District of Columbia, and actively and continuously engaged in such practice in such jurisdiction. Requirements hereof as to active practice shall include service in such jurisdiction as a judge of a court of record or as a member of a commission or tribunal of a quasi-judicial character and which commission or tribunal dealt with legal problems of a serious nature, and shall also include teaching of law as a full-time instructor in a reputable law school or schools in such jurisdiction. Such application shall be filed with the Secretary of the State Bar, who, with approval of the Chief Justice of the Supreme Court, shall establish rules as to the form of such application and the character and extent of required proof in support thereof, which rules, with like approval, may from time to time be amended by the Secretary. With the application the applicant shall tender the current fees required of active members of the State Bar, and also, all other membership and Client Security Fund fees, if any, which are owing from the applicant to the State Bar, together with all delinquency penalties thereon. If satisfied by such application and by such proof that requirements of this rule are met, the Secretary shall enroll such applicant as an active member of the State Bar, and notify him ~~thereof the applicant~~. Otherwise the Secretary shall notify the

applicant of rejection of the application. The applicant may, within thirty days after such rejection, apply to the Supreme Court for a review of the Secretary's decision, which review shall be conducted as the Court may direct, and, if satisfied on such review that the applicant meets the requirements hereinbefore stated, the Court may direct the Secretary to enroll the applicant as an active member of the State Bar. Unless such application is granted by such Secretary or by such Court on such review, the Secretary shall return to the applicant the membership and Client Security Fund fees and penalties tendered with the application. Except as otherwise hereinbefore expressly provided, and except as otherwise provided in Section 23 of these by-laws, when any person has not maintained status as an active member of the State Bar, he or she may be enrolled as such active member only by obtaining from the Supreme Court certification of adequate qualifications for resumption of practice of law in this state.

COMMISSIONERS

Section 6. The government of the State Bar shall be vested in a Board of Commissioners which shall be composed of one member nominated from and residing within each of the judicial circuits of the State of South Dakota, and ~~five~~ six members to be elected from the state at large, and the President and President Elect, who shall be ex officio members thereof. No two of the Commissioners at large shall reside within the same judicial circuit. Each Commissioner shall be an active member of the State Bar at the time of his election and a resident of the State of South Dakota. No Commissioner shall be eligible to hold office for two successive terms after the 1979 Bar Commission election.

Section 7. In 1979 three at large Commissioners and the third circuit Commissioner shall be elected for a three-year term, Commissioners from the first, second, fourth, sixth and seventh circuits shall be elected for one-year terms, and Commissioners from the fifth and eighth circuit and two at large Commissioners shall be elected for two-year terms. At the end of the aforesaid terms a Commissioner shall be elected and hold office for a three-year term.

Section 7.1. If a Commissioner shall cease to be an active member of the State Bar, or if a Commissioner shall move ~~his~~ residence out of state, then that position shall be deemed vacant.

If a Commissioner elected from one circuit shall change ~~his~~ residence to another circuit, then that position shall be deemed vacant. A change in circuit boundaries does not result in a vacancy and the commissioner shall serve out the term.

If a Commissioner elected at large shall change ~~his~~ residence to another circuit that is the residence of another Commissioner-At-Large, then the position shall be deemed vacant; otherwise, the moving Commissioner may continue in office. A change in circuit boundaries does not result in a vacancy and the commissioner shall serve out the term.

Section 8. The first election of Commissioners shall be held at the organizational meeting of the State Bar called pursuant to law. Thereafter, such election shall be held at the annual meeting of the State Bar, as provided herein. Nominations for Commissioners from judicial circuits shall be by petition, signed by at least five (5) active members of the State Bar who reside in the same judicial circuit. Nominating petitions for the Commissioners at large shall be signed by at least fifteen (15) acting members of the State Bar. Nominating petitions shall be filed with the Secretary at least ten (10) days before the date filed for the annual meeting. Further nominations may be made from the floor, as to such vacancies, at the morning session of the opening day of the annual meeting, and the name of any such nominee may be written in on the ballot by the member voting. Ballots shall be prepared under the direction of the Secretary and in such form as the Board of Commissioners may prescribe. Each Commissioner shall thereupon be elected by a plurality vote of the active members present and voting.

