

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 16-19-44

RULE 98-30

A hearing having been held June 1, 1998, at Pierre South Dakota, relating to the amendment of SDCL 16-19-44, 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 SDCL 16-19-44 be and it is hereby amended to read in its entirety as follows:

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 complaint with the board in such form as the board may prescribe. The board shall proceed on such complaint in accordance with §§ 16-19-50 to 16-19-64, inclusive.

(B) 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.

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

(C) 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 Board pursuant to § 16-19-44(A).

(D) 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 non-compliance 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 non-compliance with applicable Rules of Professional Conduct shall be dismissed.
- (3) Allegations of ineffective assistance of counsel or other lawyer 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 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.

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

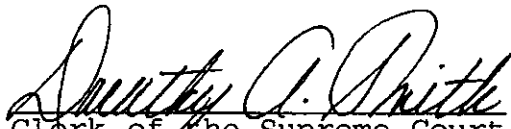
DATED at Pierre, South Dakota, this 8th day of June, 1998.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

**SUPREME COURT
STATE OF SOUTH DAKOTA
FILED**

JUN 08 1998



Clerk