

SOUTH DAKOTA SUPREME COURT **Rule Drafting Manual**



April 2026

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Part I. Introduction

The South Dakota Supreme Court is empowered by the South Dakota Constitution to “have general superintending powers over all courts and may make rules of practice and procedure and rules governing the administration of all courts. The Supreme Court by rule shall govern terms of courts, admission to the bar, and discipline of members of the bar.” S.D. Const. art. V, § 12. Rules promulgated by the Court “may be changed by the Legislature.” *Id.* The Court prescribes its own procedure to follow in carrying out its rulemaking power. SDCL 16-3-5. Additional provisions further clarify the scope of the Court’s rulemaking authority. For instance, the Court

has power to make all rules of practice and procedure which it shall deem necessary for the administration of justice in all civil and criminal actions, remedies, and proceedings in any and all courts of the state and for the method of taking, hearing, and deciding appeals to the courts from all decisions of public officers, boards, commissions, departments, and institutions exercising quasi-judicial functions, in any case where an appeal from any such decision is allowed by law.

SDCL 16-3-2; see *also* SDCL 16-3-9 (clarifying the scope of the Court’s ability to make rules governing attorneys). Rules promulgated by the Court, however, may not “in any manner abridge, enlarge, or modify the substantive rights of any litigant.” SDCL 16-3-3.

Court rules are not the same as statutes. Statutes begin as bills introduced during legislative session. Rules are also promulgated by executive agencies under the rules of administrative procedure pursuant to SDCL chapter 1-26. This chapter does not apply to Court rulemaking.

The purpose of this manual is to set forth a preferred style and form for the drafting of Court rules to ensure consistency, clarity, and readability. Good rules should be easy to understand and apply. Although some rules may not adhere to the following conventions, this manual sets forth the current preferred standards for rules. **These guidelines apply to rules proposals only—not to motions, briefs, or other materials submitted to the Court.**

A special thank you is extended to the Legislative Research Council for granting permission to borrow many of the drafting guidelines from the Legislative Drafting Manual. For each drafting guideline that relies upon the Legislative Drafting Manual, a citation is included. Examples of guidelines are either independently drafted, drawn from examples in the Legislative Drafting Manual, or are drawn from South Dakota Codified Law.

Part II. Rule-Making Procedure

The procedure for proposing a new rule, amendment of a rule, or repeal of a rule is provided by SDCL 16-3-5.2 to -5.9. Please review these rules before submitting a proposal. A summary of the process is described here.

The Court provides a notice requesting proposals for any new rules, amendments, or repeals with the intent that any proposals received by a certain date will be heard at a future rules hearing, unless the Court declines to consider any of the proposals received. By the noticed date, proposals are received by the clerk of the Supreme Court in the form required by SDCL 16-3-5.3. Part V of this manual provides examples of how to draft rules. An example of how to draft the discussion of the proposal is found in Example 1: Hearing Notice Issued by the Court.

Following receipt of a proposal the clerk immediately forwards the proposal to the chief of legal research for style and form review. Style and form review must be done within twenty days.

Following review, the draft is returned to the proponent with the style and form suggestions. The proponent may accept or reject the changes and return a final proposal within ten workdays. This submission must also conform to the requirements of SDCL 16-3-5.3.

The final proposals are noticed for hearing (see Example 1: Hearing Notice Issued by the Court). For each proposal, the Court receives a copy of the original submission, the style and form changes suggested to the proponent, and the final submission materials in preparation for the hearing.

If the Court desires, it can notice a hearing without issuing a request for proposals. A proposal heard at such a hearing may still be reviewed for style and form.

Following the hearing, the hearing audio is archived on the Unified Judicial System (UJS) website. Upon passage of the proposal, the Court issues an order regarding the new rule, amendment, or repeal (see Example 2: Order amending a rule). The order is published on the UJS website. It is also published in the State Bar newsletter and filed with the Secretary of State. SDCL 16-3-6.1 and 16-3-7. Rules are effective within thirty days of filing with the Secretary of State unless otherwise provided. SDCL 16-3-7. Copies of the rules are also mailed to all judges and the South Dakota Code Commission. *Id.* Rules are published alongside legislative changes to statutes in session laws and are found in the South Dakota Codified Laws. *Id.*

Example 1: Hearing Notice Issued by the Court

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE PROPOSED)
AMENDMENT OF SDCL 16-16-13)
)
)
) **NOTICE OF SPECIAL**
RULES HEARING
NO. 152

A petition for an amendment of an existing section of the South Dakota Codified Laws having been filed with the Court and the Court having determined that the proposed amendment should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON August 31, 2023, at 11:15 A.M., C.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

Proposed Amendment to 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 four hundred fifty dollars. An applicant for admission without examination shall pay a fee of 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 one of the next two scheduled combined Multistate Essay Examination Examinations, which includes include an Indian Law question and Multistate Performance Test, and/or to the Multistate Bar Examination Examinations. The applicant shall inform the Secretary in writing which of the next two scheduled examinations to apply the fee. 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.

