

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PROPOSED)	NOTICE OF RULES HEARING
AMENDMENT OF SDCL 15-6-30(f))	
IN THE MATTER OF THE PROPOSED)	NO. 132
AMENDMENT OF SDCL APP. FORMS. Ch.)	
15-26A, FORM 3)	
IN THE MATTER OF THE PROPOSED)	
AMENDMENT OF SDCL 16-12B-1.1)	
IN THE MATTER OF THE PROPOSED)	
ADOPTION OF A NEW RULE IN RE: RULES)	
FOR ADMISSION TO THE BAR DEALING WITH)	
THE ESSENTIAL ELIGIBILITY REQUIREMENT)	
FOR ADMISSION TO BE DESIGNATED)	
IMMEDIATELY BEFORE SDCL 16-16-2.3)	
IN THE MATTER OF THE PROPOSED)	
AMENDMENTS AND REPEALS OF SDCL Ch.)	
16-19, DISCIPLINE OF ATTORNEYS)	
IN THE MATTER OF THE PROPOSED)	
AMENDMENT OF SDCL 19-19-1101)	
IN THE MATTER OF THE ADOPTION OF A)	
NEW RULE IN RE: ESTABLISHING A)	
JUVENILE GRADUATED RESPONSE GRID)	

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

NOTICE IS HEREBY GIVEN THAT ON January 12, 2016, 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:

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1. Proposed Amendment of SDCL 15-6-30(f). Certification and filing by officer--Exhibits--Copies.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. The officer shall ~~then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly send it~~ the deposition to the attorney

who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

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**2. Proposed Amendment of SDCL APP. FORMS, Ch. 15-26A,
Form 3.**

1. Appeal transcripts shall consist of volumes of 250 pages or less, prepared on 8 ½" x 11" white opaque paper with 25 prenumbered, double-spaced lines per page.

2. Each page shall have ruled margins with ¾" top and bottom margins, a 1 ½" left margin, and a ½" right margin.

3. The transcript shall be typed using pica type with 10 characters per inch; questions shall start with a "Q" flush at the left margin, with two spaces between "Q" and the text of the question; answers shall start with an "A" flush at the left margin with two spaces between "A" and the beginning of the text of the answer; colloquy, such as "THE COURT," "MR. JONES," etc., shall start three spaces from the left margin.

4. The pages shall be consecutively numbered throughout the entire transcript (not according to volume) located at the ~~bottom~~ center of each page upper right-hand corner.

5. Each volume shall be securely bound with a protective cover upon which or through which the following shall appear: (a) a 1 ½" blank space at the top of the page; (b) the trial court name, location and case number; (c) the case name; (d) the type of proceeding; (e) the date of the proceeding reported in that volume; (f) the name of the judge before whom the proceedings occurred; (g) appearances; (h) the volume number and the pages included in the volume.

6. An index of witnesses, motions, and exhibits shall follow the cover page of the first volume of each transcript; each major event of the proceeding shall be listed separately and identified by the transcript page number at which it begins.

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3. Proposed Amendment of SDCL 16-12B-1.1. Number of magistrate judges in the judicial circuits established by 16-5-1.2 is fixed as follows:

- (1) First Circuit: Two full-time magistrate judges;
 - (2) Second Circuit: Four full-time magistrate judges;
 - (3) Third Circuit: Two ~~One~~ full-time magistrate judges;
 - (4) Fourth Circuit: One full-time and one part-time magistrate judges;
 - (5) Fifth Circuit: One full-time magistrate judge;
 - (6) Sixth Circuit: One full-time magistrate judge; and
 - (7) Seventh Circuit: Four full-time magistrate judges.
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4. Proposed Adoption of a New Rule In Re: Rules for Admission to the Bar Dealing with the Essential Eligibility Requirement for Admission to be designated immediately before SDCL 16-16-2.3.

Applicants must be able to demonstrate the following essential eligibility requirements for the practice of law:

- (1) The ability to be honest and candid with clients, lawyers, courts, the board, and others;
 - (2) The ability to reason, recall complex factual information, and integrate that information with complex legal theories;
 - (3) The ability to communicate with clients, lawyers, courts, and others with a high degree of organization and clarity;
 - (4) The ability to use good judgment on behalf of clients and in conducting one's professional business;
 - (5) The ability to conduct oneself with respect for and in accordance with the law;
 - (6) The ability to avoid acts that exhibit disregard for the rights or welfare of others;
 - (7) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, tribal, and federal laws, regulations, statutes, and any applicable order of a court or tribunal;
 - (8) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts, and others;
 - (9) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
 - (10) The ability to comply with deadlines and time constraints.
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Proposed Amendments of SDCL Ch. 16-19, Discipline Of Attorneys.

5. 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 exclusive inherent disciplinary jurisdiction of the Supreme Court and the board established by § 16-19-24

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6. SDCL 16-19-22. Supreme Court exclusive power to disbar or suspend attorney. The Supreme Court ~~shall have~~ has the sole power to disbar and strike from the roll roster the name of any attorney and counselor at law and to revoke his license or to suspend him any attorney from the practice for such time not to exceed three years, to publicly reprimand an attorney, and to impose probation or conditions as shall seem just for cause shown.

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7. SDCL 16-19-23. Powers reserved to other courts to control proceedings. Nothing contained in this chapter ~~shall be construed to deny~~ denies to any court ~~such powers as are necessary~~ for that court to maintain control over proceedings conducted before it, ~~such as~~ including the power of contempt.

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8. SDCL 16-19-24. Disciplinary board of State Bar--
Appointment and terms of members--Vacancies. ~~The President of the State Bar of South Dakota and the Chief Justice of the Supreme Court shall appoint~~ 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"), which shall consist 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 all 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 ~~only one~~ not more than two lawyer members ~~completes the member's terms~~ completes each calendar year. In the event of death, disability or resignation, resulting in multiple members ~~completing~~ completing of 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.

9. SDCL 16-19-25. Chairman and vice-chairman of disciplinary board. The president of the State Bar shall annually designate one attorney member as chairman of the board and may designate another attorney member as vice-chairman.

10. SDCL 16-19-26. Meetings of disciplinary 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.

11. SDCL 16-19-27. Compensation of members of disciplinary 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 thirty-five one hundred dollars per day in addition to travel and other expenses incidental to the performance of his or her duties.

12. 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 the disqualification 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 ~~of this state~~ to restore the board to full membership. In the event of the disqualification recusal of the lay member, the Chief Justice shall appoint a lay person having the qualifications set forth in subdivision 16-19-24(4). Each ~~ad hoc~~ such member shall fulfill all the responsibilities of the board member ~~whom he replaces~~ replaced.

13. SDCL 16-19-29. Powers and duties of disciplinary board generally. The board shall exercise the following powers and perform the duties conferred and imposed upon it by rule of the Supreme Court, including the power and duty:

(1) To consider and investigate any alleged ground for discipline or alleged incapacity impairment of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of this chapter.

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(2) To appoint such personnel and legal counsel as may from time to time be required to assist in the performance of the functions and duties of the board.

