

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ADOPTION)	SUPREME COURT RULES
OF AMENDMENTS AND REPEALS IN)	16-07 through 16-67
PART TO SDCL Ch. 16-19,)	
DISCIPLINE OF ATTORNEYS)	

A hearing was held on January 13, 2016, at Pierre, South Dakota, relating to the amendments and repeals of SDCL Title 16-19 -Discipline of Attorneys, and the Court having considered the proposed amendments and repeals and being fully advised in the premises, now, therefore, it is

ORDERED that certain rules in SDCL Title 16-19-Discipline of Attorneys, be and they hereby are amended to read in part as follows:

**SDCL CHAPTER 16-19
DISCIPLINE OF ATTORNEYS**

Rule 16-07. SDCL 16-19-21. Attorneys subject to discipline by Supreme Court and board. Any attorney admitted to practice law in this state and any attorney specially admitted by a court of this state for a particular proceeding is subject to the inherent disciplinary jurisdiction of the Supreme Court and the board established by § 16-19-24.

Rule 16-08. SDCL 16-19-22. Supreme Court exclusive power to disbar or suspend attorney. The Supreme Court has the sole power to disbar and strike from the roster any attorney – or to suspend any attorney from the practice for such time not to exceed three years, to publicly censure an attorney, and to impose probation or conditions as shall seem just for cause shown.

Rule 16-09. SDCL 16-19-23. Powers reserved to other courts to control proceedings. Nothing contained in this chapter denies any court powers necessary for that court to maintain control over proceedings conducted before it, including the power of contempt.

Rule 16-10. SDCL 16-19-24. Disciplinary board of State Bar--Appointment and terms of members--Vacancies. There is hereby established a seven member board to be known as "the disciplinary

board of the State Bar of South Dakota" (hereinafter referred to as the "board"), consisting of six active members of the State Bar appointed by the President of the State Bar and one lay member who shall be a resident of South Dakota of twenty-one years of age or more, appointed by the Chief Justice. Attorney vacancies shall be filled by the President of the State Bar, and a lay vacancy shall be filled by the Chief Justice.

The term of service for members shall be one term of five years. Except as provided herein, no member shall serve for more than five years. An appointment to fill an unexpired term shall not constitute an appointment prohibiting an appointment for a subsequent term provided that the appointment for an unexpired term does not exceed three years. It is the intent of this rule to provide for the orderly and systematic rotation of board members such that not more than two lawyer members complete terms each calendar year. In the event of death, disability or resignation, resulting in multiple members completing terms in a single calendar year and in order to restore the orderly and systematic rotation of board membership, the term of appointment by the appointing person may be either shortened or extended, not to exceed two years' deviation from a five year term.

Rule 16-11. SDCL 16-19-25. Chairman and vice-chairman of the board. The President of the State Bar shall designate one attorney member as chair of the board and may designate another attorney member as vice-chair.

Rule 16-12. SDCL 16-19-26. Meetings of the board--
Quorum--Vote required for action. The board shall meet at least quarterly at times fixed by the chair. Four members shall constitute a quorum. The board shall act only with the concurrence of four or more members. The board may meet by the use of audio or visual medium.

Rule 16-13. SDCL 16-19-27. Compensation of members of the board. Attorney members of the board shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties. The lay member shall receive compensation at the rate of one hundred dollars per day in addition to travel and other expenses incidental to the performance of his or her duties.

Rule 16-14. SDCL 16-19-28. Disqualification of board members in particular proceedings--Ad hoc appointments to restore full membership. Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. In the event of recusal of attorney members of the board, the President of the State Bar shall appoint active members of the State Bar, preferably members with previous service

on the board to restore the board to full membership. In the event of the recusal of the lay member, the Chief Justice shall appoint a lay person having the qualifications set forth in subdivision 16-19-24. Each such member shall fulfill all the responsibilities of the board member replaced.

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Rule 16-15. SDCL 16-19-30. Complaints and testimony privileged--board and staff immune from suit. Complaints submitted to the board or testimony with respect thereto shall be absolutely privileged and no civil action predicated thereon may be instituted. Members of the board, the board's counsel, board staff and any personnel or legal counsel appointed by the board shall be immune from suit for any conduct in the course of their official duties.

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Rule 16-16. SDCL 16-19-31. License to practice law as trust--Duty to conform to standards. A license to practice law in this state is a privilege and a continuing proclamation by the Supreme Court that a licensed attorney is an officer of the court, is fit to be entrusted with legal and judicial matters, and to aid in the administration of justice. It is the duty of an attorney to act, both professionally and personally, in conformity with the standards of conduct governing members of the bar.

