

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF
RULE IX OF THE SOUTH DAKOTA SUPREME
COURT DISCIPLINARY RULES
(APPENDIX TO SDCL 16-19)

RULE 98-25

A hearing having been held on February 20, 1998, at Pierre, South Dakota, relating to the amendment of Rule IX of the South Dakota Supreme Court Disciplinary Rules (Appendix to SDCL 16-19), and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that said rule (Appendix to SDCL 16-19) be and it is hereby amended to read in its entirety as follows:

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 the 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 16-19-59, 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 file 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.

RULE 98-25


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 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.

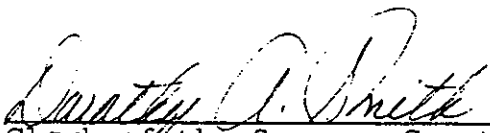
IT IS FURTHER ORDERED that this rule shall become effective July 1, 1998.

DATED at Pierre, South Dakota, this 10th day of March, 1998.

BY THE COURT:


Robert A. Miller, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 10 1998


Clerk