(3) To hold informal conferences.

(4) After a hearing, ~~To~~ privately reprimand attorneys for misconduct.

(5) To maintain permanent records of all matters processed and the disposition thereof in such form and format as the board may determine.

(6) To prosecute all disciplinary proceedings and all proceedings to determine the impairment of attorneys before the Supreme Court.

~~(7) To prosecute all proceedings before the Supreme Court to determine the incapacity of attorneys as set forth in §§ 16-19-88 to 16-19-91, inclusive.~~

~~(8)~~ 7) To hear applications for approval ~~or~~ and complaints for revocation of approval of disqualified persons to act as legal assistants under subdivisions 16-18-34.4(2) to 16-18-34.4(4), inclusive.

(9) 8) To adopt internal rules of procedure not inconsistent with this chapter and to file the same with the clerk of the Supreme Court.

~~(10)~~ 9) ~~Provided, however, that~~ Jurisdiction for complaints against members of the judiciary for conduct that occurred prior to becoming a member of the judiciary ~~shall~~ is ~~be~~ vested with the Judicial Qualifications Commission.

(10) Complaints against members of the judiciary which may arise in the course of a board investigation or proceeding shall be referred to the Judicial Qualifications Commission.

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14. 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 ~~pursuant to subdivision § 16-19-29(2) by the board~~ shall be immune from suit for any conduct in the course of their official duties.
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15. SDCL 16-19-31. **License to practice law as trust--Duty to conform to standards.** The A license to practice law in this state is a privilege and a continuing proclamation by the Supreme Court that the holder a licensed attorney is an officer of the court, is fit to be entrusted with professional legal and judicial matters, and to aid in the administration of justice ~~as an attorney and as an officer of the court~~. It is the duty of ~~every recipient of that privilege to conduct himself at all times,~~ an attorney to act, both professionally and personally, in conformity with the standards of conduct imposed

~~upon governing members of the bar as conditions for the privilege to practice law.~~

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

17. 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) ~~Willful~~ Disobedience to, or violation of an order of the court requiring the attorney to ~~do or forbear an act or refrain from acting in a particular manner connected with or in the course of his profession;~~
- (3) ~~Willful~~ violation of any of the duties of an attorney or counselor as prescribed in chapter 16-18;
- (4) ~~The doing of any other act to which such a consequence is by law attached, or a~~ eConviction of any of the offenses relating to attorneys or counselors set out in chapter 16-18;
- (5) ~~Willful~~ 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) ~~Willful~~ 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) ~~Willful~~ violation of the South Dakota Code of Judicial Conduct, appendix to chapter 16-2.

18. 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 be ~~disbarred~~ discipline, and shall forfeit to the injured party treble damages to be recovered in a civil action.

19. SDCL 16-19-35. Kinds of discipline authorized.

~~Misconduct shall be grounds for Discipline~~ for misconduct may be imposed as follows:

- (1) Disbarment by the Supreme Court;
 - (2) Suspension by the Supreme Court ~~for an appropriate fixed period of time, or for an appropriate fixed period of time and an indefinite period concurrently or thereafter to be determined by the condition imposed by the judgment. No suspension shall be ordered for a specific period in excess of not to exceed three years;~~
 - (3) Placement on a probationary status by the Supreme Court ~~for a stated period, or until further order of the court,~~ for such period and with such conditions as the court may specify;
 - (4) Public censure by the Supreme Court; ~~or and~~
 - (5) Private reprimand by the Disciplinary Board.
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20. 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, ~~including but not limited to requiring the attorney to provide proof of professional negligence insurance or the posting of a fidelity bond, 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 or~~ board counsel shall serve a copy of the petition upon the respondent attorney by ~~registered or~~ 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 or~~ board counsel. The Supreme Court may schedule a hearing before the court or order a hearing to be conducted by a referee. To the extent possible, these proceedings shall be conducted on an expedited basis. ~~Thereafter, the~~ court may deny the petition, suspend the attorney pending formal proceedings ~~as provided in this chapter,~~ or impose such restrictions or conditions for the ~~continuing~~ continued practice of law upon the respondent attorney, or enter protective and remedial orders as the court deems appropriate.

~~Further, where the Supreme Court determines that the petition for temporary suspension, and the affidavits or record filed in support thereof, establish a prima facie case meeting the requirements of this rule concerning temporary suspension, the Supreme Court may, in its discretion, enter such additional protective and remedial orders, including injunctive relief, as the court deems appropriate in order to protect the public, clients, and money or property in which a client or third party may have an interest.~~

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.

21. 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" ~~shall~~ 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.

22. 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 ~~shall~~ may enter an order immediately suspending the attorney from engaging in the practice of law, ~~whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal,~~ pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Upon good cause shown, the court may set aside such order ~~restraining~~ 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 ~~shall constitute~~ 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.

23. 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.

24. SDCL 16-19-39. Reference for formal disciplinary proceedings on conviction of serious crime. Upon the receipt of notice ~~a certificate~~ of conviction of an attorney for a serious crime, the Supreme Court shall, ~~in addition to suspending him in~~

~~accordance with the provisions of § 16-19-37, also refer the matter to the board or the attorney general 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, provided that a~~ A disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

25. 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 direction of the~~ Supreme Court;
- (2) The board;
- (3) The attorney general; or
- (4) An individual.

26. 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, ~~it shall refer the matter shall be referred to either the board or the attorney general for an investigation and report pursuant to §§ 16-19-45 to 16-19-64, inclusive as provided in this Chapter.~~

27. 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, ~~he~~ the Attorney General shall file a written complaint with the Supreme Court ~~and it which~~ 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.

28. SDCL 16-19-43. Investigation or reference for investigation and report in proceeding initiated by disciplinary board. If the investigation of an attorney's conduct is initiated by the disciplinary board, it may proceed to conduct an investigation pursuant to §§ 16-19-50 to 16-19-64, inclusive, ~~or it may file a written complaint with the Supreme Court and it shall refer the matter to the attorney general for an investigation and report pursuant to §§ 16-19-45 to 16-19-64, inclusive.~~

29. 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.

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(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.

(B 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 ~~Disciplinary B~~oard alleging similar misconduct by the attorney. A copy of any ~~Disciplinary B~~oard's disposition letter shall be attached.

(E D) If the complaint fails to comply with any of the requirements of subsection (B), 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 ~~Disciplinary B~~oard pursuant to § 16-19-44(A).

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

(1) If the 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 Disciplinary 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 ~~lawyer~~ 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 court determines the ~~Disciplinary B~~board has previously investigated the complaint, the 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 court may determine whether the complaint presents new or additional facts which warrant further investigation. If the court determines it is warranted, it may order further investigation, or, if not warranted, may dismiss the complaint.