Explanation for Proposal

This amendment is proposed by the South Dakota Board of Bar Examiners. The proposed change would allow applicants who applied for the bar exam but who did not appear for the exam to elect to apply the application fee to one of the

next two upcoming examinations, rather than to only the next examination. The proposed change would allow applicants some flexibility in determining when they will be prepared to take the exam and apply fees accordingly. The proposed amendment is not based upon any state or federal rule or statute and should not affect other existing rules or statutes. The amendment, if adopted, is intended to apply to any application currently pending before the Board or the Court.

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 August 17, 2023.

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 2 Notice of Special Rules Hearing No. 152 - August 31, 2023 notice at the Unified Judicial System's website at <http://www.ujis.sd.gov/> or the State Bar of South Dakota's website at <http://www.sdbar.org/>.

DATED at Pierre, South Dakota this 21st day of July, 2023.

BY THE COURT:

ATTEST:

Steven R. Jensen, Chief Justice

Clerk of the Supreme Court

rule, unless the party's failure is excused by the court for good cause shown.

This procedure may be modified by the court.

IT IS FURTHER ORDERED that this rule shall become effective April 1, 2025.

DATED at Pierre, South Dakota, this 5th day of March, 2025.

BY THE COURT:

Steven R. Jensen, Chief Justice

ATTEST:

Clerk of the Supreme Court

(SEAL)

Part III. Structure of Rules

Section 1. Parts of a Rule in Code

Let's use an example to demonstrate the different parts of a rule:

SDCL 15-26A-1. Scope of rules.

This chapter shall govern procedure in civil appeals to the Supreme Court of South Dakota.

Source: Supreme Court Rule 79-1, Rule 1.

1. “SDCL 15-26A-1”

- a. The section number is 15-26A-1 to note that the rule is found in Title 15, chapter 26A, section 1 of South Dakota Codified Law.

2. “Scope of rules”

- a. The catchline is material following the section number. It provides the general topic of the rule. A catchline is not law. See SDCL 2-14-9 and 2-16-13.1. It should not contain any substantive information that is not contained in the rule.

3. “This chapter shall govern procedure in civil appeals to the Supreme Court of South Dakota.”

- a. The body of the rule is the only part that carries the weight of law. See SDCL 2-14-9 and 2-16-13.1.

4. “Source: Supreme Court Rule 79-1, Rule 1”

- a. The Source indicates the rule that originally enacted this section. If this section was amended, those rules would follow the original rule. Rules appear nearly identical to legislative statutes, but the source identifies it as a Supreme Court rule. That said, research should always be done on source notes to confirm that the source is the Supreme Court or Legislature.

Note that specific editorial material and appendices listed in SDCL 2-16-13.1, which includes some appendices enacted by the Court, are excluded from the official code but appear alongside the code. See SDCL 2-16-6(e). Some of these materials have unique organizational structures or other qualities that further distinguish them from the rest of the code. Other rules also have unique organizational structures due to various circumstances. This manual applies to these materials to the extent applicable.

Section 2. Numbering

The South Dakota Codified Laws are organized by title, chapter, section, subdivision, and subsection. A title consists of multiple chapters, a chapter consists of multiple sections, and material in a section may be organized as subdivisions and subsections. A sample citation for a subsection might be subsection 77-3-31(2)(b).

77 is the title.
77-3 is the chapter.
77-3-31 is the section.
77-3-31(2) is the subdivision.
77-3-31(2)(b) is the subsection.

Graphically this arrangement is represented as follows:

77-3-31. Catchline.

Introductory material:

- (1) Subdivision;
- (2) Subdivision;
 - (a) Subsection;
 - (b) Subsection; and
 - (c) Subsection; and
- (3) Subdivision.