Section 9. The Board of Commissioners shall meet immediately after the adjournment of each annual meeting of the State Bar and at the place of such meeting for the transaction of any business which may properly come before it. At such meeting the Commissioners present shall constitute a quorum. At all other meetings of the Board, five (5) of

the Commissioners shall constitute a quorum. Other meetings of the Board of Commissioners shall be held as and when called by the President; provided, however, that any three Commissioners shall have the right to call a meeting of the Board, in which case it shall be the duty of the President or of the Secretary, upon receipt by either of them of such call, to notify the Commissioners by mail at least five (5) days before the date fixed for such meeting, of the time and place thereof.

Section 10. The Board of Commissioners, subject to the control of the State Bar and within the limits of the powers prescribed by the State Bar Act and these by-laws, may make such provisions and regulations and take such action as shall by them be deemed necessary or proper for the conduct of the affairs and protection and disposition of the property of the State Bar, and shall also have charge of all arrangements for all meetings.

Section 11. The Board of Commissioners shall annually select a Secretary-Treasurer.

Section 12. Any vacancies on the Board of Commissioners occurring between elections as scheduled in Section 7 may be filled by the remaining members of the Board. Any person elected by the Board to fill any such vacancies shall hold office until the annual meeting of the State Bar when such office is to be elected and until ~~his~~ the successor is elected.

Section 13. The members of the Board of Commissioners shall receive no compensation but shall be paid their expenses.

OFFICERS

Section 14. The officers of the State Bar shall be a President, a President Elect, and a Secretary-Treasurer.

Section 15. The President shall preside at all meetings of the State Bar and the Board of Commissioners, and in ~~his~~ the President's absence or disqualification the President Elect shall perform the duties of

the President. In addition, the President Elect shall be responsible for the procurement of the program and handling of all details in connection with the annual meeting. ~~held during his tenure.~~ The President and the President Elect shall each have a vote at meetings of the Bar Commissioners.

Section 16. The Secretary-Treasurer shall keep a record of the proceedings of the State Bar and of such other matters as may be directed by the Board of Commissioners to be placed on its files and records; shall keep an accurate roll of officers and members and notify officers and members of committees of their election or appointment; shall issue notice of all meetings; shall collect all moneys due the State Bar and be the custodian of all the funds of the State Bar and disburse the same as directed by the Board of Commissioners; shall keep regular accounts and books belonging to the State Bar, which shall be open to the inspection of any member of the Board of Commissioners, and at the annual meeting shall make a full report Or the receipts and disbursements of the past year, suitably classified. ~~His~~ State Bar accounts shall be audited by a committee of three members of the State Bar, to be appointed by the President at the annual meeting, who shall report thereon at such annual meeting. ~~He~~ The Secretary-Treasurer shall perform such other duties as may be prescribed by the Board of Commissioners.

Section 17. The Secretary-Treasurer shall receive a salary to be fixed by the Board of Commissioners, and such allowances for stenographic hire and expenses as the Board may deem necessary.

Section 18. At the conclusion of the annual meeting the President of the State Bar shall install the President Elect as President. Thereafter the President Elect shall be elected from the active members of the State Bar by a majority vote of the active members of the State Bar present and voting. Vacancies occurring in the offices of President and President Elect between annual meetings may be filled by the Board of Commissioners, and any person elected by the Board to fill any vacancy shall hold office until the next annual meeting of the State Bar and until ~~his~~ the successor is elected.