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Rule 16-17. SDCL 16-19-32. Violations by attorneys as grounds for discipline. An act or omission by an attorney, individually or in concert with others, which violate the attorney's oath of office, the laws governing attorney conduct, or the Rules of Professional Conduct, or other disciplinary rules adopted by the Supreme Court, is misconduct and is grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

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Rule 16-18. SDCL 16-19-33. Specific grounds for discipline of attorneys. The following shall similarly constitute misconduct and shall be grounds for discipline:

- (1) Conviction of a crime as set forth in § 16-19-36;
- (2) Disobedience to, or violation of an order of the court requiring the attorney to act or refrain from acting in a particular manner;
- (3) Violation of any of the duties of an attorney or counselor as prescribed in chapter 16-18;
- (4) Conviction of any of the offenses relating to attorneys or counselors set out in chapter 16-18;
- (5) Violation of any bylaw, rule, or regulation duly adopted by the State Bar and approved by the Supreme Court;
- (6) Engaging or attempting to engage in the practice of law in this state, not being an active member of the State Bar in good standing;

- (7) Violation of the prohibitions of § 16-18-29;
 - (8) Violation of § 16-18-20.1 or 20.2;
 - (9) Violation of §§ 16-18-34 to 16-18-34.5, inclusive, by a supervising attorney or by a legal assistant under the attorney's supervision.
 - (10) Violation of the South Dakota Code of Judicial Conduct, appendix to chapter 16-2.
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Rule 16-19. SDCL 16-19-34. Deceit and collusion as grounds for disbarment--Treble damages. An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge, or party to an action or proceeding, is liable to discipline, and shall forfeit to the injured party treble damages to be recovered in a civil action.

Rule 16-20. SDCL 16-19-35. Kinds of discipline authorized. Discipline for misconduct may be imposed as follows:

- (1) Disbarment by the Supreme Court;
- (2) Suspension by the Supreme Court for a specific period not to exceed three years;
- (3) Placement on a probationary status by the Supreme Court for such period and with such conditions as the Supreme Court may specify;
- (4) Public censure by the Supreme Court; and
- (5) Private reprimand by the board.

Rule 16-21. SDCL 16-19-35.1. Petition by board for temporary suspension. The board may petition the Supreme Court to temporarily suspend an attorney from the practice of law or to impose restrictions or conditions on the attorney's practice pending full investigation and disposition, where the attorney poses a risk or danger to clients, clients' property, or the public, where the board can demonstrate a substantial likelihood that the attorney will ultimately be disciplined, and where the charges under investigation, if ultimately proven, would likely result in a suspension or disbarment. The board counsel shall serve a copy of the petition upon the respondent attorney by certified mail. The respondent attorney shall file with the Supreme Court a response within ten days of service or at such time as the Supreme Court may direct, and serve a copy of the response on the board counsel. The Supreme Court may schedule a hearing before the Supreme Court or order a hearing to be conducted by a referee. To the extent possible, these proceedings shall be conducted on an expedited basis. The Supreme Court may deny the petition, suspend the attorney pending formal proceedings, or impose such restrictions or conditions for the continued practice of law upon the respondent attorney, or enter protective and remedial orders as the Supreme Court deems appropriate.

A temporarily suspended attorney shall not practice law or act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive.

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Rule 16-22. SDCL 16-19-36. Attorney's conviction of serious crime to be reported to Supreme Court--Definition of serious crime. Any attorney and the clerk of any court in this state in which an attorney is convicted of a serious crime, except those misdemeanor traffic offenses or traffic ordinance violations not involving the use of alcohol or drugs, shall within ten days of said conviction transmit a certificate thereof to the Supreme Court. The term "serious crime" includes any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime.

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Rule 16-23. SDCL 16-19-37. Suspension from practice on conviction of serious crime--Setting aside order. If any attorney has been convicted of a serious crime as defined in § 16-19-36, the Supreme Court may enter an order immediately suspending the attorney from engaging in the practice of law, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Upon good cause shown, the Supreme Court may set aside such order suspending the attorney from engaging in the practice of law when it appears in the interest of justice so to do. An order suspending an attorney from the practice of law pursuant to this section is a suspension of the attorney for the purpose of §§ 16-19-74 to 16-19-82, inclusive, unless the Supreme Court shall otherwise order.

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Rule 16-24. SDCL 16-19-38. Reinstatement of suspended attorney on reversal of conviction--Pending proceedings unaffected. An attorney suspended under the provisions of § 16-19-37 will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

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Rule 16-25. SDCL 16-19-39. Reference for formal disciplinary proceedings on conviction of serious crime. Upon the receipt of notice of conviction of an attorney for a serious crime, the Supreme Court shall also refer the matter to the board for the institution of a formal proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed. A disciplinary proceeding so instituted will not be

brought to hearing until all appeals from the conviction are concluded.

