IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PROPOSED AMENDMENT OF SDCL 16-21-2(4) AMENDMENT OF SDCL 1-26-33 AMENDMENT OF SDCL 16-21A-2(3) AMENDMENT OF SDCL 15-6-5(g) AMENDMENT OF SDCL 15-6-30(f) AMENDMENT OF SDCL 15-6-6(a) AMENDMENT OF SDCL 15-12-32-Withdrawn AMENDMENT OF SDCL 16-3-5.1 AMENDMENT OF AND ADOPTIONS TO APPENDIX A. TO SDCL CH. 16-16 IN PART, REGULATIONS OF THE BOARD OF BAR EXAMINERS STATE OF SOUTH DAKOTA, 4; 4.1; 4.2; 4.3; 5; 9; & 10 AMENDMENT OF APPENDIX A. TO SDCL CH. 16-18 IN PART, SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT CLIENT-LAWYER RELATIONSHIP, 1.0; 1.6; 1.10; 1.13; 1.18; 3.5; 3.8; 4.4; 5.3; 5.6; 7.2 & 7.3 AMENDMENT OF SDCL CH. 16-19 IN PART, DISCIPLINE OF ATTORNEYS AMENDMENT OF SDCL 23A-4-1 AMENDMENT OF SDCL 23A-35-4.3(a AMENDMENT OF SDCL 23A-44-5.1(5)	**NOTICE OF RULES HEARING** **NO. 137**

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

NOTICE IS HEREBY GIVEN THAT ON FEBRUARY 13, 2018, at 11:00 A.M., C.S.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. Proposed Amendment of SDCL 16-21A-2(4). Electronic filing.

(1) Documents filed electronically in the circuit courts or magistrate courts, excluding small claims, shall be submitted through the Odyssey® electronic filing system in all counties where available. Any user shall be required to register with the court and designate an email address prior to using the electronic filing system. The presiding judge of a judicial circuit may direct that small claims cases be filed through the electronic filing system except as specifically exempted by these rules or court order.

(2) Effective July 1, 2014, except as specifically exempted by these rules or court order, all filings, notices, petitions, pleadings, motions, briefs or documents, with the exception of small claims, shall be filed electronically for all civil case types. For criminal case types all documents, except the initiating pleading or documents specifically exempted by these rules or court order, shall be filed electronically. Self-represented litigants may file electronically, but shall not be required to file electronically. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the clerk of court. The service of any summons or subpoena shall follow the requirements of § 15-6-4 or 15-6-45(c) as applicable.

(3) Registered users will receive electronic notice when documents are entered into the system. Registration for electronic filing constitutes written consent to electronic service of all documents filed in accordance with these rules and the Rules of Civil Procedure. Electronic service through the electronic filing system shall be deemed service by mail for purposes of adding an additional three days to any prescribed period.

(4) Documents that will not be accepted for electronic filing, unless otherwise directed to be filed electronically by the court, include:

(a) New criminal case initiating documents;

(b) Motions requesting that a document be sealed and original sealed documents;

(c) Trial or hearing exhibits;

(d) Wills to be retained for safekeeping pursuant to § 29A-2-515;

(e) Oversized documents that cannot be scanned effectively;

(f) Documents not of sufficient graphical quality to be legible when scanned;

~~(g) Administrative appeal records filed with the court pursuant to § 1-26-33;~~

(~~h~~g) Discovery documents as provided by § 15-6-5(g); and

(~~i~~h) Any other documents directed by the court not to be filed electronically.

(5) A document filed or served electronically has the same legal effect as a paper document.

(6) Any signature on a document filed electronically is considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall strike the filing.

(7) Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; (b) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than seven days after filing; or (c) in any other manner approved by the court. When filing documents that require signatures from other parties, it is not permissible to insert a "/s/" for another person's signature.

(8) All paragraphs, excluding attachments, shall be numbered in all documents, except briefs, filed electronically. Reference to material in such documents shall be to paragraph number, not page number.

