

REPORTER



Vol. 33 / No. 1

SDParalegals.com

June 2022

SDPA'S ANNUAL Meeting & Seminar

June 24, 2022
Ramkota Hotel, Rapid City

Notice of Annual Meeting 4
Registration Form 14

SDPA'S SOCIAL

6:30 p.m. - 8:00 p.m.
June 23, 2022
Firehouse Brewing Co.
610 Main Street, Rapid City

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(and which Documents are a Must)

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President's Message

Jessi N. Stucke, ACP



It seems the year has flown by! As I write this final message to you as President of SDPA, I have to thank you for electing me to the Executive Committee three years ago. It was an honor and has been a tremendous privilege. My title has been a conversation starter several times over the past year—with other South Dakota attorneys, attorneys outside South Dakota, with many individuals in my local community—it was an opportunity for me to talk not only about SDPA, but how legal assistants and paralegals affect the lives of others. I tell my children that I do battle for people who need help fighting for themselves. My attorney is on the frontline, and I'm doing this, that, and the other from behind the scenes. Of course, when my 7-year-old passed this concept on to someone else, it translated to "Mom argues for work."

Executive Committee

PRESIDENT

Jessi N. Stucke, ACP
JStucke@rwwsh.com

1ST VICE PRESIDENT

Autumn Nelson, ACP
NelsonA@GoosmannLaw.com

2ND VICE PRESIDENT

Christal Schreiber
Christal@XtremeJustice.com

SECRETARY

Dixie Bader, CP
Dixie@BurdandCarper.com

TREASURER

Clara Kiley, CP
PCKiley@msn.com

NALA LIAISON

Cindy Wooten, ACP
Cindy.Wooten@Midco.com

It's understandable that most people don't really understand what we do until they need our help. That might be less the case now that we live in the era of Depp v. Heard, but I think you know what I mean. What we do on a daily basis isn't often easy to explain between mechanics and confidentiality. That's why I'm so often thankful for the friends and colleagues I have through this organization. I joined early, and got involved early. I wanted to learn as much as I could, not just from books and through training, but from people who had experience. I'm preaching to the choir here, but it's to encourage each of you to suggest SDPA membership to your co-workers and colleagues. I'd hate to imagine how differently my journey would look if I had gone it on my own.

As we approach our annual seminar and meeting on June 24, I'm eager to see everyone who can make it to Rapid City, and I know we'll have our usual good turnout through GoToMeeting as well. The Executive Committee will host a casual social on Thursday, June 23, from 6:30-8 p.m. at the Firehouse Brewing Company downtown.

I'm also looking forward to representing SDPA at NALA's Conference & Expo in Phoenix in July. NALA is finally moving back to an in-person conference for the first time since 2019, and fortunately, they are keeping the streaming option as well, which was never previously available. If you haven't looked into the presentation schedule yet, please do! We will have 6-7 members attending in person and we're looking forward to showcasing SDPA at our affiliate booth.

By the time I attend the conference, SDPA will be under the leadership of our incoming President, Autumn Nelson, ACP. Autumn and I met through an SDPA CP study group in early 2016, and I've worked with her in various capacities since then. She has always been involved in one way or another, always in more ways than one, and she is a dedicated, driven individual who will be an excellent leader for us. I'm especially grateful for her assistance and support over the past year.

Thank you for the allowing me to serve SDPA this year, and I hope you all have a wonderful summer!



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 programs, purposes, aims, and goals of NALA.

NALA *Liaison's* Report

Cindy Wooten, ACP



Please let me know at cindy.wooten@midco.com if you are an SDPA member and a member of NALA. I need to obtain a proper count for our semi-annual report to NALA. Tasha Altmann obtained her Advanced Certification in Business Organization. Congratulations Tasha!

The NALA's conference and expo is being held (virtually and in-person) on July 14-16, at the JW Marriott Desert Ridge Resort & Spa in Phoenix, AZ. The JW Marriot has an on-site spa, championship golf course, seventeen pickleball courts, five pools, and a lazy river. It would be great to see a large showing at the conference by the SDPA paralegals. There will be over 30 educational sessions which is a great way to earn CLEs. NALA active membership fee is \$154 (annual), military members receive a 20% discount, and if you are a member of the SDPA, you also receive a 20% discount. There is great value in becoming a NALA member. When you join NALA, you receive an \$80 voucher to be used for NALA CLE seminars/webinars. You also receive discounts on NALA seminars, conferences, and webinars. NALA has a quarterly magazine called *Findings of Fact*. The magazine has useful articles and some of them, if read, will earn you CLE credits. Even if you are not a CP or ACP, the benefit of the various webinars/seminars, *Findings of Fact*, discounts on car rentals, hotels, office supplies and more benefit a paralegal in the beginning, middle, or end of their career. NALA is an organization run by paralegals for paralegals. If you have any questions regarding NALA, feel free to contact me: cindy.wooten@midco.com.