Rule 16-26. SDCL 16-19-40. Parties initiating investigations of attorney's conduct. An investigation of an attorney's conduct as possible grounds for discipline may be initiated by:

- (1) The Supreme Court;
- (2) The board;
- (3) The Attorney General; or
- (4) An individual.

Rule 16-27. SDCL 16-19-41. Reference for investigation and report in proceeding initiated by Supreme Court. If the investigation of an attorney's conduct is initiated by the Supreme Court the matter shall be referred to the board for an investigation and report as provided in this chapter.

Rule 16-28. SDCL 16-19-42. Complaint and reference for investigation and report in proceeding initiated by Attorney General. If the investigation of an attorney's conduct is initiated by the Attorney General, the Attorney General shall file a written complaint with the Supreme Court which shall refer the matter to the board for an investigation and report pursuant to §§ 16-19-45 to 16-19-64, inclusive.

Rule 16-29. SDCL 16-19-43. Investigation or reference for investigation and report in proceeding initiated by the board. If the investigation of an attorney's conduct is initiated by the board, it may proceed to conduct an investigation pursuant to §§ 16-19-50 to 16-19-64, inclusive.

Rule 16-30. SDCL 16-19-44. Individual complaint filed with board or Supreme Court--Reference for investigation and report.

(A) An individual may initiate an investigation of an attorney's conduct by filing a written and signed complaint with the board secretary or designee in such form as the board may prescribe. The board shall proceed on such complaint in accordance with §§ 16-19-50 to 16-19-64, inclusive.

(B) The board secretary or designee shall dismiss complaints outside the board's jurisdiction, frivolous complaints and complaints which fail to allege facts which give rise to the board's jurisdiction utilizing summary judgment standards set forth in Chapter 15-6. Conclusions, opinions, suppositions and arguments shall not be considered. Copies of such dismissals shall be provided to the board. A complainant dissatisfied with such a dismissal may, within ten days of such dismissal request in writing

a review by the board which review shall be considered by the board at its next regular or special meeting.

(C) In the alternative, an individual may initiate an investigation of an attorney's conduct by filing with the clerk of the Supreme Court a written complaint. A complaint of attorney misconduct made directly to the Supreme Court shall comply with the following requirements:

(1) The complaint shall be signed and sworn to by the complainant.

(2) The complaint shall fully state all the facts relied upon by the complainant and shall identify all sources of the factual information. Conclusions, opinions, and suppositions of the complainant shall not be considered.

(3) If the alleged misconduct arose in a criminal case, the complaint shall state the county, court, and file number of the case file, whether there was a conviction, and the status of all appellate review, including pending habeas corpus or other post-conviction relief. Copies of any final decision of appellate or habeas corpus review, or post-conviction proceedings, or if pending, of the petition, shall be attached.

(4) The complaint shall state whether complainant has previously filed a complaint with the board alleging similar misconduct by the attorney. A copy of any board's disposition letter shall be attached.

(D) If the complaint fails to comply with any of the requirements of subsection (C), the clerk of the Supreme Court shall forward the complaint to the secretary-treasurer of the State Bar and the complaint shall be treated as if it had been initiated with the board pursuant to § 16-19-44(A).

(E) In the event that all requirements of this rule have been met, the Supreme Court shall proceed as follows:

(1) If the Supreme Court shall determine the alleged facts raise an issue of noncompliance with the Rules of Professional Conduct, the Supreme Court shall refer the matter to either the board or the Attorney General for an investigation and report pursuant to §§ 16-19-45 to 16-19-64, inclusive.

(2) Complaints that are frivolous, unfounded in fact, or fail to raise an issue of noncompliance with applicable Rules of Professional Conduct shall be dismissed.

(3) Allegations of ineffective assistance of counsel or other attorney conduct which has been raised on appeal or habeas is deemed to be res judicata to the extent addressed by the reviewing court. The complaint process is neither a substitute for nor a precursor to a habeas corpus or post-conviction petition and complaints alleging misconduct that would appropriately be alleged in a habeas corpus or post-conviction petition shall be deemed premature and dismissed.

(4) If the Supreme Court determines the board has previously investigated the complaint, the Supreme Court may, in

its discretion, order the board to file a report with the court reporting the nature and results of the board's investigation. Upon receipt of the report, the Supreme Court may determine whether the complaint presents new or additional facts which warrant further investigation. If the Supreme Court determines it is warranted, it may order further investigation, or, if not warranted, may dismiss the complaint.

Rule 16-31. SDCL 16-19-45. Investigation by board on reference--Report and recommendation filed with Supreme Court.
When an investigation of an attorney's conduct has been referred to the board for investigation it shall proceed to make a thorough investigation as provided in this chapter.