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2. Proposed Amendment of SDCL 1-26-33. Record transmitted to circuit court--Limitation of record--Corrections and additions. Within thirty days after the service of the notice of appeal, or within further time allowed by the court, the agency shall transmit to the reviewing court the ~~original or a certified~~ electronic copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

It shall be the duty of the agency to assemble and consecutively number the pages of all documents, papers, and exhibits filed with the agency, including any opinions and decisions which the agency may have filed or authorized for filing. The agency shall then prepare and attach an alphabetical and chronological index to the electronic record and shall serve a copy of such index on all parties to the review proceedings at the time the record is submitted to the reviewing court. If any portions of the record are not legible or are altered when converted to an electronic image they must be provided in hardcopy format.

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3. Proposed Amendment of SDCL 16-21A-2(3). Electronic filing.

(1) Documents filed electronically in the circuit courts or magistrate courts, excluding small claims, shall be submitted through the Odyssey® electronic filing system in all counties where available. Any user shall be required to register with the court and designate an email address prior to using the electronic filing system. The presiding judge of a judicial circuit may direct that small claims cases be filed through the electronic filing system except as specifically exempted by these rules or court order.

(2) Effective July 1, 2014, except as specifically exempted by these rules or court order, all filings, notices, petitions, pleadings, motions, briefs or documents, with the exception of small claims, shall be filed electronically for all civil case types. For criminal case types all documents, except the initiating pleading or documents specifically exempted by these rules or court order, shall be filed electronically. Self-represented litigants may file electronically, but shall not be required to file electronically. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the clerk of court. The service of any summons or subpoena shall follow the requirements of § 15-6-4 or 15-6-45(c) as applicable.

(3) Registered users will receive electronic notice when documents are entered into the system. Registration for electronic filing constitutes written consent to electronic service of all documents filed in accordance with these rules and the Rules of Civil Procedure. Electronic service through the electronic filing system shall be deemed service by ~~mail~~ electronic mail transmission for purposes of ~~adding an additional three days to~~ calculating any prescribed period.

(4) Documents that will not be accepted for electronic filing, unless otherwise directed to be filed electronically by the court, include:

(a) New criminal case initiating documents;

(b) Motions requesting that a document be sealed and original sealed documents;

(c) Trial or hearing exhibits;

(d) Wills to be retained for safekeeping pursuant to § 29A-2-515;

(e) Oversized documents that cannot be scanned effectively;

(f) Documents not of sufficient graphical quality to be legible when scanned;

(g) Administrative appeal records filed with the court pursuant to § 1-26-33;

(h) Discovery documents as provided by § 15-6-5(g); and

(i) Any other documents directed by the court not to be filed electronically.

(5) A document filed or served electronically has the same legal effect as a paper document.

(6) Any signature on a document filed electronically is considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall strike the filing.

(7) Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; (b) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than seven days after filing; or (c) in any other manner approved by the court. When filing documents that require signatures from other parties, it is not permissible to insert a "/s/" for another person's signature.

(8) All paragraphs, excluding attachments, shall be numbered in all documents, except briefs, filed electronically. Reference to material in such documents shall be to paragraph number, not page number.

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4. Proposed Amendment of SDCL 15-6-5(g). Documents not to be filed-Depositions. No depositions (except notices to take depositions), interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall be filed with the clerk of the court except as provided in this section. Any such filing shall be made electronically in full-size print unless otherwise ordered by the court. Any exhibits to such documents shall be clearly identified and included as a separate electronic file or hyperlinked within the transcript file.

Any discovery materials necessary for the disposition of any motion filed with the court or referenced in any filing with the court shall be attached as an exhibit and filed with the party's motion in its entirety. Financial account information filed with the court as an exhibit under this section shall be confidential pursuant to §§ 15-15A-8 and 15-15A-9, and shall remain confidential unless and until access is granted by the court under § 15-15A-10.