30. SDCL 16-19-45. Investigation by board or attorney general on reference--Report and recommendation filed with Supreme Court. When an investigation of an attorney's conduct has been initiated and referred to either the board or the attorney general for investigation, ~~he or it shall proceed immediately to make a thorough investigation of the complaint, and make a report thereon to the Supreme Court at a time to be fixed by the court in its order of reference, which report shall be in writing and filed with the clerk, and accompanied by his or its recommendation as the case may be as provided in this Chapter.~~

31. SDCL 16-19-46. Proceedings not to be abated for failure to prosecute, settlement or restitution. Neither ~~unwillingness nor neglect~~ Failure of a the complainant to sign a complaint or to prosecute a charge, or settlement or compromise between the complainant and the attorney ~~or restitution by the attorney, shall not, in itself, justify abatement of the processing of any complaint.~~

32. SDCL 16-19-48. Transfer to inactive status of respondent pleading disability impairment. If, during the course of a disciplinary investigation or proceeding, the respondent claims to suffer from a disability impairment ~~by for any reason of mental or physical infirmity or illness, or an addiction to drugs or intoxicants,~~ which makes it impossible for the respondent to make an adequate defense, the Supreme Court shall enter an order immediately transferring the respondent to disability impaired inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of § 16-19-89. An attorney transferred to disability impairment inactive status shall not ~~(be permitted to)~~

practice law or act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive

33. SDCL 16-19-49. **Resumption of disciplinary proceedings when respondent not incapacitated impaired.** If the Supreme Court shall determine that a respondent described by § 16-19-48 is not incapacitated impaired from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

34. SDCL 16-19-50. **Accused attorney to be given opportunity to state position.** Except in matters requiring dismissal because the complaint is frivolous and clearly unfounded on its face or falls outside the board's jurisdiction 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 his position with respect to the allegations against him.

35. 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 ~~against him~~ and the nature of the allegations of misconduct.

36. 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. ~~The accused attorney may request an informal conference to state his position to the allegations at a time and place to be set by the board or the attorney general.~~

37. SDCL 16-19-54. **Attorney's duty to respond to disciplinary board.** ~~It shall be the duty of e~~Every attorney shall to promptly and appropriately respond to any complaint or letter ~~forwarded to him~~ provided by any member of the disciplinary board. In the event ~~he shall fail to do so, he~~ of failure to respond may be an attorney is subject to private reprimand by the disciplinary board, or, after hearing on recommendation of the board ~~upon order to show cause to~~, disciplined by the Supreme Court.

38. SDCL 16-19-55. **Subpoena power of board and attorney general--Disobedience as contempt.** ~~In matters under investigation any~~ A member of the board, the board secretary, or its counsel or the attorney general is authorized to may issue a subpoena requiring any

witness to attend at any place within the state ~~where the witness is subpoenaed to appear~~ and requiring such witness to produce pertinent books, papers, and documents, including client files and record of client funds, and ~~to~~ may administer oaths and take testimony in regard to such matters. The willful failure ~~on the part~~ of any person to respond to ~~the~~ a subpoena, or the willful refusal of any person to testify, ~~shall constitute~~ is a contempt against the Supreme Court and may be punished accordingly.

39. 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.

40. 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 ~~instituted against him~~ based upon the conviction.

41. 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, ~~he~~ the attorney general shall report ~~his~~ such findings to the Supreme Court and recommend dismissal.

42. 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 ~~a definite~~ 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, ~~he~~ the attorney general shall report his findings to the Supreme Court and recommend that such action be taken by the board.

43. 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

45. ~~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.

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

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: _____

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47. 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 of disposition 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 ~~either registered or~~ certified mail. Unless otherwise directed by the Supreme Court, the investigating agency shall continue to prosecute the formal proceedings. If the ~~board makes a recommendation of~~ is for suspension or disbarment, it shall also ~~make~~ include 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.

(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 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 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 or employment and supervision if the accused is allowed to act as a legal assistant.

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48. ~~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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49. 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, ~~and further provided that an advance deposit to cover the unreimbursed costs of any prior proceedings and the anticipated costs of a reinstatement proceeding may be required by the disciplinary board from an attorney petitioning for reinstatement as provided in § 16-19-84.~~

(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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50. SDCL 16-19-70.2. Allowable costs and expenses.

Expenses incurred by the Disciplinary Board of the State Bar, the Office of 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 Disciplinary Board members' mileage, meals, and rooms, provided that proof of such costs shall be made as hereafter provided in § 16-19-70.3.

51. SDCL 16-19-71. ~~Advice to Supreme Court of discipline in another jurisdiction--Copy of order filed--Conclusive evidence of misconduct.~~ All attorneys ~~subject to the provisions of this chapter shall, upon being subjected to professional public disciplinary discipline action in another jurisdiction, shall promptly inform the clerk of the Supreme Court and the Disciplinary Board of such action. Upon being so informed that an attorney subject to the provisions of this chapter has been subjected to discipline in another jurisdiction, the clerk of the Supreme Court shall obtain a certified copy of such disciplinary order and file the same with the 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.~~

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52. 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 Disciplinary Board containing:

(1) A copy of the order from the other jurisdiction; and
(2) An order directing that the attorney inform the 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.

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53. ~~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.

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54. SDCL 16-19-74. ~~Imposition of identical reciprocal discipline--Grounds for other disposition.~~ Upon the expiration of thirty days from service of the notice issued pursuant to the provisions of § 16-19-72, ~~the~~ The Supreme Court shall impose the identical discipline unless the board or the attorney demonstrates, or

and the Court finds that ~~upon the fact of~~ 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 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 Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

55. 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 ~~as he deems~~ necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

56. 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 ~~disbarment or suspension 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 ~~he~~ the attorney may wind up and complete on behalf of any client, all matters which were pending on the entry date.

57. 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 ~~registered or~~ certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the attorney's ~~his~~ disbarment or suspension and ~~his~~ consequent inability to act as an attorney after the effective date of ~~his~~ the disbarment or suspension and shall advise such clients to seek legal advice of the client's own choice elsewhere.

58. 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 ~~registered or~~ certified mail, return receipt requested, each ~~of his~~ clients who is involved in pending litigation or administrative proceedings, and ~~the each attorney or attorneys for each for an~~ adverse party in such ~~matters or proceedings~~ cases, of ~~the~~ his disbarment or suspension and ~~the attorney's~~ consequent inability to act as an attorney after the effective date of ~~his the~~ disbarment or suspension. The notice to be given to the client shall advise the client of the desirability and importance of the prompt substitution of another attorney ~~or attorneys~~ of the client's own choice. ~~in his place.~~

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, ~~it shall be the responsibility of~~ the disbarred or suspended attorney shall ~~to~~ 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.

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

(1) That ~~he 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 ~~he 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 ~~to him~~.

60. 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 ~~by him~~ under this chapter so that, ~~upon in~~ any subsequent proceeding instituted ~~by or against him~~, proof of compliance with this chapter and with the disbarment or suspension order will be available. Proof of compliance with this chapter ~~shall be~~ is a condition precedent to any petition for reinstatement.

61. SDCL 16-19-82. Noncompliance by attorney as contempt. The failure of any attorney, including any 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.

