IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PROPOSED AMENDMENT OF SDCL 15-26C-1 AMENDMENT OF SDCL 15-26C-2 AMENDMENT OF SDCL 15-26C-3 AMENDMENT OF SDCL 15-26C-4 AMENDMENT OF SDCL 15-26A-79 AMENDMENT OF APPENDIX A TO SDCL CH. 16-1A, SECTION II, JUDICIAL NOMINATIONS, PART 2 ADOPTION OF A PROPOSED RULE CONCERNING ELECTRONIC ACCESS TO DOCUMENT AND DOCUMENT CHARGES THROUGH THE UNIFIED JUDICIAL SYSTEM'S ELECTRONIC ACCESS PORTAL TO BE DESIGNATED AT SDCL CH. 16-2 AMENDMENT OF SDCL 16-16-11 AMENDMENT OF SDCL 16-16-12.1 AMENDMENT OF SDCL 16-16-13 AMENDMENTS AND ADOPTIONS TO APPENDIX A. APPENDIX TO CHAPTER 16-16 REGULATIONS OF THE BOARD OF BAR EXAMINERS STATE OF SOUTH *DAKOTA* AMENDMENT OF AND ADOPTIONS TO APPENDIX A. TO SDCL CH. 16-17, THE STATE BAR OF SOUTH DAKOTA BY LAWS ADOPTION OF A PROPOSED RULE CONCERNING THE ADMISSIBILITY OF STATEMENTS MADE DURING A JAIL MENTAL HEALTH SCREEN TO BE DESIGNATED AT SDCL CH. 24-11	**NOTICE OF RULES HEARING** **NO. 138**

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 20, 2019, 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:

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1. Proposed Amendment of SDCL 15-26C-1. Electronic filing.

(1) Effective upon further order of the Supreme Court entered after July 1, 2019, ~~January 1, 2014~~, and except as specifically exempted by these rules or court order, attorneys shall electronically file all documents, including petitions, notices of review, motions and briefs and any appendices with the Supreme Court through the Odyssey® electronic filing system unless advance permission is granted by the court allowing paper filing or filing through any other method. Self-represented litigants may file electronically, but shall not be required to file electronically. ~~Any other notices, petitions, pleadings, motions, or documents may be filed electronically at the discretion of the attorney. Electronic filing for self-represented litigants is discretionary for all filings with the Supreme Court. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the Supreme Court.~~

(2) 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. ~~Documents filed electronically must be submitted by email attachment to SCClerkBriefs@ujs.state.sd.us. The number of the case shall appear in the subject line of the email~~.

(3) A document filed electronically has the same legal effect as an original paper document.

(4) The typed attorney or party name or electronic signature on a document filed electronically has the same effect as an original manually affixed signature.

(5) A party electronically filing a document that is not accessible to the public, in whole or in part, is responsible for redaction or designating the document as confidential or sealed before transmitting it to the Supreme Court. For any document

containing information where redaction is required, in whole or in part, pursuant to chapter 15-15A or order of the Supreme Court or circuit court, the original unredacted document shall also be filed electronically. It is the responsibility of the parties to seek advance approval from the Supreme Court for submitting a document as sealed or confidential if that document is not already declared confidential or sealed by existing law, court rules or order.

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2. Proposed Amendment of SDCL 15-26C-2. Electronic document formats.

(1) All documents submitted to the Supreme Court in electronic form must be in ~~approved word processing format which shall then be converted by the supreme court clerk to~~ portable document format (.pdf) except as follows:

(a) Parties must obtain permission from the Supreme Court Clerk in advance if they seek to submit documents in another format.

(b) Briefs shall comply with chapter 15-26A~~S 15-26A-60~~ and shall consist of a single document submitted in pdf and an approved word processing format.

(c) When ~~A~~an appendix is ~~may be~~ filed it shall be in .pdf format and shall be included as part of the brief document. Except for limited excerpts showing a court's reasoning, circuit court transcripts that have been filed electronically with the Supreme Court shall not be included in an appendix. A table of contents with page or paragraph reference as appropriate for each document must precede the appendix. Points of particular interest with page or paragraph reference may also be added to the table of contents. When feasible, electronic bookmarks shall be added to note the first page of each document in the appendix and may be added to note the location of points of particular interest.

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3. Proposed Amendment of SDCL 15-26C-3. Time of filing.

(1) A document in compliance with the Rules of Appellate Procedure and this rule and submitted electronically to the supreme court clerk by 11:59 p. m. central standard time or daylight savings time as applicable shall be considered filed on that date.

(2) ~~Upon receiving an electronic document, the supreme court clerk will issue an e-mail confirmation that the document has been received~~. After reviewing an electronically filed document, the supreme court clerk must inform the filer, through an e-mail generated by the Odyssey® system, whether the document has been accepted or rejected. A document may be rejected (a) if it is filed in the wrong court; (b) applicable filing fees are not paid or waived; (c) the document is incomplete or contains missing information; (d) or fails to comply with applicable statutory requirements or these rules.

(3) Parties filing briefs electronically must also submit an original ~~and two hardcopies of any document~~ to the supreme court clerk. For any brief filed in an appeal from a judgment or order pursuant to chapter 26-8A, the appellant shall also file a ~~two hardcopy~~ redacted brief~~s~~ in compliance with subdivision 15-26A-60(9).

(4) The Supreme Court may also order any party to provide additional hardcopies of any documents electronically filed.

(5) ~~A party must pay all required fees and payments within five days of submitting a document filed electronically. If fees and payments are not received within five days of submission, the document will not be filed and will be returned by the supreme court clerk and the party will be required to re-file the document.~~

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4. Proposed Amendment of SDCL 15-26C-4. Electronic service.

(1) All documents filed electronically must be served electronically through the Odyssey® system except for documents served on or by self-represented litigants. On a showing of good cause, an attorney may be granted leave by the Supreme Court to serve paper documents or to be exempt from receiving electronic service.

(2) Electronic service is not effective if the party making service learns that the attempted service did not reach the person to be served.

~~(1) After January 1, 2014, any attorney not exempt from electronic filing or a party filing electronically must designate~~

~~an email address for accepting electronic service and for receiving electronic service with the supreme court clerk. On a showing of good cause, an attorney may be granted leave of court to serve paper documents or to be exempt from receiving electronic service.~~

~~(2) If a party files a document by electronic means, the party must serve the document by electronic means unless the recipient of service has not designated an email address for receiving electronic service.~~

~~(3) Electronic service is not effective if the party making service learns that the attempted service did not reach the person to be served.~~

~~(4) If a recipient cannot accept electronic service of a document, service under another means specified by § 15-6-5 (b) is required.~~

~~(5) Any party effectuating service electronically must include a certificate of service specifying the items electronically served.~~

~~(6) Documents served electronically may be in portable document format (.pdf), with the exception of those documents to be filed with the Supreme Court in approved word processing format as previously specified herein.~~

~~(7) The Supreme Court may electronically file and serve on registered attorneys and parties any decisions, orders, notices, remittiturs or other documents prepared by the court in such cases provided the attorney or party to be served has designated an email address for receiving electronic service.~~

SDCL 15-26C-5. Original documents. An original document submitted for filing in paper form may be scanned by the supreme court clerk and destroyed after thirty days.

SDCL 15-26C-6. Technical issues--Relief. On a showing of good cause, the court may grant appropriate relief if electronic filing or electronic service was not completed due to technical problems.

SDCL 15-26C-7. Scope. Unless specifically provided otherwise by this rule or inconsistent with its provisions, the Rules of Appellate Procedure contained in chapter 15-26A shall govern any electronic filings.

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5. Amendment of SDCL 15-26A-79. Number of copies of briefs to be served and filed.

~~Two~~ A copy ~~copies~~ of each brief shall be served on the attorney for each party to the appeal separately represented and upon any party who is not represented by counsel. A copy ~~Fifteen copies~~ of each brief shall be filed with the clerk of the Supreme Court. The clerk shall not accept a brief for filing unless it is accompanied by admission or proof of service.

Explanation for Proposals 1-5

The proposed rules would allow for appellate filings through the Odyssey system and would be a move away from the current email based filing system used by the Supreme Court. The proposal is based largely on the current rules for the circuit court electronic filing system.

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Explanation for Proposal 6.

The proposed rule change submitted by the Judicial Qualifications Commission would allow the background investigation to be shared with the Supreme Court, upon consent of the applicant, when an applicant has been nominated and certified for a law-trained magistrate position as part of the approval process required by SDCL 16-12B-1.2. The sharing of such information can prevent the expense and delay associated with a second investigation. This information has been provided in the past upon consent of the applicant and the rule change would formalize that process.

16-12B-1.2. Certification and information on nominees for magistrate judge--Approval by Supreme Court. The presiding judge of each circuit shall certify to the state court administrator the name of each law-trained person that he proposes to appoint in his circuit. Prior to the appointment of any magistrate judge the presiding judge shall present to the state court administrator a resume of the applicant's qualifications setting forth the proposed salary offered and clearly defining the geographical area he will serve and his anticipated work load. The state court administrator shall distribute this information to all members of the court.

The Supreme Court may approve or disapprove the appointment with or without hearing and notify the presiding judge of the court's decision.

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7. Adoption of proposed rules concerning electronic access to document and document charges through the Unified Judicial System's electronic access portal to be designated at SDCL Ch. 16-2.

Section 1.

The State Court Administrator's Office shall conduct a pilot program that will allow access to Unified Judicial System case documents through a web-based electronic access portal. The State Court Administrator shall determine the procedure and parameters on how the pilot program shall be implemented and shall report the results of the pilot program prior to December 31, 2020. The pilot program shall continue until further order of the Court.

Section 2.

Any documents obtained through an electronic search of the Unified Judicial System's electronic access portal shall be charged ten cents per page but no more than three dollars per document. This fee shall not be applicable to an attorney of record on a case or an abstractor for use during the normal course of business or any entity that has a data access agreement providing document access. A self-represented litigant may not be charged a copy fee by the clerk of court for documents on cases in which they appear as a party. Any fee collected pursuant to this section will be deposited in accordance with § 16-2-43.

Explanation for Proposal

The proposed rule would create a pilot program for electronic access to court documents. The proposed rule would establish a document fee in the amount of ten cents per page but not more than three dollars per document. A fee would not be charged to attorneys of record or self-represented litigants on the case or justice partners that we have data access agreements with such as abstractors, law enforcement, jail staff, etc. The rates above are based on the rates charged by the federal PACER system.

As UJS expands electronic access to court documents to attorneys and others statewide, the pilot will allow UJS to study the fees generated, as well as use, cost, and feasibility of continuing to expand electronic access, while still protecting information deemed confidential under state and federal laws.

