

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION OF)	RULE 25-01
A NEW CHAPTER 16-16A RELATING TO)	
THE PUBLIC SERVICE PATHWAY PROGRAM)	RULE 25-02
THE AMENDMENTS TO SDCL 16-16-6;)	
SDCL 16-18-2.1 and SDCL 16-18-2.9)	RULE 25-03
REGULATIONS TO COMPRISE THE)	
APPENDIX TO SDCL CHAPTER 16-16A)	RULE 25-04
)	
)	RULE 25-05

A hearing was held on February 18, 2025, at Pierre, South Dakota, relating to the adoption of new rules relating to the Public Service Pathway and Regulations to Comprise the Appendix to SDCL Chapter 16-16A and amendments to SDCL 16-16-6, SDCL 16-18-2.1 and SDCL 16-18-2.9, and the Court having considered the proposed adoptions and amendments and written and oral presentation relating thereto, now, therefore, it is

ORDERED that the adoption of a new rule relating to creating the Public Service Pathway is hereby adopted to read in its entirety as follows:

Rule 25-01

1. Adoption as a New Chapter 16-16A - Public Service Pathway Program

16-16A-1. Definitions

Terms used in this chapter mean:

1. Board - the South Dakota Board of Bar Examiners;
2. Law school - the University of South Dakota Knudson School of Law;
3. NCBE - the National Conference of Bar Examiners;
4. Public service - full-time employment within South Dakota with any federal, state, local, or tribal government, Dakota Plains Legal Services, or East River Legal Services; and
5. Supervising attorney - an attorney who meets the requirements of § 16-18-2.9 and agrees to undertake the

supervision of a participant in accordance with the provisions of §§ 16-18-2.1 to 16-18-2.10, inclusive.

16-16A-2.

An individual may be admitted to the public service pathway program if the student:

1. Is currently enrolled at the law school;
2. Completes an application for participation and is approved by the dean of the law school and the hiring authority of the host public service entity with whom the participant will be placed;
3. Satisfactorily completed all required 1L curriculum;
4. Satisfactorily completed all required 2L curriculum;
5. Satisfactorily completed the Professional Responsibility class;
6. Successfully completed four semesters towards the individual's degree with the law school;
7. Is registered to take or has taken the Multistate Professional Responsibility Exam by November of the participant's 3L year;
8. Has never taken a bar examination or been admitted to the practice of law in another jurisdiction; and
9. Agrees to work full time with a host public service entity approved by the dean of the law school and the board as outlined in § 16-16A-3.

An individual is not required to meet these requirements at the time of application but must satisfy the eligibility requirements by the commencement of the program. The student must complete the application on a form provided by the dean of the law school. Notice of the application period shall be given in the same way internships and externships are noticed within the law school. The dean of the law school shall review applications and select program participants. No more than ten students may be admitted to the program from one law school class.

16-16A-3.

A participant in the public service pathway program shall complete a minimum of 500 hours of work experience as a legal extern with a host public service entity approved by the dean of the law school. The host public service entity shall offer a

variety of experiences and opportunities for each participant to demonstrate competence in the law and shall provide enough supervising attorneys necessary to effectively mentor and assist each participant. The law school shall provide training to each supervising attorney regarding relevant rules, regulations, and policies.

16-16A-4.

Notwithstanding § 16-16-6, an applicant may obtain admission to practice as an attorney in this state through the public service pathway program if the applicant:

1. Meets the requirements set forth in § 16-16-2;
2. Complies with the criminal background investigation as required by § 16-16-2.6;
3. Provides evidence of graduation from the law school;
4. Provides evidence of successful completion of the public service pathway bar admission program through the law school;
5. Provides a portfolio of work demonstrating minimum competence to the satisfaction of the board;
6. Demonstrates competence in Indian law either through successful completion of a board-approved Indian law course at the law school with the testing option or successful completion of a one-question examination on Indian law offered by the board following an applicant's successful completion of the program;
7. Achieves a score of 85 or higher on the Multistate Professional Responsibility Exam; and
8. Commits to providing at least two years of public service.

16-16A-5.