A section should begin with introductory material and not with a numbered subdivision. Do not create multiple subdivision lists within a section. Do not create multiple subsection lists within a subdivision.¹

Part IV. Form and Style of Rule Drafting

Section 1. Definitions

A word or phrase may be defined in a definition section that applies to an entire chapter or another section or sections, or in a standalone section to which the word defined applies.

The following rules apply to definitions:

- When using a definition section, place definitions in alphabetical order.
- If amending a definition section that is not in alphabetical order, reorder the definitions and check cross references.
- Once a word is defined, use the word consistently.
- Do not use the term being defined in its own definition.
- Do not define a word already defined in the chapter being amended.
- Do not define a word that is not used in the rule being amended.
- Do not include “unless the context requires otherwise.” This makes it unclear as to when the definition is being used and when it is not being used.
- Do not write substantive requirements into a definition.
- Definition language should be the same part of speech as the word being defined.²

Example:

Terms used in this chapter mean:

- (1) “Judge,” a public official who decides cases in a court of law;
- (2) “Lawyer,” a person who practices law; and
- (3) “Party,” a person or entity involved in a legal transaction or proceeding.

If a definition is included in a section containing other substantive language, the definition language may be drafted as follows:

The bench and the bar are primarily responsible for providing competent legal services for all persons including those unable to pay for these services. As one means of providing assistance to lawyers and to encourage law schools to provide field placement instruction in legal work of varying kinds, §§ 16-18-2.2 to 16-18-2.10, inclusive, are adopted. **For the purposes of §§ 16-18-2.1 to 16-18-2.10, “extern” means a student in a field placement program for academic credit offered by a school of law in accordance with the American Bar Association Standards for Approval of Law Schools, and “intern” means any other student providing legal assistance under the supervising lawyer.**³

Section 2. Ordinary Meaning of Words

In code, words are generally understood in their ordinary sense. SDCL 2-14-1. Certain words in the official code are defined in SDCL 2-14-2.

Section 3. Consistency

In the context of rule drafting, consistency means foregoing elegant and varying word choices in favor of being repetitive. The same word or phrase should be used to denote the same thing throughout a rule.

Compare: The defendant’s attorney shall file the person’s pleading.

With: The defendant’s attorney shall file the defendant’s pleading.

A drafter should deliberately select words to convey the drafter’s intent clearly and accurately, not accidentally cast doubt on that intent. Word choice must be consistent within a rule and compatible with the chapter of law in which the proposed language will be located.⁴

Section 4. Imperative, Permissive, and Prohibitive Construction

Verbs within the code generally convey authority. The following definitions apply:

Shall	=	Required action
May	=	Permitted action
May only	=	Restricted permitted action
May not	=	Prohibited action
Must	=	Action required as a condition of something; used with inanimate objects
Must be	=	Required condition
Is	=	Statement of condition

“Shall” is specifically defined in code “to direct any action, the term, shall, manifests a mandatory directive and does not confer any discretion in carrying out the action so directed.” SDCL 2-14-2.1. In the 2025 Session, the Legislature passed an amendment to this section to specify that “must” has the same definition as “shall.”

A rule giving discretion to an officer or entity using “may” should also establish guidelines to be followed in exercising such discretion. “May not” negates the obligation and permission to act. “Shall” is not used to establish a description or condition. “Shall not” negates the obligation but not the permission to act and therefore it should be avoided.⁵

Do not use “shall be” to make a statement that is true by operation of law. Use “is” or “are.”

Compare: The lay member’s compensation shall be one hundred dollars per day.

With: The lay member’s compensation is one hundred dollars per day.

“Must” is used rather than “shall” when:

- An action is required as a precursor to or a condition of an occurrence.
- With the passive voice.
- When the actor is not specified or when the requirement is imposed on an inanimate object.

Examples:

- Before signing the contract, an individual must complete...
- The contract must be approved by...
- The complaint must allege facts.

Section 5. Active Voice vs. Passive Voice

Use the active voice whenever possible. The use of the active voice expressly identifies the principal actor—the individual or entity who has a power, privilege, or duty—as the subject of a sentence, logically followed by the mandate or prohibition, i.e., verb and object, imposed. Passive voice generally employs the opposite order—object, verb, then subject—and is often indicated by the phrase “shall be.”

Compare: A chair shall be appointed by the board.

With: The board shall appoint a chair.

Using the passive voice may create ambiguity if a subject is not identified.

Example:

The report must be compiled annually. (Subject?)