62. 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 after hearing or by consent 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 shall may be filed within one year following an adverse judgment upon 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.

63. 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 he has the moral qualifications, competency and learning in law required for admission to practice law in this state and that his 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.

64. 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 Supreme Court board deems proper.

65. SDCL 16-19-86. Board findings and recommendation on reinstatement--Placement on Court calendar. At the conclusion of After conducting a hearing on reinstatement, the board shall within sixty days promptly file a report with the Supreme Court containing

its findings and recommendations, together with the record. The Court shall then place the petition on the calendar for argument.

66. SDCL 16-19-87. Dismissal of petition or order of reinstatement--Conditions imposed on petitioner. If a the Supreme Court finds the petitioner for reinstatement ~~is found~~ unfit to resume the practice of law, the petition shall be dismissed. If the Supreme Court finds the petitioner ~~is found~~ fit to resume the practice of law, the Supreme Court shall enter a judgment ~~shall of~~ reinstatement. ~~him, provided that t~~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) ~~upon~~ the making of partial or complete restitution to parties harmed by the ~~petitioner's~~ misconduct which led to ~~his~~ petitioner's suspension or disbarment; and
- (3) ~~upon~~ the furnishing of proof of competency as may be required ~~by the judgment in the discretion of the Supreme Court.~~ The which proof may include certification by the bar examiners of ~~the~~ petitioner's successful completion of examinations for admission to practice after the suspension or disbarment

67. SDCL 16-19-88. Transfer to disability status of attorney judicially found incompetent. Where an attorney has been judicially declared ~~incompetent~~ in need of supervision or involuntarily committed on the grounds of incompetency or disability impairment, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability impairment inactive status effective immediately and for an indefinite period until the further order of the court. A copy of such order shall be served upon such attorney and the attorney's counsel if any, ~~the attorney's, his guardian and conservator, if any, and/or the director of an officer of any the institution to which he the attorney has been committed in such manner as the court may direct.~~

68. SDCL 16-19-89. Petition by board for determination of impairment of attorney--Directions for investigation. The Disciplinary Board may petition the Supreme Court to suspend an attorney from the practice of law pending final hearing and disposition by the Supreme Court, upon good cause shown that the attorney, ~~by reason of physical, mental, or other condition, including the abuse of drugs or alcohol,~~ is impaired and that the impairment substantially adversely affects the attorney's ability to competently practice law. The court may take or direct such action as it deems necessary or proper to determine whether the attorney is so impaired, including the examination of the attorney by such qualified medical and mental health experts as the court shall designate.

69. SDCL 16-19-90. Notice to respondent of disability proceedings--Representation of respondent. The Supreme Court shall provide for such notice to the respondent in matters alleging impairment of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent ~~if he is without adequate representation.~~

70. SDCL 16-19-91. Burden of proof in disability and reinstatement proceedings. In a proceeding seeking a transfer to disability impaired inactive status under § 16-19-92, the burden of proof ~~shall rests~~ with the board. In a proceeding seeking ~~an order of~~ reinstatement to active status under § 16-19-98, the burden of proof ~~shall rests~~ with the attorney.

71. SDCL 16-19-92. Order transferring disabled attorney to inactive status--Pending disciplinary proceedings. If, ~~upon due consideration of the matter,~~ the Supreme Court concludes that an the attorney is ~~incapacitated from continuing to practice law,~~ impaired it shall enter an order transferring him the attorney to disability impaired inactive status ~~on the grounds of~~ due to such disability impairment for an indefinite period and until the further order of the court. Any pending disciplinary proceeding against the attorney shall be held in abeyance. An attorney so transferred ~~to disability inactive status~~ shall not be permitted to practice law or act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive.

72. SDCL 16-19-93. Reinstatement order required before disabled attorney resumes practice. No attorney transferred to disability impaired inactive status under the provisions of § 16-19-88 or 16-19-92 may resume active status until reinstated by order of the Supreme Court.

73. SDCL 16-19-94. Petition for reinstatement by attorney in disability impairment inactive status. Any attorney transferred to disability impaired inactive status under the provisions of § 16-19-88 or 16-19-92 ~~shall be entitled to~~ may petition for reinstatement to active status once a year or at such shorter intervals as the Supreme Court may direct in the order transferring the ~~respondent attorney~~ to disability impaired inactive status or any modification thereof. An attorney who has been placed on disability impaired inactive status may not apply for reinstatement until any pending disciplinary investigation or proceeding has been concluded.

74. SDCL 16-19-95. Reinstatement of ~~disabled~~ impaired attorney on judicial declaration of competency. Where ~~a~~An attorney has been transferred to ~~disability~~ impaired inactive status by an order in accordance with the provisions of § 16-19-88 and who is, thereafter, in ~~proceedings~~ duly taken, he has been judicially declared to be competent, may be reinstated by the Supreme Court ~~may dispense with further evidence that his disability has been removed and may direct his reinstatement to active status upon such terms subject to such conditions as the Supreme Court as are deemed appropriate proper and advisable.~~

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75. SDCL 16-19-96. Waiver of physician-patient privilege by petition for reinstatement of disabled attorney--Disclosure of names by petitioner. At any time during the disciplinary process or upon ~~T~~the filing of a petition for reinstatement to active status by an attorney transferred to ~~disability~~ impaired inactive status because of ~~disability~~ shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of ~~his disability~~ impairment. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician, and hospital or other institution by whom or in which the attorney has been examined or treated since ~~this~~ transfer to ~~disability~~ impaired inactive status and he shall furnish to the Supreme Court written consent to each to divulge such

information and records as requested by court-appointed medical experts.

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76. SDCL 16-19-97. Examination of petitioner for reinstatement--Expense of examination--Additional proof of competence required. Upon application for reinstatement by an attorney in ~~disability~~ impaired inactive status, the Supreme Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's ~~disability~~ impairment has been removed, including a direction for an examination of the attorney by such qualified ~~medical~~ experts as the court shall designate. In its discretion, the court may direct that the expense of such an examination shall be paid by the attorney, and that the attorney establish proof of competence and learning in law, which proof may include certification by the bar examiners of ~~his~~ successful completion after transfer to impaired inactive status of an examination for admission to practice.

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77. SDCL 16-19-98. Order of reinstatement on removal of ~~disability~~ impairment. A petition for reinstatement of an attorney in ~~disability~~ impaired inactive status shall be granted by the Supreme Court upon a showing by clear and convincing evidence that the attorney's ~~disability~~ impairment has been removed and he the attorney

is fit to resume the practice of law. An attorney who has been placed on ~~disability~~ impaired inactive status may not be reinstated until any pending disciplinary investigation or proceeding has been concluded.