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8. Amendment of SDCL 16-16-11. Re-examination after three failures prohibited. An applicant who fails three times to pass the bar examination in any jurisdiction or combination of jurisdictions will ~~may~~ not be permitted to take another examination in South Dakota except by permission of the Supreme Court upon a showing that the reasons for previous failures no longer exist and there is a reasonable likelihood the applicant will pass the examination if allowed to take it.

Absent a showing of exceptional circumstances, an applicant who has failed four times to pass the bar examination in any jurisdiction or combination of jurisdictions will not be granted permission to sit for the bar examination under this rule unless the applicant has obtained a scaled score of at least 125 on a prior MBE examination.

(This amendment will become effective on August 1, 2019).

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9. Amendment of SDCL 16-16-12.1. Admission without examination. Eligibility by practice. An applicant may be eligible for admission without examination if the applicant:

a. meets the requirements of SDCL 16-16-2;

b. furnishes satisfactory evidence of graduation from a law school accredited by the American Bar Association, and;

c. provides documentary evidence showing that for three (3) of the last five (5) years immediately preceding the application for admission without examination, the applicant, as principal occupation, has been actively, continuously, and lawfully engaged in the practice of law, in a state or states that allow South Dakota attorneys substantially similar admission without examination, as:

1) a sole practitioner;

2) a member of a law firm, professional corporation or association;

3) a judge in a court of record;

4) an attorney for any local or state governmental entity;

5) inside counsel for a corporation, agency, association or trust department; and/or,

6) an attorney with the federal government or a federal governmental agency including service as a member of the Judge Advocate General Department of one of the military branches of the United States.

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10. Amendment of SDCL 16-16-13. Fees payable with application for admission--Disposition of fees. An applicant for an admission on examination shall pay a fee of ~~three hundred dollars~~ four hundred fifty dollars.~~, and a fee of one hundred seventy-five dollars for subsequent examinations.~~ An applicant for admission without examination shall pay a fee of ~~four hundred~~

~~fifty dollars~~ six hundred fifty dollars. An applicant shall also pay the National Conference of Bar Examiners the applicable fee for preparation of an initial or supplemental character report. If an applicant fails to appear for the examination, the fee paid shall only be applied to the next scheduled combined Multistate Essay Examination which includes an Indian Law question and Multistate Performance Test, and/or to the Multistate Bar Examination. The fees thus paid to the Secretary shall be retained in a special fund and shall be paid out by the state court administrator when authorized by the Secretary for the compensation and necessary expenses of the Board of Bar Examiners.

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

(1) Application for Admission to Practice Law. Each applicant for admission to practice law shall file with the Secretary of the Board of Bar Examiners a written application, together with ~~five~~ one complete machine or photo copies thereof, in the form prescribed by the Board of Bar Examiners. Such application and copies thereof shall be postmarked on or before November 1 for the February examination and on or before ~~April~~ May 1 for the July examination and shall be accompanied by the fee prescribed in the applicable rules of court and a recent photograph of the applicant, and DCI and FBI fingerprint cards.

Each applicant for admission shall also file a request for preparation of a character report and application with the National Conference of Bar Examiners. Such request and application shall be postmarked on or before November 1 for the February examination and on or before ~~April~~ May 1 for the July examination and shall be accompanied by the fee prescribed by the National Conference of Bar Examiners.

(1.1) Application for Admission Without Examination. Each applicant for admission to practice law without examination shall file with the Secretary of the Board of Bar Examiners a written application, together with ~~five~~ one complete machine or photo copies thereof, in the form prescribed by the Board of Bar Examiners. Such application and cop~~ies~~y thereof shall be accompanied by the applicable fees, a recent photograph of the applicant, and DCI and FBI fingerprint cards.

Each applicant for admission without examination shall also file a request for preparation of a character report and

application with the National Conference of Bar Examiners. Such request and application shall be accompanied by the fee prescribed by the National Conference of Bar Examiners.

(2) Application Forms and Payment of Fees. All fees shall be paid by money order or certified check. Payment by credit card or e-check will be allowed when the technology is developed. The applicant will be responsible for any service fee. The application form shall require each applicant to waive confidentiality and privacy rights in order to allow the Board of Bar Examiners to inquire into the applicant's moral character through examination of state, federal, police, court and security records.

(4.1) Examination Results. The Board of Bar Examiners' decision as to whether an applicant has passed or failed the examination is final and not subject to review.

(4.2) Post-Examination Review. For purposes of preparing for reexamination, an applicant who fails the MPT/MEE/ILQ may review the questions and the applicant's answers following the examination. The review must be scheduled within 30 days after May 15 for the February bar examination and November 15 for the July examination. Review will take place in the presence of the Secretary of the Board of Bar Examiners or the Secretary's designee at the Board's office in Pierre, South Dakota. Review of materials is subject to the NCBE's policy on release of MPT and MEE materials. Successful applicants may not review their MPT/MEE/ILQ answers.

(7.1) Law Student Registration. Applicants to law school and first-or second-year law students who intend to take the South Dakota bar examination following graduation may register with the Board of Bar Examiners on forms prescribed by the Board. The registration must be accompanied by the ~~$50~~ $100 South Dakota registration fee as well as the fee required by the National Conference of Bar Examiners' law student registrant program for an initial character report. Registration under the rule is not deemed an application for permission to take the bar examination.

The Board of Bar Examiners shall review the registration and character report to identify character and fitness issues that may hinder or preclude later admission. The Board will report its findings to the registrant. The Board's findings are both preliminary and non-binding in nature. Additionally, the findings will not constitute permission to take the bar examination or awaiver of the consideration of facts or conduct that are either later discovered or occur after the Board's review under this rule.

Explanation for Proposals 9-11

The Board of Bar Examiners is proposing several amendments and additions to its rules and regulations for consideration at the Supreme Court's February 2019 rules hearing. Pursuant to SDCL 16-3-5.1 the Board offers its explanation of its proposals:

1) SDCL 16-16-12.1. Currently admission without examination is available to an applicant who shows that for the last five years immediately preceding application the applicant has practiced law. The amendment provides that an applicant must show that for three of the last five years the applicant has practiced law. This amendment allows applicants some flexibility and takes into account that there may be interruptions in the practice of law due to sabbaticals, maternity leave, illness, and other life events. Chart 11 from the National Conference of Bar Examiners (NCBE) shows the years of practice other states require.

2) SDCL 16-16-13. This raises application fees:
   a. The fee for taking the bar exam is raised from $300 to $450 and the distinction between initial and repeat fees is eliminated.
   b. The fee for admission without exam is raised from $450 to $650.

The Board proposes to make the first increase to its application fees since 1998. These increases are primarily pegged to inflation, which has averaged about 2.25 over those twenty years. So, simply applying such an annual inflationary increase on a non-compounded basis, the fees would increase like this:

Exam Fee: 300 increases to 420
Admission Without Examination: 450 increases to 630

In both instances, the Board is proposing to increase slightly beyond that amount to $450 and $650 respectively. If compounding is considered for both fees, they would move to $458 and $687 respectively. So the fee increases proposed are actually less than simply increasing for inflation on an annual basis. Additionally, the fees have been well below inflation adjusted rates for several years.

The adjustment for repeat takers is not simply adjusted for inflation. Instead, it is brought to a level equal to first time applicants. The background check work and processing with NCBE is the same for first and multiple time applicants, so there is

actually no financial savings for the Board with multiple time takers. As a result, an equal fee level is proper.

The fee increase for admission without examination recognizes the additional administrative work for applicants with a longer history than the majority of bar exam applicants. It also brings South Dakota more in line with neighboring and comparable states.

Charts 7, 11, and 13 from the NCBE showing fees nationally are attached.

3) Regulation 1: Currently applicants submit five paper copies of their application. This amendment requires only one paper copy of the application for practical storage reasons. It also changes the application deadline for the July exam from April 1 to May 1. The April deadline has become impractical due to timeframe for release of February results and the need for repeat takers to get Supreme Court permission to take the exam again.

4) Regulation 1.1: One paper copy will only be required for admission without examination.

5) Regulation 2: This amendment allows for credit card and e-card payments when the application goes online.

6) Regulation 4.1: This new regulation clarifies that the Board's pass/fail decisions are final and not subject to review by the Supreme Court. This has always been the policy of the Board and the Court. It is also recommended in the Code of Recommended Standards for Bar Examiners. Standard V (25).

7) Regulation 4.2: This allows applicants who fail the bar exam to review the questions and the applicant's answers following the release of the exam results and the posting of questions and a representative good answer on the Board's website.

8) Regulation 7.1: This increases the fee for law student registration from $50 to $100. No law student has ever utilized this procedure.

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CHART 7: Bar Examination Application Fees

Note: For admission by transferred UBE score, see Chart 10, page 36. For admission on motion, see Chart 11, page 40. For other licenses and registrations, see Chart 13, page 45.