Rule 16-32. SDCL 16-19-46. Proceedings not to be abated for failure to prosecute, settlement or restitution. Failure of a complainant to sign a complaint or to prosecute a charge, or settlement or compromise between the complainant and the attorney, shall not justify abatement of the processing of any complaint.

Rule 16-33. SDCL 16-19-50. Accused attorney to be given opportunity to state position. Except in matters dismissed in accordance with 16-19-44(B), no disposition shall be undertaken by the board or recommendation made by the Attorney General until the accused attorney shall have been afforded a reasonable opportunity to state the attorney's position with respect to the allegations.

Rule 16-34. SDCL 16-19-52. Notice to attorney of complaint and allegations. In an investigation by the board or by the Attorney General, notification shall be given to the attorney that a complaint has been made and the nature of the allegations of misconduct.

Rule 16-35. SDCL 16-19-53. Methods of investigation to be used--Informal conference. An investigation by the board or by the Attorney General may entail inquiries by mail, consultation with the accused attorney, taking sworn statements or depositions, and investigation by the board's counsel or the Attorney General's staff.

Rule 16-36. SDCL 16-19-54. Attorney's duty to respond to board. Every attorney shall promptly and appropriately respond to any complaint or letter provided by any member of the board. In the event of failure to respond an attorney is subject to private reprimand by the board, or, after hearing on recommendation of the board, to discipline by the Supreme Court.

Rule 16-37. SDCL 16-19-55. Subpoena power of board and Attorney General--Disobedience as contempt. A member of the board, the board secretary, its counsel or the Attorney General may issue a subpoena requiring any witness to attend at any place within the state and requiring such witness to produce pertinent books, papers, and documents, including client files and records of client funds, and may administer oaths and take testimony in regard to such matters. The willful failure of any person to respond to a subpoena, or the willful refusal of any person to testify, is a contempt against the Supreme Court and may be punished accordingly.

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Rule 16-38. Repeal of SDCL 16-19-56. ~~Subpoena of attorney's record of client funds.~~ The records required by § 16-18-20.1 may be subpoenaed by the attorney general or any member of the Disciplinary Board or its counsel in connection with any disciplinary investigation.

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Rule 16-39. SDCL 16-19-58. Certificate of conviction as evidence against attorney. A certificate of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding based upon the conviction.

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Rule 16-40. SDCL 16-19-59. Dismissal of complaint on finding not meritorious. If the board determines after an investigation that the complaint is not meritorious, it shall dismiss the complaint and notify the complainant, the accused attorney and such other persons as the board may deem appropriate. If the Attorney General determines after an investigation that the complaint is not meritorious, the Attorney General shall report such findings to the Supreme Court and recommend dismissal.

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Rule 16-41. SDCL 16-19-60. Conditions imposed on attorney on finding of meritorious complaint--Dismissal on compliance. If it is determined after an investigation by the board that the complaint is meritorious, but that formal disciplinary proceedings are not warranted, the board and the attorney may agree in writing to hold the proceedings in abeyance for an appropriate period, provided the attorney throughout the period complies with specified reasonable conditions, including board access to the attorney's healthcare and medical information. Upon satisfactory compliance, the board may thereafter dismiss the proceedings and notify the complainant and such other persons as the board deems appropriate. If, after an investigation, the Attorney General finds such action warranted, the Attorney General shall report the Attorney General's findings to the Supreme Court and recommend that such action be taken by the board.

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Rule 16-42. SDCL 16-19-61. Notice to attorney of report and proposal for private reprimand. If it is determined after an investigation and hearing that the complaint is meritorious and a private reprimand is warranted, a written report of the findings and proposed action shall be prepared and sent by certified mail to an accused attorney.

Rule 16-43. SDCL 16-19-62. Response by attorney to proposal for private reprimand--Report and findings by board. An accused attorney shall have twenty days in which to agree to, or object to the findings and proposed action and demand that formal proceedings be initiated in lieu of a private reprimand. Silence shall be deemed to be an agreement with the findings and proposed action. After twenty days or upon the accused attorney's agreement the board shall report its findings to the Supreme Court. Upon filing, the findings constitute a private reprimand.

Rule 16-44. Repeal of SDCL 16-19-63. ~~Demand by attorney for formal proceedings in lieu of private reprimand.~~ If an attorney does not accede to a private reprimand either affirmatively or by silence within the twenty-day period provided therefor in § 16-19-62, he may within that same twenty-day period demand as of right that formal proceedings be initiated against him pursuant to § 16-19-67.

