

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE PROPOSED	)	NOTICE OF RULES HEARING
AMENDMENT OF SDCL 15-26A-14	)	
AMENDMENT OF SDCL 16-26A-92	)	NO. 125
AMENDMENT OF SDCL CH. 16-2, APPENDIX,	)	
SOUTH DAKOTA CODE OF JUDICIAL	)	
CONDUCT, CANON 5	)	
AMENDMENT OF SDCL 16-12B-1.1-Greg	)	
IN THE MATTER OF THE PROPOSED	)	
ADOPTION OF A NEW RULE TO BE	)	
DESIGNATED AT SDCL 23A-35-4.3	)	
IN THE MATTER OF THE PROPOSED	)	
ADOPTION OF ADDING NEW SECTIONS TO	)	
SDCL Ch. 25-4	)	
ADOPTION OF A NEW RULE RELATING TO A	)	
CODE OF CONDUCT FOR INTERPRETERS IN	)	
THE SOUTH DAKOTA JUDICIARY	)	
ADOPTION OF A NEW RULE RELATING TO	)	
THE FORMATTING OF PLEADINGS IN THE	)	
COURTS	)	

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

NOTICE IS HEREBY GIVEN THAT ON FEBRUARY 13, 2013, at 9:00 A.M., C.S.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

-----  
1. Amendment of SDCL 15-26A-14. Contents of petition for appeal.

The petition shall be captioned in the Supreme Court and entitled as in the circuit court. It shall contain:

- (1) A statement of facts necessary to understand the question presented;
- (2) A statement of the question itself;

- (3) The relief sought;
  - (4) A concise statement, without argument, of law in support of the request;
  - (5) The reasons why the appeal should be allowed;
  - (6) Other papers and exhibits petitioner deems relevant and material; and
  - (7) All papers must conform to typeface specified in § 15-26A-66. Except by the Court's permission, a petition or response may not exceed 2010 pages, exclusive of the accompanying documents required by subdivisions 15-26A-15(1), (2) and (3).
- - - - -

2. Amendment of SDCL 15-26A-92. Enlargement of time.

The Supreme Court for good cause shown may upon motion enlarge or extend the time prescribed by this chapter for doing any act or may permit an act to be done after the expiration of such time; but the Supreme Court may not enlarge the time for filing or serving a notice of appeal.

- - - - -

3. Amendment of SDCL Ch. 16-2 Appendix, South Dakota Code of Judicial Conduct, Canon 5.

CANON 5

A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity

A. All Judges and Candidates

- (1) Except as authorized in Sections 5B(2), 5C(1), 5C(2) and 5C(3), a judge or a candidate\* for election or appointment to judicial office shall not:
  - (a) hold an office in a political organization;\*
  - (b) publicly endorse or publicly oppose another candidate for public office;
  - (c) make speeches on behalf of a political organization;\* ~~or~~
  - (d) solicit funds for a political organization\* or candidate; or
  - (e) personally solicit or accept campaign contributions other than through a campaign committee authorized by Section 5C(2).

COMMENTARY

*Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.*

*Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."*

*Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.*

*A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.*

- (2) A judge shall resign from judicial office upon becoming a candidate\* for a nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate\* for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law\* to do so.

COMMENTARY

*This section applies regardless of whether the office sought is partisan or nonpartisan.*

- (3) A candidate\* for a judicial office:

- (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity, impartiality,\* and independence of the judiciary, and shall encourage members of the candidate's family\* to adhere to the same standards of political conduct in support of the candidate\* as apply to candidate;\*

COMMENTARY

*Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.*

- (b) shall prohibit employees and officials who serve at the pleasure of the candidate,\* and shall discourage other employees and

officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate\* is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly\* permit any other person to do for the candidate what the candidate\* is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial\* performance of the adjudicative duties of the office; or

(ii) knowingly\* misrepresent the identity, qualifications, present position or other fact concerning the candidate\* or an opponent;

COMMENTARY

*Section 5A(3)(d) prohibits a candidate for judicial office from making pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office regarding cases, controversies or issues that are likely to come before the court. A candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Sections 3B(9) and (10), the general rules on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also South Dakota Rule of Professional Conduct 8.2. The promises and commitments clause must be narrowly construed and cautiously applied to campaign speech.*

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may, unless otherwise prohibited by law:\*

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office.