Jurisdiction	Law student registration fee, if any (timely filing)	Full Bar Exam*				Attorneys' Exam fee
		Bar exam fee for first-time takers (non-attorneys)	Bar exam fee for attorneys	Bar exam fee for repeaters	Fee for laptops, if permitted	
Alabama	$0–$250	$575**	$575**	$575	$121	
Alaska		$800	$800	$500	$100	
Arizona		$680	$680	$680	$125	
Arkansas		$500	$500	$500	$0	
California	$119	$1,228	$1,534	$1,228 / $1,534‡	$153	$1,534
Colorado		$710	$710	$710	$0	
Connecticut		$800	$800	$800	$125	
Delaware		$700 / $1,400	$800 / $1,600	$700 / $1,400	$100	
District of Columbia		$100** + $45 (MEE + MPT) + $60 (MBE)	$100** + $45 (MEE + MPT) + $60 (MBE)	$100** + $45 (MEE + MPT) + $60 (MBE)	$145	
Florida	$100–$400	$1,000	$1,600–$3,000	$450	$125	
Georgia		$350 + $84 (MBE) + $28 (MPT)	$350 + $28 (MPT)	$350 + $84 (MBE) + $28 (MPT)	$100	$350 + $28 (MPT)
Hawaii		$500**	$500**	$500**	$133.50	
Idaho		$600	$600	$200 / $300	$125	
Illinois		$950 – $1,450	$950 – $1,450	$500 – $850	$105	
Indiana		$250	$250	$250	$110	
Iowa	$50–$250	$550	$800	$550 / $800‡	$122	
Kansas		$700	$700	$700	$0	
Kentucky		$875	$1,200	$325	$125	
Louisiana	$125	$750 / $875	$875	$875	$125	
Maine		$600	$650**	$600 / $650‡	$110	$650**
Maryland		$525	$525	$250	$130	$700**
Massachusetts		$815	$815	$815	$175	
Michigan		$625	$625	$300	varies	
Minnesota		$500	$650	$500	$100	
Mississippi	$100	$525 / $625	$625**	$550	varies	
Missouri	$200	$485 / $910	$485 / $910	$285 / $385	$105	
Montana		$620**	$875	$310	$125	
Nebraska		$490	$490	$225 / $490	$150	
Nevada		$700	$1,000	$700 / $1,000‡	$150	
New Hampshire		$725	$725	$725	$52.50	
New Jersey		$675	$675	$675	$0	
New Mexico		$500 / $1,000	$500 / $1,000	$100	$100	
New York		$250 / $750	$250 / $750	$250 / $750	$100	
North Carolina		$700 / $850	$1,600 / $1,650	$400	$125	
North Dakota	$225–$250	$150**	$150**	$150**	$110	
Ohio	$75**	$358	$358	$358	$121	
Oklahoma	$125**	$300**	$1,000**	$300**	$125	
Oregon		$625	$1,050	$625 / $1,000	$150	
Pennsylvania		$650	$650	$650	$115	
Rhode Island		$725	$1,175†	$725**	$0	$1,175†
South Carolina		$1,000 / $1,600	$1,000 / $1,600 + $750	$1,000 / $1,600	$125.50	
South Dakota	$50	$300	$300	$175	$100	
Tennessee		$575**	$975**	$375**	$100	
Texas	$190	$300 / $490 / $1,140	$1,040 / $1,140	$320	$120	
Utah		$650	$650	$650 / $650‡	$150	
Vermont		$300**	$300**	$300**	$50	
Virginia		$850	$650	$650 / $850	$125	
Washington		$585	$620**	$585 / $620‡	$134.50	
West Virginia		$500**	$600**	$500 / $600**	$125	
Wisconsin		$450 / $850	$450 / $850	$450	$110	
Wyoming		$600**	$600**	$600**	$65	
Guam		$800†	$800†	$800†		$1,250
Northern Mariana Islands		$500	$1,000	$500 / $1,000‡	$0	$1,000
Palau		$300	$300	$300		
Puerto Rico		$250	$250	$250		
Virgin Islands		$1,100**	$1,100**	$500 / $500	$150	

*Timely filing fees; late filing fees may apply. Includes fees such as for separate character and fitness applications and/or investigations unless otherwise noted in supplemental remarks. †Includes NCBE report fee. ‡First fee applies to non-attorney repeaters; second fee applies to attorney repeaters. **Plus NCBE report fee.

(continued)

CHART 11: Admission on Motion/Fees

Note: As used in this chart, "on motion" denotes admission without any additional testing except, where required, the MPRE.

Jurisdiction	Do your rules provide for admission on motion? Yes	No	What is the number of years of practice required for admission on motion?	Your definition of practice for purposes of admission on motion includes: Law teaching	Gov't agency	Military	In-house corporate	Judicial court of record	Must an applicant for admission on motion be a graduate of an ABA-approved law school? Yes	No	Admission on motion fee
Alabama	X		5 of past 6	X	X	X	X	X	X		$875*
Alaska	X		5 of past 7	X	X	X	X	X	X		$1,500
Arizona	X		3 of past 5	X	X	X	X	X	X		$1,800
Arkansas	X		5 of past 7	X	X	X	X	X	X		$1,500
California		X									
Colorado	X		3 of past 5	X	X	X	X	X	X		$1,800
Connecticut	X		5 of past 10	X	X	X	X	X		X	$1,800
Delaware		X									
District of Columbia	X		None							X	$418*
Florida		X									
Georgia	X		5 of past 7	X	X	X	X	X	X		$600†
Hawaii		X‡		X		X			X		$500*
Idaho	X		Varies	X	X	X	X	X	X		$1,000
Illinois	X		3 of past 5	X	X	X	X	X	X		$1,250
Indiana	X		5 of past 7	X	X	X	X	X		X	$875
Iowa	X		5 of past 7	X	X	X	X	X		X	$900*
Kansas	X		5 of past 7	X	X	X	X	X	X		$1,250
Kentucky	X		5 of past 7	X	X	X	X	X	X		$1,500
Louisiana		X									
Maine	X		3 of past 5	X	X	X	X	X	X		$900*
Maryland		X									
Massachusetts	X		5 of past 7	X	X	X	X	X		X	$1,015*
Michigan	X		3 of past 5	X	X	X	X	X	X		$800*
Minnesota	X		5 of past 7	X	X	X	X	X	X		$950
Mississippi	X		5	X	X	X	X	X	X		$1,500*
Missouri	X		5 of past 10	X	X	X	X	X	X		$1,240
Montana	X		5 of past 7	X	X	X	X	X	X		$2,500†
Nebraska	X		3 of past 5	X	X	X	X		X		$925
Nevada		X									
New Hampshire	X		5 of past 7 / past 3	X	X	X	X	X		X	$1,225
New Jersey	X		5 of past 7	X	X	X	X	X	X		$1,500
New Mexico	X		5 of past 7	X	X	X	X	X	X		$2,500**
New York	X		5 of past 7	X	X	X	X	X	X		$400
North Carolina	X		4 of past 6	X	X	X	X	X		X	$2,000
North Dakota	X		4 of past 5	X	X	X	X	X	X		$400*
Ohio	X		5 of past 10	X	X	X	X	X	X		$1,500*
Oklahoma	X		5 of past 7	X	X	X	X	X	X		$2,000*
Oregon	X		5 of past 7	X	X	X	X	X		X	$1,050†
Pennsylvania	X		5 of past 7	X	X	X	X	X	X		$1,325
Rhode Island		X									
South Carolina		X‡		X					X		$400
South Dakota	X		Past 5		X	X	X	X	X		$450†
Tennessee	X		5 of past 7	X	X	X	X	X	X		$1,100*
Texas	X		5 of past 7	X	X	X	X	X	X		$890
Utah	X		5 of past 7	X	X	X	X	X	X		$850
Vermont	X		5 of past 10 / past 3		X	X	X			X	$800*
Virginia	X		3 of past 5		X	X	X	X	X		$2,500
Washington	X		3 of past 5	X	X	X	X	X		X	$620*
West Virginia	X		5 of past 7	X	X	X		X		X	$2,000*
Wisconsin	X		3 of past 5	X	X	X	X	X		X	$850
Wyoming	X		5 of past 7	X	X		X	X	X		$600*
Guam		X‡			X				X		$500**
Northern Mariana Islands		X‡									
Palau		X‡			X					X	$1,000 / $200
Puerto Rico		X									
Virgin Islands	X		5 of past 7	X	X	X	X	X		X	$100*†

*Plus NCBE report fee.

†Plus other fees (such as for separate character and fitness applications and/or investigations).

‡Although admission on motion is generally unavailable, it is permitted on a limited basis.

**Includes NCBE report fee.

CHART 13: Other Licenses and Registrations/Fees

Jurisdiction	Does your jurisdiction license, register, or certify the following on a special basis (that is, other than via the regular examination or motion process)?														
	Foreign legal consultants			Corporate counsel not admitted in-state			Legal service lawyers			Pro bono lawyers			Military spouse temporary practice		
	Yes	No	Application fee	Yes	No	Application fee	Yes	No	Application fee	Yes	No	Application fee	Yes	No	Application fee
Alabama		X		X		$725		X			X			X	
Alaska	X		$1,000		X		X		$0		X		X		$0
Arizona	X		$825	X		$345	X		$0	X		$0	X		$259–$379
Arkansas		X			X			X			X			X	
California	X		$1,135	X		$1,400	X		$1,400		X			X	
Colorado	X		$1,000	X		$1,000		X		X		$50	X		$500
Connecticut	X		$500	X		$1,000		X			X		X		$750
Delaware	X		$1,000	X		$100	X		$90–$150		X			X	
Dist. of Columbia	X		$450*		X			X			X			X	
Florida	X		$750*	X		$1,600	X		$1,600–$3,000		X			X	
Georgia	X		$1,000		X			X			X		X		$0
Hawaii	X		$500*		X		X		$500*		X			X	
Idaho	X		$690	X		$800		X		X		$0	X		$690
Illinois	X		$800	X		$1,250	X		$100		X		X		$0
Indiana	X		$875		X		X		$0	X		$0	X		$0
Iowa	X		$800*	X		$1,000		X		X		$0		X	
Kansas		X		X		$1,250		X			X		X		$1,250
Kentucky		X		X		$1,500	X		$100	X		$100	X		$1,500
Louisiana	X		$175	X		$875		X			X			X	
Maine		X			X		X		$0		X			X	
Maryland		X		X			X		$10		X		X		$10
Massachusetts	X		$510	X		$220–$300		X		X		$0–$201	See remark		
Michigan	X		$800*	X		$800*		X			X		X		$800*
Minnesota	X		$1,200	X		$700–$950	X		$75		X			X	
Mississippi		X			X			X			X			X	
Missouri	X		$1,400	X		$1,240		X			X			X	
Montana		X			X			X			X			X	
Nebraska		X		X		$700		X			X			X	
Nevada		X		X		$250	X		$250	X		$250		X	
New Hampshire	X		$1,200		X			X			X			X	
New Jersey	X		$675	X		$750	X		$0	X		$0	X		$675
New Mexico	X		$800		X		X		$375		X			X	
New York	X		$0	X		$0	X		$0		X		See remark		
North Carolina	X		$1,500		X			X			X			X	
North Dakota	X		$380	X		$380	X		$380		X		X		$380
Ohio	X		$550	X			X		$300		X		X		$75*
Oklahoma		X		X		$750*	X		$150		X		X		$0
Oregon	X		$1,050	X		$1,050		X		X		$425	X		$1,050
Pennsylvania	X		$650	X		$1,300	X		$350		X			X	
Rhode Island		X		X		$200	X		$200		X			X	
South Carolina	X		$1,000	X		$400	X		$0	X		$0	X		$0
South Dakota		X			X		X				X		X		$0
Tennessee		X		X		$750		X			X		X		$375*
Texas	X		$990		X			X			X			X	
Utah	X		$850	X		$850		X		X		$0		X	
Vermont		X			X			X		X		$75		X	
Virginia	X		$1,500*	X		$150		X			X		X		$400
Washington	X		$620*	X		$620*		X			X			X	
West Virginia		X			X		X		$150*		X		X		$150
Wisconsin		X		X		$250		X			X			X	
Wyoming		X			X			X			X			X	
Guam		X			X			X			X			X	
N. Mariana Islands		X			X		X		$500		X			X	
Palau		X			X			X			X			X	
Puerto Rico		X			X			X			X			X	
Virgin Islands	X		$1,325	X		$1,325		X			X		X		$0

*Plus NCBE report fee.

