



South Dakota Paralegal Association
EST. 1989

REPORTER



Vol. 31 | No. 4

SDParalegals.com 

March 2021

THIS ISSUE

| | |
|---|----|
| COVID Court Policies | 9 |
| In Memoriam | 6 |
| NALA Award Nominations | 9 |
| New Member | 9 |
| Paralegal Brief | 3 |
| USDLaw ListServe Article | 11 |
| <i>Top Ten Remarkable 2020 South Dakota Supreme Court Decisions</i> | |

EVERY ISSUE

| | |
|--|----|
| Advertising | 15 |
| Calendar | 3 |
| Careers | 15 |
| Committee Reports | 13 |
| COURT OPINIONS | |
| <i>SD Supreme Court</i> | 4 |
| <i>8th Circuit Court of Appeals</i> | 7 |
| CP/ACP Certification | 16 |
| GRAMMAR CHECK | 10 |
| <i>Misplaced Modifiers</i> | |
| NALA Liaison's Report | 3 |
| Parablog | 8 |
| President's Message | 2 |
| Recipe | 15 |
| Wordfind | 14 |
| <i>The Legislative Branch</i> | |

Positivity

at its

BEST

pg 8



President's Message

Dixie A. Bader, CP



2021 started a bit rough, but we have time to grow. It is a sad time for America. We lost Justice Ruth Bader Ginsburg in 2020 and the COVID-19 pandemic continues with the loss of American lives, the loss of jobs, and the loss of businesses. We had a wild presidential election and continued political controversy with an awful attack on our Capitol in Washington, D.C., on January 6, 2021. It was unnerving to watch the attack on our nation unfold while I was on vacation in another country.

On January 20, 2021, I watched the inauguration of President Joe Biden, Jr., and Vice President Kamala Harris, as many of you may have, and it gave me hope. I had some anxiety, based on the attack on the Capitol, about what might happen. But it was inspirational to watch an inauguration full of hope, alliance, and unity, which were the platform of much of President Biden's speech. I pray for our nation, for peace, for conformity, for unity, and for the greater good of our nation in the coming days. May the COVID-19 vaccination roll-out ease our minds from this pandemic. May life as we knew it return without masks. May businesses snap back and may our nation rise again. I am glad to be alive during a time when such a diverse group of cabinet members are working hard for our nation, and to see our first female, mixed-race Vice President, Kamala Harris. May the young girls (and boys) of today look at this and know that diversity is good, that working together is good, and that they can do anything they put their minds to.

Despite what has happened, we are Americans. We are strong and resilient, and we will persevere. This is a time of change for our state's legislation as well. Laws are to be changed based on our votes in November (some are being fought with lawsuits) and there are many new proposals. I have always loved following the South Dakota Legislature and reading the proposed amendments and laws. You too can follow these by going to SDLegislature.gov. You can create an account and follow statute sections related to your area of practice, and receive emails when proposed changes or legislation are being heard. I find it important to follow these so that if there are changes enacted into law, I can be on alert and communicate with the attorney I work for. It's important to monitor so that if some "off-the-wall" changes are proposed, then someone can lobby for the change not to occur. For the first time last year, I was able to attend in person on a Friday afternoon to listen to arguments in the House. It certainly is an orchestrated and interesting thing to watch. Or you can listen or watch live, thanks to South Dakota Public Broadcasting. I encourage you to check out the website, watch or listen live, or if given the opportunity, attend a session (they are normally open to the public; however this year they are being broadcast by video). In some ways, perhaps things have been made easier for people to argue for or against a bill without having to make the long drive to Pierre.

Executive Committee

PRESIDENT

Dixie A. Bader, CP

Dixie@BurdAndCarper.com

1ST VICE PRESIDENT

Jessi N. Stucke, CP

JStucke@rwwsh.com

2ND VICE PRESIDENT

Autumn Nelson, CP

NelsonA@GoosmannLaw.com

SECRETARY

Valerie Winegar, CP

VWinegar@LynnJackson.com

TREASURER

Diane Burns, ACP

Diane@RedstoneLawFirm.com

NALA LIAISON

Janet Miller, ACP

JMiller@SBSlaw.net

If you think about it, some good has come from the pandemic, like this quote suggests: "Life is about change. Sometimes it's painful, sometimes its beautiful. But most of the time, it's both." (Author unknown). We all became more resilient, we tried new things (like Zoom meetings and hearings, like it or not), and we were forced to step out of our comfort zones and expand our technical skills. It was a crash course for some, but overall, we were "in it together" and able to make the best of an unfortunate situation. If we are anything as paralegals, we are open to change. We think "outside the box," and we learn to adjust our schedules to make happen whatever the task is at hand. I had the crash course on DropBox and Zoom so that I could work remotely for much of 2020. It wasn't ideal, because I love people. I didn't have my big desk at home, or much room, but the silver lining was that I had a job and I was safe. I got to see my daughter more (I think she liked that), and got to hang out with my dogs. I made it work even though I missed my co-workers, seeing clients, and working with my paper files. I learned to work from "the cloud" at home and it was magical. And I liked the commute across the house rather than across town. Something good can always come from a bad situation. Growth as individuals and as employees was certainly done. Reflection on a situation and how you have grown is sometimes the prize even if the underlying situation was no prize at the time. Reflection is what makes us stronger and better human beings. So onward and upward we go in 2021. May it bring you good things.

Lastly, our, SDPA Annual Meeting will be June 18, 2021, in Sioux Falls in conjunction with the South Dakota State Bar Convention. Mark your calendar and I hope to see you there in person.

NALA Liaison's Report

Janet Miller, ACP



As of February 2021, there are 101 Certified Paralegals (CP) throughout South Dakota, and of those, 39 are Advanced Certified Paralegals (ACP).

- There are several open NALA Board positions including Vice President, Secretary, Treasurer, and At Large Directors. The deadline to apply for a position is March 15, 2021. A complete description of the responsibilities of each position is listed on the NALA website. It would be great to have an additional SDPA member on the NALA Board.
- NALA offers several free resources to paralegals including a Members Only Collaboration Site and Complementary Education opportunities. A *Facts & Findings* Archive Site and Member Newsletter Archive Site will be available soon. These free resources can be found under the Join tab of the NALA website.
- SDPA offers scholarships to assist in becoming certified or obtaining your ACP. Please feel free to contact me and I would be happy to help you or answer any questions you may have about NALA and becoming certified.
- There is a CP Skills Exam testing window from April 1-30, 2021.
- For more information on each of these topics, as well as additional information, log on to your NALA member portal or reach out to me and I will do my best to answer your questions.

INTRODUCING
PB Paralegal Brief

Access the best expert insights, in-depth analysis, and the latest information from hundreds of sources, all together in one place.

As part of its commitment to provide the best resources for paralegals and other legal professionals, NALA - The Paralegal Association (NALA) recently launched a new online resource for the paralegal community.

Paralegal Brief brings together the widest set of expert, thought-leadership content from hundreds of leading sources. Powered by Aggregate technology, **Paralegal Brief** uses machine intelligence, smart algorithms, social media, and audience-driven data to deliver the most relevant, custom-curated content to each and every reader. With **Paralegal Brief**, you can access the best expert insights, in-depth analysis, and the latest information from hundreds of sources, all together in one place.

NALA members should already be receiving weekly emails, but you can also sign up [here](#). You don't have to be a NALA member in order to register. If you would like to submit your website or blog content to **Paralegal Brief**, click [here](#) for more information.

CALENDAR

March

- 3 * **Become the Most Valuable Paralegal in the Office**..... 12pm
- 16 **ERLS Table Talk: Child Support**..... 10am
Register [here](#).
- 16 * **Miller Trust Essentials**..... 1pm
- 23 * **Effectively Lead Your Remote Team** 12pm

April

- 21 * **Deep Dive on Legal Writing: The Power of Citations**..... 12pm

May

- 5 * **Stay Healthy as a Leader: Learn Your Stressors**..... 12pm
- 19 * **Advanced Medicare Secondary Payer (MSP) Compliance Techniques** 12pm

June

- 8 * **Technology Rollouts 2021** 12pm
- 16-17 **State Bar Convention**
Sheraton ~ Sioux Falls
- 17 **SDPA Pre-Seminar Social** Evening
Sheraton ~ Sioux Falls
- 18 **SDPA Seminar & Annual Meeting**..... 8am-5pm
Sheraton ~ Sioux Falls

July

- 22-24 **NALA Conference & Expo**..... Louisville, KY

* NALA webinars: CST/CDT
Course info available [here](#).