If any party designated any or all of any deposition as evidence to be offered in the trial of any case, such deposition shall be filed in electronic format in its entirety with the clerk of the court at the same time as that party's designation.

Depositions used by a party only for the purpose of contradicting or impeaching the testimony of deponent as a witness, pursuant to subdivision 15-6-32(a)(1), shall not be filed unless otherwise ordered by the judge presiding at the hearing or trial.

All depositions which have been read or offered into evidence by agreement of parties, or at the trial or submission

of the case to the court, shall become a permanent part of the file.

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5. Amendment of SDCL 15-6-30(f). Certification and filing by officer--Exhibits--Copies.

(1) The officer shall prepare an electronic copy of the deposition transcript, including any changes as provided in 15-6-30(e), and shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. The officer shall promptly send the certified electronic original of the deposition to the attorney who arranged for the transcript or recording who must store it for filing purposes if necessary., ~~who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration~~. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and electronic files annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

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6. Amendment of SDCL 15-6-6(a). Computation of time. In computing any period of time prescribed or allowed by this chapter, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven days,

intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes those holidays listed in § 1-5-1.

Service by facsimile ~~and~~, electronic mail transmission, and through the Odyssey® electronic filing system must be completed by 5:00 p.m., ~~receiver's~~ filer's time, on a weekday, which is not a legal holiday, or service shall be deemed to be made on the following weekday, which is not a legal holiday.

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WITHDRAWN BY PROPONENT

7. Amendment of SDCL 15-12-32. Review of affidavit—Designation of substitute judge or magistrate. The presiding judge of the circuit court or in his absence or disqualification as the judge sought to be changed, the senior judge of the circuit shall review the affidavit and certification, if any, and it is determined that the affidavit is timely and is filed in good faith and that the right to file the affidavit has not been waived or is not otherwise legally defective, shall assign some other circuit judge or magistrate of that circuit as is appropriate to preside in such action, by filing an order of such appointment with the clerk of the court of the county wherein said action is pending. From the filing of such order the judge or magistrate therein designated shall have full power, authority and jurisdiction to proceed in the matter. In the event that the reviewing judge cannot determine upon the face of the affidavit that it has been filed in good faith, or if the affidavit is challenged by any other party to the action, then the issue of the impartiality of the judge will be heard by the reviewing judge and the burden will be upon the party filing the affidavit to show by clear and convincing evidence that it has been filed in good faith and that there is an objective basis to support the same. If such burden cannot be met, then the affidavit shall be rejected and the original judge shall continue on the case.

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8. Amendment of SDCL 16-3-5.1. Court rules--Filing of notice of rule changes proposed by Supreme Court--Publication hearing--Combined notices--Rules governing internal operation effective on filing. Any new rule, amendment, or repeal of existing rules or statutes relating to the administration of the courts, the number and composition of circuits and judges assigned to the circuits, to pleading, practice, or procedure, or to the admission, disbarment, discipline, and reinstatement of attorneys to practice the profession of law may be adopted by the Supreme Court.

A proposed new rule, amendment, or repeal shall be filed in the office of the clerk of the Supreme Court with deletions shown by strike-throughs and additions shown by underscore. The

proposed new rule, amendment, or repeal shall include ~~together with~~ a discussion of the proposed change ~~which shall~~ including:

(1) The identity of the proponent or proponents of the change;
(2) A detailed explanation of the change and the reasons for the change;
(3) An analysis of the state or federal rule or statute that the change is based upon, if any;
(4) A comparison of the change with federal rules or local federal rules on the same subject, if any, and an explanation of any differences, if any, and;
(5) An analysis of how the change affects existing rules or statutes.