The passive voice may be used when use of the active voice would cause awkwardness of construction. For example, one cannot generally use active voice for an exception or condition precedent to the rule’s main effect.⁶

Example:

If any attorney has been convicted of a serious crime, the Supreme Court may enter an order immediately suspending the attorney from engaging in the practice of law . . .⁷

Section 6. Singular vs. Plural

Draft using singular nouns instead of plural. “Words used in the singular number include the plural, and the plural, the singular, except where a contrary intention plainly appears.” SDCL 2-14-6.⁸

Compare: Certified judgments of conviction are conclusive evidence.

With: A certified judgment of conviction is conclusive evidence.

Section 7. Concise, Clear Language

A sentence should be as simple as possible without sacrificing clarity or precision. Arrange sentences with the goal of enhancing clarity and readability. Use shorter, simpler words whenever possible.

Avoid colloquialisms, jargon, legalisms, and redundancies. Avoid adjectives such as “real,” “true,” and “actual,” and adverbs such as “duly” and “properly.” Do not use “total” before “amount.” These ideas are normally implied. Expressing them creates doubt whether they are implied elsewhere. Avoid “adequate,” “sufficient,” “promptly,” “approved,” or “reasonable” unless one specifies what these words mean or refers to the standards that must be met.⁹

Section 8. Multi-word Reference

A multi-word reference may, after its initial use, be shortened. Repeatedly using a multi-word reference may unnecessarily lengthen a section and impact readability. To remedy this, the use of a shortened reference, e.g., “board” for “Board of Bar Examiners,” is permissible if there are no other terms in the section that contain the shortened reference.¹⁰

Example:

The Board of Bar Examiners shall conduct examinations at such times and places as the board shall by rule determine.¹¹

Section 9. Capitalization

Capitalize proper nouns (e.g., person, place, organization) in the text of a rule. The proper name of an institution, department, governmental agency, organizational unit within a department or agency:

- Board of Bar Examiners
- Supreme Court

- United States District Court
- University of South Dakota
- Unified Judicial System

Do not capitalize the following:

- board
- secretary
- chief justice
- university

Substitutions for official titles, such as “secretary” or “director,” are not capitalized.

The title of a federal or state program is not capitalized, e.g., medicaid, 24/7 sobriety program.

SDCL organizational units, such as “title,” “article,” “chapter,” “section,” or “rule” are not capitalized.¹²

Section 10. Gender

Use gender-neutral terms where possible, such as “applicant,” “attorney,” or “individual.” Do not use phrases such as “he or she” or “him or her.” Do not use “they” or “their” as a singular object.

Compare: The Supreme Court shall enter such orders as are necessary to notify the attorney’s clients of his change in status.

With: The Supreme Court shall enter such orders as are necessary to notify the attorney’s clients of the attorney’s change in status.¹⁴

In the process of amending a rule, if the rule uses terms that should be gender-neutral, it is appropriate to amend the language to reflect gender neutrality.

Note that “[w]ords used in the masculine gender include the feminine and neuter. Words used in the feminine gender include the masculine and neuter.” SDCL 2-14-5.¹³

Section 11. Person-First Language

When referring to an individual with a disability, it is generally best to reference the individual first and the disability thereafter.

Compare: the developmentally disabled

With: individual with a developmental disability

Additionally, do not make the individual synonymous with the disability (e.g., autistic, epileptic, quadriplegic).¹⁵

Section 12. Hyphenation

A compound modifier generally consists of two or more words connected by a hyphen acting as one adjective, unless the compound modifier follows the noun it modifies. Compound modifiers that contain -ly adverbs are not hyphenated.

Compare: employ a practice that is evidence-based

With: shall use an evidence-based practice

If numbers are spelled out, only compound numbers, or that portion of the number forming a compound number, should be hyphenated.

- Forty-five
- One hundred and fifty-seven
- Thirty million, sixty-seven thousand, nine hundred and two

Hyphens should be used between all fractions.

- One-half
- Five-sixteenths
- Twenty-one-thirtieths

To answer questions about hyphenation, consult a resource such as *Merriam Webster's Collegiate Dictionary*, the *Chicago Manual of Style*, or *The Redbook: A Manual on Legal Style*.¹⁶

Section 13. Numbers

Most numbers, including sums of money, should be written out rather than indicated by numerals:

- Ten days
- Twenty-five percent
- One thousand, two hundred twenty-five dollars.