+ SD State Bar webinars: CST/CDT

Sioux Falls Luncheons: Group meets monthly.
For info, email Vicki Blake, CP at Vicki@DDLAWSD.com.



MISSION STATEMENT

The purposes of the South Dakota Paralegal Association are:

To establish good fellowship among association members, NALA, and members of the legal community.

To encourage a high order of ethical and professional attainment.

To further education among members of the profession.

To cooperate with bar associations.

To support and carry out the programs, purposes, aims, and goals of NALA.

RECENT OPINIONS: *South Dakota Supreme Court*

STATE v. VORTHERMS

2020 S.D. 67 – December 3, 2020

Warrantless blood draw upheld on basis of exigent circumstances

STATE v. QUINONES RODRIGUEZ

2020 S.D. 68 – December 10, 2020

Court-trying first-degree murder conviction affirmed

FERGUSON v. THAEMERT

2020 S.D. 69 – December 10, 2020

Medical malpractice discovery as to "other patient records" reversed in 4-1 ruling

LUZE v. NEW FB CO.

2020 S.D. 70 – December 10, 2020

Resolution of issues regarding work comp insurer's ability to enforce subrogation lien against itself and for "like damages" (3-1-1 ruling)

STATE v. BABCOCK

2020 S.D. 71 – December 17, 2020

Multiple assault convictions affirmed



PICKEREL LAKE ET AL. v. DAY COUNTY

2020 S.D. 72 – December 23, 2020

Day County permitted to tax non-Indians on Indian Trust land

This dispute involves a challenge to taxes assessed by Day County, involving the issue of whether federal law concerning Indian land preempts the ability of the County to tax. The dispute and the results in the lower court and in the SD Supreme Court are described in the first paragraph of the Court's opinion:

"[¶1.] The Pickerel Lake Outlet Association, a South Dakota domestic nonprofit corporation, and forty non-Indian owners of permanent improvements around Pickerel Lake (the Plaintiffs) filed a declaratory judgment action in circuit court challenging ad valorem property taxes that Day County assessed against them. They claimed that federal law preempted taxation because their structures are on land held in trust for the Sisseton-Wahpeton Oyate. The State defended the taxes and challenged the Plaintiffs' standing to sue. The circuit court concluded the

Plaintiffs had standing and upheld the disputed taxes. The Plaintiffs appeal. We affirm."

This opinion runs 21 pages, with the Court ultimately concluding in ¶36:

"The Plaintiffs have satisfied all the prerequisites for standing. Further, the County is neither explicitly nor implicitly preempted by the provisions of [25 U.S.C.] § 5108 from assessing ad valorem taxes against the Plaintiffs."

This decision is unanimous (5-0), with opinion authored by Justice Kern.

STATE v. SEIDEL

2020 S.D. 73 – December 31, 2020

75-year prison sentence upheld; types of challenge to sentencing explained

Defendant was convicted by jury of several offenses (first degree kidnapping, rape, aggravated assault, and commission of a felony with a firearm) in connection with a brutal encounter with his estranged wife. The trial court imposed a combination of consecutive and concurrent sentences which resulted in a total of 75 years in prison, the length of which Defendant asserted was tantamount to a life sentence. The SD Supreme Court affirmed, rejecting arguments related to the length of sentence and to closing arguments (restrictions on Defendant's counsel and alleged prosecutorial misconduct in the state's argument). Of significance for future reference, this opinion discusses how one may challenge the length of a sentence in South Dakota. The opinion points out that both the Defendant and the State blurred the lines in regard to the applicable law. In that regard, ¶43 of the opinion is instructional:

"[¶43.] There are generally two types of sentence challenges—an Eighth Amendment violation and an abuse of discretion. Although Richard characterizes his challenge to the circuit court's sentence as an Eighth Amendment claim and quotes our law governing proportionately review, his arguments only dispute the appropriateness of the court's particular sentence based on the facts of this case and Richard's unique characteristics. The State's brief likewise seems to conflate the two types of sentence challenges. The State first identifies our law governing proportionality review, but then—within that constitutional analysis—quotes language from *State v. Bonner*, 1998 S.D. 30, ¶ 19, 577 N.W.2d 575, 580, setting forth what a court is to consider in exercising its discretion when imposing a sentence. Because Richard characterized his sentencing challenge as an Eighth Amendment claim, we address that claim first, although we also review the sentence for an abuse of discretion."

This decision is unanimous (5-0), with opinion authored by Justice DeVaney.

STATE v. LEADER CHARGE

2020 S.D. 1 – January 7, 2021

Sex offense conviction affirmed

STATE v. SUCHOR

2020 S.D. 2 – January 7, 2021

Convictions on three counts of grand theft by contractor reversed on basis of failure of evidence

FRYE-BYINGTON v. RAPID CITY MEDICAL CENTER

2020 S.D. 3 – January 21, 2021

Defense verdict in medical malpractice case affirmed



STATE v. CUMMINGS

2020 S.D. 4 – January 28, 2021

Consensual statements made on tribal lands may be used in criminal prosecution in state court

In this criminal case, the trial court suppressed statements made by Defendant to an investigating officer at Defendant's home on Indian Trust land. The statements related to a burglary which occurred outside of tribal lands, a burglary as to which Defendant was subsequently charged in Bennett County state court. The trial court ruled that the investigating officer lacked authority to investigate crimes in Indian Country. The SD Supreme Court granted the State's request for an immediate appeal and reversed, holding that the statements made were in the context of a consensual conversation and, as such, not in violation of the 4th Amendment.

This decision is unanimous with opinion authored by Chief Justice Jensen. Circuit Judge Myren (now Justice Myren) sat on this case in lieu of Justice DeVaney.



PIRMANTGEN v. ROBERTS COUNTY

2020 S.D. 5 – January 28, 2021

Property tax contest raised by taxpayer partially successful, with taxpayer being awarded appellate attorney fees

The facts and issues are initially summarized in ¶1 of the Court's opinion as follows: >>

RECENT OPINIONS: *South Dakota Supreme Court*

"[¶1.] After the Roberts County Director of Equalization applied an across-the-board 10% increase to the value of James Pirmantgen's properties for the 2018 tax year, Pirmantgen challenged the tax assessment on 16 properties. The Office of Hearing Examiners held a trial *de novo* and modified the assessments on four properties but affirmed the County's remaining assessments. Pirmantgen appealed the hearing examiner's decision to the circuit court, and after considering the record evidence and arguments of counsel, the court reversed and modified the hearing examiner's decision. The court set aside the County's across-the-board 10% increase, modified the assessed values for some properties, and ordered the County to assess the remaining properties at the values existing prior to the 10% increase for the tax year in question. The court also ordered that the County reimburse Pirmantgen for any excess taxes collected. The County appeals. We affirm in part and reverse in part."

With respect to three of the parcels, the SD Supreme Court affirmed the circuit court's ruling that the hearing examiner's valuations of these three parcels were clearly erroneous and also affirmed the circuit court's modification of the hearing examiner's decision to reflect appropriate valuations.

With respect to the remaining ten parcels, the SD Supreme Court found that the trial court, "erred in reversing the hearing examiner's decision as to these ten properties and in directing the County to reduce the assessments on these properties to the assessed values existing prior to the 10% increase."

In regard to the ability of the trial court to order a refund of taxes paid to the County, the SD Supreme Court stated, "[b]ecause the circuit court did not have the authority to order the refund of taxes, it erred in directing the County to reimburse Pirmantgen any taxes paid in excess of what should have been paid." Footnote 5 of the opinion explains:

The Court has previously recognized that "[t]here are two exclusive methods by which an aggrieved taxpayer may seek recovery for alleged illegal taxes paid. They are the Refund and Abatement Statute, SDCL 10-18-1, and the Protest and Suit Statute, SDCL 10-27-2." [Lick v. Dahl](#), 285 N.W.2d 594, 599 (S.D. 1979); see also [Metropolitan Life Ins. Co. v. Kinsman](#), 2009 S.D. 53, ¶ 18, 768 N.W.2d 540, 545.

The SD Supreme Court also awarded the taxpayer \$3,000 in appellate attorney fees, breaking new ground in so far as this is the first opportunity the Court has had to resolve the question "whether an appellee may recover a portion of the attorney fees incurred when the appellee only partially prevails in the appeal of a property assessment." In support of the appellate

attorney fee award, the Court stated, "Pirmantgen prevailed on a major issue—whether the Director of Equalization's assessment methodology was contrary to the statutory mandates."