The clerk of the Supreme Court shall give thirty days' notice of an intention to adopt, amend, or repeal rules by electronic mail notification to members of the State Bar of South Dakota, by posting notice at the Unified Judicial System's website at http://www.ujs.sd.gov/ or at the State Bar of South Dakota's website at http://www.sdbar.org/, or such other notice as the Court may order. Any member of the State Bar of South Dakota may request notification of an intention to adopt, amend, or repeal rules through first class mail by contacting the clerk of the Supreme Court. The notice shall fix a time and place when any person interested may appear and be heard with reference to the adoption, amendment, or repeal of rules.

Notice of adoption of several rules, amendments, or repeals of rules may be given at one time and in one notice.

All other rules adopted by the Supreme Court concerning its internal operations under its constitutional or statutory rule-making power shall be filed with the clerk of the Supreme Court and unless otherwise ordered shall become effective when so filed without further notice.

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9. Proposed Amendments and Adoptions to:
APPENDIX A. APPENDIX TO CHAPTER 16-16
REGULATIONS OF THE BOARD OF BAR EXAMINERS
STATE OF SOUTH DAKOTA

4. Passing Score.

The bar examination is comprised of three portions:

(A) The combined MPT, MEE, and Indian law portion,
(B) The MBE, and
(C) The MPRE.

~~An applicant must pass each portion of the examination. A general average of 75% or higher on the combined MPT, MEE, and Indian law portion of the examination shall be deemed a passing score on that portion of the examination. A scaled score of 135 or higher shall be deemed a passing score on the MBE portion of the examination. A scaled score of 85 shall be deemed a passing score on the MPRE portion of the examination. The Board of Bar Examiners shall determine the passing score on each portion of the bar examination in advance of the examination. Written notice of any deviation from the scores enumerated in this regulation will be given to the dean of the University of South Dakota School of Law and all applicants for admission to practice law by examination.~~

~~An applicant who has failed only one portion of the exam must only reapply to sit for the failed portion; however, a passing score on one portion of the examination shall only be valid for a period of two years to exempt the applicant from retaking that portion of the examination. An applicant who fails either the MPT, MEE, and Indian law portion of the examination and/or the MBE portion of the examination three times must receive Supreme Court permission pursuant to § 16-16-11 to take another examination.~~

The combined score of the MPT, MEE and Indian Law portion is to be given equal weight as the MBE scaled score portion utilizing the standard deviation method to determine an applicant's final score on that portion of the bar examination. The total combined passing score of the MPT, MEE and Indian Law portion combined with the MBE scaled score portion utilizing the standard deviation method shall be 260.

A separate passing score is set for the MPRE portion of the examination and a scaled score of 85 shall be deemed a passing score on the MPRE portion of the examination.

4.1 Retroactive Admission of Past Applicants Meeting the Standard in Regulation 4. Any applicant who has taken the bar examination in South Dakota between February 2015 and the date this rule takes effect may, upon written request to the Board of Bar Examiners, have the applicant's South Dakota examination(s) during that time period re-totaled consistent with the standard set forth in Regulation 4. Re-totaling shall consist of any combination of scores from one or more bar examination(s) that totals the highest possible total combined score. The re-totaled score shall be the highest combined score of the MPT, MEE and Indian law portion, as defined in Regulation 4, on any examination combined with the highest MBE scaled score portion, as defined in Regulation 4, on any examination. Applicants achieving a total combined passing score as defined in Regulation 4 after re-totaling shall be deemed to have passed the combined MPT, MEE and Indian law portion and the MBE portion of the South Dakota bar examination.

4.2 Option for Qualifying Applicants to Re-take the Whole Bar Examination or Failed Portion. Any applicant who does not attain a total combined score of 260 but receives a minimum scaled score of 130 or above on either the combined MPT, MEE and Indian law portion or the MBE portion, may elect to:

1. Re-take the combined MPT, MEE and Indian law portion and the MBE portion of the examination again; or
2. Re-take the portion of the bar examination on which the applicant did not attain a scaled score of at least 130. In order to pass the re-taken portion, the applicant must attain a final scaled score of 130 without combining the previously passed portion of the examination.