(b) a nonjudge candidate\* for appointment to judicial office may, in addition, unless otherwise prohibited by law:\*

(i) retain an office in a political organization, \*

(ii) attend political gatherings, and

*<Section 5B(2)(b)(iii) effective until the effective date of the repeal of § 12-9-2>*

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization\* or candidate and purchase tickets for political party\* dinners or other functions.

*<Section 5B(2)(b)(iii) effective upon the effective date of the repeal of § 12-9-2>*

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization\* or candidate and purchase tickets for political party dinners or other functions.

#### COMMENTARY

*Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.*

*Although under Section 5B(2) nonjudge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.*

C. Judges and Candidates Subject to Public Election.

(1) A judge or a candidate\* subject to public election\* may, except as provided by law:\*

(a) at any time

(i) purchase tickets for and attend political gatherings:

*<Section 5C(1)(a)(ii) effective until the effective date of the repeal of § 12-9-2>*

(ii) identify himself or herself as a member of a political party;\*

*<Section 5C(1)(a)(ii) effective upon the effective date of the repeal of § 12-9-2>*

(ii) identify himself or herself as a member of a political party;

(iii) contribute to a political organization\* or candidate and,

(iv) speak to gatherings on his or her own behalf;

(b) when a candidate for election

(i) appear in newspaper, television and other media advertisements supporting his or her candidacy:

(ii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and

(iii) publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running;

(iv) establish a campaign committee pursuant to the provisions of Section 5C(2); and

*<Section 5C(1)(a)(v) effective until the effective date of the repeal of § 12-9-2>*

(v) seek, accept, or use endorsements from any person or organization other than a political party\*.

<Section 5C(1)(a)(v) effective upon the effective date of the repeal of § 12-9-2>

(v) seek, accept, or use endorsements from any person or organization.

COMMENTARY

*Section 5C(1) permits judges subject to election to be involved in certain political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity. The conduct of a judicial campaign and the manner of presentation of any material in connection with a campaign for judicial office should comport with the dignity and integrity required of that office.*

(2) A judicial candidate subject to public election

(a) may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

(b) A judicial candidate subject to public election shall direct his or her campaign committee:

(i) to solicit and accept only such campaign contributions as are reasonable, in any event not to exceed one-thousand dollars (\$1,000) in the election year per individual or organization;

(ii) not to solicit contributions for the candidates campaign earlier than January 1 of the election year and no later than December 31 of the election year;

(iii) that in addition to complying with all applicable statutory requirements for disclosure of campaign contributions, candidates\* or candidates' campaign committees shall comply with all applicable statutory campaign reporting requirements;

(iv) not to use or permit the use of campaign contributions for the private benefit of the candidate\* or others; and

(v) not to disclose to the candidate the identity of campaign contributors nor to disclose to the candidate the identity of those who were solicited for contribution and refused such solicitation. The candidate may be advised of aggregate contribution information in a manner that does not reveal the source(s) of the contributions.

(c) A judicial candidate subject to public election may personally solicit campaign contributions from members of the judge's family, from a person with whom the judge has an intimate relationship, or from judges over whom the judge does not exercise supervisory or appellate authority.

COMMENTARY

Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions except to the extent allowed by Section 5C(2)(c). See Section 5A(1)(e). Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees. For instance, under current law candidates should advise their campaign committee to follow the reporting requirements contained in SDCL §§ 12-27-22 and SDCL 12-27-24 thru 28. Such reports must be filed with the Secretary of State on the dates specified. The candidates\* or candidates' campaign committees shall also comply with SDCL § 12-27-15. At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, but not to exceed one-thousand dollars in the election year per individual or organization. The candidate must also instruct the campaign committee to comply with all applicable requirements of Section 5C(2).