This decision is unanimous by the Court, with opinion authored by Justice DeVaney. Circuit Judge Hanson sat on this case in lieu of former C.J. Gilbertson.

HOLBORN v. DEUEL COUNTY BOARD OF ADJUSTMENT

2020 S.D. 6 – February 11, 2021

Board's approval of special exception permits reinstated, votes validated



HAMEN v. HAMLIN COUNTY

2020 S.D. 7 – February 11, 2021

Destruction of property by law enforcement (split decision)

This case, involving the destruction of property by law enforcement personnel, was argued orally on September 30, 2019, more than 16 months ago. The dispute, as resolved at both the trial level and on this appeal, is set forth in the opening paragraph of the Court's opinion:

"[¶1.] Gareth and Sharla Hamen (the Hamens) filed a complaint against Hamlin County (the County), the Hamlin County Sheriff Chad Schlotterbeck (the Sheriff), and other John Doe deputies after the Hamens' mobile home was damaged during the arrest of their son, Gary Hamen. The Hamens sought compensation for inverse condemnation and stated a separate claim for deprivation of constitutional rights under 42 U.S.C. § 1983. The parties filed cross-motions for summary judgment. The circuit court granted summary judgment to the County, dismissing the claims without prejudice, but denied the other motions. We granted the petition for discretionary appeal filed by the County and the Sheriff. We reverse the circuit court's denial of summary judgment on the inverse condemnation claim. We affirm in part and reverse in part the circuit court's denial of summary judgment on the §1983 claim."

The precise ruling on appeal is set forth in the concluding paragraph of the Court's opinion:

"[¶56.] We reverse the circuit court's denial of summary judgment on the inverse condemnation

claim and direct the entry of summary judgment dismissing this claim with prejudice as to the Sheriff and the County. On the Hamens' §1983 claims, we affirm the circuit court's denial of summary judgment on the Sheriff's qualified immunity for the unlawful entry claim, but we reverse the circuit court's denial of summary judgment on the Sheriff's qualified immunity on the excessive force claim. We remand the §1983 claim against the Sheriff for further proceedings consistent with this opinion."

The Court's opinion is authored by Chief Justice Jensen. It is not unanimous. The alignment of the views of the Justices on this case is as follows:

- "[¶57.] KERN, SALTER, and DEVANEY, Justices, and GILBERTSON, Retired Chief Justice, concur on Issue 1.
- [¶58.] KERN, SALTER, and DEVANEY, Justices, concur on Issue 2a.
- [¶59.] GILBERTSON, Retired Chief Justice, dissents on Issue 2a.
- [¶60.] SALTER, Justice, concurs on Issue 2b.
- [¶61.] GILBERTSON, Retired Chief Justice, concurs in result on Issue 2b.
- [¶62.] KERN, and DEVANEY, Justices, dissent on Issue 2b.

Of particular interest is the position of Justice Kern (as to which Justice DeVaney concurs), on the Issue 2b, the excessive force claim, as expressed in ¶65 and ¶72:

"[¶65.] However, I respectfully dissent from the majority's decision to dismiss the Hamens' alternative claim for excessive use of force. In my view, we should instead affirm the circuit court's order denying the Sheriff's motion for summary judgment on this issue. This claim should also proceed to trial, where the jury can determine through special interrogatories any disputed issues of fact. The court can then resolve the questions of law."

...

"[¶72.] The nature and extent of the force used here is undisputed and well documented. A police drone circled above the scene, capturing some of the incident on video, and the officers involved prepared detailed reports of the episode. The first armored vehicle approached from the west side pulling the front stairs and deck away from the trailer. It then tore off the front door of the trailer with a ram, damaging not only the door but the floor and frame. The second armored vehicle drilled three portholes on the other side through windows and a sliding glass door, destroying the septic system in the process. Minutes later, the drone captured images of Gary walking in the river near the Hamens' trailer."

Justice Kern's position is supported by four color photos included as part of her opinion.



RECENT OPINIONS: *South Dakota Supreme Court*

**WINGS AS EAGLES MINISTRIES, INC.
v. OGLALA LAKOTA COUNTY**
2020 S.D. 8 – February 11, 2021
*Property tax on 501(c)(3)
non-profit corporation*

J. CLANCY, INC. v. KHAN COMFORT, LLC
2020 S.D. 9 – February 11, 2021
Lawrence County mechanic's lien

STATE v. THOMAN
2020 S.D. 10 – February 18, 2021
*Solicitation of another to aid
and abet first-degree murder*

DISCIPLINE OF SWIER
2020 S.D. 11 – February 18, 2021
Attorney disciplined a second time

Swier was suspended from the practice of law in early 2020. During his suspension Swier engaged in the practice of law. The SD Supreme Court then suspended Swier indefinitely and requested "the State Bar's Disciplinary Board to conduct a full investigation of Swier and the Swier Law Firm to determine if Swier or members of the Swier Law Firm committed additional violations of the Court's Order of Suspension." Following investigation and report, the Court found that the incident was singular but intentional. The Court extended Swier's suspension an additional 60 days and further ordered Swier to reimburse the UJS and the State Bar of South Dakota for costs and expenses for the initial suspension plus costs and expenses for this subsequent proceeding.

NOTE: It was also found "the attorney members of Swier Law Firm did not assist or condone any violation of the Court's order." This decision is unanimous (5-0) with opinion authored by Retired Chief Justice Gilbertson. Circuit Judge Means sat on this case in lieu of Justice Kern.

Decisions are available [here](#).

The USDLaw list serve is designed to facilitate discussion of matters of interest to South Dakota lawyers, law students, judges and others as may be permitted by discretion of the moderator, and is made available through the University of South Dakota (USD). Professor Roger Baron, Professor Emeritus, University of South Dakota School of Law, launched USDLaw in 1997 and continues to serve as operator and moderator. Any views expressed are his personal views which do not reflect the views of USD. If you would like to subscribe, email the moderator [here](#).

Gay Dempsey



5/13/1942 ~ 1/21/2021

SDPA gave memorial gifts to the Sioux Falls Humane Society and the Upper Midwest Chapter of the National Multiple Sclerosis Society in Gay's honor.

Gay Francis (Nickeson) Dempsey passed away peacefully early in the morning on January 21, 2021 following a lengthy illness. Gay was born on May 13, 1942 to Clinton and Chyrant (Halvorson) Nickson at Veblen, SD. After graduating from Veblen High School she moved to Minneapolis where she began a career as a legal secretary. Gay moved back to South Dakota shortly thereafter, and married Warren Dempsey. Together they had three children. They lived in Aberdeen, SD; Sisseton, SD; and Watertown, SD.

In the early 1970's, Gay moved to Sioux Falls and began working as a legal secretary. She worked at Davenport Evans and then for Sidney B. Strange. In the early 1990's, Gay began working for Gerry & Kulm Ask law firm as a Paralegal. Throughout all those years, Gay made many lifelong friendships, and earned the respect of those who entrusted her to guide them through their legal woes.

Gay's children, grandchildren and friends were her top priority throughout her life. She was always available to give her time, her love and her advice (solicited or not) to all. Her home had an open door where all were welcome. Every gathering/celebration seemed to have another new 'adoptee' in attendance.

Gay touched many lives in her 78 years with her bright and lively personality. She was the pillar of strength and tenacity, and was resilient whenever tough times arose. If Gay was excited or happy about something, she would unabashedly share her exuberance with 'Hey, hey, hey' – arms in the air – and perhaps, when lucky enough to witness, a happy little jig would accompany this enthusiasm. Gay's favorite pastime included watching and attending sporting events with her family and friends. She was a season ticket holder to the Minnesota Vikings as well as to the Sioux Falls Canaries. Gay was enthusiastic about her teams. While it was evident that she loved the thrill of the game, what really mattered most to her was getting to spend time with her children, grandchildren and her closest friends.

Gay was an active member of St. Mark's Lutheran Church. She was also a Charter Member of SD Paralegal Assoc., as well as a Member of National Assoc. of Legal Assistants. Gay's love for the arts, entertainment and science also included being a member of the Washington Pavillion since they first opened in June of 1999. She was also an avid book reader, loved to go for walks and enjoyed bird watching.

