

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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|--------------------------------------|---|----------------------|
| IN THE MATTER OF THE PROPOSED |) | RULES HEARING NOTICE |
| AMENDMENT TO ARTICLE V OF THE STATE |) | |
| BAR OF SOUTH DAKOTA BYLAWS (APPENDIX |) | NO. 153 |
| SDCL CHAPTER 16-17) IN RE: STATE BAR |) | |
| ELECTED OFFICERS |) | |
| |) | |
| IN THE MATTER OF THE PROPOSED |) | |
| AMENDMENT OF SDCL 23A-48-19 |) | |
| |) | |
| PROPOSED ADOPTION OF A NEW RULE TO |) | |
| CREATE A COMMISSION ON ACCESS TO THE |) | |
| COURTS |) | |

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

NOTICE IS HEREBY GIVEN THAT ON February 14, 2024, 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:

1. PROPOSED AMENDMENTS TO "ARTICLE V - STATE BAR ELECTED OFFICERS" OF THE STATE BAR OF SOUTH DAKOTA BYLAWS

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

5.2. **President Elect Nomination.** To qualify as a President Elect candidate, the candidate must be an Active Member and complete a nominating petition containing signatures of at least fifteen

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

5.2-5.3. Installation, Election, and Term. The President will install the President Elect as President before the Annual meeting adjourns each year. The Active Members at the Annual Meeting will then, by majority vote, elect the next President Elect. The President will serve a one-year term. The President Elect will serve in that capacity until installed as President the following year.

5.3-5.4. Duties. The State Bar officers' duties are as follows:

- a. **President.** The President may:
 - i. preside at all State Bar and Bar Commission meetings;
 - ii. execute, with the Executive Director, all State Bar contracts and instruments as authorized by the Bar Commission;
 - iii. appoint Members to standing and ad hoc committees;
 - iv. be an ex-officio, non-voting Member of all committees except as specified otherwise herein;
 - v. perform all duties incident to the office of President and such other duties as may be assigned by the Bar Commission; and,
 - vi. perform the duties of the Executive Director in the event the Executive Director is unable to perform. The President may appoint someone to serve as the Executive Director if the President is unwilling or unable to perform those duties. The President or the President's appointee will serve until the Bar Commission hired a new Executive Director or until the current Executive Director is able to return to and perform the duties of that position.
- b. **President Elect.** The President Elect will perform and be vested with all the powers and duties of the President in the event the President is absent or otherwise unwilling or unable to perform. The President Elect may perform such duties as may be assigned by the President and Bar Commission.

5.4-5.5. Vacancy. If the office of President becomes vacant for any reason, the President Elect will complete the remainder of the President's term. After completing the President's unfulfilled term, the President Elect will serve his or her full term as President. If the office of President Elect becomes vacant for any reason, the Bar Commission, by majority vote, will fill that

vacancy. The person appointed to fulfill the President Elect's remaining term will hold office until the next President Elect is elected at the Annual Meeting of the State Bar.

Explanation for Proposal

This amendment is being proposed by the State Bar after State Bar members voted at the June 23, 2023, State Bar Annual business meeting to support the amendment. This proposed amendment adds a new section (5.2) to Article V of the State Bar Bylaws, and it addresses State Bar President Elect candidate requirements. This proposed amendment expands and clarifies qualification requirements for State Bar President Elect candidates, and the proposed requirements are similar to the election requirements for At-Large Bar Commissioners. This proposed amendment would require the President Elect to complete a nominating petition containing signatures of at least 15 active bar members. This proposed amendment is not based upon any state or federal rule or statute, and it should not affect any other current rules or statutes.

2. Proposed Amendment of SDCL 23A-48-19. Criteria for awarding earned discharge credits.

A probationer shall be awarded earned discharge credits while on supervised probation as follows:

- (1) For each full calendar month of compliance with the terms of supervised probation an earned discharge credit of 30 days shall be awarded to a probationer. Each earned discharge credit shall reduce the term of supervised probation by 30 days. No earned discharge credit may be awarded for a partial month or the last two full months of supervised probation. No earned discharge credit may be awarded for any month, or portion of a month, during which the probationer is incarcerated.
- (2) A probationer shall not receive an earned discharge credit for any month(s) during which a probation violation is pending before the court. If the court does not sustain the probation violation, the court may enter a written order awarding earned discharge credits to the probationer for the months the probation violation was pending before the court.

Absent such an order the probationer shall not be entitled to any earned discharge credit for such period of time.