COMMITTEES

Section 19. The President shall annually and as soon as possible after his election appoint and name such committees to have charge of particular subjects for study, discussion, and reporting to the annual meeting as the President deems advisable for the carrying out of proper functions of the State Bar. Included in such committees to be appointed shall be the following standing committees:

~~Advisory Editorial~~

Criminal Law

Disciplinary Board

~~Legal Economics~~

~~Legal Education and Admissions~~

Real Property, Probate and Trust Law

Unauthorized Practice of Law

~~Corporation, Banking and Business Law~~

~~Uniform State Laws~~

~~Public Relations of the Bar~~

~~Committee on American Citizenship~~

~~Legal Medical Committee~~

Negligence and Tort Law

The Bar Commissioners may approve the creation of sections when sufficient interest is shown through a petition by interested State Bar members and if it appears such action is in the best interests of the State Bar. Any section created shall be subject to the direction of the Bar Commissioners and shall exist in lieu of any similar by-law committee.

FEEES

Section 20. The annual membership fee for each member of the State Bar shall be two hundred forty dollars payable to the Secretary-Treasurer on or before January 1 of each year for which the fee is being paid provided, however, that in those years in which a Client Security Fund fee is required, said fee will be in addition to annual dues and collected and disbursed pursuant to Section 32 of the By-laws, and, further, provided, that no dues payment will be collected for the first year of admission to The State Bar of South Dakota unless the applicant has had membership in another state bar in a prior year, and, further provided, that the annual membership fee for those

members who have been members of The State Bar of South Dakota or any other state bar association for five (5) years or less shall be one hundred fifteen dollars for each year in which dues are collected and shall be paid and allocated as set forth hereinabove. Each active member except Supreme Court Justices, Circuit Court Judges, and Full-Time Law Trained Magistrates of this state, shall pay at the same time as the aforesaid annual membership fee, an additional membership fee of seventy-five dollars to be used for the State Bar's continuing legal education program.

Section 21. The annual membership fee for inactive members of the State Bar shall be seventy-five dollars, payable on or before the first day of January of each year, and shall be paid to the Secretary.

Section 22. It shall be the duty of the Secretary to furnish the Clerk of Courts of each organized county in the state, the Clerk of the Supreme Court, and the Clerk of the United States District Court for the District of South Dakota, a list of the names of active members of the State Bar in good standing, such lists to be furnished as of the fifteenth day of March of each year, and corrections and additions to such list shall be furnished as occasion may arise.

Section 23. Any active member who fails to pay any membership or Client Security Fund fees and any inactive member who fails to pay any membership fee on or before the date such fee becomes due, is thereby automatically suspended from such membership in the State Bar. Such members so suspended shall at any time within five years from the date of such suspension be reinstated upon payment of all membership fees, and if an active member the Client Security Fund fees, owing as of the date of such suspension and accruing since such date, together with all delinquency penalties thereon imposed by the Board of Bar Commissioners, not exceeding double the amount of delinquent fees. After expiration of such five years, such reinstatement as an active member may be effected only as provided by Section 5 hereof. Such reinstatement of an inactive member may, however, be effected by application to the Board of Commissioners on proof satisfactory to such Board that reasonable excuse existed for such delinquency in

payment of such membership fees and that fairness to the applicant requires such reinstatement should be permitted. No person shall be deemed entitled to a change of status from active membership to inactive membership, whether for purposes of computation of membership and Client Security Fund fees ~~owing by him~~ owed, or otherwise, unless and until he or she effects such change as provided in Section 3. If, however, any applicant for reinstatement to membership, either under this Section or Section 5, establishes by evidence satisfactory to the Secretary that in any interval prior to the effective date of this by-law the applicant did not in fact engage in practice of law in this state, the Secretary may for such interval only reduce the required payment of fees to those at that time payable by an inactive member.

MEETINGS

Section 24. The annual meeting of the State Bar shall be held at such time and place as shall be fixed by the Board of Commissioners. Notice of such annual meeting shall be mailed by the Secretary to all active and inactive members Or the State Bar at least sixty (60) days before the date fixed for such meeting.

Section 25. Special meetings of the State Bar may be called by any five members of the Board of Commissioners who shall sign a written call for such special meeting and file the same with the Secretary. It shall be the duty of the Secretary, upon the filing of such written call, to mail within ten (10) days notice of such special meeting to all the active and inactive members of the State Bar, such notices to be mailed at least thirty (30) days before the date fixed for such special meeting. The Secretary must, upon the filing of such written call, fix a date for such special meeting, not later than forty (40) days from the date of the filing of such call. The written call, together with the notice of such special meeting, shall clearly state the object and purpose of such special meeting.