Candidates' campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible. Contributions for a campaign for judicial office should not be knowingly solicited or accepted from a party, or one employed by, affiliated with or a member of the immediate family of a party, to litigation that (a) is before the candidate, (b) may reasonably be expected to come before the candidate if elected, or (c) has come before the candidate so recently that the knowing solicitation or acceptance of funds may give the appearance of improper use of the power or prestige of judicial office. Similarly, contributions may not be knowingly solicited or accepted from any firm, corporation or other organization that has as one of its purposes the promotion of one side of a legal issue which may reasonably be expected to come before the candidate if elected. Contributions may be solicited and accepted from lawyers (including lawyers having cases before, or which may come before, the candidate), provided that the solicitation makes no reference, direct or indirect, to any particular pending or potential litigation.



~~<First paragraph of Section 5C(2) effective until the effective date of the repeal of § 12-9-2>~~

~~(2) Candidates,\* including an incumbent judge, may personally solicit campaign contributions and publicly stated support from individuals and organizations other than political parties.\* Such candidates\* or candidates' campaign committees may solicit and accept reasonable campaign contributions not to exceed one thousand dollars (\$1000.00) in the election year per individual or organization. Such candidates\* or candidates' campaign committees may manage the expenditure of funds for the candidates campaign and obtain public statements of support for his or her candidacy from individuals or organizations other than political parties.\* The limitation on individual contributions to any individual candidate\* in this section does not apply to contributions from the candidate,\* the candidate's spouse, any relative within the third degree of kinship of the candidate\* or the candidate's spouse, and the spouses of such relatives.~~

~~<First paragraph of Section 5C(2) effective upon the effective date of the repeal of § 12-9-2>~~

~~(2) Candidates,\* including an incumbent judge, may personally solicit campaign contributions and publicly stated support from individuals and organizations. Such candidates\* or candidates' campaign committees may solicit and accept reasonable campaign contributions not to exceed one thousand dollars (\$1000.00) in the election year per individual or organization. Such candidates\* or candidates' campaign committees may manage the expenditure of funds for the candidates campaign and obtain public statements of support for his or her candidacy from individuals or organizations. The limitation on individual contributions to any individual candidate\* in this section does not apply to contributions from the candidate,\* the candidate's spouse, any relative within the third degree of kinship of the candidate\* or the candidate's spouse, and the spouses of such relatives.~~

~~Such candidates\* or candidates' campaign committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate\* or candidate's campaign committee may solicit contributions for the candidates campaign no earlier than January 1 of the election year and no later than December 31 of the election year. In addition to complying with all applicable statutory requirements for disclosure of campaign contributions, candidates\* or candidates' campaign committees shall comply with all reporting requirements established in SDCL §§ 12-25-13 and 12-25-13.1. The reports must be filed with the Secretary of State on the dates specified in SDCL §§ 12-25-13 and 12-25-13.1. The candidates\* or candidates' campaign committees~~

~~shall also comply with SDCL § 12-25-4.1. A candidate \* shall not use or permit the use of campaign contributions for the private benefit of the candidate \* or others.~~

**COMMENTARY**

~~Although judges and judicial candidates are free to personally solicit campaign contributions and publicly stated support, they are encouraged to establish campaign committees of responsible persons to conduct campaigns for candidates through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Judges and judicial candidates are also encouraged to allow campaign committees to secure and manage the expenditure of funds for their campaigns and obtain public statements of support for their candidacies. The use of campaign committees is encouraged because they may better maintain campaign decorum and reduce campaign activity that may cause requests for recusal or the appearance of partisanship with respect to issues or the parties. At the start of the campaign, candidates must instruct his or her campaign committees to solicit or accept only contributions that are permitted under this rule. Candidates or candidates' campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund raising, to the extent possible. Contributions for a campaign for judicial office should not be knowingly solicited or accepted from a party, or one employed by, affiliated with or a member of the immediate family of a party, to litigation that (a) is before the candidate, (b) may reasonably be expected to come before the candidate if elected, or (c) has come before the candidate so recently that the knowing solicitation or acceptance of funds may give the appearance of improper use of the power or prestige of judicial office. Similarly, contributions may not be knowingly solicited or accepted from any firm, corporation or other organization that has as one of its purposes the promotion of one side of a legal issue which may reasonably be expected to come before the candidate if elected. Contributions may be solicited and accepted from lawyers (including lawyers having cases before, or which may come before, the candidate), provided that the solicitation makes no reference, direct or indirect, to any particular pending or potential litigation.~~