(continued)

12. Amendment of SDCL APPENDIX TO CHAPTER 16-17

THE STATE BAR OF SOUTH DAKOTA BY-LAWS

~~**APPENDIX TO CHAPTER 16-17**~~

~~**THE STATE BAR OF SOUTH DAKOTA BY-LAWS**~~

~~NAME.~~

~~1. Name.~~

~~MEMBERSHIP.~~

~~2. Qualifications.~~
~~3. Inactive members.~~
~~4. Judicial officers.~~
~~5. Regaining active status.~~

~~COMMISSIONERS.~~

~~6. Qualifications, number, circuits.~~
~~7. At large commissioners.~~
~~7.1. Vacancies.~~
~~8. Election.~~
~~9. Meetings.~~
~~10. Duties.~~
~~11. Secretary-Treasurer.~~
~~12. Filling vacancies.~~
~~13. Reimbursements of expenses.~~

~~OFFICERS.~~

~~14. Offices.~~
~~15. Duties.~~
~~16. Records.~~
~~17. Salary and expenses.~~
~~18. Elections.~~

~~COMMITTEES.~~

~~19. Standing committees.~~

~~FEES.~~

~~20. Active members, payment, allocation.~~
~~20. Active members, payment, allocation.~~
~~21. Inactive members.~~
~~21. Inactive members.~~
~~22. List of members.~~
~~23. Suspension upon non-payment of dues.~~

~~MEETINGS.~~

~~24. Annual meeting.~~
~~25. Special meetings.~~
~~26. Quorum.~~

~~COMPLIMENTARY MOTIONS.~~

~~27. Prohibition.~~

~~RULES OF PROFESSIONAL CONDUCT.~~

~~28. Adoption of Model Rules.~~

~~AMENDMENTS.~~

~~29. Proposed amendments submitted prior to annual meeting.~~

~~YOUNG LAWYERS SECTION.~~

~~30. Young Lawyers Section.~~
~~31. Membership in Young Lawyers Section.~~

~~CLIENT SECURITY FUND.~~

~~32. Client Security Fund.~~

~~ACTIVE MEMBERS-QUALIFICATIONS.~~

~~33.1. Active members.~~

~~INITIATIVES AND REFERENDA.~~

~~33.2. Petition for initiative or referendum.~~
~~33.3. Time for initiating or referring.~~
~~33.4. Presentation of the petition.~~
~~33.5. Petition signatures.~~
~~33.6. Petition contents.~~
~~33.7. Election procedures.~~
~~33.8. Binding effect of the vote.~~
~~33.9. Counting the ballots.~~
~~33.10. Effective date.~~
~~33.11. Waiting period on defeat.~~

~~ELECTRONIC COMMUNICATIONS.~~

~~34. Electronic communications.~~

~~BOARD ACTION.~~

~~35. Board action with less than required notice.~~
~~36. Action without a meeting.~~

~~CONFLICT OF INTEREST.~~

~~37. Conflict of interest.~~

NAME

~~Section 1. Name.~~

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

MEMBERSHIP

~~Section 2. Qualifications.~~

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

~~Section 3. Inactive members.~~

~~Persons otherwise qualified to become active members of the State Bar, but who are no longer residents of the State of South Dakota, or who, though residing within the State of South Dakota, are no longer engaged in the active practice of law, may become inactive members of the State Bar by paying the annual fee prescribed for an inactive member and by requesting the Secretary of the State Bar to so enroll them.~~

~~Section 4. Judicial officers.~~

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

~~Section 5. Regaining active status.~~

~~Any person who has been duly licensed to practice law in this state, but who has not maintained status as an active member~~

~~of the State Bar, may become such active member upon establishing, as hereinafter provided, that throughout at least one of the five years immediately preceding the application for such active status, the applicant was duly admitted to practice law in the highest court of a state or territory of the United States, or of the District of Columbia, and actively and continuously engaged in such practice in such jurisdiction. Requirements hereof as to active practice shall include service in such jurisdiction as a judge of a court of record or as a member of a commission or tribunal of a quasi-judicial character and which commission or tribunal dealt with legal problems of a serious nature, and shall also include teaching of law as a full-time instructor in a reputable law school or schools in such jurisdiction. Such application shall be filed with the Secretary of the State Bar, who, with approval of the Chief Justice of the Supreme Court, shall establish rules as to the form of such application and the character and extent of required proof in support thereof, which rules, with like approval, may from time to time be amended by the Secretary. With the application the applicant shall tender the current fees required of active members of the State Bar, and also, all other membership and Client Security Fund fees, if any, which are owing from the applicant to the State Bar, together with all delinquency penalties thereon. If satisfied by such application and by such proof that requirements of this rule are met, the Secretary shall enroll such applicant as an active member of the State Bar, and notify the applicant. Otherwise the Secretary shall notify the applicant of rejection of the application. The applicant may, within thirty days after such rejection, apply to the Supreme Court for a review of the Secretary's decision, which review shall be conducted as the Court may direct, and, if satisfied on such review that the applicant meets the requirements hereinbefore stated, the Court may direct the Secretary to enroll the applicant as an active member of the State Bar. Unless such application is granted by such Secretary or by such Court on such review, the Secretary shall return to the applicant the membership and Client Security Fund fees and penalties tendered with the application. Except as otherwise hereinbefore expressly provided, and except as otherwise provided in Section 23 of these by-laws, when any person has not maintained status as an active member of the State Bar, he or she may be enrolled as such active member only by obtaining from the Supreme Court certification of adequate qualifications for resumption of practice of law in this state.~~

~~COMMISSIONERS~~

~~Section 6. Qualifications, number, circuits.~~

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

~~Section 7. At large commissioners.~~

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

~~Section 7.1. Vacancies.~~

~~If a Commissioner shall cease to be an active member of the State Bar, or if a Commissioner shall move his residence out of state, then that position shall be deemed vacant. If a Commissioner elected from one circuit shall change residence to another circuit, then that position shall be deemed vacant. A change in circuit boundaries does not result in a vacancy and the commissioner shall serve out the term.~~

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

~~Section 8. Election.~~

~~The first election of Commissioners shall be held at the organizational meeting of the State Bar called pursuant to law. Thereafter, such election shall be held at the annual meeting of the State Bar, as provided herein. Nominations for Commissioners from judicial circuits shall be by petition, signed by at least five (5) active members of the State Bar who reside in the same judicial circuit. Nominating petitions for the Commissioners at~~

~~large shall be signed by at least fifteen (15) acting members of the State Bar. Nominating petitions shall be filed with the Secretary at least ten (10) days before the date filed for the annual meeting. Further nominations may be made from the floor, as to such vacancies, at the morning session of the opening day of the annual meeting, and the name of any such nominee may be written in on the ballot by the member voting. Ballots shall be prepared under the direction of the Secretary and in such form as the Board of Commissioners may prescribe. Each Commissioner shall thereupon be elected by a plurality vote of the active members present and voting.~~

~~Section 9. Meetings.~~

~~The Board of Commissioners shall meet immediately after the adjournment of each annual meeting of the State Bar and at the place of such meeting for the transaction of any business which may properly come before it. At such meeting the Commissioners present shall constitute a quorum. At all other meetings of the Board, five (5) of the Commissioners shall constitute a quorum. Other meetings of the Board of Commissioners shall be held as and when called by the President; provided, however, that any three Commissioners shall have the right to call a meeting of the Board, in which case it shall be the duty of the President or of the Secretary, upon receipt by either of them of such call, to notify the Commissioners by mail at least five (5) days before the date fixed for such meeting, of the time and place thereof.~~

~~Section 10. Duties.~~

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

~~Section 11. Secretary-Treasurer.~~

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

~~Section 12. Filling vacancies.~~

~~Any vacancies on the Board of Commissioners occurring between elections as scheduled in Section 7 may be filled by the remaining members of the Board. Any person elected by the Board to fill any such vacancies shall hold office until the annual~~

~~meeting of the State Bar when such office is to be elected and until his successor is elected.~~

~~Section 13. Reimbursements of expenses.~~

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

~~OFFICERS~~

~~Section 14. Offices.~~

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

~~Section 15. Duties.~~

~~The President shall preside at all meetings of the State Bar and the Board of Commissioners, and in the President's absence or disqualification the President Elect shall perform the duties of the President. In addition, the President Elect shall be responsible for the procurement of the program and handling of all details in connection with the annual meeting. The President and the President Elect shall each have a vote at meetings of the Bar Commissioners.~~

~~Section 16. Records.~~

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

~~Secretary-Treasurer shall perform such other duties as may be prescribed by the Board of Commissioners.~~

~~**Section 17. Salary and expenses.**~~

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

~~**Section 18. Elections.**~~

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

~~**COMMITTEES**~~

~~**Section 19. Standing committees.**~~

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

~~Criminal Law~~

~~Disciplinary Board~~

~~Real Property, Probate and Trust Law~~

~~Unauthorized Practice of Law~~

~~Negligence and Tort Law~~

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

FEES

Section 20. Active members, payment, allocation.

The annual membership fee for each member of the State Bar shall be three hundred fifteen dollars payable to the Secretary-Treasurer on or before January 1 of each year for which the fee is being paid provided, however, that in those years in which a Client Assistance Fund fee is required, said fee will be in addition to annual dues and collected and disbursed pursuant to Section 32 of the By-laws, and, further, provided, that no dues payment will be collected for the first year of admission to The State Bar of South Dakota unless the applicant has had membership in another state bar in a prior year, and, further provided, that the annual membership fee for those members who have been members of The State Bar of South Dakota or any other state bar association for five (5) years or less shall be one hundred ninety dollars for each year in which dues are collected and shall be paid and allocated as set forth hereinabove. Each active member except Supreme Court Justices, Circuit Court Judges, and Full-Time Magistrate Judges of this state, shall pay at the same time as the aforesaid annual membership fee, an additional membership fee of one hundred dollars to be used for the State Bar's continuing legal education program.

Section 21. Inactive members.

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

Section 22. List of members.

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

Section 23. Suspension upon non-payment of dues.