Rule 16-45. SDCL 16-19-65. Consent by attorney to disbarment--Contents of affidavit. An attorney who is the subject of an investigation into, or a pending proceeding involving allegations of misconduct may consent to disbarment, but only by delivering to the board an affidavit to be prepared by the board in the following form:

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

In Re: _____)
 (Name)) RESIGNATION
)
 State of _____) ss
)
 County of _____)

I, _____, being duly sworn on oath, depose and say that my business address is _____ (Building No. and Name, if any, or Box No.), _____ (Street address, if any), _____ (City), _____ (State), _____ (Zip Code); that my residence address is _____ (No. Street), _____ (City), _____ (State), _____ (Zip Code),

and that I hereby tender my resignation from membership in the State Bar of South Dakota and request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the State Bar.

I am aware that there is pending against me a formal complaint concerning alleged misconduct and/or that complaints, allegations or instances of alleged misconduct by me are under investigation by the State Bar Disciplinary Board and that such complaints, allegations and/or instances include:

(Brief description of alleged misconduct, including designation of provisions of the South Dakota Rules of Professional Conduct and statutes, if any, violated--and incorporation by reference of any formal complaint in a pending disciplinary proceeding.)

I do not desire to contest or defend against the above-described complaints, allegations or instances of alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of the State Bar of South Dakota with respect to admission, discipline, resignation and reinstatement of members of the State Bar, including SDCL 16-19-80. I understand that I shall not be permitted to practice law or act as a legal assistant within the State of South Dakota except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. I understand that any future application by me for reinstatement will be treated as an application by one who has been disbarred for misconduct, and that, on such application, I shall not be entitled to a reconsideration or reexamination of the facts, complaints, allegations or instances of alleged misconduct upon which this resignation is predicated. I am aware that the Supreme Court may impose judgment for costs pursuant to SDCL 16-19-70.1.

Dated at _____, this ____ day of _____, 20__.

(Signature of Attorney)

Subscribed and sworn to before me this ____ day of _____,
20__.

Notary Public

My Commission Expires: _____

Rule 16-46. SDCL 16-19-67. Findings of fact, conclusions of law, and recommendation of investigating agency shall constitute a formal accusation. Formal disciplinary proceedings shall be conducted as follows:

(1) After investigation as provided in this chapter, the

investigating agency may file with the Supreme Court, findings of fact, conclusions of law or conclusions pertaining to violations of applicable Rules of Professional Conduct, and a recommendation for formal discipline. Such filing constitutes a formal accusation against the respondent attorney.

(2) A copy of the formal accusation shall be served upon the respondent attorney by certified mail. Unless otherwise directed by the Supreme Court, the investigating agency shall continue to prosecute the formal proceedings. If the recommendation is for suspension or disbarment, it shall also include a finding as to the qualifications of the accused attorney to act as a legal assistant and a recommendation as to the restrictions or conditions of employment and supervision if the accused is allowed to act as a legal assistant under §§ 16-18-34.4 to 16-18-34.7, inclusive.

(3) The respondent attorney shall answer the formal accusation within thirty days and admit or deny the allegations therein. If the accused attorney admits the allegations or fails to answer the Supreme Court may proceed to render judgment.

(4) If the issue is joined it shall be tried by the Supreme Court which may refer the matter for the taking of testimony and the making of findings and recommendations.

(5) A reference may be to any circuit court judge or to a referee appointed by the Supreme Court in the same manner as provided for reference of cases in the circuit court so far as applicable.

(6) The reference shall include the files and records of the board's investigation of the accused attorney, including the transcript of any hearing conducted by the board.

(7) If the referee recommends suspension or disbarment the referee shall also make a finding as to the qualifications of the accused attorney to act as a legal assistant and a recommendation as to restrictions or conditions of employment and supervision if the accused is allowed to act as a legal assistant.

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Rule 16-47. Repeal of SDCL 16-19-68. Answer by attorney to formal accusation Reference to receive evidence and recommend disposition Judgment on admission by attorney. The accused attorney shall answer the formal accusation within thirty days and admit or deny the allegations therein; the issues joined thereon shall in all cases be tried by the Supreme Court, but the court may refer said matter for the taking of testimony and the making of findings and recommendations. Such reference may be to any circuit court judge in this state or to a referee or referees appointed by the court in the same manner as provided by law for the reference of cases in the circuit court so far as applicable. If the accused attorney admits the allegations or fails to answer the formal accusation, the court shall proceed to render such judgment as the case requires. If the referee recommends

~~suspension or disbarment, the referee shall also make a finding as to the qualifications of the accused attorney to act as a legal assistant and make a recommendation as to the restrictions or conditions of employment and supervision if the accused is allowed to act as a legal assistant under §§ 16-18-34.4 to 16-18-34.7, inclusive.~~

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Rule 16-48. SDCL 16-19-70.1. Costs and expenses of Disciplinary proceedings.