Section 26. A quorum at any regular or special meeting of the State Bar shall consist of not less than fifty (50) active members in good standing. Any less number present may adjourn any regular or special meeting of the State Bar from hour to hour or from day to day until a quorum is present.

COMPLIMENTARY MOTIONS

Section 27. No resolution or motion, complimentary to any officer or member for any service performed, paper read, or address delivered, shall be considered by the State Bar.

RULES OF PROFESSIONAL CONDUCT

Section 28. The Model Rules of Professional Conduct of the American Bar Association are adopted as the Rules of Professional Conduct for all members of the State Bar, unless specifically modified by action of the State Bar and the South Dakota Supreme Court. Any changes, modifications or amendments to the Code by action of the American Bar Association will not become effective unless approved by The State Bar of South Dakota at an Annual Meeting and the South Dakota Supreme Court pursuant to SDCL 16-17-8.

AMENDMENTS

Section 29. The State Bar shall have power at any regular meeting to amend the by-laws. Any proposed amendment to the by-laws must be submitted in writing to the Secretary not later than forty-five (45) days before the opening day of the annual meeting, and shall not be voted upon until the second day of the annual meeting. All proposed amendments to the by-laws which are filed with the Secretary shall be published in any publication of the State Bar and mailed to the membership at least twenty (20) days prior to the opening day of the annual meeting and shall be read when submitted. Amendments may be made from the floor to the proposed amendment as filed and published, but all of said amendments to the amendments must pertain to the subject matter of the original proposed amendment and be in writing. No proposed amendment to the by-laws shall be adopted unless it shall receive an affirmative vote of a majority of the active members of the State Bar present and voting.

Section 30. There shall be a section of the State Bar to be known as the Young Lawyers Section. The Section is formed for the purpose of fostering discussion and interchange of ideas relative to the duties, responsibilities and problems of the younger members of the profession, aiding and promoting their advancement and encouraging

their interest and participation in the activities of the State Bar. It may make recommendations to the State Bar and its proceedings may be published by the authority of the Board of Commissioners.

Section 31. The members of the Young Lawyers Section shall consist of all members of the State Bar who have not yet reached the age of 36 years. The Section shall elect such officers and governing board annually as its membership may determine and shall have the power to adopt regulations subject to the by-laws of the State Bar and the statutes of the State of South Dakota.

Section 32. Each member of the State Bar on active status shall, subsequent to the year of admission, pay a Client Security Fund fee of twenty-five dollars. Such fee is payable in the same manner and at the same time as annual membership fees. The Secretary-Treasurer shall hold such funds in a separate Client Security Fund. The funds shall be expended only in conformity with the Rules of Procedure of the Client Security Fund Committee or for administrative expenses. Whenever the fund shall reach \$100,000 the Client Security fee shall not be required of State Bar members. Whenever the fund is less than \$80,000, the Client Security Fund fee shall be required of State Bar members with the next annual membership fee payment and be continued until the fund again reaches \$100,000. The Client Security Fund fee required pursuant to this section shall be in addition to membership dues and Continuing Legal Education fees but shall not be assessed against Federal Judges, Supreme Court Justices, Circuit Court Judges, and full-time Magistrate Judges. In the event the Bar Commissioners should determine that a group insurance policy can be purchased to advantage then they are authorized the use of the Client Security Fund to pay premiums on such a policy.

Section 33.1. Active Members: Whenever in this by-law there is a reference to active member, member or petitioning member, it shall mean a member in good standing in The State Bar of South Dakota, who is current in dues payment and is classified within the organization as an active member.

Section 33.2. Petition for Initiative or Referendum: Any active member may propose an initiative or referendum to the State Bar by filing with the Secretary-Treasurer of the State Bar a petition containing in proper form the proposed initiative or referendum, signed by the required number of active members, each signer adding to his or her signature a place of residence and telephone number and the date or signing. The petition shall be verified as required for state authorized initiatives or referendums as defined in SDCL 9-20.