CALENDAR

June 22-24	SD St Bar Convention <i>Rapid City</i>
23-24	SDPA Annual Social & Seminar <i>Rapid City</i>
July 14-16	2022 NALA Conference & Expo <i>Phoenix, AZ</i>
August 24	*Addressing our Professional, Emotional, and Mental Health 12:00 p.m. - 1:00 p.m. CT
September 7	*Life Care Plans - Experts and Paralegals Working Together 12:00 p.m. - 1:00 p.m. CT

*NALA webinars: CST/CDT
Course info available



CONGRATULATIONS!

Janki Sharma
New Magistrate Judge
7th Circuit





Pursuant to the Bylaws (Article VI, Section 2), notice is hereby given of the South Dakota Paralegal Association’s 2022 Annual Meeting. The meeting will be held on June 24, 2022, commencing at 11:20 a.m. MDT, at the Best Western Ramkota Hotel in Rapid City, South Dakota. The Annual Meeting will be held in conjunction with our Annual Seminar and will be streamed via GoToMeeting.

The purpose of this meeting is to:

- Welcome the 2022-2023 Executive Committee;
- Hear reports of the 2021-2022 officers and committee chairpersons; and
- Transact such other business that may come before the members.

The meeting agenda, reports, and any other materials will be sent via email on or before Thursday, June 23, 2022.

The following officers were elected to the 2022-2023 Executive Committee during the October 15, 2021, Semi-Annual Meeting, and their term begins immediately following this annual meeting:

- PresidentAutumn Nelson, ACP
- 1st Vice PresidentChristal Schreiber
- 2nd Vice PresidentCindy Wooten, ACP
- NALA LiaisonSarah Havlin, ACP
- TreasurerClara Kiley, CP
- SecretaryMichelle Tyndall, ACP

The meeting and seminar will also be broadcast live via GoToMeeting for any members who are unable to attend in person or otherwise prefer to attend virtually. Login instructions will be emailed on or before June 23, 2022. If you do not receive instructions by end of the day, please contact Education Committee Chair, Rebekah Mattern, at RMattern@LynnJackson.com, or the President at JStucke@rwwsh.com.

Dated this 24th day of May, 2022.

Jessi N. Stucke, ACP
SDPA President



Have a GREAT Summer!

Order Rescinding Declaration of Judicial Emergency

Effective June 30, 2022

COVID-19

The **SOUTH DAKOTA SUPREME COURT** issued the following Order Rescinding Declaration of Judicial Emergency due to COVID-19 Pandemic Effective June 30, 2022, on May 12, 2022:

STATE OF SOUTH DAKOTA
In the Supreme Court
1. Sheriff Jackson Fogel, Clerk of the Supreme Court of South Dakota, hereby certifies that the within instrument is a true and correct copy of the original filed as the same appears on record from office. In witness whereof, I have hereunto set my hand and placed the seal of said court at Pierre, S.D. this 13th day of May, 2022.
Clerk of the Supreme Court
Deputy

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED
MAY 12 2022
Shief A. Jensen Legal
Clerk

ORDER RESCINDING DECLARATION OF JUDICIAL EMERGENCY
DUE TO COVID-19 PANDEMIC EFFECTIVE JUNE 30, 2022

The Court having carefully monitored current circumstances related to the COVID-19 pandemic in the State of South Dakota following its ORDER DECLARING JUDICIAL EMERGENCY entered on March 13, 2020, now therefore, it is ORDERED that the prior order of this Court declaring a judicial emergency to exist is rescinded effective June 30, 2022;

IT IS FURTHER ORDERED that any subsequent orders entered pursuant to the declaration of a judicial emergency by the Supreme Court or the presiding judges of the seven judicial circuits will no longer be valid after expiration of the judicial emergency on June 30, 2022, and will be considered null and void.

DATED at Pierre, South Dakota this 12th day of May 2022.

BY THE COURT:
Steven R. Jensen, Chief Justice

ATTEST:
Clerk of the Supreme Court
(SEAL)

DID YOU KNOW?

U.S. FEDERAL COURTS
Eighth Circuit:

New Jury Instructions Builder (JIB) is Live and Ready for Use!

The Jury Instruction Committee for the Eighth Circuit is pleased to announce a new tool with increased functionality for both Civil and Criminal Pattern Jury Instructions.

Trial lawyers and judges will benefit from this new tool that enables users to format an entire packet of jury instructions by clicking a few computer keys!

Use of the JIB will ensure that the most current Committee-approved version of instructions are being used.

Other benefits include:

- No log-in required.
- Save or print a Microsoft Word copy of selected instructions with or without Committee Comments and Notes on Use.
- JIB automatically generates Table of Contents.
- Reorder and paginate instructions to customize your packet of instructions.
- Content is maintained and updated by court staff in the Eighth Circuit, ensuring feedback goes directly to the Jury Instruction Reporter.
- Available to bench and bar at:

<https://juryinstructions.ca8.uscourts.gov/>

Q&A

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.

