

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

| | | |
|---------------------------------------|---|-------------------------|
| IN THE MATTER OF THE PROPOSED |) | NOTICE OF RULES HEARING |
| AMENDMENT OF SDCL 15-6-83 |) | |
| IN THE MATTER OF THE PROPOSED |) | NO. 135 |
| AMENDMENT TO THE APPENDIX OF SDCL |) | |
| CHAPTER 16-1A TO MODIFY THE METHOD |) | |
| OF PUBLICATION FOR JUDICIAL VACANCIES |) | |
| IN THE MATTER OF THE ADOPTION OF A |) | |
| NEW RULE TO THE APPENDIX OF SDCL |) | |
| CHAPTER 16-1A RELATING TO THE |) | |
| PROCEDURE FOR RECORD RETENTION AND |) | |
| DESTRUCTION FOR THE JUDICIAL |) | |
| QUALIFICATION COMMITTEE |) | |
| IN THE MATTER OF THE PROPOSED |) | |
| AMENDMENT OF SDCL 16-3-5.1 |) | |
| IN THE MATTER OF THE ADOPTION OF A |) | |
| NEW RULE RELATING TO THE EFFECTIVE |) | |
| DATE OF SUPREME COURT RULES |) | |
| IN THE MATTER OF THE ADOPTION OF A |) | |
| NEW RULE RELATING TO STYLE AND FORM |) | |
| OF AMENDED SUPREME COURT RULES FOR |) | |
| PUBLICATION |) | |
| IN THE MATTER OF THE PROPOSED |) | |
| AMENDMENT TO THE APPENDIX OF SDCL |) | |
| CHAPTER 16-17 RELATING TO MODIFYING |) | |
| THE METHOD OF PUBLICATION FOR |) | |
| INITIATIVE OR REFERENDUM TO THE |) | |
| STATE BAR |) | |
| IN THE MATTER OF THE PROPOSED |) | |
| AMENDMENT OF SDCL 23A-13-10 |) | |

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

NOTICE IS HEREBY GIVEN THAT ON May 30, 2017, 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:

Notice of Rules Hearing No. 135 - May 30, 2017

1. Proposed Amendment of SDCL 15-6-83. Rules by courts of record. A majority of the judges in each circuit court may make and amend rules governing practice not inconsistent with the rules contained in this chapter. Notice of the intent to adopt, amend, or repeal any rule shall be given by filing a copy of the proposed rule, amendment, or repeal in the office of the clerk of courts in each county within the circuit to be affected and by giving notice indicating the purpose of the proposed rule, amendment, or repeal in general terms and fixing a time and place, not sooner than thirty days following the date of notice, at which any person may appear and be heard regarding the proposed adoption, amendment, or repeal. Notice of the proposed adoption, amendment, or repeal of several rules may be given at one time and in one notice. The notice required by this rule may be given by ~~mailing to all of the active members of the state bar within the circuit or by publication in all of the newspapers published within the circuit~~ 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/>. Electronic mail notification shall also be provided to members of the State Bar of South Dakota who are registered through File and Serve.

Any rule, or amendment or repeal thereof, adopted pursuant to this section shall become effective upon being filed with and approved by the Supreme Court. Upon being approved, all such rules, amendments or repeals thereof shall be filed by the Supreme Court with the code counsel, who shall publish them as an appendix to Title 15 of the code. Any rules heretofore adopted pursuant to this section are hereby nullified.

Notice of Rules Hearing No. 135 - May 30, 2017

**2. Proposed Amendment to the Appendix of SDCL CHAPTER
16-1A:**

II. JUDICIAL NOMINATIONS

1. Initial Procedure; Investigative Sources; Notice.

(a) Whenever the commission receives a notice of vacancy of a judicial office within the jurisdiction of the commission, the commission shall actively seek out and encourage applications. The commission shall require completion of a questionnaire which shall include questions relating to the background and qualifications of the applicant, a waiver of confidentiality of all materials necessary to adequately investigate each applicant, including, but not limited to, disciplinary records of the South Dakota State Bar Disciplinary Board, any other bar association disciplinary records, and records maintained by any law enforcement agency.

(b) The commission may also require financial disclosure from the applicant to include, but not limited to, South Dakota sales tax returns and financial statements.

