



South Dakota
Paralegal
Association

EST. 1989

N AFFILIATED
ASSOCIATION

Reporter

MAKING APPEALS *Manageable*

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**ANNUAL MEETING
& SEMINAR**

June 14, 2024
PIERRE

MARCH 2024 Vol. 34 No. 4

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President's Message

Jessi Stucke, ACP, CEDS



We're off to an exciting start this year and I'm hopeful for all the good things coming to SDPA, starting with the four new members that have joined since the beginning of the year! They are listed on page 6 and I encourage existing members to reach out to them if you are in the same area. We are excited to have you join our community and I hope to meet each of you either virtually through an upcoming lunch CLE webinar or in-person in June at our Annual Meeting & Seminar. As always, it will be held in conjunction with the State Bar Convention, which is in Pierre this year. Our social will be held Thursday evening, June 13, 2024 (exact time and location TBD). Our full-day seminar with lunch and the annual meeting will be held Friday, June 14, 2024. Thanks go to the Education Committee members, who are already working on the CLE line-up.

The Membership Committee has put together some ideas for member-hosted mixers around the state. Please see the report on page 13 for more details. This is something we've been hoping to get off the ground for several years and we're confident that local get-togethers will strengthen our networking relationships and grow our organization. Another goal is to start having a regular presence at middle school and high school career fairs around the state. Thanks to Clara Kiley and Heidi Jensen for representing SDPA in Belle Fourche last month!

I'm so pleased to share with you that I had the opportunity to speak with two State Bar committees on behalf of SDPA over the past few months. First, Cheri Wittler (President of the South Dakota Court Reporters Association) and I had the opportunity to speak with the Pathways Committee in December. The Pathways Committee is a special committee of the Strategic Planning Committee, dedicated to educating South Dakota youth about all of the different legal and court service careers that are critical to the well-being of South Dakota citizens. The committee wanted to learn more from us about the struggles we see in hiring and retaining legal assistants and paralegals. I provided a report back to the committee in January and look forward to hearing about their next steps. I will also be meeting with the Aberdeen School District Superintendent to learn more about how the STEM industry developed curricula and scholarships to keep South Dakota students once they graduate. Second, I met with a member of the Strategic Planning Committee to talk more about how SDPA and the Bar can strengthen our relationship as the committee puts together its next three-year plan. For SDPA, maintaining and growing membership is vital and we discussed ways that the Bar and SDPA can work together for everyone's benefit. Of course, this ties right in with the Pathways Committee's work in the long-run!

Finally, I cannot say enough how worthwhile it would be for all of you to attend NALA's Conference and Expo in July. It will be held July 11-13, 2024, in Louisville, Kentucky. Clara Kiley, our incoming NALA Liaison, and I are looking forward to attending and representing SDPA at the Affiliated Associations Expo. Although the time and travel expense isn't an option for everyone, NALA has offered virtual attendance since 2020 and the cost is an absolute steal, plus you'll get access to the recordings of every session, so you can watch the sessions you couldn't attend at a time that works for you. Regardless of whether or not you're certified, expanding your knowledge and skills is something you won't regret!

**2023-2024
Executive Committee**

PRESIDENT

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TREASURER

Clara Kiley, CP
PCKiley@msn.com

NALA Liaison's Report

Rebecca Goeken



The NALA Affiliated Association Annual Report was turned in to NALA on January 12, 2024. SDPA has 88 members and of those members, 28 are certified and 19 are advanced certified.

If you are interested in joining NALA's Board of Directors, you should submit a Declaration of Candidacy Form no later than March 15, 2024, to qualify. Information about the duties

associated with each open position and candidacy process can be found on NALA's website.

When you join NALA, you receive an \$80 voucher to be used for NALA CLE seminars/webinars. You will also receive a quarterly magazine called *Facts & Findings*, discounted rates, 24/7 access to CLE courses, SimpleLaw platform access, and Affinity discounts. NALA is an organization run by paralegals for paralegals.

Lastly, as a reminder, the NALA's 2024 Conference and Expo will be held (virtually and in-person) on July 11-13, 2024, at the Louisville Marriott Downtown in Louisville, Kentucky. The Louisville Marriott Downtown has an on-site health club and indoor pool, as well as a 24-hour business center, express check-out, and complimentary newspaper in the lobby. It would be great to see a large showing at the conference by the SDPA paralegals. Our President, Jessi Stucke, ACP, CEDS, and our incoming NALA Liaison, Clara Kiley, CP will be representing SDPA at the NALA Affiliated Associations Showcase on July 11. Plus, there will be over 30 educational sessions, which is a great way to earn CLEs. Click [here](#) for more information!