Why College Students Need an Estate Plan

(and Which Documents are a Must)

By Lynae Tucker-Chellew | 14, February 2022
Reprinted with permission from Goosmann Law Firm, PLLC.



It's Saturday night and the college is buzzing with homecoming hype. The football game is almost over- the home team is up by a mile and it's looking like the game is going to be a blow out. You, an 18-year-old college freshman, can't wait to celebrate your first homecoming weekend away from home. The last thing you are thinking about is "I wonder if I have what I need to make sure my family can help me if something goes wrong?"

Two years into the global pandemic, COVID-19, the college experience has changed drastically. The types of pressures and decisions young adults are facing at college today are more impactful than ever before, yet, once they turn 18 and become legal adults, their parents and loved ones can no longer get information or help make decisions for their college students without the student's permission. Three legal documents make it much easier for parents to step in and assist their college-aged children in the event of a medical emergency.

Although the types of situations that may require these documents seem few and far between- they are not.

According to the MAYO Health Clinic, up to 44% of college students reported having symptoms of depression and anxiety.[1] A total of 33% of college students engaged in binge drinking in the past month (meaning 5 or more drinks for males or 4 or more drinks for females on

one occasion)[2] Also, the number of college aged students using illicit drugs increased to 44% in 2019.[3]

Students facing medical related issues often need guidance from their support systems at home. Mental health and substance use concerns are especially sensitive and complex in nature making it difficult for young people to explain the nature of the concern in order to seek advice. In some cases, the consequences of untreated mental health concerns or substance use leave the student unable to make their own medical decisions leaving it up to the hospital unless a parent or guardian has written permission to act on

"The types of pressures and decisions young adults are facing at college today are more impactful than ever before..."

the student's behalf.

On a less serious, but equally important note, it is not abnormal for young people to need help filing out student loan applications, navigating health insurance or replacing lost or stolen cell phones and debit cards. These documents also give you permission to help your student in these ways as well.

1. HIPPA Authorization

HIPPA, or the Health Insurance Portability and Accountability Act, ensures that adults are afforded protections from unauthorized release of sensitive medical information. HIPPA generally will not allow family members to access a student's health information without express authorization whether or not the student is medically able to give that approval or make medical decisions for themselves at that time.

HIPPA authorizations do not give away the student's ability to make decisions for themselves, but it is a useful tool for when a student needs or wants assistance communicating with or understanding physicians or other healthcare providers. A HIPPA authorization also lets medical professionals know who they can speak to in case of an emergency and is especially helpful in getting real time updates on the student if they were to be hospitalized.

2. Healthcare Power of Attorney

A Healthcare Power of Attorney (Or Advance Health Care Directive in Minnesota) is a document that allows you to select a person you trust to step in and make health care decisions for you if you are unable to do so yourself. Anyone 18 years or older should appoint someone to act in that capacity on the off chance the person becomes unable to manage their own personal care or loses the ability to understand one's actions. The alternative is to rely on the local law of whatever

Why College Students Need an Estate Plan

Continued from page 6

state your student is located in at the time that you would be making decisions for them. Each state has a different law but often the default decisions that can be made by family are restricted and most serious medical decisions are left up to the medical professional caring for the patient.

Each state has a different form for appointing a health care agent. For this reason, it is best for the student and their families to complete a health care directive in both the state where the family lives and the state where the student will be living. Both the student and the person they appointed should keep an original copy and a digital copy of the document because these documents are most often needed at a moment's notice.

3. Financial Power of Attorney

A Financial Power of Attorney, sometimes called a Durable Power of Attorney, is a simple and cost-effective way to arrange for a trusted person to be able to act on the student's behalf to manage their finances and sign legal documents if the student is ever unable to do so for themselves. Financial Power of Attorney documents can be used to assist in bill paying, taking out loans for school, signing apartment leases or purchasing vehicles. These documents are very powerful, and the person appointed should be someone both the family and the student trust. With great power, comes great responsibility (and great convenience when used correctly!).

[1] <https://www.mayoclinichealthsystem.org/hometown-health/speaking-of-health/college-students-and-depression>

[2] National Institute on Alcohol Abuse and Alcoholism. (2021). <https://www.niaaa.nih.gov/publications/brochures-and-fact-sheets/college-drinking>

[3] Schulenberg, J. E., Johnston, L. D., O'Malley, P. M., Bachman, J. G., Miech, R. A. & Patrick, M. E. (2020). *Monitoring the Future national survey results on drug use, 1975–2019: Volume II, College students and adults ages 19–60*. Ann Arbor: Institute for Social Research, The University of Michigan.