78. SDCL 16-19-99. Attorney discipline--Proceedings
confidential--Violation as contempt--Exceptions. All proceedings involving allegations of misconduct by or the ~~disability~~ impairment of an attorney shall be kept confidential until a formal complaint asking for disciplinary action is filed with the Supreme Court ~~by the board or the attorney general~~. ~~A or the~~ respondent-attorney may requests that the matter be public~~7~~. ~~or the~~ An investigation ~~is~~ predicated upon a conviction of the respondent-attorney for a crime ~~or and~~, in matters ~~involving alleged disability~~, in which the Supreme Court enters an order transferring the respondent-attorney to ~~disability~~ impaired inactive status pursuant to § 16-19-88 or 16-19-92 the matter is public. All participants in ~~the~~ a confidential proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. Any violation by any person of the requirement of confidentiality shall constitute contempt and shall be punishable as such by the Supreme Court. This section shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, the board of bar examiners or to other jurisdictions investigating qualifications for admission to practice, or an agency acting pursuant to order of the Chief Judge of the United States District Court for South Dakota concerning reciprocal discipline; or to law enforcement agencies investigating qualifications for government employment. In addition, the clerk of the Supreme Court shall transmit notice of all public discipline imposed ~~by the Supreme Court~~ on an attorney or the transfer to inactive status due to ~~disability~~ impairment of an attorney to the national discipline data bank maintained by the American Bar Association.

79. SDCL 16-19-100. Retention of files and records of
disbarred, suspended, or reinstated attorney. The ~~Disciplinary B~~board shall, unless otherwise ordered by the Supreme Court, retain ~~the~~ 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.

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

~~As amended effective July 1, 1998.~~

~~RULE I.~~

~~Each written complaint received by any member of the Disciplinary Board shall be forwarded to the Secretary-Treasurer of The State Bar of South Dakota for assignment and dissemination to the Disciplinary Board and its counsel.~~

~~RULE II.~~

~~Upon receipt of a written complaint by the Secretary-Treasurer from whatever source that he deems not frivolous, the Secretary-Treasurer shall acknowledge receipt of the complaint and notify the complainant of the name and address of the Disciplinary Board member to whom this complaint is assigned.~~

~~RULE III.~~

~~The Secretary-Treasurer shall assign the complaint to a member of the Disciplinary Board and forward a copy of the complaint to all members of the Disciplinary Board and to the Board Counsel.~~

~~RULE IV.~~

~~The member to whom the complaint is assigned shall notify the complainant that the complaint has been forwarded to the attorney complained against with a request for a response within ten days and that any response received will be forwarded to the complainant and the complainant will be given an opportunity to respond to this answer of the attorney.~~

~~RULE V.~~

~~The Secretary-Treasurer shall give notice to the attorney complained against by forwarding the complaint to the attorney and by requesting the attorney to respond in writing to the assigned Disciplinary Board member within ten days and with nine copies of the response for distribution.~~

~~RULE VI.~~

~~The member to whom the complaint is assigned shall distribute the response of the attorney complained against to all members of the Disciplinary Board, the Secretary-Treasurer and to the Board Counsel.~~

~~RULE VII.~~

~~The member to whom the complaint is assigned shall continue the investigation by mail or in person until the matter is ready for Board determination.~~

~~RULE VIII.~~

~~The Disciplinary Board shall by mail, or at a regular meeting, or at a meeting called especially for that purpose act upon the information before it, in one of the following manners, to-wit:~~

~~A. Dismiss the complaint if frivolous or clearly unfounded in fact.~~

~~B. Require investigation by Board Counsel.~~

~~_____ C. _____ Continue to correspond with the attorney complained against, or take such further action as the Board deems appropriate.~~

~~_____ D. _____ That in the event that the Disciplinary Board resolves the complaint pursuant to paragraph A herein, the Board may, by a separate and unanimous vote, expunge the respondent attorney's record of the dismissed complaint.~~

~~RULE IX.~~

~~_____ Should the Disciplinary Board find the complaint to have merit, after the investigation is completed, the Board shall afford the attorney complained against a reasonable opportunity to respond to the allegations. This hearing shall take the form of an informal conference between the Board and the attorney complained against or in the alternative, if required by the Board, a formal hearing noticed and conducted in the following manner, to-wit:~~

~~_____ A. _____ Notice to the attorney complained against shall be given by a member of the Board or by Board Counsel in writing, by certified mail return receipt requested, stating the time, place and date of the hearing when and where the complaint will be considered, requiring the attendance of the attorney and advising of the right to~~

~~attend with Counsel. The notice shall be given at least ten days prior to said hearing and have enclosed therewith a copy of these Rules.~~

~~_____ B. _____ A transcript shall be kept by a Court Reporter of all formal hearings.~~

~~_____ C. _____ The Chairman or Vice Chairman shall conduct the hearing with at least a quorum of the Board present.~~

~~_____ D. _____ Procedurally, after advising the accused attorney of the right to be heard, to offer witnesses, to be represented by Counsel and to have a record kept, the hearing shall be conducted as follows:~~

~~_____ FIRST The accused attorney, after being sworn, or the accused attorney's Counsel, shall be permitted to make a statement.~~

~~_____ SECOND Any and all witnesses on behalf of the accused attorney shall testify after being sworn. Witnesses will be questioned first by the accused attorney or his Counsel and thereafter by a Board member or Board Counsel.~~

~~_____ THIRD Accused attorney shall be questioned by a Board member or Board Counsel.~~

~~_____ FOURTH Additional questions, if any, from other Board members.~~

~~_____ FIFTH Take testimony from the complainant or other witnesses, if it appears desirable, with cross examination.~~

~~_____ SIXTH Closing statement by accused attorney or Counsel with time limit set by Board Chairman.~~

~~_____ SEVENTH Board discussion off the record and out of hearing of the accused attorney.~~

~~_____ EIGHTH Decision of Board in accordance with SDCL 16-19-~~

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~~59, 16-19-60 or 16-19-61 and acts amendatory thereto.~~

~~NINTH~~ If the Board's decision is within the purview of SDCL 16-19-61 and the accused attorney files written objections with the Board within the time allowed, the objections shall be given consideration by the Board by means of correspondence between Board members or at a special meeting held for that purpose should the Board deem it necessary.

~~TENTH~~ The Board shall notify the accused attorney by mail of any revision or changes in the findings and recommendations brought about by the objections.

~~ELEVENTH~~ The Disciplinary Board shall report its findings to the Supreme Court in accordance with SDCL 16-19-62.

~~TWELFTH~~ If the Board's decision is within the purview of SDCL 16-19-60 and acts amendatory thereto, the Board shall notify the accused attorney of its decision in writing, by mail, certified return receipt requested, and unless the accused attorney invokes the provisions of SDCL 16-19-63 demanding a formal proceeding, the decision will be final and the requirements set therein complied with by the accused attorney on penalty of a petition for contempt before the Supreme Court.

~~THIRTEENTH~~ If the Board's decision is within the purview of SDCL 16-19-59 and acts amendatory thereto, the Disciplinary Board shall give notice in writing to the accused attorney, the complainant and such other persons as the Board deems appropriate, in writing.

80. 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 its 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 attorney who is the subject of the complaint along with the name and address of the assigned board member;

(c) instruct the 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 attorney of the provisions of 16-19-99 concerning confidentiality.