The following commentary paragraph is repealed effective upon the effective date of the repeal of § 12-9-2

With regard to the issue of solicitation of contributions or publicly stated support from political parties, candidates or candidates' campaign committees are directed to review SDCL § 12-9-2, making it a class 2 misdemeanor for any political party to endorse or nominate any candidate for judicial office.

Court Comment:

The proposed changes to Canon 5 reflect the development of case law in the area of judicial elections and the solicitation clause following the changes to the Code of Judicial Conduct made in 2005. See e.g. Wersal v. Sexton, et.al., 674 F3d 1010 (8<sup>th</sup> Cir 2012). The proposed rule would bar direct solicitation of campaign contributions by a judicial candidate with only limited exception as set forth in proposed Section 5(C)2(c). Such solicitations would instead be directed through a candidate's campaign committee. The candidate's campaign committee would not disclose to the candidate the identity of campaign contributors nor the identity of those solicited for campaign contributions, but only aggregate campaign contribution information.

The proposed changes to Canon 5 borrow heavily from the ABA Model Code of Judicial Conduct (2011 Edition) and the Minnesota Code of Judicial Conduct Rules 4.2 and 4.4. The proposed rule does not alter the prior limitation concerning the amount of campaign contributions, which is consistent with current legislative and county campaigns, or the requirement that public information filings are submitted to the Secretary of State. The proposed rule is similar in many respects to the former South Dakota provisions on solicitation that were in place prior to the 2005 revisions.

- (3) Except as prohibited by law,\* a candidate \* for judicial office in a public election may permit the candidate's\* name:
- (a) to be listed on election materials along with the names of other candidates\* for elective public office, and
- (b) to appear in promotions of his or her candidacy.

COMMENTARY

*Section 5C(3) provides a limited exception to the restrictions imposed by Section 5A(1).*

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law,\* the legal system or the administration of justice, or (iii) as expressly authorized by law.

COMMENTARY

*Neither Section 5D nor any other Section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive*

*and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.*

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.\* A successful candidate,\* whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate\* who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate\* for judicial office is subject to Rule 8.2(b) of the South Dakota Model Rules of Professional Conduct.

- - - - -

4. Amendment of 16-12B-1.1. Number of ~~full-time~~ magistrate judges. The number of ~~full-time~~ magistrate judges in the judicial circuits established by § 16-5-1.2 is fixed as follows:

- (1) First Circuit: One full-time magistrate judge;
- (2) Second Circuit: Four full-time magistrate judges;
- (3) Third Circuit: One full-time magistrate judge;
- (4) Fourth Circuit: One full-time and one part-time magistrate judge;
- (5) Fifth Circuit: One full-time magistrate judge; and
- (6) Sixth Circuit: One full-time magistrate judge; and
- (7) Seventh Circuit: Three full-time magistrate judges.

- - - - -

5. Proposed Adoption of a new rule to be designated at SDCL 23A-35-4.3. Relating to Search Warrant for Installation, Use, and Maintenance of Tracking Devices.