TECH TIPS & TRICKS

Using “Compare” feature to compare two versions of the same document

- Open Word.
- Go to “Review”
- Click “Compare” in the toolbar, then click “Compare” in the drop down menu

- In the “Original” section, browse the chose the original version of the document
- In the “Revised” document section, browse and chose the revised version of the document
- Make sure show changes in “New Document” is checked at the bottom right-hand side
- Then click “okay”

- Three windows should open, the “Compared” document, the “Original” document, and the “Revised” document

Committee Reports

AUDIT

Chair: Cindy Smeins, ACP
Member: Vicki Blake, CP

The Audit Committee has received and reviewed the credit card and bank statements from CorTrust Bank through April 30, 2022, and find them to be without error.

CLE LUNCHEON

Chair: Jessi Stucke, ACP
Members: Vicki Blake, CP
Jennifer Frederick, CP
Jessica Huyck, ACP
Janet Miller, ACP
Cindy Smeins, ACP

The committee held a Zoom meeting in February to brainstorm ideas for future CLEs. The next webinar is slated for August and information will be emailed once the date and topic are finalized.

EDUCATION

Chair: Rebekah M. Mattern
EC Liaison: Autumn Nelson, ACP (1st VP)
Members: Amanda Anderson
Heidi Anderson
Rebecca Goeken
Stephanie Bentzen
Susan Rasmussen, ACP
Courtney Vanden Berg, CP

The Education Committee has been busy planning the SDPA's June Annual Meeting and Seminar, which is scheduled to be held on June 24, 2022, in Rapid City. The Committee has put together a great lineup of speakers. We will be requesting 5 CLE credits, including 1 ethics, from NALA. Reminder, you do not have to be a member of the SDPA to attend our seminars, so please feel free to invite any paralegals you know throughout the state! The Education Committee always welcomes recommendations on topics, speakers, and ways to improve our trainings. Please email any recommendations for upcoming trainings to Rebekah at rmattern@lynnjackson.com.

ETHICS

Co-Chairs: Jennifer Frederick, CP
Janet Miller, ACP
Vikki Kelner, ACP
Member: Dixie A. Bader, CP

Nothing to report at this time.

FINANCE

Chair: Clara Kiley, CP

As of April 30, 2022, there is \$xxxxx in the association savings account and \$xxxxx in the checking account. Income as of April 30, 2022, has consisted of interest income, membership renewals, and library DVD income.

The majority of expenses for the same time period include payment of travel related expenses for officers attending the upcoming NALA convention in Arizona in July. Other expenses include postage, Stripe fees, and the fee associated with filing our annual report with the State of South Dakota.

The upcoming annual meeting in June will see an increase in both income and expenses for the association.

LIBRARY

Chair: Courtney VandenBerg, CP

The Library has received one (1) new request for past seminars from the library, as individuals work to complete their CLE requirements for NALA. If you or someone you know is in need of CLE credits, please keep in mind we have the library catalog available online at <https://www.sdparalegals.com/news-resources>, and material can be checked out through the website store. Please take a moment to review the catalog and if there are any recommendations for additional materials, please let me know.

As a reminder, recordings of previous seminars can be checked out by SDPA members for \$45.00 or \$60.00 for nonmembers (pricing includes postage). 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 \$100.00 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 Courtney L. Vanden Berg,

CP, at courtlyn@hotmail.com or courtney@strangelaw.com.

MEMBERSHIP

Co-Chair: Autumn Nelson, ACP
Co-Chair: Jessi Stucke, ACP
EC Liaison: Christal Schreiber (2nd VP)
Members: Amanda Anderson
Heidi Anderson
Dixie A. Bader, CP

As of April 30, 2022, we have 89 members. If you work with or know any paralegals or legal assistants who are interested in joining SPDA, please have them contact Autumn or Jessi. 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 Autumn at nelsona@goosmannlaw.com. We are hoping to coordinate some fun membership mixers in 2022 and always welcome any suggestions from our members for activities they would like to see.

NEWSLETTER

Chair: Jessi Stucke, ACP
EC Liaison: Dixie Bader, CP (Secretary)
Members: Karen Armstrong, PP, PLS
Amanda Bain, CP
Jennifer Frederick, CP
Jessica Huyck, ACP

Nothing to report at this time.

NOMINATIONS & ELECTIONS

Chair: Cindy Smeins, ACP
EC Liaison: Dixie Bader, CP (Secretary)

Nothing to report.

PROFESSIONAL DEVELOPMENT

Chair: TBD
EC Liaison: Christal Schreiber (2nd VP)
Members: Autumn Nelson, ACP

Nothing to report.