2.) Upon receipt of the attorney's written response the assigned board member shall distribute copies to the board members and 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, impose conditions on respondent 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 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 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.

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81. Proposed Amendment of SDCL 19-19-1101. Applicability of chapter. Except as otherwise provided in this section, this chapter applies to all actions and proceedings in the courts of this state. This chapter other than those with respect to privileges do not apply in the following situations:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under subdivision § 19-19-104(a).

(2) Small claims court proceedings.

(3) Proceedings for extradition or rendition.

(4) Sentencing, or granting or revoking probation.

(5) Issuance of warrants for arrest, criminal summonses, and search warrants.

(6) Proceedings with respect to release on bail or otherwise.

(7) Disposition hearings, temporary custody hearings and other hearings other than adjudicatory hearings in juvenile court.

(8) Contempt proceedings in which the court may act summarily.

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82. Proposed Adoption of a new rule to establish a juvenile graduated response grid.

Section 1. Pursuant to SDCL 26-7A-125, the Supreme Court hereby adopts the following juvenile graduated response grid and rules to guide court services officers in determining the appropriate response to a violation or compliance with the conditions of juvenile probation. It is the policy of the Unified Judicial System that violations of probation be addressed in a timely, consistent and reasonable manner by use of a graduated response grid. The use of graduated sanctions and incentives is intended to achieve public safety by holding juvenile offenders accountable for their behavior and reinforcing positive behavior.

Section 2. The response grids attached to this rule as Appendix A are hereby adopted for statewide use by court services officers. The response grids shall be utilized statewide for all juvenile delinquency and child in need of supervision (CHINS) cases supervised through court services.

Section 3. Court services officers should utilize the incentives grid to provide incentives for compliance with the conditions of probation. Incentives should be individualized to the juvenile and provided in a manner that acknowledges achievements and reinforces positive behavior.

Section 4. These response grids shall be made a standard condition of juvenile probation and the juvenile probationer shall be informed that they may seek review of any moderate or serious sanction imposed by requesting review by the chief court services officer for the judicial circuit. In the event the supervising court services officer is the chief court services officer, the probationer may request review of such determination by a chief court services officer from another judicial circuit which shall be assigned by the director of trial court services. The decision made by the chief court services officer concerning the imposition of a sanction is final. Any requests for review shall be documented by the court services officer.

Section 5. The response grid applies to conduct that is a violation of the terms and conditions of juvenile probation including an arrest for a new offense. If a juvenile probationer is arrested for a violent offense or an offense that involves substantial threat of violence or a sex offense the court services officer shall submit a probation violation report to the state's attorney and file a petition to modify or revoke probation with the court. If a juvenile probationer's conduct demonstrates a significant risk to public safety the court services officer shall immediately submit a probation violation report.

Section 6. A court services officer shall respond to a violation through the application of the sanctions grid by utilizing the appropriate cells based on the juvenile probationer's risk level and the type of violation. The imposition of sanctions within a grid cell is vested to the discretion of the supervising court services officer. A court services officer may deviate up or down from the cell with supervisor approval. Not all responses in each grid may be appropriate for all violations or for all juvenile probationers. Graduated responses may be used individually or in combination and include formal and informal responses to probation violations. The imposition of any sanction or incentive shall be documented by the court services officer.

Section 7. Court services officers shall consider the risk the juvenile probationer poses to the community, the severity of any violation, prior history on probation, previous violations or sanctions, and the deterrent effect when imposing a sanction. The court services officer shall also employ positive reinforcement for a probationer's compliance with the conditions of supervision and completion of benchmarks during the term of supervision.

Section 8. Detention shall only be requested in conjunction with the filing of a formal petition to modify or revoke probation.

Section 9. A sanction cannot extend the term of probation.

Section 10. There is hereby established a juvenile response grid oversight committee to consider recommendations to the graduated response grid and make such changes as the committee determines appropriate by majority vote. The committee shall be appointed by the Chief Justice of the South Dakota Supreme Court. The committee shall consist of nine members and be composed of two judges, two chief court services officers, one deputy chief court services officer, two court services officers that are not chief or deputy chief court services officers, one state's attorney and one defense attorney. The director of trial court services shall also serve as a non-voting member of the committee. The committee shall meet within 180 days from appointment and at least annually thereafter.

Section 11. Nothing in this rule shall be construed to limit the sentencing court's ability to respond to a probation violation or modify the terms and conditions of probation.

Section 12. This rule shall become effective February 1, 2016.

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South Dakota's Juvenile Supervisory Responses (JSR)

-Sanctions-

Undesired Behavior-Severity Level	Low/Admin Risk Juvenile (YLS)	Medium Risk Juvenile (YLS)	High Risk Juvenile (YLS)
Minor <ul style="list-style-type: none"> • Disruptive Behaviors/Disobedience • Dishonesty • Failure to Complete Assignment/Directive • Truancy • Failure to Attend Probation Meeting • Association with Prohibited Peers • Failure to Pay Court-Ordered Financials • Failure to Complete Community Service • School Infractions • Runaway • Driving without Permission • Positive Drug Test • PBT of .07 or lower • House Arrest Violation • Intimidating/Threatening Others • Gang Association (minor-colors, drawings etc.) • Curfew Violation • Missed Programming Appointment (first time) • Refusal to UA/PBT • Admitted Ingestion 	<ul style="list-style-type: none"> • Verbal Consequence • Adjust Curfew • Homework Verification • CD Evaluation • Community Service • Counseling Service • Support Parental Rules • Increase Face to Face • Increase Phone Contact • Limit Overnight with Friends • Parent Proposed Sanction • Parent-Child Conference • Restrict Privileges/Friends • School Progress Reports • Written Assignment • Youth Proposed Sanction • Discretion of CSO, Appropriate per Violation 	<ul style="list-style-type: none"> • Verbal Consequence • Adjust Curfew • Homework Verification • CD Evaluation • Community Service • Counseling Service • Support Parental Rules • Increase Face to Face • Increase Phone Contact • Limit Overnight with Friends • Parent Proposed Sanction • Parent-Child Conference • Restrict Privileges/Friends • School Progress Reports • Written Assignment • Youth Proposed Sanction • Behavior Modification Group • Discretion of CSO, Appropriate per Violation 	<ul style="list-style-type: none"> • Verbal Consequence • Adjust Curfew • Homework Verification • CD Evaluation • Community Service • Counseling Service • Support Parental Rules • Increase Face to Face • Increase Phone Contact • Limit Overnight with Friends • Parent Proposed Sanction • Parent-Child Conference • Restrict Privileges/Friends • School Progress Reports • Written Assignment • Youth Proposed Sanction • Scheduled Problem-solving meeting with CSO • Behavior Modification Group • Discretion of CSO, Appropriate per Violation

South Dakota's Juvenile Supervisory Responses (JSR)