Section 33.3. Time for Initiating or Referring: Members may initiate a measure at any time. Members may refer any action of the Bar Commissioners within thirty days after the date of the publication of the act in the State Bar Newsletter.

Section 33.4. Presentation of the Petition: Upon receiving a petition for initiative or referendum, the Secretary-Treasurer shall verify that all signatures on the petition are those of active members and that the petition bears the proper number of signatures and shall then certify those facts to the Bar Commissioners. The Secretary-Treasurer shall also present the initiative or referendum at the next regular or special meeting of the Bar Commissioners, at which time the Bar Commissioners may adopt the proposed initiative or referendum or shall refer it to a vote of the active members by mail within forth days from the date of the meeting at which it was rejected by the Bar Commissioners.

Section 33.5. Signatures Required: A petition for initiative or referendum shall bear the signatures of at least five percent of the active members, as determined by reference to the most recent compilation of the active membership, such compilation to be prepared by the Secretary-Treasurer on April 1, and October 1, of each year.

Section 33.6. Contents of the Petition: A petition shall contain the whole of the initiative or referendum. The Secretary-Treasurer shall cause the proposed initiative or referendum to be published in the Newsletter next published after the meeting at which the Commissioners referred the initiative or referendum to a vote of the active members.

If the initiative or referendum is exceedingly lengthy, the Secretary-Treasurer shall have the discretion to consolidate the subject matter in the Newsletter and shall, upon request, file in each judicial circuit a copy of the petition for reference by the active members.

Section 33.7. Election Procedures: Within ten days after the publication in the Newsletter, the Secretary-Treasurer shall mail to each active member a ballot and a copy of the proposed initiative or referendum (unless lengthy, see Section 33.6). The ballot shall contain the title and a brief summary of the proposed initiative or referendum. Ballots shall be returned by mail to the Secretary-Treasurer within twenty days from the day of mailing of the ballots to the active members.

Section 33.8. Binding Effect of the Vote: The results of an election at which an initiative or referendum receives a favorable vote of a majority of the voting members shall be binding upon the Commissioners for two years, during which time the Commissioners shall adopt no other measure that would have the effect of compromising the vote of the majority.

Section 33.9. Counting the Ballots: The ballots shall be counted by a panel of six tellers, three of whom shall be selected by the Secretary-Treasurer from the subscribers to the petitions and three of whom shall be selected by the President of the State Bar from the membership at large. When six tellers have been selected who have agreed to act, the Secretary-Treasurer shall fix a time and place for the counting. In the event any of the six tellers shall thereafter be unable to attend and act, he or she shall name a replacement and give timely notice to the Secretary-Treasurer. Failure of a teller to appear at the time and place fixed for counting the ballots shall not invalidate the counting process, which shall be conducted by the tellers who are in attendance. Any active member of the State Bar may be present during the counting process.

Section 33.10. Effective Date: An initiative or referendum shall become effective immediately after the counting of the votes unless it

involves a rule, a by-law, or an amendment thereto that is subject to supervision of the Supreme Court under SDCL 16-17. At the time of the counting of the votes, the Secretary-Treasurer shall make a report of the results and shall publish the same in the next Newsletter. When action is required by the Commissioners, such action shall be taken at the next regular or special meeting of the Commissioners. When any by-law or rule change has been effected by the initiative or referendum action, the Secretary-Treasurer shall make a report of the same to the Supreme Court for approval in accordance with SDCL 16-17-7 and SDCL 16-17-8.

Section 33.11. Waiting Period: When an initiative or referendum has been defeated, no further request for an election of the same issue as that contained in the defeated initiative or referendum may be made for one year from the time of the counting of the ballots.

IT IS FURTHER ORDERED that these amendments shall become effective July 1, 2001

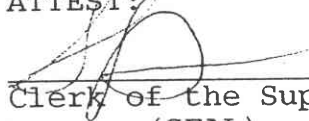
DATED at Pierre, South Dakota this 26th day of February, 2001.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 26 2001


Clerk