Job Bank

The following posts have been abbreviated. Complete listings are available on our [website](#).
If you are aware of open positions, please contact Job Bank Chair, Laura Stewart, at LStewart@FullerAndWilliamson.com

Chair: Laura Stewart
EC Liaison: Autumn Nelson, ACP (1st Vice President)
Members: Kayne Larimer, ACP
Ashly Luke
Jackie Schad, ACP

There are currently 11 openings in the job bank. To see complete descriptions, please go to our website.

If you are an employer or know of an employer seeking paralegals and/or legal staff, please contact me.

Legal Assistant – Sioux Falls

AVERA HEALTH is seeking a qualified full-time legal assistant.

Paralegal – Sioux Falls

NORTHWESTERN ENERGY is seeking a full-time paralegal.

Paralegal – Sioux Falls

DAVENPORT EVANS LAW FIRM has an opening for a full-time paralegal.

Legal Assistant/Paralegal – Sioux Falls

ALVINE WEIDENAAR is hiring a legal assistant/paralegal for their personal injury and workers' compensation claims firm.

Paralegal/Legal Assistant – Rapid City

GUNDERSON PALMER NELSON & ASHMORE has an opening for a full-time estate planning and business paralegal/legal assistant.

Paralegal/Legal Assistant – Rapid City

Williams Law Office is hiring a full-time paralegal/legal assistant.

Paralegal/Legal Assistant – Rapid City

BEARDSLEY, JENSEN & LEE has an opening for a full-time paralegal/legal assistant.

Paralegal/Receptionist – Rapid City

GREY & EISENBRAUN LAW FIRM is hiring a full-time paralegal/receptionist.

Paralegal - Agency

The Sisseton-Wahpeton Oyate legal department is seeking a full-time paralegal.

Legal Assistant – Aberdeen

BANTZ, GOSCH & CREMER is hiring a full-time legal assistant.

Legal Support Staff – Aberdeen

RICHARDSON, WYLY, WISE, SAUCK & HIEB is hiring a full-time legal support staff.

Committee Reports, continued from page 8

PUBLIC RELATIONS

Chair: "Vacant"
EC Liaison: Dixie Bader, CP (Secretary)
Members: Jennifer Frederick, CP

The Executive Committee is asking for one or two volunteers to chair or co-chair this committee, and would welcome any other members who are interested in

working on this committee. The duties of this committee are to "read and report current case law involving legal assistants of the NALA Professional Development Committee. In addition, the committee would promote local professional involvement with the legal community."

WEBSITE

Chair: Jessica Huyck, ACP
Members: Carrie Reider
Jessi Stucke, ACP

Nothing to report at this time.

¶	start a new paragraph	/	make lower case
^	insert a word or letter	frag	fragment
sp	check spelling		parallelism
a/b	transpose these letters	pv	passive voice
agr	agreement	w-c	word choice
p	check punctuation	inc	incomplete
h	capitalize this letter		
r-o	run-on sentence - (two sentences run together with no punctuation)		
c-s	comma-splice - (two sentences connected by a comma)		

GRAMMAR CHECK

By Karen Armstrong, PP, PLS

HOW ARE YOUR PROOFREADING SKILLS?

Some of the following sentences are correct, and some are not! Some have punctuation errors, some have used the wrong word, and some are perfectly fine just the way they are. See if you can spot all the errors. The answers are on page 11 of this newsletter.

1. Me and Julio smoke cigarettes down by the schoolyard.
 Correct: ____ Incorrect, and why: _____
2. Their is another way to do that, and it is much easier than what you are doing.
 Correct: ____ Incorrect, and why: _____
3. I think that he is the best principal our high school has ever had.
 Correct: ____ Incorrect, and why: _____
4. I am starting to learn why Mom used to say, "Getting old ain't for sissies".
 Correct: ____ Incorrect, and why: _____
5. There are eight parts of speech: nouns, pronouns, verbs, adjectives, adverbs, prepositions, conjunctions, and rejections.
 Correct: ____ Incorrect, and why: _____
6. An adverb is a word or an expression that modifies a verb, adjective, another adverb, determiner, clause, preposition, or sentence.
 Correct: ____ Incorrect, and why: _____
7. Three convenience stores were reported robbed by the Sioux Falls police last month.
 Correct: ____ Incorrect, and why: _____
8. I think that wounded veterans should be treated like the hero's they really are.
 Correct: ____ Incorrect, and why: _____
9. Your the best friend anyone could ever have.
 Correct: ____ Incorrect, and why: _____
10. My son usually loses his mittens about once a month during the wintertime.
 Correct: ____ Incorrect, and why: _____

RECENT OPINIONS: *South Dakota Supreme Court*

POWERS v. POWERS AND PREVAILING WINDS, LLC,

2022 S.D. 25

Owner for a “right of first refusal” on real estate claimed right of specific performance as a result of lease for a wind farm on the property. The trial court held the right was not triggered by the lease because it applied only to a fee interest transfer and further held that the right was “void as an unreasonable restraint on alienation.” The SD Supreme Court affirmed. This is a unanimous (5-0) ruling, with opinion authored by Justice DeVaney.