On or before October 1 during the semester of placement with a host public service entity, participants seeking admission to practice as an attorney in this state through the public service pathway program shall submit to the board:

1. An application on the form provided by the board;
2. An application fee prescribed by the Supreme Court;

3. A photograph taken within six months of the date of application;
4. A current law school transcript;
5. Completed South Dakota Division of Criminal Investigation and United States Federal Bureau of Investigation fingerprint cards;
6. The required fingerprinting fee; and
7. A copy of the request for preparation of a character report and accompanying submissions to the NCBE with proof of payment of the fee prescribed by the NCBE.

An application is not complete until each of these items is received.

16-16A-6

Upon completion of the public service pathway program and the board's character and fitness investigation, the board shall make a recommendation regarding the participant's admission to practice as an attorney in this state to the Supreme Court for its consideration and order.

16-16A-7.

Upon admission to the practice of law through the public service pathway program, a participant shall complete two years of public service. The two-year commitment must be completed within three years of the date of admission to practice as an attorney in this state. The time a participant serves in a state or federal judicial clerkship may not count toward the two-year requirement but the three-year period to complete the public service requirement is tolled during service in a state or federal judicial clerkship.

16-16A-8.

A participant seeking a waiver or extension of time to complete the public service requirement must submit a written request for waiver or extension to the secretary of the board as soon as practicable. Upon receiving a waiver or extension of time to complete the public service requirement, the board shall conduct a hearing. The board may also initiate an investigation and hearing upon belief that a participant has not, or will not, complete the two-year public service commitment. To qualify for a waiver or extension, the participant must demonstrate, by a preponderance of the evidence, extraordinary circumstances, personal hardship, or that the public service employment was terminated for reasons

beyond the control of the participant and the participant is unable to secure new employment in public service.

The board may take testimony and compel, by subpoena, the attendance of witnesses and the production of documents. Any member of the board may administer an oath or issue a subpoena. Upon conclusion of its investigation and hearing, the board shall issue a recommendation to the Supreme Court for its consideration and order. The board may recommend to extend the deadline to complete the public service, to waive the remainder of the term of public service, or to deny the request and revoke the participant's license to practice law in this state.

16-16A-9.

Each participant shall report to the secretary of the board the participant's place of employment until completion of the public service requirement. The participant shall file with the secretary of the board an affidavit upon a form provided by the board attesting to the completion of the public service requirement.

16-16A-10.

The Supreme Court shall appoint an oversight committee to monitor the public service pathway program and suggest changes. The committee must include one member from the law school, one from the board, and one from the Supreme Court.

16-16A-11.

Each participant shall comply with the South Dakota Rules of Professional Responsibility. Failure to do so may result in denial of admission to practice law as an attorney in this state and referral to the Disciplinary Board. The board may refer a participant to the Disciplinary Board for any violation of the Rules of Professional Responsibility. Failure to furnish information or answer truthfully the inquiries of the board pertinent to the participant's application may also result in denial of admission to practice law.

In any application for waiver or extension pursuant to § 16-16A-8, a participant shall disclose to the board any allegation of misconduct involving the participant.

16-16A-12.

The provisions of this chapter are effective for five years from the date of the order adopting these rules. The oversight committee shall make a recommendation to the Supreme Court whether the program should continue or be amended.

16-16A-13.

The board is authorized to promulgate policies and regulations necessary to implement this program.

16-16A-14.

The application for admission to practice law as an attorney in this state and all accompanying materials, including investigative reports and transcripts but not including portfolio submissions, are confidential and for the use of the board, the Supreme Court, and its staff in determining admission to the practice of law in the state. This rule does not prohibit the board from furnishing relevant information to the Disciplinary Board when the Disciplinary Board is conducting an investigation. The information and records may be released to the applicant or, with the applicant's consent, to another jurisdiction for purposes of admission to the practice of law.

Rule 25-02

2. SDCL 16-16-6. Examination required of applicants to practice law--Educational requirements.

All applicants for admission, except those applying pursuant to §§ 16-16-7.6, 16-16-12.1, ~~or §§ 16-16-12.3, and 16-16-12.4,~~ or chapter 16-16A shall be required to pass satisfactorily an examination conducted by the Board of Bar Examiners. An applicant for permission to take an examination, in addition to the general qualifications prescribed in § 16-16-2, must furnish satisfactory evidence that he graduated from a law school accredited by the American Bar Association with a J.D. or LL.B. degree or that he will so graduate prior to the examination, or that he has successfully completed all of the requirements for graduation prior to the examination.