Gay was preceded in death by her parents, her brother Roger Nickeson, her son-in-law Michael Deckert, and her nephew, Jesse. Grateful for having shared her life are Gay's three children, Steven (Darla) Dempsey of Sioux Falls, SD; Michael Dempsey of Sioux Falls, SD; Beth Ann Deckert of Tea, SD. Her grandchildren and great grandchildren, Mariah (Jeremy) South, parents of Elsetta and Ragnar; Rochelle Dempsey; Hunter (Taylor) Deckert, parents of Carson; Chase Deckert; and Brooke Deckert. Her sisters, Jollene McNee of Pendleton, OR; Linda (Neil) Christensen of Veblen, SD; and Sandra Nickeson of Prague in the Czech Republic. All of these she loved and touched deeply. Gay was also blessed to have so many other people in her life that she loved and cared for – but this list is too long with too many people to list individually, but just know that you mattered greatly to her – and that she loved and appreciated you all.

Lastly, Gay's life was a living example of Ephesians 4:32:

"And be kind and compassionate to one another, forgiving one another, just as God also forgave you in Christ."

RECENT OPINIONS: 8th Circuit U.S. Court of Appeals

The following unofficial case summaries were prepared by the clerk's office and/or the USD ListServe as a courtesy. They are not part of the court's opinion.

SCALIA v. RED LAKE NATION FISHERIES, INC.

USCA 19-3373 – December 4, 2020

Petition for Review of an Order of the Occupational Safety and Health Review Committee

Civil case – Indian Law. OSHA issued citations to the Tribe's fishery business after two members of the Red Lake Tribe who were working for the fishery drowned on the reservation in Lower Red Lake, the OSHA Review Commission dismissed the citations and the fine imposed and the Secretary of the Interior appeals; the Commission did not err in determining that OSHA was inapplicable to the Tribe because enforcement of the Act would dilute the principles of tribal sovereignty and self-government recognized in the applicable treaty which gave the Tribe fishing rights in the reservation; even if OSHA applied to Indian activities in other circumstances, OSHA would not apply to an enterprise owned by and consisting solely of Red Lake Tribe members, as the Tribe is perhaps the most insular and independent sovereign tribe.
Opinion available [here](#).

GILBERT v. WEAHKEE

USCA 20-1484 – December 4, 2020
D.S.D. Western Division

Civil case – Indian law. Dismissal of Plaintiffs' action challenging a tribal organization's contract with the Indian Health Service affirmed without comment.
Opinion available [here](#).

UNITED STATES v. RICKER

USCA 19-2351 – December 22, 2020
D.S.D. Central Division

Criminal case – Criminal law and sentencing. At the time he made incriminating statements, defendant was not subject to the restraints associated with a formal arrest and thus he was not in custody; defendant did not assert his Fifth Amendment right to counsel by telling the officer that his attorney was at a funeral and that his father wanted his attorney present; defendant being on the autism spectrum and English being his second language did not make his statements involuntary based on the totality of the circumstances; no error in sequestering defendant's father after the U.S. Attorney put his name on the witness list as there was a colorable reason for the listing (defendant's announced intention to place his mental health in issue); it was error to admit descriptive cover memos regarding certain images as the memos were hearsay, but the error was harmless in light of the overwhelming evidence of defendant's guilt; no error in admitting expert testimony identifying defendant's hand in photos of child abuse; for

sentencing purposes, the question of whether defendant had a prior state conviction for possessing or distributing child pornography could be decided by the court without a jury; defendant's 600-month sentence was substantively reasonable, and the district court did not abuse its discretion in weighing the sentencing factors; mandatory minimum sentence was not unconstitutional in this case.
Opinion available [here](#).

BUTTERFIELD v. YOUNG

USCA 19-2371 – January 8, 2021
D.S.D. Southern Division

Prisoner case – Prisoner civil rights. In action alleging defendants had violated plaintiff's civil rights by denying adequate treatment for gender dysphoria and by engaging in gender-based harassment, plaintiff sued the warden and associate warden only in their official capacities; because the complaint did not alleged the existence of any government policy or custom that caused the alleged constitutional violations, the district court did not err in dismissing these official capacity claims; while defendant Perret, a corrections officer, was sued in his individual capacity, the complaint failed to allege Perret played any role in denying plaintiff adequate medical treatment or engaged in gender-based harassment, and the court properly dismissed the claims for failure to state a claim.
Opinion available [here](#).

UNITED STATES v. EARTH

USCA 19-1555 – January 11, 2021
D.S.D. Central Division

Criminal case – Criminal law. Challenges to the admission of statements defendant alleged were inadmissible hearsay rejected as the statements were either not admitted for the truth of the matter asserted or were admissible under various exceptions to the hearsay rule; while statements the victim made at the hospital were not admissible under any of the exceptions and were admitted for the truth of the matters asserted, the admission of the evidence was harmless in the light of all of the other evidence in the case; the district court did not err in rejecting defendant's proposed self-defense instruction and giving the 8th Cir. Model Jury Instruction on self-defense; the evidence was sufficient to support defendant's conviction for assault with a dangerous weapon.
Opinion available [here](#).

DONALD EAST v. MINNEHAHA COUNTY

USCA 19-2621 – January 26, 2021
D.S.D. Southern Division

Prisoner case – Prisoner civil rights. No error in dismissing case against physician assistant

Adams as the allegations in the complaint failed to state any facts to sustain its conclusory statements; the County, the medical care providers and other staff were properly granted summary judgment on plaintiff's claims of deliberate indifference as the claims amounted to no more than a disagreement with treatment decision which did not approach criminal recklessness; claims regarding threats from guards had not been administratively exhausted and plaintiff's argument that he was not required to exhaust because of fear or intimidation failed because he could not show that a reasonable inmate of ordinary firmness would have failed to file a grievance in his situation.
Opinion available [here](#).

NAAMBWE v. JOHN MORRELL & CO.

USCA 20-2022 and 20-2080 – February 4, 2021
D.S.D. Southern Division

Civil case – Employment discrimination. Defendant's judgment affirmed without comment.
Opinion available [here](#).

UNITED STATES v. WHITE CALF

USCA 20-1321 – February 10, 2021
D.S.D. Western Division

Criminal case – Sentencing. The district court did not abuse its discretion in imposing an upward enhancement under Guidelines Sec. 5K2.21 to reflect the seriousness of the conduct in charges dismissed as part of the plea agreement; the court properly evaluated the seriousness of the offense, defendant's course of conduct and the 3553(a) factors; defendant's sentence is not substantively unreasonable.
Opinion available [here](#).

UNITED STATES v. WEBER

USCA 20-1391 – February 10, 2021
D.S.D. Southern Division

Criminal case – Criminal law. Any error in admitting evidence seized pursuant to a warrant defendant claimed lacked the necessary particularity was harmless as the evidence admitted from the search (three passports) was cumulative and insignificant in light of all of the other testimony identifying defendant; the district court did not err in admitting testimony under Rule 413 and Rule 414 from other victims of defendant's sexual abuse as the evidence had substantial probative value, rebutted defendant's defense and was not unduly prejudicial; under Rule 804(b)(1), the district court did not abuse its discretion in admitting a missing abuse victim's testimony from defendant's trial in the District of Montana.
Opinion available [here](#).

5 Ways to Boost your Positive Attitude

Rebecca A. Goeken, Paralegal

Goosmann Law Firm, PLC ~ Sioux Falls

There is so much material out there telling or suggesting to us how to be positive in order to be successful in life. It is rather intimidating to feel like you need forums, seminars, or conferences to achieve a positive mindset. I once believed that I needed to know the secret tips behind every guru's advice to become positive with just my life in general. Thinking and having a positive attitude at work can definitely be beneficial for your mental and physical health, but how do you maintain that positivity? Below are five tips that have helped me boost my positive attitude.

1 Manage Rejection.

I don't know about everyone else, but it is easy for me to become discouraged with unwelcomed words. It is easy to feel a failure or rejection is the end of you, but it never is. In fact, some of the smartest people in the world failed or were rejected early in their careers. These people had a choice on whether to let their failure define them or make them stronger. Those people chose to get up and push forward, and find themselves more successful than they ever could have imagined.

2 Rid Yourself of Resentment.

Wow! Been there and done that. Resentment destroys your attitude and spirit and it makes you feel like you have no control over your life. It is time to accept responsibility, put your big girl panties on, and conquer that task. You need to accept the choices that put you at the place you are in your life and push forward. Dr. Wayne Dyer once said, "to keep a positive attitude, embrace the concept that there are no justified resentments in life." Live with this in your mind and your heart every day!