FLINT v. FLINT

2022 S.D. 27

This is a modification of a “shared physical custody [provision in a] parenting order entered as part of [the parties’] 2018 Arizona divorce.” After divorce, Father moved to South Dakota and Mother moved to California. Father registered the decree in SD and sought primary custody. The trial court granted primary custody to Mother, ruling contrary to the recommendation of the custody evaluator. The SD Supreme Court affirmed, applying the principles found in *Fuerstenberg v. Fuerstenberg*, 1999 S.D. 35, 591 N.W.2d 798. This ruling is unanimous (5-0), with opinion authored by Justice Salter. Appellate attorney fees were requested by both parties and denied. (NOTE: This case was submitted on the briefs just 17 days ago, on April 25, 2022.)

STATE v. TIMMONS

2022 S.D. 28

Defendant was sentenced to 15 years in prison, with 3 years suspended, for aggravated assault on his girlfriend. Defendant's motion for new trial was supported by letter from girlfriend which Defendant asserted to be “newly discovered evidence.” In the letter:

[girlfriend] stated that she felt like she was lied to, manipulated, and threatened by the State’s prosecutor...[and] that she did not want to call the cops, was coming down from meth, and did not believe that [Defendant] deserved a heavy sentence. She believed that [Defendant’s] [intentions] were not to hurt me.”

On appeal, Defendant asserted both insufficiency of evidence and denial of motion for new trial based upon newly discovered evidence (the letter). The SD Supreme Court affirmed, with opinion authored by Chief Justice Jensen. The decision is unanimous (4-0) with Justice DeVaney having recused herself. NOTE: This case was submitted to the Court, on briefs, less than 2 months ago on March 21, 2011.

HOSTLER v. DAVISON COUNTY DRAINAGE COMMISSION

2022 S.D. 24

Landowner in Davison County sought drainage permit from County Drainage Commission. Neighbor objected. Commission granted permit. Neighbor sought relief in Circuit Court by pursuing an appeal (under SDCL 46A-10A-35) and by seeking a declaratory judgment. Circuit Court ruled for neighbor. Landowner appeals to SD Supreme Court. The SD Supreme Court ruled in favor of landowner by vacating the Circuit’s ruling on the basis that neither an appeal nor a declaratory judgment action is available under the facts of this case.

As to the possibility of an appeal, the Court examined the peculiar language of the statute, pointing out:

[¶12.] We are unable to find, and [Appellant] has not identified, an instance in which this statute has been used to appeal the permitting decision of a drainage commission directly to a circuit court. Importantly, the first two sentences of this statute allow a landowner to

appeal a drainage commission decision arising from a drainage conflict to either the board and then to the circuit court or to the circuit court directly. But the statute does not authorize a direct appeal to the circuit court from a drainage commission decision to grant or deny a drainage permit application. (emphasis is original by the Court)

As to the applicability of a DJ action, the Court stated:

[¶17.] Here, [Appellant] is not challenging the validity of any ordinance, and he is not seeking a declaration of his rights, status, or other legal relations under such ordinances. Moreover, while he is arguably affected by the drainage commission’s decision, he is not seeking to have determined “any question of construction or validity arising under” a municipal ordinance to “obtain a declaration of rights, status, or other legal relations thereunder.” See SDCL 21-24-3. Rather, he is requesting that the circuit court void the administrative decision of the drainage commission to grant a permit to a third party because, in his view, the drainage commission abused its discretion by failing to properly consider matters required to be considered. Because [Appellant’s] request for relief is not of the type that circuit courts have authority to grant via a declaratory judgment action, the circuit court did not have authority under the Declaratory Judgment Act to consider [Appellant’s] complaint challenging the drainage commission’s decision to grant [Landowner’s] permitting request. (emphasis is original by the Court)

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

Two aspects of this decision which I found interesting: 1) this relatively short ruling (19 ¶s) is handed down more than a year after it was submitted on the briefs on 4/26/21; and 2) the lawyers listed for the parties are officed out of state (Arizona and Minnesota).

GRAMMAR CHECK Answers:

1. Incorrect. It should say: “**Julio and I** smoke cigarettes down by the schoolyard.”
2. Incorrect. “Their” should be spelled “**There**.”
3. Correct.
4. Incorrect. The period at the end of the sentence should go inside the final set of quotation marks.
5. Incorrect. “Rejections” should be “**interjections**.”
6. Correct.
7. Incorrect. It should say: “The Sioux Falls police reported that three convenience stores were robbed in the last month.”
8. Incorrect. “Hero’s” should be “**heroes**.”
9. Incorrect: “Your” should be “**you’re**.”
10. Incorrect: “looses” should be “**loses**.”