(a) **State Bar of South Dakota.** Costs and expenses incurred by the Disciplinary Board of the State Bar of South Dakota in the investigation or prosecution of any disciplinary or reinstatement proceeding under this chapter shall be paid by the State Bar, provided, however, that the expenses of a disciplinary proceeding may, in the discretion of the Supreme Court, be assessed against the attorney who is the subject of such proceeding.

(b) **Attorney General.** The Attorney General shall pay the costs and expenses his office incurs in the investigation or prosecution of any disciplinary proceeding under this chapter.

(c) **Unified Judicial System.** The Unified Judicial System shall pay the costs and expenses incurred by the referee, the court reporter and witnesses when a disciplinary action is referred to a referee under § 16-19-68.

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Rule 16-49. SDCL 16-19-70.2. Allowable costs and expenses. Expenses incurred by the board, the Attorney General, or the Unified Judicial System that were not covered by advance deposit and that have not been previously paid by the attorney who is the subject of a disciplinary or reinstatement proceeding may be assessed by the Supreme Court against said attorney in favor of the State of South Dakota and/or the State Bar of South Dakota according to their respective interests to cover the costs of a referee's mileage, meals, and rooms; a court reporter's mileage, meals, rooms, and transcript preparation; disciplinary counsel's mileage, meals, rooms, telephone charges, copying fees, and hourly charges for investigation and preparation for hearings, trials, and appeals, and appearances at hearings, trials, and appeals; witnesses' fees and mileage; and the board members' mileage, meals, and rooms, provided that proof of such costs shall be made as hereafter provided in § 16-19-70.3.

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Rule 16-50. SDCL 16-19-71. Advice to Supreme Court of discipline in another jurisdiction--Copy of order filed--
Conclusive evidence of misconduct. All attorneys subjected to professional discipline in another jurisdiction, shall promptly inform the clerk of the Supreme Court and the board of such action. Upon being so informed, the clerk of the Supreme Court shall obtain a certified copy of such disciplinary order and file the same with the Supreme Court. Except as provided by § 16-19-74,

a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this state.

Rule 16-51. SDCL 16-19-72. Notice to attorney of disciplinary order from other jurisdiction. Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this state has been disciplined in another jurisdiction, the Supreme Court shall forthwith issue a notice directed to the attorney and a copy to the board containing:

(1) A copy of the order from the other jurisdiction; and
(2) An order directing that the attorney inform the Supreme Court, within thirty days from service of the notice, of any claim by the attorney predicated upon the grounds set forth in § 16-19-74 that the imposition of the identical discipline in this state would be unwarranted and the reasons therefor.

(3) Any claim by the attorney that imposition of identical discipline is unwarranted may be referred to the board for an investigation and report to the Supreme Court.

(4) In the event discipline imposed in another jurisdiction has been stayed, any reciprocal discipline in this state shall be deferred until such stay expires.

Rule 16-52. Repeal of SDCL 16-19-73. ~~Stay of reciprocal discipline on stay in other jurisdiction.~~ In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this state shall be deferred until such stay expires.

Rule 16-53. SDCL 16-19-74. Imposition of identical reciprocal discipline--Grounds for other disposition. The Supreme Court shall impose the identical discipline unless the board or the attorney demonstrates, and the Supreme Court finds that on the record upon which the discipline is predicated it clearly appears:

(1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Supreme Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) That the misconduct established warrants substantially different discipline in this state; or

(4) That the attorney's conduct subject of discipline in another jurisdiction has been or is currently under investigation by the board.

Where the Supreme Court determines that any of said elements exist, the Supreme Court shall enter such other order as it deems appropriate.

Rule 16-54. SDCL 16-19-76. Notice to courts of suspension or disbarment--Order for protection of clients. The clerk of the Supreme Court shall promptly transmit a certified copy of every order of suspension or disbarment to all judges in this state, and the presiding judge of each judicial circuit shall make such further order deemed necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

Rule 16-55. SDCL 16-19-77. Effective date of suspension or disbarment--New matters not to be accepted--Winding up of pending business. Unless the Supreme Court shall otherwise order, orders imposing suspension or disbarment shall be effective thirty days after entry. The disbarred or suspended attorney, after entry of the order, shall not accept any new retainer or engage as an attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date the attorney may wind up and complete on behalf of any client, all matters which were pending on the entry date.

Rule 16-56. SDCL 16-19-78. Notice to office clients of disbarment or suspension. A disbarred or suspended attorney shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the attorney's disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension and shall advise such clients to seek legal advice of the client's own choice elsewhere.