(c) The commission shall advertise the judicial vacancy in ~~in the State Bar Newsletter circulated throughout the State of South Dakota or by first-class mail to all members of the State Bar of South Dakota~~ by posting notice at the Unified Judicial System's website at <http://www.uj.s.sd.gov/> or the State Bar of South Dakota's website at <http://www.sdbar.org/>. Electronic mail notification shall also be provided to members of the State Bar of South Dakota who are registered through File and Serve. The advertisement shall afford reasonable notice to prospective applicants of the vacancy. The commission shall acknowledge receipt of each application submitted for the judicial vacancy.

Notice of Rules Hearing No. 135 - May 30, 2017

3. Proposed Adoption of a New Rule In Re:

RECORD RETENTION OF THE JUDICIAL QUALIFICATIONS COMMITTEE:

(a) Confidentiality of Records. All pleadings, papers, evidence, records and files of the Judicial Qualifications Commission with respect to the selection or discipline of judges or justices is confidential and privileged information pursuant to South Dakota Constitution, Article V, section 9 and in the Appendix to chapter 16-1A except as otherwise provided in these rules.

(b) Definitions. The following definitions apply to this rule:

- (1) "Administrative reference files," contain budget, general correspondence, policies and procedures, research materials, reference manuals, logs, mailing lists, and other related information used in the daily administration of Commission activity.
- (2) "Application files," contain applications, personal data, background investigative reports, credit reports, finger print cards as well as fingerprint comparison reports and related materials to applications for judicial officer positions.
- (3) "Commission meeting minutes," contains copies of agendas, dates of meetings, members present, topics discussed, actions taken, approving signatures, and relating to the official minutes of the Commission meetings.
- (4) "Complaint/investigation files," contain the complaint against any judge or justice concerning allegations of misconduct for any judicial officer, any formal complaint or petition filed by commission counsel, any answer or reply thereto, related correspondence, investigation reports, depositions, transcripts, conclusion of the investigation, and related materials and correspondence sent or received from either the general public, members of the commission or counsel.
- (5) "Contracts and agreements," contain terms and conditions of contracts and agreements, effective

Notice of Rules Hearing No. 135 - May 30, 2017

dates, and cost information relating to contracts and agreements between the Commission and other parties.

(6) "Disciplinary files," contain the complaint letter, investigation materials, final decisions, and general correspondence related to the investigation of written complaints concerning judicial officers.

(7) "Vouchers," contain nature of expense, amount, fund expended from, date, where the funds went, and authorized signatures in copies of travel, non-cash, direct, receiving, and journal vouchers.

(c) Email and Electronic Document Management Policy.

If an email or electronic document qualifies as a record pursuant to § 1-27-9, it must be filed and maintained in accordance with the records retention and destruction schedule as determined by content of the document just as any paper record would be managed. General correspondence emails between members of the commission for scheduling or other routine matters are not maintained or kept in accordance with the records retention policy.

(d) Retention and Destruction Schedule.

(1) **Administrative reference files.** Current working files shall be retained in office. Superseded or obsolete files shall be destroyed.

(2) **Application files.** Files shall be retained in office for fifteen years after vacancy has been filled. Thereafter files shall be transferred to microfilm and retained permanently.

(3) **Commission meeting minutes.** Files shall be retained in office for five years and thereafter shall be microfilmed and retained permanently.

(4) **Complaint/investigation files.** Files shall be retained in office for ten years after resignation or death of judicial officer. Thereafter files shall be transferred to microfilm and retained permanently.

Notice of Rules Hearing No. 135 - May 30, 2017

- (5) Contracts and agreements. Current files shall be retained in office. After terminated, files shall be transferred to microfilm, provided no litigation is pending. Files shall be destroyed seven years after transfer to microfilm. Pursuant to § 1-24A-1, consulting contracts must be filed with the State Auditor.
- (6) Disciplinary files. Files shall be retained in office for ten years after resignation or death of judicial officer. Thereafter files shall be transferred to microfilm and retained permanently.
- (7) Vouchers. Vouchers shall be retained in office for two years and thereafter destroyed.

(e) Requests for Restricted Information. Restricted information requests may be made by any member of the public only for scholarly, journalistic, governmental, research, evaluation or statistical purposes upon the death of any judge identified to be ancillary to the purpose of the request. The request shall:

- (1) Identify what information is sought;
- (2) Describe the purpose for requesting the information and explain how the information will benefit the public interest or public education; and
- (3) Explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

The request may be granted after review by the Judicial Qualifications Commission, the Supreme Court, and the family of the judge who is the subject of the request if in doing so meets criteria established by the Judicial Qualifications Commission and is consistent with the purposes of this rule.