- (3) Earned discharge credits shall not be awarded to a probationer for any month(s) in which a probationer is absconded. Additionally, a probationer shall not be awarded earned discharge credit for any month in which the probationer was sanctioned for conduct that disqualifies the probationer from receiving earned discharge credits as provided by the graduated response grid.
- (4) A South Dakota probationer placed on supervised probation who is supervised in another state under the Interstate Compact for Adult Offender Supervision is eligible for earned discharge credits pursuant to §§ 23A-48-15 to 23A-48-22, inclusive.
- (5) Earned discharge credits shall be applied to the probation term within fifteen days after the end of the month in which any credit was earned. A probationer who is eligible for earned discharge credits shall be notified of their probation discharge date on a semi-annual basis.

Explanation for Proposal

This rule revision is being submitted by the State Court Administrator's Office. Currently a probationer is not entitled to earned discharge credit for the final full month of the probation term. Pursuant to SDCL 23A-48-20 Court Services Officers (CSO) are required to notify the supervising CSO, by the tenth of the month, of any probationer that is entitled to earned discharge credit for the preceding month. Pursuant to SDCL 23A-48-19(5) the earned discharge credit shall be applied by the fifteenth of each month. If a probationer received earned discharge credit for the second to last month of the probation term it will not be credited until the fifteenth, but it would be effective back to the first of the month. If there is a violation between the first and fifteenth of the last month of the probation term the CSO's would not know whether the probation term has ended and a CSO could submit a violation report for acts that took place after the probationer was no longer on probation.

The proposal is being offered pursuant to SDCL 16-3-5.1 and is not based on any other state or federal rule or statute.

3. Proposed Adoption of a New Rule to Create a Commission on Access to the Courts

Section 1. That a new rule be adopted to read as follows:

There is hereby created a Commission on Access to the Courts. The commission shall consist of eleven members appointed as follows:

- (1) Seven members appointed by the Chief Justice of the Supreme Court, three initially appointed for a term of two years and four appointed for a term of three years.
- (2) Four members appointed by the President of the State Bar of South Dakota, two initially appointed for a term of two years and two for a term of three years.

Thereafter, each appointment shall be for a term of three years, beginning on the first day of July. No member may serve more than two consecutive terms.

The Chief Justice of the Supreme Court shall appoint a chair of the commission and the President of the State Bar shall appoint a vice-chair of the commission from their appointed members. The commission members shall serve without compensation. The Commission shall be staffed by the Unified Judicial System.

Section 2. That a new rule be adopted to read as follows:

The Commission on Access to the Courts shall work collaboratively across the justice system to advance efforts to promote equal access to the court and inspire a high level of trust and confidence in the South Dakota court system. This may include:

- (1) Recommending improvements in court processes, procedures and policies;
- (2) Addressing access to counsel and collaborative efforts with entities that provide legal representation pro bono or at reduced cost for low-income or disadvantaged individuals;
- (3) Developing models to assist self-represented litigants and addressing barriers to access to the court system;
- (4) Increasing the availability of legal aid services statewide;

- (5) Expanding the availability of effective use of technology; and
- (6) Providing outreach efforts and strategic planning to ensure timely and effective access to the judicial system.

Explanation for Proposal

The proposal by the State Court Administrator's Office is to create a Commission to better coordinate and strategically plan for ways in which the South Dakota justice system can serve individuals of various backgrounds and with varying levels of financial resources.

Representative membership on such a group in other states includes the following:

- Supreme Court Justice
- Circuit Court Judge
- Magistrate Court Judge
- Bar Leadership
- Attorney
- Clerk of Court
- State Court Administration Staff
- Court Interpreter
- Legislative Member
- Circuit Court Administrator
- Legal Services Entity Representative
- Tribal Judge
- Law School Representative

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and filed with the Clerk of the Supreme Court no later than February 1, 2024. Subsequent to the hearing, the Court may reject or adopt the proposed amendments of any rule germane to the subject thereof.

Notice of Rules Hearing No. 153 - February 14, 2024

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <https://ujis.sd.gov/Supreme Court/Hearings.aspx> or the State Bar of South Dakota's website <https://www.statebarofsouthdakota.com>.

DATED at Pierre, South Dakota this 8th day of January, 2024.

BY THE COURT:



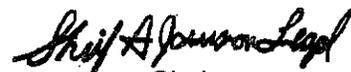
Steven R. Jensen, Chief Justice

ATTEST 

Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN -8 2024


Clerk