RECENT OPINIONS: *8th Circuit Court of Appeals*

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

Carrie Larson v. United States
U.S. Court of Appeals Case No: 21-3319

U.S. District Court for the District of South Dakota - Central

[UNPUBLISHED] [Per Curiam - Before Colloton, Erickson, and Kobes, Circuit Judges]

Per Curiam - Before Colloton, Erickson, and Kobes, Circuit Judges] Civil case - Federal Tort Claims Act. Dismissal of action affirmed without comment.

Rudy Stanko v. Oglala Sioux Tribe
U.S. Court of Appeals Case No: 22-1266

U.S. District Court for the District of South Dakota - Western

[UNPUBLISHED] [Per Curiam - Before Colloton, Erickson, and Kobes, Circuit Judges]

Civil case - Civil rights. Dismissal of civil rights action affirmed without comment.

United States v. Carlocito Slim
U.S. Court of Appeals Case No: 21-2693

U.S. District Court for the District of South Dakota - Western

[PUBLISHED] [Grasz, Author, with Stras and Kobes, Circuit Judges]

Criminal case - Criminal law. Police had probable cause to arrest defendant without a warrant based on their belief that he was in process of committing a sex trafficking crime; officers properly searched defendant's car for evidence of the offense as a search incident to his arrest; under Eighth Circuit precedents an indictment for sex trafficking and attempted enticement can be based on a non-existent victim; the evidence was sufficient to support defendant's convictions for attempted commercial sex trafficking of a minor and attempted enticement of a minor for sexual activity using a facility of interstate commerce; any alleged error in the district court's decision not to permit defendant's prior attorney to testify that defendant told him he was only seeking a massage was harmless.

United States v. William Left Hand
U.S. Court of Appeals Case No: 21-2507

U.S. District Court for the District of South Dakota - Northern

[UNPUBLISHED] [Per Curiam - Before Grasz, Stras, and Kobes, Circuit Judges]

Criminal case - Criminal law. The district court did not plainly err in relying on a preliminary-hearing transcript rather than live witness testimony at defendant's revocation proceeding; in any event, there was plenty of other evidence to establish that defendant had violated the conditions of his supervised release and the consideration of the transcript had little or no effect on the decision.

United States v. Anthony Story
U.S. Court of Appeals Case No: 21-2847

U.S. District Court for the District of South Dakota - Central

[UNPUBLISHED] [Per Curiam - Before Grasz, Stras, and Kobes, Circuit Judges]

Criminal case - Criminal law. There was a valid consent to search the trailer where the drugs were found; evidence was sufficient to support defendant's conviction for possession of methamphetamine with intent to distribute.

United States v. Holli Lundahl
U.S. Court of Appeals Case No: 21-3489 and No: 21-3558
U.S. District Court for the District of South Dakota - Western

[UNPUBLISHED] [Per Curiam - Before Loken, Benton, and Kelly, Circuit Judges]

Criminal case - Criminal law. The district court did not abuse its discretion in terminating defendant's pro se status before trial based on her disruptive behavior; evidence was sufficient to support defendant's convictions for theft of government property and Social Security fraud; double jeopardy argument rejected; the district court permissibly exercised its discretion to run the sentence

consecutively to an undischarged federal sentence.

Franklin Nelson v. Jim Croymans
U.S. Court of Appeals Case No: 21-3748

U.S. District Court for the District of South Dakota - Northern

[UNPUBLISHED] [Per Curiam - Before Loken, Gruender, and Grasz, Circuit Judges]

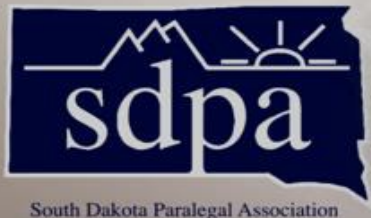
Civil case - Civil rights. Dismissal affirmed without comment.

United States v. Darrell Two Hearts
U.S. Court of Appeals Case No: 20-3700

U.S. District Court for the District of South Dakota - Northern

[PUBLISHED] [Colloton, Author, with Shepherd and Kelly, Circuit Judges]

Criminal Case - Conviction and Sentence. There was ample evidence presented from which a reasonable jury could conclude the Two Hearts constructively possessed the firearm and that he was a prohibited person; there was sufficient evidence that he was an unlawful user of a controlled substance and possessed methamphetamine at the time of his arrest. The alleged discrepancy in the testimony of whether there was one bag or three bags is easily explained and a jury could conclude that the one bag found in Two Hearts's pocket contained three baggies. There was sufficient evidence to support finding that Two Hearts knew of his status as a convicted felon. The district court's admission of a Facebook photograph was not an abuse of discretion, as the evidence was relevant and the absence of conclusive evidence that the item in the photograph was real does not create a risk of unfair prejudice. Although the district court did not make an explicit finding that the possession of the gun facilitated his possession of methamphetamine, the district court's finding that Two Hearts possessed methamphetamine and a loaded gun at the same time presenting a very dangerous situation was sufficient to show the district court did not apply the four-level enhancement under Guidelines section 2K2.1(b)(6)(B) automatically based on mere proximity.