Dates, time, and formulas are exceptions to this rule.¹⁷

Section 14. Date and Time

Dates should be written as follows:

- December 31, 2003
- December thirty-first of the application year

Specific times must be depicted as “a.m.” or “p.m.” Do not use “o’clock.” The relevant time zone should also be included.¹⁸

Example:

A document filed by 11:59 p.m. central standard time or daylight savings time as applicable is considered filed on that date.

Section 15. Tense

Generally, draft words in the present tense. “Words used in the present tense include the future as well as the present.” SDCL 2-14-7.¹⁹

Compare: No fee will be required for filing.

With: No fee is required for filing.

Section 16. Proper Punctuation

The use of punctuation in rule drafting is the same as correct formal usage. Some rules to be observed in the use of punctuation include:

- Do not use a colon except to introduce a series of subdivisions.
- In a series of subdivisions following a colon, use a semicolon at the end of each provision.
- Quotation marks should be used around a word being defined but should otherwise be avoided. When quotations are used, the comma or period is placed inside a quotation mark, but other punctuation marks are placed outside the quotation mark unless part of the quotation.
- Use a serial comma, i.e., the comma that comes before the “and” in a list, such as A, B, C, and D.²⁰

Section 17. Referring to Existing Law

Any reference to existing law is generally made to the South Dakota Codified Laws. However, the abbreviation “SDCL” is not used. The section symbol “§” is used unless the word “section” begins a sentence. In that instance, “section” is spelled out.

Referencing a SDCL title or chapter:

- Pursuant to title 16 . . .
- Pursuant to this title . . .
- Pursuant to chapter 16-18 . . .
- Pursuant to this chapter . . .

Referencing SDCL sections:

- One section: § 16-16-1
- Two sections: §§ 16-16-1 and 16-16-1.1
- Three or more consecutive sections: §§ 16-16-1 to 16-16-2.3, inclusive
- Three or more non-consecutive sections: §§ 16-16-4, 16-16-6, and 16-16-7.1
- Sections connected by “or”: § 16-16-7.1 or 16-16-7.6
- Three or more consecutive sections and another section: §§ 16-16-1 to 16-16-2.3, inclusive, and 16-16-7.1

Referencing SDCL subdivisions:

- One subdivision: subdivision 16-19-33(1)
- Two subdivisions in different sections: subdivisions 16-19-33(1) and 16-19-35(1)
- Two subdivisions in the same section: subdivisions 16-19-33(1) and (3)
- Three or more subdivisions in the same section: subdivisions 16-19-33(1), (2), and (10)

Referencing SDCL subsections:

- One subsection: subsection 15-26A-60(8)(a)
- Two subsections in different sections: subsections 15-26A-60(8)(a) and 16-18-2(7)(a)
- Two subsections in the same section: subsections 15-26A-60(8)(a) and (b)
- Three or more subsections in the same section: subsections 15-26A-60(8)(a), (b), and (c)

Referencing a constitutional section:

- S.D. Const., Art. V, § 12

If a legal authority needs to be cited other than the above examples, consult *The Bluebook* for the proper citation format.²¹

Part V. Word Preferences

Section 1. Avoiding Certain Words

The wording of rules should be precise, clear, and concise. Avoid both conversational and legalistic expressions. Use shorter, simpler words if there is a choice. The following words or phrases are often incorrectly used in drafting and can usually be replaced by a better word or phrase²²:

AVOID	PREFERABLE
absolutely null and void	void
aforesaid, aforementioned, before-mentioned	the, that, or those
afforded or accorded	given
and/or	either A or B, or both
any and all	any, or all
at such time as, at the time of	when
attorney and counselor at law	attorney
authorize and empower	may
be and the same is hereby	is
bonds, checks, drafts, notes, etc.	evidence of indebtedness
can	may
carry out	execute or complete
constitute and appoint	appoint
deal with	address or conduct
deemed to include	includes
during such time as	while
during the course of	during
each and every	each, or every
either directly or indirectly	<i>(remove entirely)</i>
employ (meaning to use)	use
enter into a contract with	contract with
every individual, all individuals	any individual, or each individual
examine witnesses and hear testimony	take testimony
fail, refuse, or neglect	fail
for the duration of	during
for the reason that	because