23A-35-4.3 Search Warrant for installation, use, and maintenance of tracking device

- (a) Tracking Device Defined. As used in this section the term tracking device means an electronic or mechanical device which permits the tracking of the movement of a person or object.
- (b) Contents. A search warrant for a tracking device may be issued by any magistrate authorized in SDCL 23A-35-2 for

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

- (c) **Scope.** Any tracking-device warrant issued under this section may authorize the use of the tracking device within the jurisdiction of the magistrate, and outside that jurisdiction if the tracking device is installed within the magistrate's jurisdiction. The executing officer must perform any installation authorized by the warrant during the daytime, unless the magistrate for good cause expressly authorizes installation at another time.
- (d) **Return.** The tracking-device warrant must command the executing officer to return the warrant to the magistrate designated in the warrant. The officer executing a tracking-device warrant must enter on it the exact time and date the device was installed and the period during which it was used.
- (e) **Service.** Within 10 days after the use of the tracking-device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who

was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the state, the judge may delay notice for reasons set forth in 23A-35-4.3(f).

- (f) Sealing of Contents of Warrant. With respect to the issuance of any warrant under this section, a judge may, upon a showing of good cause, seal the contents of a warrant and supporting documents until the termination of an investigation, an indictment or information is filed, or as otherwise ordered by the court for purpose of preventing (1) endangerment of life or physical safety of an individual, (2) flight from prosecution, (3) destruction of or tampering with evidence, (4) intimidation of potential witnesses; or (5) if failure to seal would otherwise seriously jeopardize an investigation or unduly delay a trial.
- - - - -

**6. Adoption of new sections to be added to SDCL Ch. 25-4. Relating to a parenting coordinator:**

Current Statutory Authority:

25-4-63. Divorce - Custody and visitation disputes--Appointment of parenting coordinator. In any custody or visitation dispute between parents, the court may appoint a parenting coordinator to assist the parents in resolving contested issues. The Supreme Court may promulgate rules pursuant to § 16-3-1 to prescribe the authority, duties, appointment, and compensation of parenting coordinators.

Section 1. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

At the request of either party, or on the court's own motion, a parenting coordinator may be appointed in any custody or visitation

proceeding. The parties may agree to use a parenting coordinator, subject to approval by the court, or the court may designate a parenting coordinator for the parties.

Section 2. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

A parenting coordinator must satisfy the following minimum qualifications:

- (1) A parenting coordinator must file an approved application on the prescribed form with the presiding judge for the circuit in which the parenting coordinator will provide parenting coordinator services;
- (2) A parenting coordinator must be qualified and approved as a family court mediator and meet the requirements of SDCL 25-4-58.1; and
- (3) A parenting coordinator must either be an attorney who is licensed to practice law in South Dakota; a psychologist who is licensed to practice in South Dakota; a psychiatrist who is licensed to practice in South Dakota; a social worker, family therapist or substance abuse counselor licensed to practice in South Dakota; or any other South Dakota licensed or certified professional with education, experience and specialized expertise relevant to the duties of a parenting coordinator.

Section 3. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

Persons not meeting the requirements of section 2 may be appointed as a parenting coordinator by the court upon consent of the parties.

Section 4. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

The prescribed form for a person seeking approval as a parenting coordinator is as follows:

PARENTING COORDINATOR APPLICATION FORM  
UNIFIED JUDICIAL SYSTEM OF SOUTH DAKOTA

Instructions: To be considered for approval as a parenting coordinator an applicant must complete this application form fully and accurately. This information must be filed with the Presiding Judge for the circuit in which the parenting coordinator will provide parenting coordinator services. You will be notified if any additional information is required and if your application is approved.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_

Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

- 1) Provide your professional background including degree(s), certificate(s), practice specialization(s), years of experience, special training, and any licensures held and dates obtained:
- 2) Provide a full and complete description of your experience in the following areas:
  - (a) knowledge of the South Dakota court system and its procedures in contested family matters;
  - (b) knowledge of South Dakota family law, especially as applied to custody and visitation issues;
  - (c) knowledge of child development and specifically the impact of divorce or separation on family members;
  - (d) knowledge of resources available in the state to which the parties and the children can be referred for assistance;
  - (e) knowledge of interviewing and problem-solving techniques applicable to the family setting.
- 3) Provide a full and complete disclosure of all professional employment experiences whether related to the role of a parenting coordinator or in any other field:
- 4) Provide complete information regarding any training, seminars, workshops, etc., you deem pertinent to family law, custody and visitation disputes, interviewing and dispute resolution techniques, child-rearing, child development, domestic violence or abuse or any other areas relevant to the services of a parenting coordinator that you have received:
- 5) Provide the number of proceedings in which you have been involved as a family court mediator or parenting coordinator giving approximate dates if available:
- 6) Describe your approach to resolving high-conflict situations and the methods of dispute resolution you have used:
- 7) Please describe how fees and costs will be calculated for your services as a parenting coordinator:
- 8) Please describe the requirements for payment of fees:
- 9) Please indicate if you are willing to accept pro bono cases or cases at a reduced rate? If so, please explain:  
I am aware of and agree to abide by the rules for parenting coordinators as promulgated by the Supreme Court of South Dakota.  
I understand that being approved and placed on the roster does not guarantee or ensure my appointment to any specific case or cases.

Signature

Date

**NOTE: This form must be updated as changes to the information occur or at least annually.**

Approved:

Presiding Judge

Date



Section 5. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

The term of the parenting coordinator will be designated in the order of appointment. The parenting coordinator may resign upon notice to the parties and the court. Absent an order of the court one or both parties cannot discharge a parenting coordinator. The court may terminate the service of the parenting coordinator at any time.

Section 6. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

A parenting coordinator will be required to disclose how fees and costs will be calculated for any services rendered and such fees and costs are subject to the approval of the court. The fees and costs for any parenting coordinator shall be at the sole expense of the parties. The court will determine the allocation of any fees between the parties in the order of appointment or through subsequent court order based on the circumstances of any particular case.

Section 7. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

The court order appointing the parenting coordinator shall specify the scope of the appointment and authority of the parenting coordinator. Additionally, a parenting coordinator may be ordered to do one or more of the following:

- 1) Inform the parties of the role of the parenting coordinator;
- 2) Monitor implementation of a voluntary or court-ordered parenting plan, the schedule, or parenting time issues provided such resolution does not involve a substantive change to the court's order;

- 3) Recommend strategies for implementing the parenting plan or resolving other parenting issues that may be impacting the parenting plan;
- 4) Assist the parties in developing communication and cooperation for the purpose of effective co-parenting of the children;
- 5) Assist with implementation of court orders and make recommendations to the court regarding implementation, clarification, modification, and enforcement of any temporary or permanent parenting time orders;
- 6) Implement domestic violence safeguards as the court deems necessary. For example, ordering no direct communications or no joint meetings, ensuring compliance with all provisions of any protection order or sentence in a criminal proceeding;
- 7) Document the services provided and record agreements reached;
- 8) Recommend appropriate community resources to one or both parents;
- 9) Educate the parties to effectively parent in a manner that minimizes conflict, develop appropriate parenting skills, identify sources of conflict, and work to lessen the effect of conflict on the children;
- 10) Make recommendations on the day-to-day issues experienced by the parties;
- 11) Act to empower the parties in resuming parental controls and decision-making, and minimize the degree of conflict between the parties for the best interests of the children;
- 12) Facilitate the ability of both parents to maintain ongoing relationships with the children;
- 13) Only with the prior consent of the court as specified in the order of appointment, make limited decisions subject to review by the court upon motion of the parties as specified in the

order of appointment. By way of example only, these issues include disagreements around exchanges, time-sensitive issues, holiday scheduling, discipline, health issues, school and extracurricular activities, and managing problematic behaviors by the parents or children; and

14) Interview law enforcement, social workers, health care providers, daycare providers and teachers as necessary to fulfill the terms of the court order.

A parenting coordinator shall not have the authority to make any decision affecting child support, a change of custody, or a substantial change in parenting time.

Section 8. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

The parenting coordinator may exclude counsel for the parties from participating in any parenting coordinator sessions.