This regulation and the minimum scaled scores required to qualify within this regulation shall only be effective if an applicant does not attain a total combined passing score of 260.

4.3 Notice Required for Proposed Change to the Final Scaled Score. The Board of Bar Examiners shall forthwith provide written notice to the Dean of the University of South Dakota School of Law of any proposed change to the scores set forth in Regulation 4. If the final scaled score is being raised on any portion of the examination, and the change has been approved by the South Dakota Supreme Court, that change shall not be effective until three years after the order has been signed by the South Dakota Supreme Court.

5. Acceptance of Multistate Bar Examination Results from Other States. In its discretion, the Board of Bar Examiners may accept an applicant's previous scores on the MBE administered in a jurisdiction other than South Dakota if taken within two years prior to the next scheduled examination, if the score on the MBE is a scaled score of ~~135~~ 130 or above and if the applicant passed the bar examination in the other jurisdiction. The Board of Bar Examiners may accept an applicant's MPRE score if taken within twenty-eight months prior to the next scheduled examination and if the score is a scaled score of 85 or above.

9. Written Notice of Non-Passing Score. Applicants shall be notified in writing of non-passing score(s) for the MPT, MEE and Indian law portion and/or MBE portion. If an applicant does not receive a passing score for the MPT, MEE and Indian law portion, the applicant shall be allowed to review the applicant's answers with the model answer. This review shall take place in person at the Board of Bar Examiners in Pierre, South Dakota.

10. Standing Committee to be Created. A standing committee is hereby created to periodically review issues related to legal education, examination, and bar eligibility and to make recommendations thereon. This committee shall provide an annual report to the State Bar of South Dakota, the Board of Bar Examiners, and the University of South Dakota School of Law on the state of these subjects in South Dakota, including the impact of the same on the administration of justice in and the legal needs of the State of South Dakota.

Members of this committee shall be: The Dean of the University of South Dakota School of Law; a member of the Board of Bar Examiners; the president of the Student Bar Association for the University of South Dakota School of Law; the president of the State Bar Association for South Dakota; the president of the Young Lawyers Section Board; and three (3) other members of the South Dakota State Bar to be appointed by the South Dakota Supreme Court.

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10. Proposed Amendments and Adoptions to:
APPENDIX A. TO CHAPTER 16-18
SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT

CLIENT-LAWYER RELATIONSHIP.

Rule 1.0 Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and ~~e-mail~~ electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent ~~except for disclosures that are impliedly authorized in order to carry out the representation or the disclosure is permitted by, and except as stated in paragraph.~~ ~~(b).~~, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(4) to the extent that revelation appears to be necessary to rectify the consequences of a client's criminal or fraudulent act in which the lawyer's services had been used; ~~or~~

(5) to comply with other law or a court order~~.~~; or

(6) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 1.10 Imputation of Conflicts of Interest General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the ~~prohibited~~ disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm~~.~~; or

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a

statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Rule 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law ~~which~~ that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law. ~~In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's~~

~~representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:~~

~~(1) asking for reconsideration of the matter;~~

~~(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and~~

~~(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.~~

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

~~(d)~~ (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

~~(e)~~ (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Rule 1.18 Duties to Prospective Client

(a) A person who ~~discusses~~ consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had discussions with~~ learned information from a prospective client shall not use or reveal that information ~~learned in the consultation~~, except as in Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

ADVOCATE

Rule 3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte on the merits with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt the tribunal.

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to exculpate the guilt of the accused, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged exculpatory information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence relating to the lawyer's representation of a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from

making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees of other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS.

Rule 4.4 Respect for Rights of Third Persons.

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender, and or sender's lawyer if sender is represented.

LAW FIRMS AND ASSOCIATIONS.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistancets

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in

effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.5 Unauthorized practice of law; multi-jurisdictional practice of law.