If the request is granted, the Judicial Qualifications Commission may require the requestor to sign a declaration that:

Notice of Rules Hearing No. 135 - May 30, 2017

- (1) The data will not be sold or otherwise distributed directly or indirectly, to third parties, except for journalistic purposes;
 - (2) The information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes; and
 - (3) There will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.
-

4. Proposed Amendment of SDCL 16-3-5.1 Court rules--

Filing of notice of rule changes proposed by Supreme Court--

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

A proposed new rule, amendment or repeal shall be filed in the office of the clerk of the Supreme Court together with a discussion of the proposed change which shall include:

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

Notice of Rules Hearing No. 135 - May 30, 2017

- (5) An analysis of how the change affects existing rules or statutes.

The clerk of the Supreme Court shall give thirty days' notice of an intention to adopt, amend, or repeal rules ~~in a publication of general circulation among the active members of the State Bar of South Dakota, or~~ by electronic mail notification to members of the State Bar of South Dakota who are registered through File and Serve, by posting notice at the Unified Judicial System's website at <http://www.sdjudicial.com/> <http://www.uj.s.sd.gov/> or the State Bar of South Dakota's website at <http://www.sdbar.org/>, or such other notice as the Court may order. The notice shall fix a time and place when any person interested may appear and be heard with reference to the adoption, amendment, or repeal of rules.

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

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

5. Proposed Adoption of a New Rule In Re: Effective Date of Supreme Court Rules.

Unless the Court deems it an emergency and so states in the new rule or amendment, all new Supreme Court rules, and all amendments to existing Supreme Court rules, shall be effective July 1 immediately following their adoption.

Notice of Rules Hearing No. 135 - May 30, 2017

6. Proposed Adoption of a New Rule In Re: Style and Form of Amended Supreme Court Rules for Publication.

When the Supreme Court amends an existing rule, it will supply to the State Bar, for publication in the State Bar Newsletter, a copy of the amended rule, with deletions shown by strike-throughs and additions shown by underscores.

7. Proposed Amendment to the Appendix of SDCL CHAPTER 16-17.

**THE STATE OF SOUTH DAKOTA BY-LAWS
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 of 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

Notice of Rules Hearing No. 135 - May 30, 2017

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~~ sent by electronic mail to members of the State Bar of South Dakota who are registered through File and Serve, posted 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.sdba.org> 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~~ posting 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~~ posting, 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

Notice of Rules Hearing No. 135 - May 30, 2017

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 post the same in the next Newsletter on either of the respective websites and by electronic mail to South Dakota

Notice of Rules Hearing No. 135 - May 30, 2017

State Bar Members who are registered with File and Serve. 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.

8. Proposed Amendment of SDCL 23A-13-10. Kinds of prior statements subject to discovery by defendant. The term "statement" as used in §§ 23A-13-7 to 23A-13-9, inclusive, in relation to any witness called by the prosecuting attorney, means:

- (1) A written statement made by such witness and signed or otherwise adopted or approved by him;
- (2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by such witness and recorded contemporaneously with the making of such oral statement;
- (3) A statement, however taken or recorded, or a transcription thereof, if any, made by such witness to a grand jury;

~~(4) A summary of an oral declaration made by someone other than the witness that has been reduced to writing.~~

Notice of Rules Hearing No. 135 - May 30, 2017

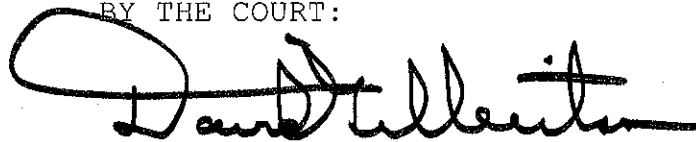
Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and two copies thereof filed with the clerk of the Supreme Court no later than May 16, 2017.

Subsequent to the hearing, the Court may reject or adopt the proposed rules 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 publication of this notice in the May 2017, State Bar Newsletter and at http://ujs.sd.gov/Supreme_Court/ruleshearing.aspx and <http://www.statebarofsouthdakota.com/p/do/si/topic=193> and by electronic mail notification to members of the State Bar of South Dakota who are registered through file and serve.

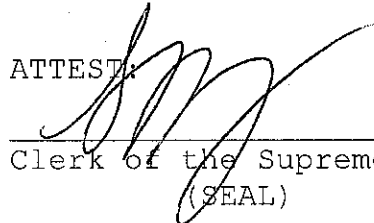
DATED at Pierre, South Dakota this 17th day of April, 2017.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

**SUPREME COURT
STATE OF SOUTH DAKOTA
FILED**

APR 17 2017


Clerk