3 Associate with Positive People.

Negative people tend to pull others down while positive people pull others up. When you surround yourself with positive people, all that positivity can lead you to success.

4 Compliment at Least One Person Every Day.

Giving other people compliments not only makes them feel good but lifts their spirits up. It also has a way of making you feel good. A word to the wise—only make sincere compliments. Most people are able to tell if you are faking it or not and will also put doubt on their trust for you. I enjoy leaving anonymous notes or stickers on a co-worker's desk just to brighten their day. You never know what people are going through, and to come in to that little bit of happy can make all the difference for them!

5 Be Enthusiastic.

This does not mean you have to be enthusiastic every second of every day. That seems exhausting and unrealistic, but if you can, I am jealous of you and might have some suspicion of what you are on. Just kidding! But for real, enthusiasm is contagious and tends to draw those positive people in. Think before you react, and maybe pick up the phone instead of emailing. Some people can come across in a manner they did not intend over email and something entirely benign can appear negative and harsh. If you act positive and enthusiastic, you will be! If you need to do a cheer, do it! Gimme a P! O! S! I! T! I! V! E! and kick!

With what is going on in today's world, we need to have some positivity and have a chance to be happy once again, whether that's being at work or in our personal lives. Make it a priority every day to look for a chance to inspire someone with your positivity.

DISCLAIMER: The information in this article is provided for general informational purposes only, and may not reflect the current law in your jurisdiction. By viewing this article in any format, you understand that there is no attorney-client relationship between you and the Goosmann Law Firm attorneys. No information contained in this post should be construed as legal advice from Goosmann Law Firm, PLC, or the individual author, nor is it intended to be a substitute for legal counsel on any subject matter. No reader of this post should act or refrain from acting on the basis of any information included in, or accessible through, this article without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a lawyer licensed in the recipient's state, country, or other appropriate licensing jurisdiction.



Standing Orders, News & Resources

UNIFIED JUDICIAL SYSTEM

On March 13, 2020, the South Dakota Supreme Court declared a judicial emergency. The order granted the Presiding Judges of each of South Dakota's seven judicial circuits the authority to enter orders to respond to the public health emergency in their respective jurisdictions. Supreme Court and Circuit Court orders are available [here](#).

DISTRICT OF SOUTH DAKOTA

On March 13, 2020, the District of South Dakota declared a judicial emergency. Standing Orders are available [here](#).

U.S. BANKRUPTCY COURT DISTRICT OF SOUTH DAKOTA

Standing orders and other updates are available [here](#).

COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Standing orders are listed [here](#). Calendar updates and other protocols are available [here](#).

SUPREME COURT OF THE UNITED STATES

Standing orders and other updates are available [here](#).

STATE BAR ASSOCIATION ARTICLES

- "COVID-19 Ethical Considerations (Rules 1.1 through 1.6 and 5.1-5.3)." Click [here](#).
- "Remote Execution of Wills and Living Wills Under the Supreme Court's Emergency Order." Click [here](#).



If you would like to submit a question to our members on a legal or administrative issue, please email it to the President. The President will email your question to the Membership and ask that members respond directly to you. If anyone else would like to get a copy of any information received, please contact the person who posed the question. Q&A emails go to all members. You can opt out or opt in again at any time by emailing the President.



FOUNDERS' AWARD

Nomination Deadline: April 1

Recognizes extraordinary or outstanding contributions to the growth and future of the paralegal profession which impacted or affected the paralegal profession in a positive manner for a significant period of time.

PRESIDENT'S AWARD

Nomination Deadline: April 1

Recognizes the outstanding accomplishments of NALA members and their contributions to the future of the paralegal profession.

CERTIFIED PARALEGAL CHAMPION AWARD

Nomination Deadline: September 1

Recognizes outstanding achievement by an individual or a NALA Affiliated Association in promoting and advancing its Certified Paralegal Program within the legal profession.

To submit a nomination, you must be an active type NALA member in good standing. Click [here](#) for more details on the criteria for each award and to submit a nomination.



MISPLACED MODIFIERS

I am sure we have all been guilty of misplacing a modifier or two, even if we didn't know that was what we were doing! I know reading about grammar is kind of boring, so I've tried to give you some examples that will hopefully give you a little chuckle.

“Modifiers” are words, phrases, or clauses that add description to sentences. You will usually find a modifier right next to—either in front of or behind—the word it is describing or modifying.

A “misplaced modifier” is a word, phrase, or clause that is placed too far away from the word it modifies or describes. Because the modifier is separated from the word it modifies, the resulting sentence can sound awkward, ridiculous, ambiguous, or just downright confusing!

See the following examples:



INCORRECT: The teacher served sloppy joes to the students on paper plates.

This sentence makes it seem that the students were on paper plates!

CORRECT: The teacher served the students sloppy joes on paper plates.



INCORRECT: Joe saw two German Shepherd puppies on the way to the library.

This sentence makes it seem that the German Shepherd puppies were on their way to library.

CORRECT: On the way to the library, Joe saw two German Shepherd puppies.

INCORRECT: Joe stepped on the spider without shoes on.

This sentence makes it seem that the spider wasn't wearing shoes.

CORRECT: Without shoes on, Joe stepped on the spider.



INCORRECT: I have some cookies in my desk drawer that my mother made.

This sentence makes it seem that my mother made my desk drawer.

CORRECT: I have some cookies that my mother made in my desk drawer.



INCORRECT: At the age of five, my mother played hymns on the organ for me.

This sentence makes it seem that my mother was playing the organ for me when she was five years old.

CORRECT: When I was five, my mother played hymns on the organ for me.

OR: My mother played hymns on the organ for me when I was five years old.

INCORRECT: I brought my kitten to the veterinarian with fleas.

This sentence makes it seem that the veterinarian was the one with fleas.

CORRECT: I brought my kitten with fleas to the veterinarian.

INCORRECT: I borrowed a tractor from my cousin that was broken.

This sentence makes it seem that the cousin was broken, not the tractor.

CORRECT: I borrowed a tractor that was broken from my cousin.

INCORRECT: Every two hours the doctor told her to take a pill.

This sentence makes it seem that the doctor was instructing her on her medication every two hours.

CORRECT: The doctor told her to take a pill every two hours.



INCORRECT: A baby was found under the bridge near Broadway Avenue in diapers.

This sentence makes it seem that Broadway Avenue was wearing diapers.

CORRECT: A baby in diapers was found under the bridge near Broadway Avenue.



INCORRECT: The intruder was in his late forties and about 6 feet tall with long curly red hair weighing about 150 pounds.

Wow—that's some heavy hair!

CORRECT: The intruder was in his late forties weighing about 150 pounds and about 6 feet tall with long curly red hair.

INCORRECT: Taped to the wall, Joe read the note.

Can't you just picture Joe taped to the wall?

CORRECT: Joe read the note that was taped to the wall.

INCORRECT: Joe's mother handed out sandwiches to all the kids in Ziploc bags.

Can't you just imagine all those cute little kiddos in Ziploc bags?

CORRECT: Joe's mother handed out sandwiches in Ziploc bags to all the kids.

You can see from these examples how easily sentences can become awkward, ridiculous, ambiguous, or confusing just by placing a modifier in the wrong place in a sentence. Just remember—keep your modifier right next to the word or words it is modifying, and you should be in good shape!

If you have any questions or grammar subjects you would like discussed in future articles, please contact Karen Armstrong, PP, PLS @ Karen@SchoenbeckLaw.com.

Ten Remarkable 2020 South Dakota Supreme Court Decisions

by Roger Baron, Professor Emeritus, University of South Dakota School of Law

The observations contained herein are solely those of the author and do not represent the views of the University of South Dakota.
The order of presentation is chronological.

PRELIMINARY COMMENTS

Both the criminal and civil dockets are included. Five of the Top Ten cases are purely civil matters and are both diverse and interesting. Four of the cases are purely criminal matters and represent a pattern which is entirely different from the review made last year for the top ten cases of 2019. The remaining case involves the assertion of a legal malpractice claim made by a wrongfully incarcerated inmate and, as such, involves a mixture of criminal and civil aspects.