Any active member who fails to pay any membership or Client Security Fund fees and any inactive member who fails to pay any membership fee on or before the date such fee becomes due, is thereby automatically suspended from such membership in the State Bar. Such members so suspended shall at any time within five years from the date of such suspension be reinstated upon payment

~~of all membership fees, and if an active member the Client Security Fund fees, owing as of the date of such suspension and accruing since such date, together with all delinquency penalties thereon imposed by the Board of Bar Commissioners, not exceeding double the amount of delinquent fees. After expiration of such five years, such reinstatement as an active member may be effected only as provided by Section 5 hereof. Such reinstatement of an inactive member may, however, be effected by application to the Board of Commissioners on proof satisfactory to such Board that reasonable excuse existed for such delinquency in payment of such membership fees and that fairness to the applicant requires such reinstatement should be permitted. No person shall be deemed entitled to a change of status from active membership to inactive membership, whether for purposes of computation of membership and Client Security Fund fees owed, or otherwise, unless and until he or she effects such change as provided in Section 3. If, however, any applicant for reinstatement to membership, either under this Section or Section 5, establishes by evidence satisfactory to the Secretary that in any interval prior to the effective date of this bylaw the applicant did not in fact engage in practice of law in this state, the Secretary may for such interval only reduce the required payment of fees to those at that time payable by an inactive member.~~

~~MEETINGS~~

~~Section 24. Annual meeting.~~

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

~~Section 25. Special meetings.~~

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

~~**Section 26. Quorum.**~~

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

~~**COMPLIMENTARY MOTIONS**~~

~~**Section 27. Prohibition.**~~

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

~~**RULES OF PROFESSIONAL CONDUCT**~~

~~**Section 28. Adoption of Model Rules.**~~

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

~~**AMENDMENTS**~~

~~**Section 29. Proposed amendments submitted prior to annual meeting.**~~

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

~~**YOUNG LAWYERS SECTION**~~

~~**Section 30. Young Lawyers Section.**~~

~~There shall be a section of the State Bar to be known as the Young Lawyers Section. The Section is formed for the purpose of fostering discussion and interchange of ideas relative to the duties, responsibilities and problems of the younger members of the profession, aiding and promoting their advancement and encouraging their interest and participation in the activities of the State Bar. It may make recommendations to the State Bar and its proceedings may be published by the authority of the Board of Commissioners.~~

~~**Section 31. Membership in Young Lawyers Section.**~~

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

~~**CLIENT SECURITY FUND**~~

~~**Section 32. Client Security Fund.**~~

~~Each member of the State Bar on active status shall, subsequent to the year of admission, pay a Client Security Fund fee of twenty-five dollars. Such fee is payable in the same manner and at the same time as annual membership fees. The Secretary-Treasurer shall hold such funds in a separate Client Security Fund. The funds shall be expended only in conformity with the Rules of Procedure of the Client Security Fund Committee or for administrative expenses. Whenever the fund shall reach $100, 000.00, the Client Security fee shall not be required of State Bar members. Whenever the fund is less than $80,000.00, the Client Security Fund fee shall be required of State Bar members with the next annual membership fee payment and be continued until the fund again reaches $100,000.00. The Client Security Fund fee required pursuant to this section shall be in addition to membership dues and Continuing Legal Education fees but shall not be assessed against Federal Judges, Supreme Court Justices, Circuit Court Judges, and full-time Magistrate Judges. In the event the Bar Commissioners should determine that a group insurance policy can be purchased to advantage then they are authorized the use of the Client Security Fund to pay premiums on such a policy.~~

~~ACTIVE MEMBERS-QUALIFICATIONS~~

~~Section 33.1. Active members.~~

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

~~INITIATIVES AND REFERENDA~~

~~Section 33.2. Petition for initiative or referendum.~~

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

~~Section 33.3. Time for initiating or referring.~~

~~Members may initiate a measure at any time. Members may refer any action of the Bar Commissioners within thirty days after the date of the publication of the act in the State Bar Newsletter.~~

~~Section 33.4. Presentation of the petition.~~

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

~~Section 33.5. Petition signatures.~~

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

~~**Section 33.6. Petition contents.**~~

~~A petition shall contain the whole of the initiative or referendum. The Secretary-Treasurer shall cause the proposed initiative or referendum to be published in the Newsletter next published after the meeting at which the Commissioners referred the initiative or referendum to a vote of the active members. If the initiative or referendum is exceedingly lengthy, the Secretary-Treasurer shall have the discretion to consolidate the subject matter in the Newsletter and shall, upon request, file in each judicial circuit a copy of the petition for reference by the active members.~~

~~**Section 33.7. Election procedures.**~~

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

~~**Section 33.8. Binding effect of the vote.**~~

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

~~**Section 33.9. Counting the ballots.**~~

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

Section 33.10. Effective date.

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

Section 33.11. Waiting period on defeat.

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

ELECTRONIC COMMUNICATIONS

Section 34. Electronic communications.

Electronic communications, records, and signatures may be used in connection with all matters contemplated by the by-laws unless prohibited by law. The Bar Commissioners may use and rely upon electronic communications for all notices, waivers, consents, and action for all matters contemplated by the by-laws.

BOARD ACTION

Section 35. Board action with less than required notice.

Meetings and action of the Board of Bar Commissioners held with less than required notice may be held upon unanimous consent of the Board. Once unanimous consent is obtained, the Board may act upon majority vote of the Commissioners present at the meeting. A vote on the merits is deemed to be a waiver of the notice requirement.

Section 36. Action without a meeting.

Any action required by law or required by these by-laws to be taken at a meeting of the Board of Bar Commissioners or any action which may be taken at a meeting of the Board, may be taken without a meeting if all of the Commissioners consent in writing,

~~which writing sets forth the action so taken and is signed by all the Commissioners. Such consent shall have the force and effect of a unanimous vote, and may be stated as such in any document, whether or not filed with the secretary of state of South Dakota.~~

~~**CONFLICT OF INTEREST**~~

~~**Section 37. Conflict of interest.**~~

~~Each Bar Commissioner shall timely advise the Board of any conflict of interest. Upon notice and explanation of a conflict of interest, the Board may, by majority vote, exercise any of the following options:~~

~~a. Require recusal of the Commissioner on the conflicted matter;~~

~~b. Authorize the Commissioner to speak on the merits of the matter but refrain from voting;~~

~~c. Waive the conflict and authorize the Commissioner to vote; or~~

~~d. Authorize action appropriate and consistent with the Board's fiduciary duties.~~

APPENDIX TO CHAPTER 16-17
THE STATE BAR OF SOUTH DAKOTA BY-LAWS

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ARTICLE I - ORGANIZATION

1.1. **Name.** The State Bar of South Dakota is an unincorporated public association authorized by and constituted under South Dakota law.

ARTICLE II - OPERATIONS

2.1 **Purpose.** The State Bar may engage in all activities permitted by the South Dakota Supreme Court ("Supreme Court"), South Dakota Law, and the Internal Revenue Code.

2.2 **Mutual Benefit.** The State Bar, for the mutual benefit of its Members:

a. must at all times be operated in compliance with IRC §501(c)(6);

b. may not pay interest or a dividend on any capital furnished by its Members; and,

c. may form, or be an owner or member of, one or more entities it deems necessary or appropriate to accomplish the State Bar mission provided any such entity's activities do not conflict with South Dakota Law or Supreme Court rule.

2.3 **Office.** The State Bar must maintain an office in South Dakota and may have other offices within or outside South Dakota as determined by the Bar Commission.

2.4 **Electronic Communication.** The State Bar may use electronic communications and electronic signatures to give notice and conduct Bar Commission and other State Bar business. Records of all matters governed by these Bylaws may be maintained electronically except to the extent prohibited by law. Electronic communications must include sufficient information for the person receiving the message to reasonably conclude that the communication was sent by the purported sender.

2.5 **Dissolution.** Upon the State Bar's formal dissolution, the Bar Commission will distribute all State Bar assets for one or more exempt purposes within the meaning of the Internal Revenue Code or will distribute the assets:

a. to the federal government;

b. to a state or local government; or,

c. for an appropriate purpose, as determined by the Bar Commission.

ARTICLE III - ORGANIZATION

3.1. **Rules.** The State Bar may formulate rules of professional conduct for all Members from time to time, subject to the approval of the Supreme Court.

ARTICLE IV - MEMBERS

4.1. **Membership.** A Member is any person who qualifies for Active or Inactive membership as stated below, pays the requisite Membership Fee unless exempt, and complies with these Bylaws, State Bar rules, and Supreme Court rules. State Bar membership is mandatory for every person actively practicing law in South Dakota. State Bar membership is permissive for all other qualified persons.

a. **Active.** Any person authorized to practice law in South Dakota and in good standing with the State Bar is an "Active Member." Active Members have the right to vote in all State Bar matters requiring Member action and as otherwise specified in these Bylaws. Others deemed Active Members are:

i. **Law School Faculty.** Fulltime University of South Dakota School of Law faculty members;

ii. **Judiciary.** Supreme Court Justices, South Dakota Circuit Court Judges ("Circuit Court Judges"), and fulltime South Dakota Magistrate Judges ("Magistrate Judges"); and,

iii. **Emeritus.** An Active Member retiring from active law practice or a retiring judiciary member may take "Emeritus Status" by filing an emeritus registration form with the State Bar and complying with South Dakota statutory restrictions.

b. **Inactive.** Any person otherwise qualified to be an Active Member, but who does not actively practice law in South Dakota may become an "Inactive Member" by paying the Membership Fee for an Inactive Member.

4.2. **Membership Notification.** The State Bar will furnish a list of Active Members by April 15th each year to the:

a. Clerk of Courts for each South Dakota county;

b. Supreme Court Clerk; and,

c. Clerk of the United States District Court for the District of South Dakota.

The State Bar will furnish these clerks with updates to the Active Member list from time to time.

4.3. **Reinstatement.** Any person meeting the qualifications of Paragraph 4.1.a. may seek reinstatement as an Active Member as follows:

a. **Inactive for Five Calendar Years or Less.** Pay the Active Membership Fees by December 31st of the fifth calendar year of the Member being an Inactive Member.

b. **Inactive for more than Five Calendar Years.** Submit a written request for reinstatement to the Executive Director and include:

i. proof that the Member was admitted to practice law in the highest court of any state, United States territory, or the District of Columbia for at least one of the five years immediately preceding the written request;

ii. proof that the Member was actively practicing law in that jurisdiction or engaged:

1) as a judge for a court of record;

2) as a commission or tribunal member authorized to address legal matters of a serious nature; or,

3) as a fulltime instructor at an accredited law school in that jurisdiction;

iii. payment of the Active Member Membership Fees; and,

iv. payment of Delinquent Fees, if any, and Delinquency Penalty thereon.

c. **Reinstatement Decision.** The State Bar will reinstate the Inactive Member as an Active Member upon determination that the Inactive Member satisfactorily meets the reinstatement requirements. If the State Bar rejects the reinstatement request, the Member may appeal the State Bar's decision to the Supreme Court, within thirty days after receiving notice of rejection from the State Bar. The Supreme Court may overturn the State Bar's decision. If the Supreme Court declines to hear the appeal or hears the appeal and upholds the State Bar's decision, the State Bar will return the Membership

Fees, Delinquent Fees, if any, and Delinquency Penalty tendered with the application.