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice, and

(5) in all cases, the lawyer obtains a South Dakota sales tax license and tenders the applicable taxes pursuant to Chapter 10-45.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, ~~and~~ are not services for which the forum requires pro hac vice admission~~;~~, and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized to provide by federal law or other law ~~of~~ or rule to provide in this jurisdiction, provided that the lawyer obtains a South Dakota sales tax license and tenders the applicable taxes pursuant to Chapter 10-45.

(e) For purposes of paragraph (d):

(1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this rule by, in the exercise of its discretion, the South Dakota Supreme Court.

INFORMATION ABOUT LEGAL SERVICES.

Rule 7.2 Advertising

(a) Definition. "Lawyer" is defined in Rule 7.1(a)(2).

(b) Permitted Advertising. Subject to the requirements of Rules 7.1 and 7.3, 7.4 and 7.5, a lawyer may advertise legal services through written, recorded , internet, computer, e-mail or other electronic communication, including public media, such as a telephone directory, legal directory, newspapers or other periodicals, billboards and other signs, radio, television and

other electronic media, and recorded messages the public may access by dialing a telephone number, or through other written or recorded communication. This rule shall not apply to any advertisement which is broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is reasonably expected by the lawyer not to be received or disseminated in the State of South Dakota.

(c) Record of Advertising. A copy or recording of an advertisement shall be kept by the advertising lawyer for two years after its last dissemination along with a record of when and where it was used.

(d) Prohibited Payments. Except as provided in Rule 1.17 and except as provided in subparagraph (c)(13) of Rule 7.1, a lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule and may pay the usual charges of a not-for-profit legal service organization;

(2) pay the usual charges of a not-for-profit 501(c)(3) or 501(c)(6) qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17~~.~~ ; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

(e) Prohibited Cost Sharing. No lawyer shall, directly or indirectly, pay all or part of the cost of an advertisement by another lawyer with whom the nonadvertising lawyer is not associated in a partnership, professional corporation or limited liability company for the practice of law, unless the advertisement conspicuously discloses the name and address of the nonadvertising lawyer, and conspicuously discloses whether the advertising lawyer contemplates referring all or any part of the representation of a client obtained through the advertisement to the nonadvertising lawyer.

(f) Permissible Content. The following information in advertisements and written communications shall be presumed not to violate the provisions of this Rule 7.2:

(1) Subject to the requirements of Rule 7.5, the name of the lawyer, a listing of lawyers associated with the lawyer for the practice of law, office addresses and telephone numbers, office and telephone service hours, and a designation such as "lawyer," "attorney," "law firm," "partnership" or "professional corporation," or "limited liability company."

(2) Date of admission to the South Dakota bar and any other bar association and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the State of South Dakota or other recognized licensing authorities.

(4) Foreign language ability.

(5) Fields of law in which the lawyer is certified subject to the requirements of Rule 7.4.

(6) Prepaid or group legal service plans in which the lawyer participates.

(7) Acceptance of credit cards.

(8) Information concerning fees and costs, or the availability of such information on request, subject to the requirements of this Rule 7.2 and the other Rules of Professional Conduct.

(9) A listing of the name and geographic location of a lawyer as a sponsor of a public service announcement or charitable, civic or community program or event. Such listings shall not exceed the traditional description of sponsors of or contributors to the charitable, civic or community program or event or public service announcement, and such listing must comply with the provisions of this rule and the other Rules of Professional Conduct.

(10) Schools attended, with dates of graduation, degree and other scholastic distinctions.

(11) Public or quasi-public offices.

(12) Military service.

(13) Legal authorships.

(14) Legal teaching positions.

(15) Memberships, offices and committee assignments in bar associations.

(16) Memberships and offices in legal fraternities and legal societies.

(17) Memberships in scientific, technical and professional associations and societies.

(18) Names and addresses of bank references.

(19) With their written consent, names of clients regularly represented.

(20) Office and telephone answering service hours.

(g) Permissible Fee Information.