An applicant for admission who is a graduate of a foreign law school, not accredited by the American Bar Association, may apply for permission to take the South Dakota bar examination upon good cause shown if the graduate has passed the bar examination in another state and is a member in good standing of the bar of that state.

Rule 25-03

**3. SDCL 16-18-2.1
SDCL 16-18-2.1. Legal assistance by law students--Purpose of provisions.**

The bench and the bar are primarily responsible for providing competent legal services for all persons including those unable to pay for these services. As one means of providing assistance to lawyers and to encourage law schools to provide field placement instruction in legal work of varying kinds, §§ 16-18-2.2 to 16-18-2.10, inclusive, are adopted. For the purposes of §§ 16-18-2.1 to 16-18-2.10, "extern" means a student in a field placement program for academic credit offered by a school of law in accordance with

the American Bar Association Standards for Approval of Law Schools, including a participant in the public service pathway program pursuant to chapter 16-16A, and "intern" means any other student providing legal assistance under the supervising lawyer.

Rule 25-04

**4. SDCL 16-18-2.9. Qualifications of supervising lawyer—
Professional responsibility.**

A supervising lawyer under whose supervision a legal intern or extern does any of the things permitted by §§ 16-18-2.4 to 16-18-2.7, inclusive, ~~shall~~ must be a lawyer authorized to practice law in this state, and:

- (1) ~~Shall be approved by the dean of the school of law of the University of South Dakota or by the director of the externship program of the school of law; and such approval by the dean or the director may be general, may have time, scope, or case limitations, or may be on an ad hoc case by case basis; all such as the dean or the director shall from time to time determine. The approval may be modified or withdrawn by the dean or the director at any time without notice or hearing and without any showing of cause. Such approval shall be in writing except that at the option of the dean or the director the approval may be oral for all matters relating to the externship program.~~
Must be a member of the South Dakota bar, in good standing, and shall certify such in writing; and

- (2) Shall assume personal professional responsibility for the conduct of the legal intern or extern.

RULE 25-05

**5. Regulations to Comprise the Appendix to SDCL Chapter 16-16A.
Regulation 1.**

Each participant must prepare and submit a portfolio of work product. By May 31 of the year of placement, the board shall publish the requirements of the portfolio.

Regulation 2.

After each court appearance, each participant shall complete a form provided by the board detailing the case name and number, the subject matter of the litigation, the purpose of the appearance, and the feedback received from the supervising attorney, and, if any, the feedback received from the court or adjudicator. If the court appearance is for a block of cases, the participant shall so indicate on the form and, in lieu of providing details on each case, the participant shall report only the most significant case. The participant shall provide this form to the secretary of the board each week, or as otherwise ordered by the board, and provide a copy to the supervising attorney. The supervising attorney shall

review the form and complete a section pertaining to the accuracy of the form and submit the form via email to the secretary of the board.

Regulation 3.

Each participant shall complete the daily time and activity form provided by the board, which must detail the title of the legal matter, the date, the scope of the activity, the time spent in 15-minute increments, and what was observed. Additionally, in a separate word document attached to the form, the participant shall also provide a short synopsis of what the participant learned if the activity involved observation or, if the activity required participation, what the participant did correctly and what the participant could have done differently and why. The participant shall submit the daily time and activity form and attachment to the secretary every week or as otherwise ordered by the board.

Regulation 4.

A participant shall inform the secretary of the board of any hearings or trials which would provide an opportunity for observation of the participant actively engaging before the court or adjudicator. It is preferable that notice of three days or more be given of such events.

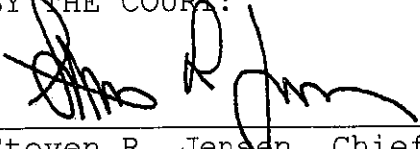
Regulation 5.

The board will regularly assess each participant. The board shall apprise each participant of the participant's progress by November 15 of the year of placement. The board's assessment pursuant to this regulation is preliminary and non-binding. The assessment does not constitute a waiver of the consideration of facts or conduct that are either later discovered or occur after the board's assessment under this regulation.

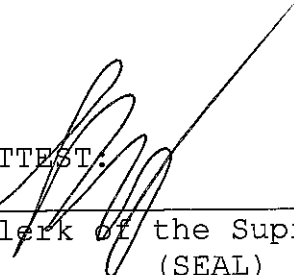
IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 21st day of February, 2025.

BY THE COURT:



Steven R. Jensen, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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Clerk