

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PROPOSED)	NOTICE OF RULES HEARING
AMENDMENT OF SDCL 15-6-5(d))	
AMENDMENT OF SDCL 15-12-33)	NO. 141
AMENDMENT OF SDCL 15-15-4)	
AMENDMENT TO THE APPENDIX OF CHAPTER)	
16-18, SOUTH DAKOTA RULES OF)	
PROFESSIONAL CONDUCT, MAINTAINING THE)	
INTEGRITY OF THE PROFESSION)	
RULE 8.4, MISCONDUCT)	
AMENDMENT TO THE APPENDIX OF CHAPTER)	
25-4A, SOUTH DAKOTA PARENTING)	
GUIDELINES)	
ADOPTION OF A RULE REQUIRING A PARTY)	
TO DEMONSTRATE A PRIMA FACIE SHOWING)	
OF SUBSTANTIAL AND MATERIAL CHANGE IN)	
CIRCUMSTANCE BY AFFIDAVIT BEFORE THE)	
PARTY MAY PROCEED ON A MOTION FOR)	
CHANGE OF PHYSICAL CUSTODY)	

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

NOTICE IS HEREBY GIVEN THAT ON FEBRUARY 11, 2020, at 11:00 A.M., C.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. **Proposed Amendment of SDCL 15-6-5(d). Filing of papers--Originals--Copies.** The original of all papers served upon a party or presented to any court or judge in support of any application or motion and including the summons, all pleadings, notices, ~~demands, offers,~~ stipulations, affidavits, written motions, briefs, memorandums of law, and orders shall, if not filed before service, be filed with the court, together with

4. Proposed Amendment to:

APPENDIX TO CHAPTER 16-18 IN PART
SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT

Maintaining the Integrity of the Profession

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in harassing or discriminatory conduct by the known use of words or actions based upon race, sex, religion, national origin, disability, age, or sexual orientation when that conduct is directed to litigants, witnesses, lawyers, judges, court personnel, or others and that conduct is prejudicial to the administration of justice. This rule does not apply to legitimate advocacy when race, sex, religion, national origin, disability, age, or sexual orientation is an issue in any legal proceeding, action or forum where said counsel provides advice. This rule is not intended to prevent an attorney from declining to represent a client. A finding that a preemptory challenge is exercised in a biased or prejudicial fashion on any of the above-named reasons does not violate this rule. Any violation of the rule may be used solely for disciplinary proceedings and shall not form the basis of a private civil cause of action or a criminal or quasi-criminal complaint or charge.

Explanation for Proposal

The proposed amendment to Rule 8.4 is being sent to the Court, by the State Bar of South Dakota, after a great deal of discussion and debate by the State Bar Commission and the Bar at

large. This rule amendment was discussed and debated by the State Bar Commission at its regular meeting on April 24, 2019. After discussion, it was moved and seconded that the Commission present the proposed Rule 8.4 amendment to the Bar membership for a vote at the Bar's annual meeting in June 2019. The motion passed with 7 aye votes, 5 no votes and one abstention.

The proposed rule was then presented to the State Bar's membership at its June 2019 annual meeting. President Reed Rasmussen introduced the proposal to amend Rule 8.4 (Misconduct) of the South Dakota Rules of Professional Conduct by Supreme Court Rule. Thereafter, a motion was made that the State Bar of South Dakota propose and support a change to the South Dakota Rules of Professional Conduct before the Supreme Court by supporting the addition to Rule 8.4 as approved by the Bar Commission. The motion was seconded. Thereafter, comments were made by members both for and against the proposed change to Rule 8.4. After a lengthy discussion, the question was called, and the call was supported by the membership. A voice vote was then held, and the motion was declared passed by the President. Immediately thereafter, a request for a division of the house was made by a member and granted by the President. Those that supported the motion were asked to stand and then those that were opposed were asked to stand. After observing the division, President Rasmussen declared the motion passed by a majority of those present. However, the division did demonstrate that there was a considerable number of members present opposed.

The enclosed proposal adds a subsection to Rule 8.4. The new subsection would specifically make it professional misconduct for a lawyer to "engage in harassing or discriminatory conduct by the known use of words or actions based upon race, sex, religion, national origin, disability, age, or sexual orientation when that conduct is directed to litigants, witnesses, lawyers, judges, court personnel, or others and that conduct is prejudicial to the administration of justice." The new subsection also outlines when the rule does not apply and that it is not intended to prevent an attorney from declining to represent a client.

The proposed amendment to Rule 8.4 is not based upon any state or federal rule or statute and it should not affect any other current rules or statutes.

Notice of Rules Hearing No. 141 - February 11, 2020

Thereafter, the rule was presented to the State Bar membership at its June 2019 annual meeting at which time the members present voted to support it.

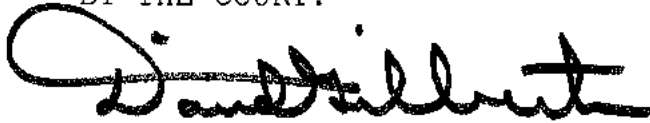
The proposed rule is not based upon any specific state or federal rule or statute and it should not affect any other current rules or statutes.

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and five copies thereof filed with the Clerk of the Supreme Court no later than January 21, 2020. Subsequent to the hearing, the Court may reject or adopt the proposed amendments or adoption or any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <http://www.ujs.sd.gov/> or the State Bar of South Dakota's website at <http://www.sdbar.org/>.

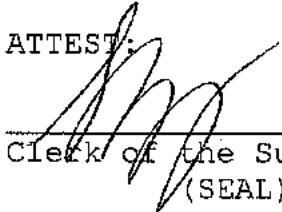
DATED at Pierre, South Dakota this 12th day of December, 2019.

BY THE COURT:



David Gilbertson, Chief Justice
SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

ATTEST:



Clerk of the Supreme Court
(SEAL)

DEC 12 2019


Clerk