4.4. **Meetings.**

a. **Annual Meeting.** The State Bar will hold an annual Member meeting ("Annual Meeting") at the time and place determined by the Bar Commission.

b. **Notice.** The State Bar will give notice of the Annual Meeting to all Active and Inactive Members at least 30 days before the meeting date.

c. **Resolutions.** Resolutions for Member consideration at the Annual Meeting must be submitted by an Active Member to the State Bar in writing at least 45 days before the business portion of the Annual Meeting ("Business Meeting"). The State Bar will publish properly submitted resolutions in the Annual Meeting Program, post them conspicuously at the Annual Meeting, and make copies available for Members in attendance. The State Bar will not accept any resolution or motion, complimentary to any Officer or Member, for any service performed, paper read, or address delivered.

d. **Special Meetings.** Any five Bar Commissioners may call a special Member meeting by signing a written Call for Special Meeting and filing it with the Executive Director. The Call must state the Special Meeting's purpose. Upon receipt of the Call, the Executive Director must fix a date for the Special Meeting no more than 40 days after receipt of the Call and give notice of the Special Meeting to all Active and Inactive Members at least 30 days before the meeting date.

e. **Waiver of Notice.** A Member's attendance at any meeting will constitute a waiver of notice by the Member, unless the Member announces at the meeting's beginning that the Member is attending solely to object to the meeting on the grounds of improper notice.

f. **Quorum.** Twenty-Five Active Members at any Regular or Special Meeting will constitute a quorum. If a quorum is not present, those in attendance may adjourn the meeting until a quorum is present.

g. **Proxy.** Members may not vote by proxy.

h. **Voting.** Each Active Member has one vote for each matter

upon which the Member is eligible and entitled to vote. A matter is approved when a majority of Members present vote in favor of the matter. In the event of a tie vote, lots will be drawn to determine the matter.

i. **Fixing of Membership.** The State Bar will determine Membership ten days before an Annual or Special Meeting for voting purposes at the upcoming meeting.

j. **Official Record.** The Executive Director will maintain an official record of all State Bar meetings.

4.5. **Membership Fees.** The State Bar may annually impose upon the Members approved State Bar dues ("Dues"), CLE Fee, and Client Assistant Fee (collectively "Membership Fees"). Membership Fees will be set to meet the State Bar's financial obligations. The Bar Commission may set the Membership Fees based upon membership type or other criteria. The Executive Director will assess Membership Fees on a calendar-year basis. Members must pay the Membership Fees in advance each January 1st.

a. **Approval.** The Supreme Court must approve Membership Fees proposed by the Bar Commission before the Executive Director may assess them on the Members.

b. **Active Member Dues.** Active Member Dues are:

i. **Calendar Year of Admission.** Waived for newly admitted Members the calendar year of admission unless, in a prior year, that Member was a member of another state bar or practiced law in another state or jurisdiction without mandatory bar membership; in either of those cases, the newly admitted Member will pay Dues based on years in practice specified in Paragraph 4.5.b.ii. or 4.5.b.iii. below.

ii. **2nd - 4th Calendar Years after Admission Year.** $190, except Members electing Emeritus Status will pay $100.

iii. **5th Calendar Year after Admission Year and Thereafter.** $315, except Members electing Emeritus Status will pay $100.

c. **Inactive Member Dues.** Inactive Member Dues are $100.

d. **Continuing Legal Education.** Each Active Member, except

Supreme Court Justices, Circuit Court Judges, Magistrate Judges, and Members electing Emeritus Status, must pay a $100 Continuing Legal Education program fee ("CLE Fee").

e. **Client Assistance Fund.** The State Bar may charge each Active Member, after the calendar year of admission, a Client Assistance Fund fee of $25 ("Client Assistance Fee"). The State Bar will hold this fee in a separate Client Assistance Fund. The State Bar will charge the Client Assistance Fee whenever the fund balance is less than $80,000 and will continue to charge the fee until the Client Assistance Fund balance reaches $100,000. The State Bar will not charge the Client Assistance Fee when the fund balance is $100,000 or greater. Federal Judges, Supreme Court Justices, Circuit Court Judges, and Magistrate Judges will be exempt from the Client Assistance Fee. The Bar Commission may use the Client Assistance Fund to pay premiums on a group insurance policy should the Commission determine that the purchase of such coverage would be an appropriate use of the fund.

f. **Failure to Pay.** The Bar Commission may suspend any Member who does not pay the Membership Fees when due, and upon suspension, that Member will not be in good standing with the State Bar. A suspended Member may, at any time within five years of the suspension date, be reinstated upon payment of all delinquent and current Membership Fees ("Delinquent Fees") together with any penalties imposed by the Bar Commission. Penalties imposed by the Bar Commission may not exceed double the Delinquent Fees amount ("Delinquency Penalty"). After five years, a Member may only be reinstated as specified in Paragraph 4.3. above.

ARTICLE V - STATE BAR ELECTED OFFICERS

5.1. **Officers.** The State Bar elected officers are President and President Elect (individually "State Bar Officer" and collectively "State Bar Officers"). Only Active Members may be elected to either of these offices.

5.2. **Installation, Election, and Term.** The President will install the President Elect as President before the Annual Meeting adjourns each year. The Active Members at the Annual Meeting will then, by majority vote, elect the next President Elect.

The President will serve a one-year term. The President Elect will serve in that capacity until installed as President the following year.

5.3. **Duties.** The State Bar Officers' duties are as follows:

a. **President.** The President may:

i. preside at all State Bar and Bar Commission meetings;

ii. execute, with the Executive Director, all State Bar contracts and instruments as authorized by the Bar Commission;

iii. appoint Members to standing and ad hoc committees;

iv. be an ex-officio, non-voting Member of all committees except as specified otherwise herein;

v. perform all duties incident to the office of President and such other duties as may be assigned by the Bar Commission; and,

vi. perform the duties of the Executive Director in the event the Executive Director is unable to perform. The President may appoint someone to serve as the Executive Director if the President is unwilling or unable to perform those duties. The President or the President's appointee will serve until the Bar Commission hires a new Executive Director or until the current Executive Director is able to return to and perform the duties of that position.

b. **President Elect.** The President Elect will perform and be vested with all the powers and duties of the President in the event the President is absent or otherwise unwilling or unable to perform. The President Elect may perform such duties as may be assigned by the President and Bar Commission.

5.4. **Vacancy.** If the office of President becomes vacant for any reason, the President Elect will complete the remainder of the President's term. After completing the President's unfulfilled term, the President Elect will serve his or her full term as President. If the office of President Elect

becomes vacant for any reason, the Bar Commission, by majority vote, will fill that vacancy. The person appointed to fulfill the President Elect's remaining term will hold office until the next President Elect is elected at the Annual Meeting of the State Bar.

ARTICLE VI - EXECUTIVE DIRECTOR

6.1. **Executive Director.** The Executive Director will have general charge and control of day-to-day State Bar affairs subject to Bar Commission and State Bar Officer direction and Supreme Court rule. The Executive Director is the State Bar's Secretary/Treasurer.

6.2. **At Will.** Except as stated otherwise in these Bylaws or by separate contract, the Executive Director is an at-will employee.

6.3. **Duties.** The Executive Director will:

a. carry out and oversee the State Bar strategic plan;

b. advocate the State Bar's agenda with South Dakota's legislative and executive branches of government;

c. work with the Supreme Court to create appropriate rules regulating the State Bar and its Members;

d. serve notice of all Member and Bar Commission meetings;

e. keep the minutes of Member and Bar Commission meetings and authenticate State Bar records as necessary;

f. maintain the State Bar's books, papers, and records and provide for their inspection for any proper purpose at any reasonable time;

g. maintain a current register of the names and post office addresses of all Members and include other information provided by the Members;

h. participate in national conferences and forums approved by the Bar Commission;

i. approve bills for payment, subject to limits prescribed by the Bar Commission;

j. execute all contracts and instruments of conveyance in the State Bar's name as authorized by the Bar Commission;

k. have custody, and keep proper account of all State Bar funds;

l. sign checks, drafts, and notes on behalf of the State Bar;

m. endorse checks, notes, and other obligations payable to the State Bar and deposit them in the State Bar account determined by the Bar Commission;

n. pay all normal and ordinary State Bar bills in the ordinary course of business and seek Bar Commission approval before paying any extraordinary bill;

o. submit State Bar books and records for a Board approved independent audit;

p. deliver a financial report at each regular Bar Commission meeting and deliver an annual financial report to the Members at the Annual Meeting;

q. propose policies to ensure proper functioning of the State Bar;

r. hire, supervise, and, if necessary, terminate State Bar employees and determine State Bar employees' salary and benefits subject to Bar Commission approval;

s. deliver a report to the Board at each regular Board meeting and to the Members at their Annual Meeting and prepare other reports as requested by the Bar Commission;

t. call Member and Bar Commission Special Meetings, as provided for in these Bylaws; and,

u. perform all other duties usually incident to the chief operations officer and corporate secretary/treasurer along with any other duties assigned by the Board and President.

6.4. **Bond.** The Bar Commission in its discretion may require the Executive Director and any other State Bar agent or employee to give a bond in such amount, and with a surety, as it determines. The State Bar will pay the expense of any such bond.

6.5. **Termination.** The Executive Director may resign by delivering written notice to any State Bar Officer or Bar Commissioner. The Board may remove the Executive Director as specified in the Executive Director's employment contract. If the

Executive Director is not under a contract, the Bar Commission may remove the Executive Director at any time, with or without cause, by an affirmative vote of 2/3rds of all Commissioners.

ARTICLE VII - BAR COMMISSION

7.1. **Governing Powers.** A Board of Bar Commissioners elected by the Members will govern and manage the business and affairs of the State Bar ("Bar Commission" or "Board"). The Board has all the power and authority necessary or appropriate for the administration of State Bar affairs consistent with Supreme Court rule, South Dakota Law, and these Bylaws. The Board may adopt rules, regulations, policies, and directives necessary for efficient State Bar operation. The Bar Commission will perform the acts necessary to locate and hire the Executive Director and determine the Executive Director's salary and benefits.