Rule 16-57. SDCL 16-19-79. Notice to opposing counsel and clients involved in litigation of disbarment or suspension--Leave of court or agency to withdraw. A disbarred or suspended attorney shall promptly notify, or cause to be notified, by certified mail, return receipt requested, each client who is involved in pending litigation or administrative proceedings, and each attorney for an adverse party in such cases, of the disbarment or suspension and the attorney's consequent inability to act as an attorney after the effective date of the disbarment or suspension. The notice to be given to the client shall advise the client of the desirability and importance of prompt substitution of another attorney of the client's own choice.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, the disbarred or suspended attorney shall move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an

adverse party shall state the mailing address and place of residence of the client of the disbarred or suspended attorney.

Rule 16-58. SDCL 16-19-80. Affidavit of compliance filed by disbarred or suspended attorney. Within ten days after the effective date of disbarment or suspension the disbarred or suspended attorney shall file with the Supreme Court an affidavit showing:

(1) That the attorney has fully complied with the provisions of the order and with this chapter; and with

(2) All other state, federal, and administrative jurisdictions to which the attorney is admitted to practice.

(3) Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications to the attorney may thereafter be directed.

Rule 16-59. SDCL 16-19-81. Record of compliance maintained by disbarred or suspended attorney--Condition precedent to reinstatement. A disbarred or suspended attorney shall keep and maintain records of the various steps taken under this chapter so that, in any subsequent proceeding, proof of compliance with this chapter and with the disbarment or suspension order will be available. Proof of compliance with this chapter is a condition precedent to any petition for reinstatement.

Rule 16-60. SDCL 16-19-82. Noncompliance by attorney as contempt. The failure of an attorney, including an attorney who has been disbarred or suspended, to comply fully and promptly with any of the provisions of this chapter or with any order or judgment entered in disciplinary proceedings shall constitute contempt and shall be punishable as such by the Supreme Court.

Rule 16-61. SDCL 16-19-83. Reinstatement order required before resumption of practice--Time of application--Waiting period after denial of reinstatement. No attorney suspended for more than three months or disbarred may resume practice until reinstated by order of the Supreme Court. A person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. No petition for reinstatement under § 16-19-87 may be filed within one year following denial of a petition for reinstatement filed by or on behalf of the same person. An attorney suspended or disbarred shall not be permitted to act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive.

Rule 16-62. SDCL 16-19-84. Petition and hearing on reinstatement--Advance cost deposit--Burden of proof. A petition for reinstatement by a disbarred or suspended attorney under § 16-19-87 may be filed with the secretary or designee of the board and

shall be accompanied by a deposit in an amount to be set by the board to cover prior proceedings and anticipated expenses of the reinstatement proceeding. Upon receipt of the petition and the deposit the board shall promptly schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that the petitioner has the moral qualifications, competency and learning in law required for admission to practice law in this state and that petitioner's resumption of the practice of law within the state will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive of the public interest.

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Rule 16-63. SDCL 16-19-85. Participation by board counsel in hearing on reinstatement--Appearance by and examination of petitioner. In all proceedings before the board upon a petition for reinstatement, cross-examination of the witnesses and of the petitioner, and the submission of evidence, if any, in opposition to the petition shall be conducted by the board's counsel. Board members may inquire of the witnesses and of the petitioner into all matters required by § 16-19-84 for petitioner's readmission. The petitioner shall be present in person at the hearing and shall submit to such examination as the board deems proper.

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Rule 16-64. SDCL 16-19-86. Board findings and recommendation on reinstatement--Placement on Court calendar. After conducting a hearing on reinstatement, the board shall promptly file a report with the Supreme Court containing its findings and recommendations, together with the record. The Supreme Court shall then place the petition on the calendar for argument.

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Rule 16-65. SDCL 16-19-87. Dismissal of petition or order of reinstatement--Conditions imposed on petitioner. If the Supreme Court finds the petitioner for reinstatement unfit to resume the practice of law, the petition shall be dismissed. If the Supreme Court finds the petitioner fit to resume the practice of law, the Supreme Court shall enter a judgment of reinstatement. The judgment may make reinstatement conditional upon:

(1) the payment of all or part of the expenses of the reinstatement and all prior proceedings; and

(2) the making of partial or complete restitution to parties harmed by the misconduct which led to petitioner's suspension or disbarment; and

(3) 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

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Rule 16-66. SDCL 16-19-100. Retention of files and records of disbarred, suspended, or reinstated attorney. The board shall, unless otherwise ordered by the Supreme Court, retain its files and records of any attorney who has been disbarred, suspended, placed on probationary status, publicly censured, or who has been later reinstated after a prior discipline until such time as the attorney dies, at which time the records may be expunged.