-Sanctions-

Moderate <ul style="list-style-type: none"> Continuous or Repetitive Undesired Minor Behaviors New Nonviolent Offense Gang Involvement-Moderate Vandalism, Graffiti etc. Discharged Unsuccessfully from Programming PBT of .08 or Higher 	<ul style="list-style-type: none"> Verbal Consequence Adjust Curfew Behavior Modification Group CD Evaluation Community Service Counseling Service Support Parental Rules House Arrest Increase Face to Face Increase Phone Contact Limit Overnight with Friends Parent Proposed Sanction Parent-Child Conference Restrict Privileges/Friends School Progress Reports Weekly Counseling Reports Written Assignment Youth Proposed Sanction Scheduled Problem-Solving Meeting with CSO Review of Future sanctions if Behaviors Continue Day/Evening Reporting Discretion of CSO, Appropriate per Violation 	<ul style="list-style-type: none"> Verbal Consequence Adjust Curfew Behavior Modification Group CD Evaluation Community Service Counseling Service Support Parental Rules House Arrest Increase Face to Face Increase Phone Contact Limit Overnight with Friends Parent Proposed Sanction Restrict Privileges/Friends School Progress Reports Weekly Counseling Reports Written Assignment Youth Proposed Sanction Scheduled Problem-solving Meeting with CSO Review of Future Sanctions if Behaviors Continue Day/Evening Reporting Electronic Monitoring Parent-Child Conference Discretion of CSO, Appropriate per Violation 	<ul style="list-style-type: none"> Verbal Consequence Adjust Curfew Behavior Modification Group CD Evaluation Community Service Counseling Service Support Parental Rules House Arrest Increase Face to Face Increase Phone Contact Limit Overnight with Friends Parent Proposed Sanction Restrict Privileges/Friends School Progress Reports Weekly Counseling Reports Written Assignment Youth Proposed Sanction Scheduled Problem-solving Meeting with CSO Review of Future Sanctions if Behaviors Continue Day/Evening Reporting Electronic Monitoring Parent-Child Conference Discretion of CSO, Appropriate per Violation
Serious <ul style="list-style-type: none"> Continuous or Repetitive Undesired Minor Behaviors Continuous or Repetitive Undesired Moderate 	<ul style="list-style-type: none"> Verbal Consequence Adjust Curfew Behavior Modification Group CD Evaluation 	<ul style="list-style-type: none"> Verbal Consequence Adjust Curfew Behavior Modification Group CD Evaluation 	<ul style="list-style-type: none"> Verbal Consequence Adjust Curfew Behavior Modification Group CD Evaluation

South Dakota's Juvenile Supervisory Responses (JSR)

-Sanctions-

Behaviors	Community Service	Community Service	Community Service
<ul style="list-style-type: none"> • Tampering with UA • Positive UA other than THC • Contact with victim • Possession of unauthorized weapon • *New violent offense or substantial threat of violence • *Sex offense • *Abscond 	<ul style="list-style-type: none"> • Community Service • Counseling Service • Support Parental Rules • House Arrest • Electronic Monitoring • Court Observation • Increase Face to Face • Increase Phone Contact • Limit Overnight with Friends • Parent Proposed Sanction • Parent-Child Conference • Restrict Privileges/Friends • School Progress Reports • Weekly Counseling Reports • Written Assignment • Youth Proposed Sanction • Scheduled Problem-Solving Meeting with CSO • Day/Evening Reporting • Violation Report with the Court- Detention Request • Increase in Risk Level/Supervision Level • Discretion of CSO, Appropriate per Violation 	<ul style="list-style-type: none"> • Community Service • Counseling Service • Support Parental Rules • House Arrest • Electronic Monitoring • Court Observation • Increase Face to Face • Increase Phone Contact • Limit Overnight with Friends • Parent Proposed Sanction • Parent-Child Conference • Restrict Privileges/Friends • School Progress Reports • Weekly Counseling Reports • Written Assignment • Youth Proposed Sanction • Scheduled Problem-Solving Meeting with CSO • Day/Evening Reporting • Violation Report with the Court- Detention Request • Discretion of CSO, Appropriate per Violation 	<ul style="list-style-type: none"> • Community Service • Counseling Service • Support Parental Rules • House Arrest • Electronic Monitoring • Court Observation • Increase Face to Face • Increase Phone Contact • Limit Overnight with Friends • Parent Proposed Sanction • Parent-Child Conference • Restrict Privileges/Friends • School Progress Reports • Weekly Counseling Reports • Written Assignment • Youth Proposed Sanction • Scheduled Problem-Solving Meeting with CSO • Day/Evening Reporting • Violation Report with the Court- Detention Request • Discretion of CSO, appropriate per violation

*Officer is required to submit a probation violation. For all other cells the officer has discretion to submit a probation violation report as appropriate in response to behavior.

South Dakota's Juvenile Supervisory Responses (JSR)

-Incentives-

Desired Behaviors	Low Level Incentive	Moderate Level Incentive	High Level Incentive
Compliant (Contemplation Stage of Change) (Preparation Stage of Change) Desired behavior would be that the juvenile is meeting the conditions of probation or has shown an improvement in meeting those conditions. -More problem recognition -Decisional balance -Increased commitment -Ready to make choices -Sharing plans for change -Change becomes priority -Shift in view from past to future	<ul style="list-style-type: none"> • Verbal Praise • Written Praise • Drawing from a Prize Bucket • Encourage School Staff Recognition for Child • Decrease Phone Contact Parent and Juvenile • Recommended Incentives 	<ul style="list-style-type: none"> • Verbal Praise • Written Praise • Drawing from a Prize Bucket • Encourage School Staff Recognition for Child • Decrease Phone Contact Parent and Juvenile • Recommended Incentives • Reduce meetings • Eliminate Electronic Monitoring • Allow overnights with Friends 	<ul style="list-style-type: none"> • Verbal Praise • Written Praise • Drawing from a Prize Bucket • Reduce Meetings • Allow Overnights with Friends • Encourage School Staff Recognition for Child • Decrease Phone Contact Parent and Juvenile • Recommended Incentives • Reduce meetings • Eliminate Electronic Monitoring • Allow overnights with Friends • Reduced UAs/PBTs • Job Shadowing • Moderate Financial Reward (gift cards, activity fees, tickets, recreational passes, memberships under \$15 etc.) • Reduced Probation Condition • Extend Curfew
Demonstrated Improvement (Action Stage of Change) Desired behavior would be a	<ul style="list-style-type: none"> • Verbal Praise • Written Praise • Moderate Financial Reward (gift cards, activity fees, 	<ul style="list-style-type: none"> • Verbal Praise • Written Praise • Moderate Financial Reward (gift cards, activity fees, 	<ul style="list-style-type: none"> • Verbal Praise • Written Praise • Moderate Financial Reward (gift cards, activity fees,

South Dakota's Juvenile Supervisory Responses (JSR)