AVOID	PREFERABLE
forthwith	immediately
from and after	after
from July first	after June thirtieth
full and complete	full
give consideration to	consider
give recognition to	recognize
have need of	need
hereinafter, hereinbefore, hereinabove, above, below, following, preceding (when referring to the position of a provision)	if reference is necessary, specify the chapter, section, etc.
in case, in cases which, in the event that	if
in the interests of	for
inquire	ask
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is dependent on	depends on
is directed to	shall
is empowered to	may
is entitled to	may
is hereby authorized and it shall be his duty to	shall
is required to	shall
is unable to	cannot
it is the individual's duty to	shall
it is lawful to	may
law passed	law enacted
make application	apply
make a determination	determine or decide
make payment	pay
make provision for	provide for
matter transmitted through the mail	mail
means and includes	means

AVOID	PREFERABLE
member of a partnership	partner
no later than June thirtieth	before July first
none whatsoever	none
not later than	before
null and void	void
occasion (as a verb)	cause
of a technical nature	technical
on an individual's own application	upon request
ordered, adjudged, and decreed	ordered
or, in the alternative,	or
per annum	a year
per centum	percent
period of time	period
prior to	before
prosecute its business	conduct its business
purchase	buy
rules and regulations	rules
said	the, that, or those
same	(appropriate noun or pronoun)
shall be construed to mean	means
shall be deemed to be	is
shall have the power to	may
shall not	may not
should	shall or must
sole and exclusive	exclusive
State of South Dakota	this state
subsequent to	after
such	the
suffer	allow
to wit	(remove entirely)
under the provisions of	pursuant to
unless and until	unless or until
until such time as	until
utilize	use
when, where (as a condition)	if

AVOID	PREFERABLE
whenever	when or if
wheresoever	where
whosoever	whoever

Section 2. “Including but Not Limited To”

Avoid using the phrase “including, but not limited to . . .” The term “including” is not exhaustive.

It is preferable to not have examples listed in rule if there is a general statement. If there are listed examples, they should be exhaustive.²³

Compare: Contains the applicant’s relevant personal identifying and contact information, including the applicant’s legal name, address, telephone number, email address, and website address.

With: Contains the applicant’s legal name, address, telephone number, email address, and website address.

With: Contains the applicant’s relevant personal identifying and contact information.

Section 3. “Person” or “Individual”

“Person” may be used to apply a provision to human beings and nonhuman entities, such as corporations and governmental bodies.

If “person” is used to apply a provision to a human being, the context must clearly indicate that the application may only apply to a human being.

When it is not clear from the context that the application of a provision only applies to a human being, “individual” should be used.²⁴

Section 4. “That” or “Which”

If a phrase is intended to provide information integral to the sentence, e.g., a restriction or description, use “that.” A phrase using “that” is not set off by commas.

Compare: Jurisdiction for complaints against members of the judiciary for conduct *which* occurred prior to becoming a member of the judiciary shall be vested with the Judicial Qualifications Commission.

With: Jurisdiction for complaints against members of the judiciary for conduct *that* occurred prior to becoming a member of the judiciary shall be vested with the Judicial Qualifications Commission.²⁶

If a phrase is intended to provide additional but not essential information, use “which.” A phrase using “which” is set off by commas.²⁵

Example:

The furnishing of proof of competency as may be required in the discretion of the Supreme Court, which proof may include certification by the bar examiners of petitioner’s successful completion of examinations for admission to practice after the suspension or disbarment.²⁷

Section 5. “Less” or “Fewer,” “Greater” or “More”

Use “fewer” when referring to countable or plural nouns, use “less” when referring to volume, amount, or degree.

Examples:

- fewer applicants
- less land

Use “more” rather than “greater than.” “Greater than” may be used in limited circumstances when comparing the degree, level, or number of the items referenced.²⁸

Section 6. “Whether” or “Whether Not”

When to use only the word “whether,” as opposed to the phrase “whether or not,” depends on that which is being modified.

If the “whether” clause is the object of a verb, then “or not” is unnecessary.

Example:

The applicant shall indicate whether the license was revoked.

If the “whether” clause is the object of a preposition, “or not” is unnecessary.

Example:

The board shall base the decision on whether the error was remedied.

“Whether or not” is necessary when the “whether” clause modifies a verb or when the phrase “regardless of whether” could logically be used in the sentence.²⁹

Example:

The board shall vote, whether or not all members are present.