7.2. **Composition.** The Bar Commission is composed of one Active Member from each of South Dakota's judicial circuits and six at-large Active Members ("Commissioner" individually or "Commissioners" collectively). The Bar Commission also includes the State Bar President and President Elect.

7.3. **Commissioner Qualifications.** A Commissioner candidate must be an Active Member at the time of election and reside in the judicial circuit that the candidate is seeking to represent. No two at-large Commissioners may reside within the same judicial circuit.

7.4. **Commissioner Nomination.** To qualify as a Commissioner candidate, the Member must meet the election qualifications specified in Paragraph 7.3 above and either:

a. **Petition.** Complete a nominating petition containing signatures of at least:

i. **Judicial Circuit Commissioner.** Five Active Members residing in the same judicial circuit the candidate is seeking to represent.

ii. **At-Large Commissioner.** Fifteen Active Members

Candidates must file completed nominating petitions with the Executive Director at least 10 days before the Annual Meeting.

b. **Floor.** Be orally nominated by an Active member from the floor at the Business Meeting, provided the nominee's name and position sought was submitted to the Executive Director or other State Bar employee at least 40 hours before the beginning of the Business Meeting. After the submission deadline and until the beginning of the Business Meeting, the Executive Director will immediately and conspicuously post the names and Commissioner position sought for each candidate eligible for floor nomination.

7.5. **Commissioner Election.** The State Bar will conduct Commissioner elections at the Business Meeting according to the Election Cycle. The Executive Director will prepare, or cause to be prepared, ballots in the form determined by the Bar Commission. Only Active Members may vote in Commissioner elections. Any Commissioner candidate receiving a majority of the votes properly cast will be elected. If no Commissioner candidate receives a majority of the votes, the Commissioner candidate receiving the fewest votes will be eliminated from consideration as a Commissioner. The Members will then vote on the remaining candidates. Any Commissioner candidate receiving a majority of the votes properly cast will be elected. If no Commissioner candidate receives a majority of the votes, the Commissioner candidate receiving the fewest votes will be eliminated from consideration as a Commissioner. Voting and candidate elimination will continue in this manner until a candidate receives a majority of the votes. Tie votes will be determined by lot.

7.6. **Commissioner Election Cycle.** Active Members will elect Commissioners to represent each judicial circuit and the at-large positions according to the following election cycle:

a. **Circuits 1, 2, 3, 6, and 7.** 2019, 2022, 2025, and every third year thereafter.

b. **Circuits 4 and 5 and two At Large.** 2020, 2023, 2026, and every third year thereafter.

c. **Four At Large.** 2021, 2024, 2027, and every third year thereafter.

7.7. **Commissioner Term.** Upon election, Commissioners will hold office for a three-year term beginning at the close of the Annual Meeting in the year of election. No Commissioner may hold office for successive terms. A Commissioner appointed to the Board according to Paragraph 7.19 below may be elected to serve one full term in the appropriate circuit or at-large circuit after the expiration of the appointed term. Upon expiration of the Commissioner's term, or if the Commissioner leaves the Board for any reason, that Member is not eligible for Board appointment or election for one year. After an absence of at least one year, the Member is eligible for Board appointment or Board election provided the Member meets the Board criteria.

7.8. **Regular Meetings.** The Bar Commission will meet immediately after the adjournment of the Annual Meeting and transact any business that may properly come before the Bar Commission. Additionally, the Board will hold at least four regular meetings throughout the year according to a schedule and at locations determined by the Board ("Regular Meetings").

7.9. **Special Meetings.** Any State Bar Officer or any three Commissioners may call a Special Meeting of the Board by delivering the Call for Special Meeting to the Executive Director. The Call must state the Special Meeting's purpose. Upon receipt of the Call, the Executive Director must fix a date for the Special Meeting no more than ten days after receipt of the Call.

7.10. **Notice.** The Executive Director must, by mail or electronic communication, provide all Board Members at least 20 days' notice of any Regular Meeting and four hours' notice of any Special Meeting. The notice must state the time, place, and, in the case of a Special Meeting, the purpose of the meeting. Notice by mail is given when deposited in the United States mail with sufficient postage. Notice by electronic communication may be given by facsimile, e-mail, text message, or other electronic means, at a number or electronic address designated by the Board Member. Notice is considered received when it is given.

7.11. **Waiver of Notice.** Attendance by a Board Member at any Board meeting will constitute a waiver of notice by that Board

Member unless the Board Member announces at the beginning of the meeting that he or she is attending for the sole purpose of objecting to the meeting on the grounds of improper notice.

7.12. **Quorum.** At the meeting following the Annual Meeting, the Board Members present will constitute a quorum. At all other Bar Commission meetings, eight Board Members will constitute a quorum. The acts of the majority of the Board Members present at a duly held meeting will be the acts of the Board, except when a larger number is required by Supreme Court rule, South Dakota Law, or these Bylaws.

7.13. **Proxy.** Board Members may not vote by proxy.

7.14. **Voting.** All Board Members have one vote on any matter properly presented to the Board. A majority of the Board Members present at any meeting voting in favor of any matter properly brought before the Commission will constitute passage of the matter.

7.15. **Action in Lieu of Meeting.** The Board may, by electronic communication or written action, take any action the Board may take at a meeting, provided all Board Members were notified of the action in lieu of meeting before the action. All electronic communications must comply with Section 2.4 above. The written action is effective when signed or consented to unless a different effective date is stated. When written action is signed or consented to by fewer than all Board Members, the Board will immediately provide all Board Members with the text and effective date of the written action. Failure to provide such notice does not invalidate the written action.

7.16. **Expenses.** By resolution of the Board, Board Members will receive reimbursement for reasonable expenses incurred to attend each Board meeting and other meetings authorized by the Bar Commission.

7.17. **Compensation.** Board Members will receive no compensation for attending Board meetings and other meetings on behalf of the State Bar or the Bar Commission unless the Board by

majority vote determines otherwise.

7.18. **Commissioner Termination.** A Commissioner's term will end immediately upon a Commissioner:

a. ceasing to be an Active Member;

b. establishing primary residency outside South Dakota;

c. establishing primary residency outside the circuit from which the Commissioner was elected for those Commissioners elected to represent a judicial circuit; and,

d. establishing primary residency in a judicial circuit that is the residence of another at-large Commissioner.

A change in circuit boundaries will not terminate a Commissioner's term.

7.19. **Commissioner Vacancies.** A Commissioner vacancy, regardless of cause, including an increase in the number of Commissioners, will be filled by majority vote of the remaining Commissioners. Any Commissioner appointed to fill a vacancy will serve the remainder of the vacating Commissioner's term.

7.20. **Commissioner Attendance.** Commissioners are expected to attend all Board meetings, Member meetings, committee meetings of which the Commissioner is a member, and State Bar functions. Commissioners may participate in any meeting by teleconference or similar communications technology ("Teleconference") that allows all persons participating in the meeting to hear each other at the same time. Participation by Teleconference constitutes presence in person at a meeting. Any Commissioner with more than three unexcused absences from Regular Meetings may be deemed by the Board to have resigned as a Commissioner.

7.21. **Commissioner Resignation.** A Commissioner may resign at any time by delivering a written resignation to the Executive Director or State Bar Officer. The resignation is effective when received, unless a later date has been specified in the notice.

ARTICLE VIII - STATE BAR COMMITTEES

8.1. **Establishment.** The State Bar President or Bar Commission may establish one or more standing and ad hoc committees to carry out the business of State Bar and upon so doing will specify the purpose of each in the State Bar records.

8.2. **Membership.** The President will promptly after installation, appoint Members to State Bar committees and select each committee's chair. Individuals who are not State Bar Members may serve on any committee if the President determines the non-Member's knowledge, skill, and experience is necessary or desirable to the efficient conduct of the committee's business. Non-Members may be voting or non-voting members as determined by the Board. The State Bar Officers and Executive Director are ex-officio, non-voting Members of all committees except the Executive Director will not be a member of any Nominating Committee established as part of an Executive Director search.

8.3. **Term.** All committee members serve one-year terms; the number of terms is not limited.

8.4. **Reporting.** Each committee must report to the Bar Commission actions approved and recommendations adopted promptly after the action or recommendation. Each committee must also provide the State Bar a summary of its activities by April 30th each year.

8.5. **Disciplinary Action.** The President may remove a member from any committee at any time, except the Executive Committee. The Bar Commission may, by majority vote, remove a committee member if the President is unwilling or unable to do so.

8.6. **Standing Committees.** The State Bar will have the following Operational and Professional standing committees:

a. **Operational.** The following committees will assist with the effective administration of State Bar operations and maintain compliance with various requirements under United State Code and South Dakota Law.

i. **Executive.** The President, President Elect, and Executive Director constitute the Executive

Committee. The Executive Committee is authorized to act on behalf of the Bar Commission between meetings on matters that, if action was not taken, would detrimentally affect the State Bar or its Members. The Executive Committee may exercise other powers the Bar Commission may determine and which may be legally delegated. The Executive Committee will report its actions to the Bar Commission at the first Board meeting following any action or by delivering copies of the Executive Committee meeting minutes to each Commissioner in advance of the next Board meeting.

ii. **Finance and Audit.** This committee will assist the Bar Commission in overseeing accounting policies and practices, financial reporting and auditing, and provide the Bar Commission with recommendations. The committee will, in conjunction with the Executive Director, cause the State Bar's books and records to be audited by an independent certified public accountant as often as required by statute or rule, or as required by the Board. The committee will recommend independent auditors to the Bar Commission. The committee along with the Executive Director will oversee each audit and present the results to the Bar Commission and Members at the Annual Meeting. The committee will periodically review the State Bar's financial records with respect to: the audit results, changes in accounting principles or practices, areas of audit concern, contents of the independent auditors' management letter, and the State Bar's response thereto.

b. **Professional.** Any number of committees may be established to provide Members with professional development and continuing education opportunities. The State Bar will note the creation and purpose of each committee in its records. Each committee may establish its own operating rules and procedures and properly memorialize them in the committee records and with the State Bar. All committees must meet as often as necessary to accomplish their stated purposes.

ARTICLE IX - STATE BAR SECTIONS

9.1. **Establishment.** The Bar Commission may establish one or more Member Sections when presented with a petition evidencing sufficient State Bar Member interest and when creation of the Section is in the best interests of the State Bar. The Bar Commission will govern any Section created, and the Section will replace any similar State Bar committee. The State Bar will note the creation and purpose of each Section in the State Bar records.

9.2. **Membership.** The Bar Commission will determine membership criteria for each Section. The State Bar Officers and the Executive Director will be ex-officio, non-voting members of each Section. Each Section member has one vote to cast on all matters that come before the section.