Section 9. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

The appointment of a parenting coordinator does not divest the court of its exclusive jurisdiction to determine fundamental issues of custody, visitation and support, and the authority to exercise management and control of the case.

Section 10. That a NEW SECTION be added to SDCL Ch. 25-4 to read as follows:

Parenting coordinators are expected to conduct themselves by the highest ethical standards. Parenting coordinators should conduct themselves according to the following general principles:

- (1) A parenting coordinator should recognize that success is based on participation and self-determination by the parties. A parenting coordinator shall conduct any session fairly, diligently, impartially and in a manner consistent with assisting the parties under the direction of the court's order and in the best interests of the children.
- (2) A parenting coordinator shall fully disclose to all parties involved any actual or potential conflict of interest. A parenting coordinator shall not accept or shall withdraw from any matter in which the parenting coordinator has reason to believe he or she cannot proceed in an impartial manner. After full disclosure of an actual or potential conflict of interest to the parties, the parenting coordinator shall withdraw from the case if requested by any party to do so within ten days of the disclosure.
- (3) A parenting coordinator shall not provide any other professional services or counseling to either party or the minor children while serving as a parenting coordinator.
- (4) A parenting coordinator should maintain confidentiality at all times except as provided by law, this rule or court order. A parenting coordinator may otherwise disclose information regarding the matter only with the expressed consent of the parties. A parenting coordinator may testify if ordered by the court.

- - - - -  
7. Adoption of a new rule relating to a code of conduct for interpreters in the South Dakota judiciary.

Preamble.

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as

far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. Interpreters help ensure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

**Applicability.**

This Code shall guide and be binding upon all persons, agencies, and organizations who administer, supervise use of, or deliver interpreting services to the judiciary.

**Canon 1. Accuracy and completeness.**

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

**Canon 2. Representation of qualifications.**

Interpreters shall accurately and completely represent what their training and pertinent experience is and any certification they may have.

**Canon 3. Impartiality and avoidance of conflict of interest.**

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

**Canon 4. Professional demeanor.**

Interpreters shall conduct themselves in a manner consistent with the formality and civility of the court and shall draw as little attention to themselves as possible.

**Canon 5. Confidentiality.**

Interpreters shall keep confidential all privileged and other confidential information.

**Canon 6. Restriction of public comment.**

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

**Canon 7. Scope of practice.**

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

**Canon 8. Assessing and reporting inabilities to perform.**

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment completely, they shall immediately convey that reservation to the appropriate judicial authority.

**Canon 9. Duty to report ethical violations.**

Interpreters shall report to the proper judicial authority any effort to encourage a lack of compliance with any law, any provision to this Code, or any other official policy governing court interpreting and legal translating.

Canon 10. Professional development.

Interpreters shall strive to continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interactions with colleagues and specialists in related fields.

-----  
8. In the matter of the adoption of a new rule relating to the formatting of pleadings in the courts.

Section 1. All pleadings, motions, orders and other papers filed with the court, with the exception of exhibits, shall be typewritten or printed in a clear and legible manner, no smaller than 12 point type; on one side only of white, unglazed, opaque paper of good texture, eight and one-half inches wide and eleven inches long; and consecutively numbered at the bottom center of each page.

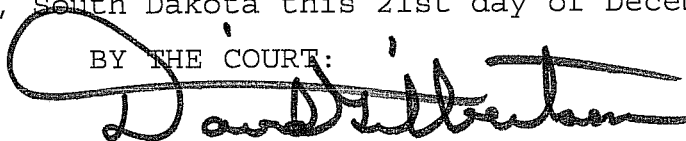
-----  
Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and ten copies thereof filed with the Clerk of the Supreme Court no later than January 30, 2013.

Subsequent to the hearing, the Court may reject or adopt the proposed rules or any rules germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by publication of this notice in the January 2013 State Bar Newsletter. Copies of proposals or comments may be obtained from the Office of the Supreme Court Clerk.

DATED at Pierre, South Dakota this 21st day of December, 2012.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
**FILED**

DEC 21 2012

  
Clerk