(1) Advertisements permitted under this Rule 7.2 may contain information about fees for services as follows:

(i) the fee charged for an initial consultation;

(ii) availability upon request of a written schedule of fees or an estimate of fees to be charged for specific legal services;

(iii) that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery, provided that the advertisement conspicuously discloses whether percentages are computed before or after deduction of costs, and only if it specifically and conspicuously states that the client will bear the expenses incurred in the client's representation, regardless of outcome, except as permitted by Rule 1.8(e);

(iv) the range of fees for services, provided that the advertisement conspicuously discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client, that the quoted fee will be available only to clients whose legal representation is within the services described in the advertisement, and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;

(v) the hourly rate, provided that the advertisement conspicuously discloses that the total fee charge will depend upon the number of hours which must be devoted to the particular matter to be handled for each client, and that the client is entitled without obligation to an estimate of the fee likely to be charged;

(vi) fixed fees for specific legal services, provided that the advertisement conspicuously discloses that the quoted fee will be available only to a client seeking the specific services described.

(2) A lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee or rate for at least ninety (90) days unless the advertisement conspicuously specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(h) Electronic Media. Advertisements by electronic media, such as television and radio, may contain the same information as

permitted in advertisements by print media, subject to the following requirements:

(1) if a lawyer advertises by electronic media and a person appears in the advertisement purporting to be a lawyer, such person shall in fact be the advertising lawyer or a lawyer employed full-time by the advertising lawyer; and

(2) if a lawyer advertises a particular legal service by electronic media, and a person appears in the advertisement purporting to be or implying that the person is the lawyer who will render the legal service, the person appearing in the advertisement shall be the lawyer who will actually perform the legal service advertised unless the advertisement conspicuously discloses that the person appearing in the advertisement is not the person who will perform the legal service advertised.

(3) Advertisements disseminated by electronic media shall be prerecorded and the prerecorded communication shall be reviewed and approved by the lawyer before it is broadcast.

(i) Law Directories. Nothing in this Rule 7.2 prohibits a lawyer from permitting the inclusion in reputable directories intended primarily for the use of the legal profession or institutional consumers of legal services and contains such information as has traditionally been included in such publications.

(j) Acceptance of Employment. A lawyer shall not accept employment when he knows or should know that the person who seeks his services does so as a result of conduct prohibited under this Rule 7.2.

(k) Lawyers Responsible for Advertising. Every lawyer associated in the practice of law with or employed by the lawyer which causes or makes an advertising in violation of this rule may be subject to discipline for the failure of the advertisement to comply with the requirements of this rule.

(l) Mandatory Disclosure. Every lawyer shall, in any written or media advertisements, disclose the absence of professional liability insurance if the lawyer does not have professional liability insurance having limits of at least $100,000, using the specific language required in Rule 1.4(c)(1) or (2).

Rule 7.3 ~~Direct Contact with Prospective~~ Solicitation of Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment ~~from a prospective client~~ when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment ~~from a prospective client~~ by written, recorded or electronic communication or by in-person, live telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) The ~~prospective client~~ target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) The solicitation involves coercion, duress, or harassment.

(c) A copy of every written or recorded communication from a lawyer soliciting professional employment from anyone ~~a prospective client~~ shall be deposited no less than thirty days prior to its dissemination or publication with the Secretary-Treasurer of the South Dakota State Bar by mailing the same to the Office of the State Bar of South Dakota in Pierre, postage prepaid, return receipt requested.

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). Where the communication is written, the label shall appear in a minimum 18-point type or in type as large as the largest type otherwise used in the written communication, whichever is larger. This labeling requirement shall not apply to mailings of announcements of changes in address, firm structure or personnel, nor to mailings of firm brochures to persons selected on a basis other than prospective employment.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

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11. Proposed Amendments and Adoptions to: 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 crime~~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.~~

(~~C~~B) 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 appellate or habeas corpus review, ~~or~~ post-conviction proceedings, or if pending, ~~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.