THE NEW PATTERN IN THE CRIMINAL ARENA

Last year's *Ten Remarkable 2019 South Dakota Supreme Court Decisions* included decisions which upheld protections and liberties for individuals, including a ruling enforcing a *presumptive probation* analysis for a criminal defendant and one enforcing the 4th Amendment's *fruit of the poisonous tree* doctrine. Last year's jurisprudence also included a decision that applied the rules of procedure so as to avoid the denial of judicial review based upon a technicality, thereby fostering a decision on the merits. This year is much different. The top ten decisions for this year include no rulings which foster protections and liberties for individuals. Rather, the Court's rulings in 2020 include two decisions that alleviate the burden of the state in regard to the prosecution of felony charges, a decision upholding an extreme sentencing of a juvenile offender, and a decision denying a legal malpractice remedy to a wrongfully incarcerated inmate. Also included is a decision denying the right of an appeal to an inmate based upon ambiguously applicable rules of procedure.

#1 Are the deliberations of a county commission quasi-judicial or quasi-legislative? It makes a difference.

The South Dakota Supreme Court rarely splits 3-2 in its decisions, but in *CARMODY v. LAKE COUNTY BD. OF COMM'RS*, 2020 S.D. 3, we find not only a 3-2 split, but that the deciding vote was cast by Retired Justice Wilbur who joined with Justice Kern and Chief Justice Gilbertson for a majority. The appeal in this case related to the Lake County Drainage Board's grant of installation permits for drain tile on land in Lake County. The trial court and the Supreme Court affirmed the action of the Lake County Commissioners (sitting as the County Drainage Board) utilizing the "abuse of discretion" standard of review. Justice Jensen filed a dissenting opinion, arguing that

the underlying decision was *quasi-judicial*, not *quasi-legislative*, and therefore should be reviewed *de novo*. Justice Salter agreed with Justice Jensen.

#2 State's burden in proving felonious hit and run alleviated.

In *STATE v. NEKOLITE*, 2020 S.D. 8, the Supreme Court handed down a *pro* prosecution decision which alleviates the necessity of proving "knowledge of an injury" as an element of felonious "hit and run involving injury" statute. Hit and run involving property damage may be prosecuted as a misdemeanor, but hit and run involving injury or death to a person may be prosecuted as a felony. The Court recognized a split among jurisdictions, but opted to follow the view that the state need only show the Defendant had knowledge of a collision, as opposed to knowledge of an injury, in connection with prosecution of a felony involving injury or death.

#3 Inmate denied appeal by ambiguous rule.

An incarcerated inmate, acting *pro se*, was denied the opportunity to appeal his parole revocation in *ABDULRAZZAK v. S.D. BD. OF PARDONS AND PAROLES*, 2020 S.D. 10, on the basis that his notice of appeal was untimely. This decision is supported by a 3- Justice majority opinion which provides a logical interpretation of the appropriate rules to support the result. Justice Salter filed a dissenting opinion (supported by Justice Jensen) which provides an equally logical interpretation of the relevant rules. Justices Salter and Jensen would hold that the notice of appeal was, in fact, timely as having been filed on the last day permissible. In a situation such as this, it seems that the more judicious approach would be to grant the *pro se* inmate the opportunity to perfect his appeal.

#4 Would-be state record jury verdict reversed.

What appeared to be a record state court jury verdict (\$45 million +) was reversed by the Supreme Court in *JOHNSON v. UPS*, 2020 S.D. 39. This case involved a *bad faith* claim in a work comp proceeding. The reversal was a unanimous decision by the Court. The good news for the plaintiff and for plaintiffs' attorneys is that this decision leaves intact the bad faith body of law which is fostered by common law in South Dakota. The basis for the reversal was confined to the application of the law, not to the law itself.

next page >>

Ten Remarkable 2020 South Dakota Supreme Court Decisions

<< *previous page*

#5 Extreme sentencing of juvenile upheld.

Both the trial court and the Supreme Court exhibited South Dakota's tendency to engage in extreme sentencing in *STATE v. QUEVEDO*, 2020 S.D. 42. This decision upholds a discretionary sentence of 90 years for a juvenile offender who entered a guilty plea. South Dakota remains entrenched on the "lock 'em up and throw away the key" end of the spectrum for incarceration. South Dakota already exceeds both national and international norms for incarceration, placing the burden of costs of confinement on taxpayers. This decision is especially harsh given evolving societal and judicial notions of criminal justice relating to juvenile offenders.

#6 State's burden in proving sexual assault alleviated.

The critical issue of whether the state must prove a defendant's knowledge of lack of capacity for consent in regard to sexual relations with an alleged adult victim presented itself again in *STATE v. JACKSON*, 2020 S.D. 53. Yes, we know that the state has the burden of proof beyond a reasonable doubt regarding criminal offenses -- but, not in all respects. In this decision, the Supreme Court opted for the pro prosecution view that the state's burden does not include the element that the Defendant had knowledge of incapacity to consent. Furthermore, two of the three justices deciding this case indicated a willingness to permanently remove any vestiges of existing law that suggest otherwise.

#7 Legal malpractice remedy denied to wrongfully incarcerated inmate.

The client, wrongfully incarcerated for more than 3 years, was denied the opportunity to assert a legal malpractice claim against his trial attorney in *SLOTA v. IMHOFF*, 2020 S.D. 55. When finally freed from prison, the client secured competent counsel who promptly brought a civil malpractice claim, only to be told by the Supreme Court that if the client wished to assert legal malpractice, he should have done so while in prison. We learn for the first time here in 2020 -- through this decision and through another legal malpractice decision handed down a few months earlier, *ROBINSON-PODOLL v. HARMELINK, FOX, & RAVNSBORG LAW OFFICE*, 2020 S.D. 5 -- that legal malpractice claims are protected by a "statute of repose" and not by a "statute of limitations." This distinction means, contrary to what was previously and widely believed to be the law, that "the continuing representation and fraudulent nondisclosure doctrines do not toll" the statute.

#8 Legislators denied access to federal funds.

By an advisory opinion rendered at the request of Governor Noem, the Court held, *IN THE MATTER OF THE INTERPRETATION OF S.D. CONST. AND STATE LAW RE: ELIGIBILITY FOR CRF GRANT PROGRAMS*, 2020 S.D. 58, that Article III, Section 12 of SD's State Constitution prohibits a current state legislator from being eligible to receive funds from the federal COVID 19 Relief Fund. In the words of Senator Lee Schoenbeck, "This is a big deal. There are several [legislators] that have businesses seriously affected, that will forego six figure grants due to their \$12,000 legislator gig."

#9 Buffalo Chip denied municipal incorporation.

In what appears to be the final chapter in efforts to make Buffalo Chip a municipal incorporation, the decision in *STATE v. BUFFALO CHIP*, 2020 S.D. 63, holds "no." This is a 4-1 decision, with Chief Justice Gilbertson dissenting. Although the statutes were subsequently amended to make certain that Buffalo Chip cannot succeed, Chief Justice Gilbertson would have upheld incorporation as a municipality under the previous language of statute because there were 30 or more voters, even though Buffalo Chip lacked 100 residents. This case makes the list of "top ten" because of the notoriety of Buffalo Chip on both state and national levels.

#10 Access to files of other patients denied in medical malpractice litigation.

In this medical malpractice action, the trial judge in *FERGUSON v. THAEMERT*, 2020 S.D. 69, ordered production of redacted documents related to other patients over the prior five years who had undergone similar surgeries by the Defendant doctor. But, the SD Supreme Court permitted an intermediate appeal and reversed the trial court, holding that the plaintiff was simply going on a "fishing expedition." The Court's decision is a 4-1 ruling, with opinion by Chief Justice Gilbertson. Justice Kern dissented, stating that the trial court's ruling was sufficiently "specific, redacted, protected, and limited," and that, in her belief, that "information [sought] was—at a minimum—reasonably calculated to lead to the discovery of admissible evidence."



AUDIT

Chair: Paula Newman
PNewman@AustinLawSD.com

Member: Dixie A. Bader, CP
Cindy Schmit, ACP

The committee has received and reviewed the credit card and bank statements from CorTrust Bank through November 30, 2020, and found them to be without error.