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APPENDIX TO CHAPTER 16-19

SOUTH DAKOTA SUPREME COURT DISCIPLINARY RULES [SUPERSEDED]

RULES OF PROCEDURE OF THE DISCIPLINARY BOARD OF THE STATE BAR OF
SOUTH DAKOTA

Rule 16-67. These rules describe the usual procedures employed by the board in the discharge of its duties to investigate complaints alleging attorney misconduct. However, procedures may vary in individual cases according to the circumstances of the matter being investigated and the conduct of the respondent attorney as the board may in its discretion determine to be appropriate. Questions or requests for variance should be addressed to the member to whom a complaint has been assigned.

1. Each complaint received by the board secretary or designee that is not dismissed pursuant to the provisions of 16-19-44 shall be distributed to the members of the board and board counsel for investigation and assigned by the secretary or designee to one member of the board who shall administer the initial investigation. The secretary or designee shall

(a) acknowledge receipt and notify the complainant of the name and address of the board member to whom the complaint has been assigned;

(b) provide a copy of the complaint to the respondent attorney who is the subject of the complaint along with the name and address of the assigned board member;

(c) instruct the respondent attorney to respond in writing, not to exceed ten pages, to the assigned board member within ten days along with nine copies of the response for distribution;

(d) and advise the complainant and the respondent attorney of the provisions of 16-19-99 concerning confidentiality.

2. Upon receipt of the respondent attorney's written response the assigned board member shall distribute copies to the board members and board counsel and shall mail a copy to the complainant for a written reply.

3. The assigned member shall continue the investigation by mail or in person until the matter is ready for board determination and may engage the assistance of board counsel.

4. The board may act on the complaint by mail or at a regular or special meeting as follows:

(a) Dismiss the complaint if the alleged facts do not constitute a violation of the rules governing attorney conduct or the attorneys' oath. The board may, by a separate and unanimous vote, expunge the respondent attorney's record of the dismissed complaint.

(b) Continue the investigation or take such further action with respect to the attorney's conduct as the board deems appropriate.

5. In the event that the board deems it appropriate to have a hearing before the board concerning the respondent attorney's alleged conduct, the hearing shall be conducted in the following manner:

(a) Notice shall be given to the respondent attorney by board counsel by certified mail, return receipt requested, not less than ten days prior to the hearing and shall include a reference to these rules and to the Rules of Professional Conduct.

(b) A transcript shall be kept by a court reporter.

(c) The chair or a member designated by the chair shall conduct the hearing with a quorum of the board present.

(d) The chair shall advise the respondent attorney of the right to be heard, to offer witnesses, to be represented by counsel and to have a record of the proceedings kept. The procedure shall be as follows:

(1) The respondent attorney, after being sworn or the respondent's counsel may make a statement and may examine the respondent attorney.

(2) Witnesses on behalf of the respondent attorney may testify after being sworn. Witnesses will be first examined by respondent attorney or respondent's counsel and thereafter by board counsel and members of the board.

(3) Respondent shall be examined by board counsel and board members.

(4) The complainant or other witnesses may be called and examined by board counsel and members of the board with cross examination by respondent or respondent's counsel.

(5) Respondent or respondent's counsel or both may make a closing statement subject to such time limits as the board may require.

(6) The board shall consider the matter off the record and out of hearing of the respondent and in closed session.

(e) The board may dismiss the complaint, caution or admonish the respondent attorney, impose conditions on respondent attorney pursuant to 16-19-60, impose a private reprimand pursuant to 16-19-61, or commence formal disciplinary proceedings pursuant to 16-19-67, et.seq.

(f) If the board's decision is within the purview of 16-19-61 the respondent attorney may, within ten days of receipt of the board's decision file written objections. The objections will be considered by the board by means of written correspondence among the members or at a special meeting if deemed appropriate.

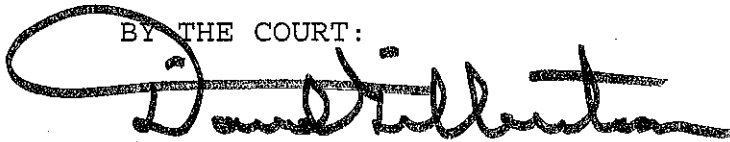
(g) The board shall notify the respondent attorney by mail of changes, if any, in the findings and recommendations made as a result of the objections.

(h) The board shall notify the complainant of the board's decision when it is final.

IT IS FURTHER ORDERED that these rules shall become effective July 1, 2016.

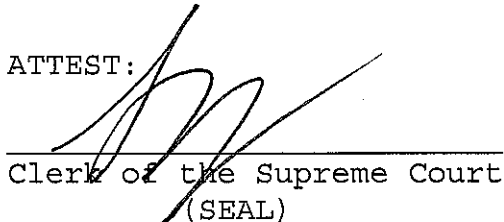
DATED at Pierre, South Dakota, this 29th day of March, 2016.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 29 2016



Clerk