ANNUAL MEETING & SEMINAR - FRIDAY, JUNE 24, 2022
RAMKOTA HOTEL – RAPID CITY, SOUTH DAKOTA

CLE CREDIT (NALA application pending): 5 CLE, including 1 Ethics

Agenda

7:30-8:00 AM Registration & Breakfast

8:00-9:30 AM **Hollie Strand, Pennington County Sherriff's Department, Internet Crimes
Against Children Taskforce**
When Bedrooms Become Chatrooms

9:30-9:40 AM Break

9:40-11:10 AM **Jennifer and Jarad Tomac, Tomac & Tomac Law**
Elder Law and Estate Planning

11:10-11:20 AM Break [set up for annual meeting]

11:20-12:00 PM **SDPA Annual Meeting**

12:00-1:00 PM **LUNCH**

1:00-2:00 PM **Honorable Robert Gusinsky, Judge of the 7th Judicial Circuit Court**
Legal Ethics for Paralegals

2:00-2:10 PM Break

2:10-3:10 PM **Greg Eiesland, Johnson, Eiesland & Rohl Trial Lawyers**
Case Prep/Trial Prep as a Paralegal

3:10-3:30 PM Announcements and Adjournment



South Dakota Paralegal Association, Inc.

Founded in 1989

ANNUAL MEETING & SEMINAR - FRIDAY, JUNE 24, 2022 (7:30 am-3:30 pm MST) RAMKOTA HOTEL – RAPID CITY, SOUTH DAKOTA

<i>Time</i>	<i>Agenda</i>	<i>Speakers</i>
7:30-8:00 AM	Registration & Breakfast	
8:00-9:30 AM	When Bedrooms Become Chatrooms: Internet Crimes Against Children	Hollie Strand, Pennington County Sheriff's Department, Internet Crimes Against Children Taskforce
9:30-9:40 AM	Break	
9:40-11:10 AM	Elder Law and Estate Planning	Jennifer and Jarad Tomac, Tomac & Tomac Law
11:10-11:20 AM	Break	
11:20-12:00 PM	SDPA Semi-Annual Meeting	SDPA Executive Committee
12:00-1:00 PM	Lunch	
1:00-2:00 PM	Legal Ethics for Paralegals	Honorable Robert Gusinsky, Judge of the 7th Judicial Circuit Court
2:00-2:10 PM	Break	
2:10-3:10 PM	Case Prep/Trial Prep as a Paralegal	Greg Eiesland, Johnson, Eiesland & Rohl Trial Lawyers
3:10-3:30 PM	Announcements and Adjournment	

REGISTRATION FORM

(Online Registration Available at SDParalegals.com/Store)

Attend: _____ In Person _____ Webinar

Seminar Fee enclosed (includes luncheon): _____ Member \$65 _____ Non-Member \$85 _____ Student \$30
Webinar Fee Enclosed: _____ Member \$65 _____ Non-Member \$85 _____ Student \$30

Name: _____ Designation (CP/ACP/RP/PLS/PP) _____

Firm: _____ Email: _____

Address: _____

Telephone: _____

Thursday Social (location TBD): ___ Yes ___ No ___ Maybe

REGISTRATION DEADLINE: Online: Wednesday, June 22. By mail: Postmark by Friday, June 17. **LATE REGISTRATIONS:** As of June 20, rates will be \$40 for Students, \$75 for Members, and \$95 for Non-Members. ***REGISTRATION BY MAIL:** Registration forms with check can be mailed to Clara Kiley, SDPA Treasurer at 11158 Valley 1 Road, Belle Fourche, SD 57717, with a copy to the Education Committee Chair, Rebekah Mattern, via email at RMattern@LynnJackson.com. **VIRTUAL ATTENDEES:** Our seminars are live-streamed through GoToMeeting. The times listed above are MST. We cannot guarantee your experience will be equivalent to attending in person. We will ensure the best online experience possible; however, audio, visual, and other technical difficulties may be outside our control. We highly recommend testing GoToMeeting on your device prior to the seminar. **ROOMS:** SDPA has a limited number of rooms available under "South Dakota State Bar/South Dakota Paralegal Association" at \$133.99 plus tax for Thursday, June 23 only. **CANCELLATIONS:** SDPA will provide full refunds for registrations cancelled on or before June 17, 2022 (registrations made through the website will be refunded to your card, less the online processing fee (approximately 5%)). Contact the Education Committee Chair, Rebekah Mattern, at RMattern@LynnJackson.com if you need to cancel your registration.

Continuing legal education credit from NALA has been requested as follows: 5 hours of CLE credit to include 1 hour of ethics credit.