9.3. **Operations.** Each Section will be self-governing and may establish bylaws, a board of directors, and other governance structure as approved by the Bar Commission. Sections may hold elections of the Section members to select members for governance positions. Sections may establish their own operating rules and procedures and properly memorialize them in the Section records and with the State Bar. All Sections must meet at the Annual Meeting and otherwise as often as necessary to accomplish the Section's purpose.

9.4. **Reporting.** Sections must deliver their meeting minutes to the Executive Director after each Section meeting. Section actions and recommendations are not binding upon the Board. Each Section must also provide the State Bar a summary of its activities by April 30th each year.

ARTICLE X - FISCAL OPERATIONS

10.1. **Fiscal Year.** The State Bar's fiscal year begins on August 1st each year and ends on July 31th the following year.

10.2. **Document Signing.** The Bar Commission may authorize any State Bar Officer or State Bar employee to enter into any contract or execute and deliver any instrument in the State Bar's name. Such authority may be general or confined to specific matters.

10.3. **Loans.** No loans will be taken out in the State Bar's name or no evidences of indebtedness may be issued in its name unless authorized by Bar Commission resolution. Such authority may be general or confined to specific instances. No loan may be granted to the Executive Director, any other State Bar employee, State Bar Officer, or Bar Commissioner.

10.4. **Checks, Drafts, and Accounts.** All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the State Bar's name must be signed by those individuals authorized to do so by the Bar Commission by general authorization or specific resolution. The State Bar will deposit all its funds in such banks, trust companies, or other depositories determined by the Board.

10.5. **Budget.** The Bar Commission must approve the annual State Bar budget.

10.6. **Property.** Title to all State Bar property will be held in its name or in an entity owned or controlled by the State Bar.

ARTICLE XI - CONFLICTS OF INTEREST

11.1. **Basis.** Conflicts of interest must be avoided because they place, or appear to place, the interests of others ahead of the State Bar's obligations to its corporate purposes and to the public interest. Conflicts of interest reflect adversely upon the persons involved and upon the institutions with which they are affiliated, regardless of the actual facts or motivations of the parties. A conflict of interest refers only to personal, proprietary interests of the persons covered by this policy and their immediate families and not to philosophical or professional differences of opinion. Real and apparent conflicts of interest with State Bar affairs may sometimes occur because the many persons associated with the State Bar have multiple interests, affiliations, and various positions of responsibility within the community. It is likely that a person covered by this policy will owe identical duties to two or more organizations having similar activities. However, it is not in the long-range best interests of the State Bar to terminate or cease all association with persons who may have real or apparent conflicts or dualities of interest if there is a prescribed

and effective method of rendering such conflicts harmless to all concerned.

11.2. **Statement.** Recognizing the underlying policy basis, the State Bar will not preclude dealings with those having actual or apparent conflicts or dualities of interest so long as the same are promptly and fully disclosed whenever they exist or occur, and the Board determines that the conflict or duality of interest is harmless to the State Bar.

11.3. **Application.** This policy applies to the Executive Director, all other State Bar employees, State Bar Officers, and Bar Commissioners; the referenced individual's immediate family members; and independent contractors providing services or materials to the State Bar (collectively "Covered Persons"). Each Covered Person must discharge his or her duties in good faith, in the best interests of State Bar, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. It is the Executive Director's obligation to publicize this policy to all Covered Persons on a recurring basis.

11.4. **Full Disclosure.** Each Covered Person must disclose all real or apparent conflicts or dualities of interest with the State Bar's activities. Additionally, Covered Persons must annually complete a conflict of interest disclosure form as specified by the Board. "Disclosure" as used in these Bylaws is defined as providing a written description of the facts comprising the real or apparent conflict or duality of interest to the Executive Director, State Bar Officers, or Bar Commission.

11.5. **Proscribed Activity.** Where a Covered Person believes there may exist a real or apparent conflict or duality of interest, that person must, in addition to filing the notice of disclosure required under Section 11.4, abstain from making motions, participating in relevant deliberations, voting, executing agreements, or taking any other similar direct action on behalf of the State Bar where the conflict or duality of interest might pertain. If a Bar Commissioner discloses a conflict, the Board may:

a. require the Commissioner to recuse on the conflicted matter;

b. authorize the Commissioner to opine on the merits of the matter but refrain from voting;

c. waive the conflict and authorize the Commissioner to vote; or,

d. take other or no action if the Board determines the conflict or duality of interest harmless to the State Bar.

ARTICLE XII - INDEMNIFICATION

12.1. **Coverage.** Any person who at any time serves or has served as a Bar Commissioner, State Bar Officer, or State Bar employee, or in a capacity benefitting the State Bar has a right to be indemnified by the State Bar to the fullest extent permitted by South Dakota law against:

a. reasonable expenses, including reasonable attorney fees, actually incurred by him or her in connection with any threatened, pending, or completed action, suit or proceedings and any appeal thereof, whether civil, criminal, administrative, or investigative, seeking to hold him or her liable by reason of the fact that he or she is or was acting in such capacity; and,

b. reasonable payments made by him or her in satisfaction of any judgment, money decree, fine, penalty, or settlement for which he or she may have become liable in any such action, suit, or proceeding.

12.2. **Payment.** Indemnifiable expenses claimed may not be paid in advance of any final disposition unless the Bar Commission approves otherwise by majority vote.

12.3. **Evaluation.** The Bar Commission will evaluate the claimant's actions giving rise to the indemnity claim and of the amount of indemnity claimed by him or her.

12.4. **Consideration.** Any person who at any time after the adoption of this Article XII serves or has served in any of the previously mentioned capacities for or on behalf of State Bar will be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right will inure to the benefit of the legal representatives of any such person and is not exclusive

of any other rights to which such person may be entitled. Any repeal or modification of these indemnification provisions will not affect any rights or obligations existing at the time of such repeal or modification.

12.5. **Insurance.** The State Bar may, by resolution of the Bar Commission, purchase and maintain insurance on behalf of any Bar Commissioner, State Bar Officer, the Executive Director, and other State Bar employee or State Bar agent.

ARTICLE XIII - PARLIAMENTARY AUTHORITY

13.1. **Rules of Order.** The most current edition of *Mason's Manual of Legislative Procedure* will govern the State Bar in all matters to which they are applicable and in which they are not inconsistent with these Bylaws and any State Bar adopted special rules of order.

ARTICLE XIV - AMENDMENT

14.1. **Amendment.** The State Bar may amend or restate the Bylaws at its Annual Meeting. Any proposed amendment or restatement must be submitted to the Executive Director in writing at least 45 days before the Business Meeting. The Executive Director will notify Active Members, in the manner specified in these Bylaws, of properly submitted Bylaw change proposals at least 20 days before the Business Meeting. Active Members will vote on the proposed Bylaw changes Business Meeting. Members may propose amendments to the proposed Bylaw changes from the floor, but all floor amendment proposals must be in writing and pertain to the original Bylaw amendments. Bylaw amendments or restatement will be adopted by an affirmative vote of a majority of the Members present. Bylaw changes will not become effective until approved by the Supreme Court.

Explanation for proposals in re: revised and restated Bylaws of the State Bar of South Dakota

The State Bar found the revisions necessary to properly reflect how the State Bar currently conducts business and to better organize what the Board of Bar Commissioners felt had become a disjointed compilation of additions and amendments. The revisions were presented to and approved by the State Bar's membership at its June 2018 annual meeting. The revised bylaws are in substance similar to the current bylaws, except as noted below:

1. The date the State Bar will furnish a list of active members to the Clerks of the various Courts in South Dakota was changed from March 15th of each year to April 15th of each year (see Article IV, Section 4.2);

2. The time in which the State Bar will give notice of the Annual meeting to all Active and Inactive Members of the Bar was changed from at least 60 days before the meeting date to at least 30 days before the meeting date (see Article IV, Section 4.4.b);

3. The number of Active Members that constitute a quorum at any regular or special meeting was reduced from fifty to twenty-five (see Article IV, Section 4.4.f);

4. Article IV, Section 4.5.f allows the Bar Commission to suspend any member that does not pay membership fees when due as opposed to the automatic suspension that exits in the current bylaws;

5. Article V, Section 5.3.a, provides a more extensive listing of the duties of the State Bar President;

6. Article VI provides an extensive listing of the duties of the Executive Director of the State Bar;

7. The number of Board Members constituting a quorum at any meeting of the Bar Commission was changed from five to eight, except for the Bar Commission meeting that

   immediately follows the Annual Meeting (see Article VII, Section 7.12);

8. The revised bylaws add a section on commissioner attendance that allows the Board of Bar Commissioners to deem any commissioner with more than three unexcused absences from regular meetings to have resigned as a commissioner (see Article VII, Section 7.20);

9. The revised bylaws related to Bar Committees are more extensive than the current bylaws and provide for both operational and professional standing committees (see Article VIII);

10. The revised bylaws add an Article of bylaws related the fiscal operation of the State Bar (see Article X);

11. The revised bylaws expand the bylaws related to conflicts of interest (see Article XI); and

12. The revised bylaws add an Article related to indemnification to provide protection to those that serve the Bar in certain capacities (see Article XII).

The revised bylaws are not based upon any state or federal rule or statute. The revisions should not affect any other current rules or statutes as the Board of Bar Commissioners took great care to draft the revisions to comply with current Supreme Court rules and South Dakota law.

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13. A proposed rule concerning the admissibility of statements made during a jail mental health screen to be designated at SDCL Ch. 24-11.

Section 1.

Any statement made by a defendant in response to a question administered during a jail mental health screen is not admissible against the defendant in any criminal proceeding. The screen shall be filed with the committing court and will only be made available to the defendant, defendant's attorney, prosecuting attorney and any mental health provider ordered to provide an assessment of the defendant as a condition of bond.

Explanation for Proposal

The proposed rule change is intended to make any statements obtained pursuant to a jail mental health screen inadmissible against the person completing the screen in any criminal proceeding. As part of the jail mental health screening pilot program concerns have been raised that if during the administration of the screen the defendant makes statements that may be used against them during the criminal proceeding defense attorneys will advise their clients not to cooperate with the screening process. The jail screen is intended to identify individuals that may need further assessment and connect them to services. It is not intended to capture evidence or be used against the individual as evidence in a court proceeding. The proposed rule has been endorsed by the HB 1183 Oversight Council.

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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 February 1, 2019. 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 4th day of January, 2019.

BY THE COURT:

David Gilbertson, Chief Justice

ATTEST:

Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED
JAN - 4 2019
Clerk