-Incentives-

<p>juvenile's progress in meeting the conditions of probation and showing a commitment for improvement that goes beyond mere compliance.</p> <p>-Strategies for change are chosen and pursued</p> <p>-Active modification of behavior, thoughts, feelings, and environment</p> <p>-Treatment and/or self help</p>	<p>tickets, recreational passes, memberships under \$15 etc.)</p> <ul style="list-style-type: none"> • Reduced Probation Condition • Reduced UAs/PBTs • Drawing from a Prize Bucket • Reduce Meetings • Allow Overnights with Friends • Encourage School Staff Recognition for Child • Extend Curfew • Decrease Phone Contact • Graduation • Certificate/Ceremonies for Accomplishments • Reduce Telephone Contact • Higher Level Financial Rewards (gift cards, activity fees, tickets, recreational passes, memberships over \$15 etc.) • Job Shadowing • Recommend Reduced Probation Term • Eliminate Electronic Monitoring • Acknowledgement by the Judge for Positive Behaviors • Parent and Juvenile recommended incentives • College/Career Planning 	<p>tickets, recreational passes, memberships under \$15 etc.)</p> <ul style="list-style-type: none"> • Reduced Probation Condition • Reduced UAs/PBTs • Drawing from a Prize Bucket • Reduce Meetings • Allow Overnights with Friends • Encourage School Staff Recognition for Child • Decrease Phone Contact • Graduation • Certificate/Ceremonies for Accomplishments • Reduce Telephone Contact • Higher Level Financial Rewards (gift cards, activity fees, tickets, recreational passes, memberships over \$15 etc.) • Job Shadowing • Eliminate Electronic Monitoring • Acknowledgement by the Judge for Positive Behaviors • Parent and Juvenile Recommended Incentives • College/Career Planning Session • School Spirit Wear • Backpack Program- food, 	<p>tickets, recreational passes, memberships under \$15 etc.)</p> <ul style="list-style-type: none"> • Reduced Probation Condition • Reduced UAs/PBTs • Drawing from a Prize Bucket • Reduce Meetings • Allow Overnights with Friends • Encourage School Staff Recognition for Child • Backpack Program- food, school supplies • Increase Driving Privileges • Extend Curfew • Decrease Phone Contact • Graduation • Certificate/Ceremonies for Accomplishments • Reduce Telephone Contact • Higher Level Financial Rewards (gift cards, activity fees, tickets, recreational passes, memberships over \$15 etc.) • Job Shadowing • Recommend Reduced Probation Term • Eliminate Electronic Monitoring • Acknowledgement by the
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South Dakota's Juvenile Supervisory Responses (JSR)

-Incentives-

	session	school supplies	Judge for Positive Behaviors
	<ul style="list-style-type: none"> School Spirit Wear 	<ul style="list-style-type: none"> Increase Driving Privileges Extend Curfew Reduce Community Service Hours 	<ul style="list-style-type: none"> Parent and Juvenile Recommended Incentives College/Career Planning Session School Spirit Wear Backpack Program- food, school supplies Increase Driving Privileges Extend Curfew Reduce Community Service Hours
Significant Improvement			
(Action Stage of Change) (Maintenance Stage of Change) Desired behavior would indicate a demonstration of commitment and progress to meeting the terms of probation and would be associated with a level of improvement that shows effective change by the juvenile.	<ul style="list-style-type: none"> Verbal Praise Written Praise Moderate Financial Reward (gift cards, activity fees, tickets, recreational passes, memberships under \$15 etc.) Reduced Probation Condition Reduced UAs/PBTs Drawing from a Prize Bucket Reduce Meetings Allow Overnights with Friends Encourage School Staff Recognition for Child Backpack Program- food, school supplies Increase Driving Privileges Extend Curfew 	<ul style="list-style-type: none"> Verbal Praise Written Praise Moderate Financial Reward (gift cards, activity fees, tickets, recreational passes, memberships under \$15 etc.) Reduced Probation Condition Reduced UAs/PBTs Drawing from a Prize Bucket Reduce Meetings Allow Overnights with Friends Encourage School Staff Recognition for Child Backpack Program- food, school supplies Increase Driving Privileges Extend Curfew 	<ul style="list-style-type: none"> Verbal Praise Written Praise Moderate Financial Reward (gift cards, activity fees, tickets, recreational passes, memberships under \$15 etc.) Reduced Probation Condition Reduced UAs/PBTs Drawing from a Prize Bucket Reduce Meetings Allow Overnights with Friends Encourage School Staff Recognition for Child Backpack Program- food, school supplies Increase Driving Privileges

South Dakota's Juvenile Supervisory Responses (JSR)

-Incentives-

<ul style="list-style-type: none">• Decrease Phone Contact• Graduation Certificate/Ceremonies for Accomplishments• Reduce Telephone Contact• Higher Level Financial Rewards (gift cards, activity fees, tickets, recreational passes, memberships over \$15 etc.)• Photo ID Costs• Job Shadowing• Recommend Reduced Probation Term• Eliminate Electronic Monitoring• Acknowledgement by the Judge for Positive Behaviors• Parent and Juvenile Recommended Incentives• Reduce Community Service Hours• Recommend Court Reduction in Fines or Fees.• College/Career Planning Session• School Spirit Wear• Payment for GED Testing	<ul style="list-style-type: none">• Decrease Phone Contact• Graduation Certificate/Ceremonies for Accomplishments• Reduce Telephone Contact• Higher Level Financial Rewards (gift cards, activity fees, tickets, recreational passes, memberships over \$15 etc.)• Photo ID Costs• Job Shadowing• Recommend Reduced Probation Term• Eliminate Electronic Monitoring• Acknowledgement by the Judge for Positive Behaviors• Parent and Juvenile Recommended Incentives• Reduce Community Service Hours• Recommend Court Reduction in Fines or Fees.• College/Career Planning Session• School Spirit Wear• Payment for GED Testing	<ul style="list-style-type: none">• Extend Curfew• Decrease Phone Contact• Graduation Certificate/Ceremonies for Accomplishments• Reduce Telephone Contact• Higher Level Financial Rewards (gift cards, activity fees, tickets, recreational passes, memberships over \$15 etc.)• Photo ID Costs• Job Shadowing• Recommend Reduced Probation Term• Eliminate Electronic Monitoring• Acknowledgement by the Judge for Positive Behaviors• Parent and Juvenile Recommended Incentives• Reduce Community Service Hours• Recommend Court Reduction in Fines or Fees.• College/Career Planning Session• School Spirit Wear• Payment for GED Testing
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* Incentives should be individualized to the juvenile and this list is not exclusive.

** Incentives should be applied with a 4:1 ratio when compared to Sanctions.

Notice of Rules Hearing No. 132 - January 12, 2016

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 4, 2016.

Subsequent to the hearing, the Court may reject or adopt the proposed rule 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 December 2015, State Bar Newsletter.

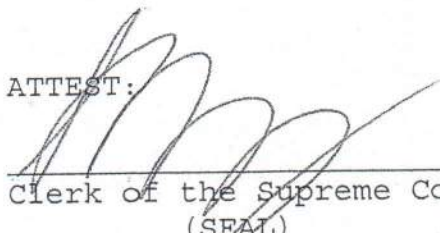
DATED at Pierre, South Dakota this 25th day of November, 2015.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

NOV 25 2015


Clerk