(~~D~~C) If the complaint fails to comply with any of the requirements of subsection (~~C~~B), 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).

(~~E~~D) 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.

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:)
_____)
(Name))
) RESIGNATION

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 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 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 § 16-19-48. 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 § 16-19-48, 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.

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12. Proposed Amendment of SDCL 23A-4-1. (Rule 5(a)) Arrested person taken before magistrate--Complaint filed on arrest without warrant. A law enforcement officer shall, without unnecessary delay, take the arrested person before the nearest available committing magistrate. Any person, other than a law enforcement officer, making an arrest shall, without unnecessary delay, take the arrested person before the nearest available committing magistrate or deliver him to the nearest available law enforcement officer. If a person arrested without a warrant is brought before a committing magistrate, a complaint shall be filed forthwith. ~~When a~~ A person, arrested with or without a warrant or given a summons, shall appear ~~appears~~ initially before a committing magistrate in person or via ITV, without unnecessary delay, at which time the committing magistrate shall proceed in accordance with the applicable provisions of §§ 23A-4-2 to 23A-4-5, inclusive.

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13. Proposed Amendment of SDCL 23A-35-4.3. Search Warrant for installation, use, and maintenance of tracking device.

(a) Tracking Device Defined. As used in this section the term tracking device means an electronic or mechanical device which permits the tracking of the movement of a person or object, including GPS, "pole camera", or any other covert surveillance device.

(b) Contents. A search warrant for a tracking device may be issued by any magistrate authorized in § 23A-35-2 for the installation, use, and maintenance of a tracking device. There must be probable cause to search and seize property as set forth in this chapter and that such installation and use of this device will lead to the discovery of evidence under § 23A-35-3. The tracking-device warrant must identify the person or property to be tracked, designate the magistrate to whom it must be returned, and specify a reasonable length of time that the device may be used. The time may not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days.

(c) Scope. Any tracking-device warrant issued under this section may authorize the use of the tracking device within the jurisdiction of the magistrate, and outside that jurisdiction if the tracking device is installed within the magistrate's

jurisdiction. The executing officer must perform any installation authorized by the warrant during the daytime, unless the magistrate for good cause expressly authorizes installation at another time.

(d) Return. The tracking-device warrant must command the executing officer to return the warrant to the magistrate designated in the warrant. The officer executing a tracking-device warrant must enter on it the exact time and date the device was installed and the period during which it was used.

(e) Service. Within 10 days after the use of the tracking-device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the state, the judge may delay notice for reasons set forth in subsection (f).

(f) Sealing of Contents of Warrant. With respect to the issuance of any warrant under this section, a judge may, upon a showing of good cause, seal the contents of a warrant and supporting documents until the termination of an investigation, an indictment or information is filed, or as otherwise ordered by the court for purpose of preventing

(1) endangerment of life or physical safety of an individual;

(2) flight from prosecution;

(3) destruction of or tampering with evidence;

(4) intimidation of potential witnesses; or

(5) if failure to seal would otherwise seriously jeopardize an investigation or unduly delay a trial

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14. Proposed Amendment of SDCL 23A-44-5.1(5). Time allowed for disposition of criminal case--Periods excluded--Dismissal.

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

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

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

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

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

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

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

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

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

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

(g) Other periods of delay not specifically enumerated herein, but only if the court finds that they are for good cause. A motion for good cause need not be made within the one hundred eighty day period.

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

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Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and ten copies thereof filed with the Clerk of the Supreme Court no later than January 30, 2018. Subsequent to the hearing, the Court may reject or adopt the proposed amendments or adoptions or any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at http://www.ujs.sd.gov/ or the State Bar of South Dakota's website at http://www.sdbar.org/.

DATED at Pierre, South Dakota this 28th day of December, 2017.

BY THE COURT:

David Gilbertson, Chief Justice

ATTEST:

Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

DEC 28 2017

Clerk