Part VI. Examples of How to Draft a Proposed Rule Change

Amending a Current Rule

Proposed Amendment to 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 four hundred fifty dollars. An applicant for admission without examination shall pay a fee of 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 one of the next two scheduled combined Multistate Essay ~~Examination~~ Examinations, which ~~includes~~ include an Indian Law question and Multistate Performance Test, and/or ~~to the Multistate Bar Examination~~ Examinations. The applicant shall inform the Secretary in writing which of the next two scheduled examinations to which the fee should be applied. 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.

Add an appropriate lead line indicating the proposed amendment to the pertinent section, followed by the catchline to that section.

When proposing amendments to a current rule, deletions are shown by strikethroughs and additions shown by underscore. New material always follows overstricken text. Punctuation following overstricken text should be carried to the end of the new text.

Do not overstrike or underscore part of a word, number, numeric dollar amount, or citation. Overstrike the entire unit of text to be changed and add the new text after the overstricken text.

Adding a New Rule

Proposed adoption to Mandate Sexual Harassment Prevention Training for Lawyers to be Added to a New Section to SDCL Chapter 16-18 Powers and Duties of Attorneys.

Each active member of the State Bar of South Dakota shall complete sexual harassment prevention training offered or approved by the State Bar of South Dakota within two years following admission to the practice of law or within two years after the enactment of this rule, and once every three years thereafter. Failure to complete such required training will result in the member being placed on inactive status and may be grounds for disciplinary action.

A new rule is underlined in its entirety. An appropriate lead line summarizes the purpose of the new rule and indicates where the proponent believes it should be placed in code by the Code Commission. See SDCL 2-16-6. A new section will never replace a previously transferred or repealed section.

Adding a New Subdivision to a Rule

Proposed amendment to SDCL 79-36-42. Qualifications for Members of the Justice Task Force.

An individual is eligible to be nominated for membership in the Justice Task Force, if the individual verifies in writing that the individual:

- (1) Is at least eighteen years of age;
- (2) Holds a juris doctor; ~~and~~
- (3) Has ten years of experience practicing law; and
- (4) Resides in this state.

Removing a Subdivision from a Rule

Proposed amendment to SDCL 79-36-42. Qualifications for Members of the Justice Task Force.

An individual is eligible to be nominated for membership in the Justice Task Force, if the individual verifies in writing that the individual:

- (1) Is at least eighteen years of age;
- (2) Holds a juris doctor;
- (3) Has served for five years on the board of a national justice task force; and
- ~~(4) Has ten years of experience practicing law; and~~
- ~~(5) Resides in this state.~~

Repealing a Rule

Proposal to repeal SDCL 79-36-42. Qualifications for Members of the Justice Task Force.

An individual is eligible to be nominated for membership in the Justice Task Force, if the individual verifies in writing that the individual:

- (1) Is at least eighteen years of age;
- (2) Holds a juris doctor;
- (3) Has served for five years on the board of a national justice task force;
- (4) Has ten years of experience practicing law; and
- (5) Resides in this state.

The proposed repeal of a section requires overstriking the entire section.

Endnotes

1. Legislative Research Council, Legislative Drafting Manual 18 (November 2023).
2. *Id.* at 13-14.; SDCL 16-18-2.1
- 3.
4. Legislative Research Council, *supra* note 1, at 15.
5. *Id.* at 18-19; Legislative Research Council, Legislative Drafting Manual 20-21 (October 2024).
6. Legislative Research Council, *supra* note 1, at 20-21; Legislative Research Council, *supra* note 5, at 21-22.
7. SDCL 16-19-37
8. Legislative Research Council, *supra* note 1, at 21.
9. *Id.*
10. *Id.* at 22.
11. SDCL 16-16-9
12. Legislative Research Council, *supra* note 1, at 22-24.
13. *Id.* at 24-25.
14. SDCL 16-19-48.
15. Legislative Research Council, *supra* note 1, at 25.
16. *Id.* at 25-26.
17. *Id.* at 27.
18. *Id.*
19. *Id.* at 18.
20. *Id.* at 27.
21. *Id.* at 28-29.
22. *Id.* at 32-35.
23. *Id.* at 24.
24. *Id.* at 35.
25. *Id.*
26. SDCL 16-19-29. Note that “is” is preferable to “shall be” under current recommendations.
27. SDCL 16-19-87.
28. Legislative Research Council, *supra* note 1, at 36; Bryan Garner, *The Redbook: A Manual on Legal Style* § 13.3 (West Academic Publishing 5th ed. 2023).
29. Legislative Research Council, *supra* note 1, at 36.