CLE LUNCHEON

Chair: Jessi Stucke, CP
JStucke@rwwsh.com

Members: Clara Kiley, CP
Nicole Mayer, CP
Janet Miller, ACP
Paula Newman
Jackie Schad, ACP
Cindy Smeins, ACP
Laura Stewart
Courtney Vanden Berg, CP
Val Winegar, CP

The committee will soon begin work on arranging CLE luncheons for 2021. We received several survey responses from the members on topics they would like to learn about as they relate to their work as well as general legal topics of interest. Thank you for taking the time to contribute your ideas! We plan to schedule two or three state-wide webinars this year. If you didn't fill out the survey last fall but have suggestions for content or speakers, please contact Jessi Stucke, CP.

EDUCATION

Chair: Rebekah M. Nelson
RNelson@LynnJackson.com

Members: Dixie A. Bader, CP
Stephanie Bentzen
Autumn Nelson, CP
Susan Rasmussen, ACP
Michelle Schmidt, ACP
Jessi Stucke, CP
Courtney Vanden Berg, CP

The committee is busy preparing for our Annual Meeting & Seminar, which is set to take place at the Sioux Falls Convention Center on June 18, 2021. The Committee is working to finalize the agenda and locate speakers. We will be requesting CLE credits from NALA for the training. As in years past, will be setting up a Facebook event for the seminar, so be on the lookout for that. The committee is always on the lookout for new training topics and ideas, so if you have any recommendations on topics, speakers, or ways to improve our seminars, feel free to reach out to Chair Rebekah Nelson.

ETHICS

Co-Chairs: Jennifer Frederick, CP
Jen@SchoenbeckLaw.com
Vikki Kelner, ACP
vlk@CostelloPorter.com
Janet Miller, ACP
JMiller@sbsLaw.net

Member: Dixie A. Bader, CP

No report.

FINANCE

Diane Burns, ACP
Diane@RedstoneLawFirm.com

No report.

JOB BANK

Chair: Laura Stewart
LStewart@FullerAndWilliamson.com

Members: Kayne Larimer, ACP
Ashly Luke
Jackie Schad, ACP
Jessi Stucke, CP

Abbreviated job listings are on page 15. The actual postings are available on our website [here](#). If you are an employer or know of an employer seeking legal staff, please contact Laura.

LIBRARY

Clara Kiley, CP
PKiley@msn.com

The library has had one member check out a seminar recording since October 2020. Both the October 2019 seminar and the October 2020 webinar recordings are now available to check out.

At the recommendation of SDPA members, I have purchased the book "The Indispensable Paralegal" by Candess Zona-Mendola for the library. It is available to check out by any SDPA member at no cost, except the postage to mail it to them. The book has three sections: 1) *You, Paralegal*; 2) *Practice Pointers*; and 3) *Taking Your Practice to the Next Level*. Hopefully, by the next edition of the newsletter I will be able to give you my take-aways from the book.

Now that the cold winter has taken its hold, it is a great time to get your CLE credits earned for your certification. As always, recordings of previous seminars can be checked out by SDPA members for \$35 plus postage or \$50 for nonmembers. Let me know what seminars you were not able to attend but would like to view, and I can get the DVDs out to you.

The library also has two copies of the *NALA Certified Paralegal Exam Fundamentals* manual available for members to check out if

you are thinking now is the time to get certified. Members are allowed to use the manual for three months to study for the exam after paying a \$100 deposit. The manual is an excellent resource for anyone studying for the CP exam.

If you have questions or would like to check out any of the library materials, please email me.

MEMBERSHIP

Chair: Jackie Schad, ACP
Jackie.Schad@JohnsonEiesland.com

Members: Autumn Nelson, CP
Jessi Stucke, CP

As of February 1, 2021, SDPA had 105 members on its roster. If you have not renewed your membership for 2021 as of March 1, 2021, you will need to re-apply to the association. Please see the membership application on the SDPA website. If you work with or know any paralegals or legal assistants who are interested in joining SDPA, please have them contact any one of the membership committee members listed above.

Also, please remember to update any changes in your employment, home or work contact information, and email address so that you receive timely notices, newsletters, and other important emails. All changes can be sent to Jackie Schad.

NEWSLETTER

Chair: Jessi Stucke, CP
JStucke@rwwsh.com

Members: Karen Armstrong, PP, PLS
Amanda Bain, CP
Jessica Huyck, ACP
Val Winegar, CP

We hope you enjoyed this edition of SDPA's *Reporter*. If you are interested in contributing information or articles for future issues, please contact us. And as always, the committee welcomes tips and suggestions so that we can continue to provide you information to help you in your daily work and for your career.

NOMINATIONS & ELECTIONS

Chair: Cindy Schmit, ACP
CindySmeinsSchmit@gmail.com

Member: Chris Lillo, ACP

The officers elected to begin their terms following the Annual Meeting in June of 2021 are:
Jessi Stucke, CP – President
Autumn Nelson, CP – 1st Vice President
Christal Schreiber – 2nd Vice President
Valerie Winegar, CP – Secretary
Clara Kiley, CP – Treasurer
Cindy Wooten, ACP – NALA Liaison



The Legislative Branch

PROFESSIONAL DEVELOPMENT

Chair: Nicole Mayer, CP
Nicole@AlvineWeidenaar.com
 Members: Janet Miller, ACP
 Autumn Nelson, CP

Congratulations to Sarah Tibbs, CP, the recipient of our Certified Paralegal reimbursement scholarship. Sarah lives in Pierre and is employed at Carlon Law Office.

SDPA has four scholarships available. The applications can be found on our website. We encourage our members who are not certified to sit for the CP exam, and for our Certified Paralegal members to register for an ACP course. If you have any questions, please contact a member of our committee.

PUBLIC RELATIONS

Chair: Vicki Blake, CP
Vicki@ddLawSD.com
 Members: Jennifer Frederick, CP
 Val Winegar, CP

SDPA volunteers assisted again last December with gift wrapping at the Empire Mall in Sioux Falls. Proceeds benefit the Children's Inn in Sioux Falls. Pictured below are Vicki Blake, CP, and Diane Burns, ACP. The committee also delivered their annual "Cookies for Clerks" in advance of Valentine's Day.



WEBSITE

Chair: Jessica Huyck, ACP
Jessica.Huyck@SDstate.edu
 Member: Jessi Stucke, CP

The Website Committee has continued to update SDPA's webpages with current forms and job postings. We are also exploring options for restructuring the website and online payments for membership and seminars. Please keep an eye out for further updates.

S L W T U Q K G E F B E X K Q X Q Y C F M N D K
 N A S O R S R E K A M W A L K F K T S E N A T E
 O O I Z D A N T K Q S T A T E C A P I T O L D V
 I J G J O H N C O M M E R C E A N D E N E R G Y
 T Q Q H I U K S D A P F R A O B X P P N C A I C
 A P V B X M K B P D F D Q P S S L Q Z A K H Y L
 I W P I E R R E C O S R W P A U Z B O C S N F H
 R L D C A M H A D O R X P O T D Y S O E W U J A
 P I H J J I Q Q T N I T L I E M B D O L Q J T W
 O N D Y I F U R P R A B A N S K I T I D J M B Q
 R K O R D G A R O X F M L T T F U W V S T X G Q
 P W W I R J H R D R F B X M I B O M G A H X A M
 P O L L T X P D P O A V M E M O U L X M X U L S
 A B C A Z A V B K F S U D N O B N A H X D M O R
 C P Q O K E C A Y V N L X T N R T V C I U X B E
 Q E J B N B Q U S F A L Y S Y I O O T Y A H B Q
 F C T Q A G H B D W R O Q A O F N I M F R X Y L
 Q E D F I E R N S E E B E N B S U C N C D K I K
 U B S Q M I H E L F T R D J O X G E W G Y B S V
 R F N Z G D J L S O E K S R E B M A H C C I T M
 E G W N I E L A A S V M I Y O K U B J W I F U X
 X B S N O I T A R E P O T N E M N R E V O G U H
 C S E V I T A T N E S E R P E R F O E S U O H D
 J E R U D E C O R P U C F M K N P Z O Q T R K O

| | | |
|-----------------------|--------------------------|---------------|
| Voice | House of Representatives | Chambers |
| Transportation | Education | Codified Laws |
| Taxation | Appropriations | Lobbyist |
| Veterans Affairs | Commerce and Energy | Lawmakers |
| Audit | Appointments | Pierre |
| Government Operations | State Capitol | Congress |
| Procedure | Testimony | Senate |

Answers on page 15.

Job Bank

Postings are listed on our [website](#). If you are aware of open positions, please contact Job Bank Chair, Laura Stewart, at LStewart@FullerAndWilliamson.com



Receptionist/Secretary – RAPID CITY

ANKER LAW GROUP seeks part-time receptionist/secretary, which could turn into full-time. Applicant should have knowledge of Microsoft Office Suite, PDFs, and other Windows-based software programs.

...

Legal Assistant/Paralegal – SIOUX FALLS

ALVINE & WEIDENAAR is seeking an experienced legal assistant/paralegal to work directly with attorneys in a fun, fast-paced environment. Successful and growing law firm specializes in personal injury and workers' compensation claims.

...

Criminal Legal Assistant – SIOUX FALLS

THE UNITED STATES ATTORNEY'S OFFICE is looking for a criminal legal assistant to support the Assistant United States Attorneys.

...

Paralegal – SIOUX FALLS

JEFF LARSON LAW is looking for a paralegal to add to their team. Their primary focus is criminal and family law. Must have a paralegal degree and significant experience in family law and/or civil litigation.

...

Paralegal/Legal Assistant - ABERDEEN

BANTZ, GOSCH & CREMER has an opening for a full-time paralegal/legal assistant. Experience in the legal field preferred.

...

Paralegal/Legal Assistant - BROOKINGS

HELSPER, MCCARTY & RASMUSSEN has an opening for a full-time paralegal/legal assistant with experience in criminal law.

...

Assistant Trust Officer – RAPID CITY

SOUTH DAKOTA TRUST COMPANY is looking for an Assistant Trust Officer. Must be a self-starter, work independently at a high level and take initiative to ensure deadlines are met.

...

Legal Assistant/Paralegal – RAPID CITY

DEMERSSEMAN, JENSEN, TELLINGHUISEN & HUFFMAN is looking for a full-time paralegal/legal assistant to work in their well-established civil and business practice. Must have legal experience.

...

Paralegal/Legal Assistant/Tribal Advocate – PINE RIDGE

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a paralegal (tribal advocate) position in their Pine Ridge, South Dakota, office. The Pine Ridge Office serves the Pine Ridge Indian Reservation and Oglala Lakota, Bennett, and Jackson counties.

Hashbrown Egg Bake

by Autumn Nelson, CP

Ingredients

- 20 oz. shredded hash browns, thawed
- 1 1/3 cups milk
- 1/4 c. onion, finely diced
- 2 c. cheddar cheese
- 1/2 red bell pepper, diced
- * Optional: 1/2 tsp. Italian seasoning or your favorite herbs/spices
- 1/2 green bell pepper, diced
- * Salt & pepper, to taste
- 8 eggs

Instructions

1. Preheat oven to 350°F.
2. Combine eggs, milk, salt, pepper, and Italian seasoning in a bowl. Whisk until smooth.
3. Set aside 1/2 c. cheese for the topping.
4. Place remaining ingredients in a 9x13 baking pan. Pour egg mixture over these and top with the remaining cheese.
5. Bake 55-65 minutes, or until baked through.

Notes

If you want to add meat, that is fine. Just make sure to brown whichever you prefer (sausage, bacon, ham) and drain before mixing it in. You can mix everything up and cover and refrigerate overnight, but I would remove it from the fridge at least an hour before baking, otherwise it may require an extra 10-15 minutes of baking time.



2021 Legislative Session

@ <https://sdlegislature.gov/>

- Session Calendar
- Daily Schedules
- Broadcasts
- Agendas
- Journals & Audio
- Bills
- Hearing Documents
- Latest News
- Legislator Directory
- Chamber Directory
- Committee Directory

The Legislative Branch

S L W T U Q K G E F B E X K Q X Q Y C F M N D K
 N A S O R S R E K A M W A L K F K T S E N A T E
 O D I Z D A N T K Q S T A T E C A P I T O L D Y
 I J G J O H N C O M M E R C E A N D E N E R G Y
 T Q Q H I U K S D A P P F R A O B X P P N C A I C
 A P B X M K P P D F D P S S L Q Z A K H Y L
 I W P I E R R E C O S R W P A U Z B O C S N F H
 R L D C A M H A D O R X P O T D Y S O E W U J A
 P I H J J I Q Q T N I T L I E M B D O L Q J T W
 O N D Y I F U R P R A B A N S K I T I D J M B Q
 R N O R D G A R O X F M L T T F U W Y S T X G Q
 P W W I R J H R D R F B M I B O M C A B X A R
 P O L L T X P D P O A V A E M O U L X M X U L S
 A B C A Z A V B K F S U D N O B N A H X D M O R
 C P O K E C A Y V N L X T N R T V C I U X B E
 Q E J B N B Q U S F A L Y S Y I O D T Y A H B Q
 F C T Q A G H B D W R O Q O F N I M F R X V L
 Q E D F I E R N S E E B E N B S U C N C D K I X
 U B S Q M I H E L F T R D J O X G E W G Y B S V
 R F N Z G D J L S O E K S R E B M A H C C I T M
 E G W N T E L A A S V W L T O R U S B W F P U X
 X S M O I T A R E P O T N E M R E V O G U H
 C S E V I T A T N E S E R P E R F O E S U O H D
 J E R U D E C O R P U C F M K N P Z Q T R K O

SUBMISSIONS

Reporter is published quarterly. Submissions due to ReporterSubmissions@gmail.com by:

January 31 March
 July 31 September
 April 30 June
 October 31 December

ADVERTISING

Rates are per issue and include tax:

Full Page\$53.²⁵
 Half Page\$31.⁹⁵
 Quarter Page\$21.³⁰
 Business Card\$15.⁹⁸

Inquiries: Jessi N. Stucke, CP
 @ JStucke@rwwsh.com



[CLICK HERE for COMPLETE INFORMATION](#)

NALA will release new editions of the CP study materials to correspond with the new format launched this year.

| Part 1 | KNOWLEDGE Exam |
|---|----------------|
| Available year-round at PSI testing centers. Contact your chosen testing center for availability. | |

- Administered on-demand, year-round at testing centers with preliminary results upon completion.
- 120* multiple-choice questions covering the topics listed in Appendix A online. *Only 100 questions will be scored.*
- Subjects addressed:
 - Corporate/Commercial Law
 - Criminal Law & Procedure
 - Estate Planning & Probate
 - Real Estate & Property
 - Professional & Ethical Responsibility
 - U.S. Legal System
 - Civil Litigation
 - Contract Law
 - Torts

Candidates must successfully complete the Knowledge Exam in order to be eligible to take the Skills Exam.

- Candidates must wait at least two weeks after passing the Knowledge Exam to take the Skills Exam.

| Part 2 | SKILLS Exam |
|---|-------------|
| Candidates are eligible two weeks after passing the Knowledge Exam. | |

- Administered four times each year: February, April, July, and October.
- Written assignment (see Appendix A online).
- Written submissions will be evaluated according to the following criteria:

WRITING

- Grammar, Spelling & Punctuation
- Clarity of Expression

CRITICAL THINKING

- Reading Comprehension
- Analysis of Information
- Decision Making

Re-Testing

Candidates who do not pass the Knowledge Exam must wait 90 days before re-taking it. Candidates must pass each exam within the first three attempts at each exam during a 365-day period or wait 365 days before trying again.



[CLICK HERE for COMPLETE INFORMATION](#)

ACP certification is available for Certified Paralegals and is focused on mastery of any of the following law specialties.

Courses are self-study, web-based modules. The courses include presentations(s), detailed exercises, and a final assessment exam. Courses average 20 hours to complete.

| Self-Study / Web-Based |
|--|
| Online course module, detailed exercises and assessment. |

NALA has converted some ACP courses to its new online platform. The following focus areas are available at this time:

BUSINESS ORGANIZATIONS: Incorporated Entities

CRIMINAL LITIGATION

DISCOVERY

E-DISCOVERY

FAMILY LAW:

- Adoption & Assisted Reproduction
- Child Custody, Child Support, Visitation
- Dissolution Case Management
- Division of Property & Spousal Support

LAND USE

REAL ESTATE PRINCIPLES

TRIAL PRACTICE

Returning Soon:

BUSINESS ORGANIZATIONS: Non-Corporate Entities

COMMERCIAL BANKRUPTCY

CONTRACTS MANAGEMENT

ESTATE PLANNING

PERSONAL INJURY

- Automobile Accidents
- Entity Medical Liability
- Individual Medical Liability
- Intentional Torts
- Premises Liability
- Product Liability
- Worker's Compensation
- Wrongful Death

TRADEMARKS