Also, a reminder that SDPA offers scholarships to assist in becoming certified or obtaining your ACP credential. 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.

The CP Knowledge Exam portion is administered year-round but has been paused from February 1-March 31, 2024. The Skills Exam portion is administered every February, April, July, and October. You can learn more about eligibility and exam details from the September 2023 newsletter and [here](#)!



CALENDAR

MARCH

- 12 * Post-Petition Events in Chapter 7 & 13 Bankruptcy 12pm
- 14 * What To Do When Your Mergers & Acquisitions Involve Healthcare 12pm
- 18 * A Paralegal's Guide to Civil Litigation 12pm
- 27 * Effective Filing of Searchable and Readable PDF Documents 12pm

APRIL

- 2 * Transferable Skills: Leveraging Your Expertise in New Practice Areas 12pm
- 10 * The Basics of Beneficial Ownership Information Reporting 1pm
- 11 * Fundamentals of Survey and Title Review 12pm

MAY

- 1 * Ethical Billing Considerations for Paralegals 12pm
- 9 * The Opportunities in Confrontation 12pm

JUNE

- 12-14 SD State Bar Convention Schedule TBD
Ramkota Hotel, Pierre
- 13 SDPA Social Evening TBD
Ramkota Hotel, Pierre
- 14 SDPA Annual Seminar/Mtg 7:30am-5pm
Ramkota Hotel, Pierre

SDPA Events - watch for registration openings [here](#).

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

* SD State Bar seminars/webinars: CST/CDT.

Register for virtual CLE opportunities provided by other NALA affiliates [here](#)!



Mission Statement

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

To encourage a high order of ethical & professional attainment.

To further the education of members of our profession.

To cooperate with bar associations.

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

Ethics Corner

ETHICS OPINION 2023-05

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QUESTION PRESENTED

Whether an attorney who is not licensed in South Dakota may take a deposition in an adjudicative proceeding venued in a South Dakota state tribunal on behalf of a party if the attorney is licensed in the state where the deposition is going to be taken.

SHORT ANSWER

Not without being admitted pro hac vice in the South Dakota proceeding.

RULE(S) IMPLICATED:

5.5

FACTS

Lawyer represents Client in an adjudicative proceeding before a South Dakota state tribunal. The opposing party has hired an expert who resides in another state. Lawyer plans to hire an attorney licensed in that other state (but not licensed in South Dakota) to take the expert's deposition without appearing in the South Dakota proceeding. Is this practice acceptable under South Dakota's Rules of Professional Conduct?

ANALYSIS

Rule 5.5(c) regarding the multi-jurisdictional practice of law provides in relevant part:

- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any



jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

- ...
- (2) Are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized
- ...

Rule 5.5(c)(2) and its comments (particularly cmts. [9]-[11]) do not squarely address the question here, i.e., a lawyer licensed in State A but not State B is going to take a deposition in state A for use in a case venued in State B. There is also minimal precedent or commentary from other jurisdictions addressing the issue.

It is the Committee's opinion that an attorney taking (or defending) a deposition of a witness noticed in and on behalf of a party to, a South Dakota venued adjudicative proceeding is practicing law in South Dakota and must either be admitted to practice law in South Dakota generally or admitted Pro Hac Vice in the proceeding specifically.

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. You can opt out or opt in again at any time by emailing the President.



BELLE FOURCHE HIGH SCHOOL CAREER FAIR

February 22, 2024

Thank you to Clara Kiley, CP, and Heidi Jensen for volunteering your time on behalf of SDPA to represent our association and educate students on the vital and exciting role legal assistants and paralegals play in the delivery of legal services in South Dakota!

MAKING APPEALS



MANAGEABLE

by Jen Frederick, CP

Most of us have had at least one South Dakota Supreme Court appeal during our careers, and some of us many. But, I remember in my early years, appeals scared the living daylights out of me. All the rules, deadlines, and massive amounts of paper (prior to e-filing) kept me up at night when we had an appeal pending. I was always afraid to ask for help back then, so calling the clerks at the Supreme Court was just as scary as trying to correctly calculate deadlines. I made a lot of mistakes, but I also learned things I could do to make appeals more manageable—here are my top three.



DON'T BE AFRAID TO ASK QUESTIONS.

It goes without saying, but sometimes it's really hard to do. We think we should know it all, but guess what—we don't. We can admit it up front and ask for help, or we can be embarrassed later when everyone finds out we missed deadlines, got rejected filings, or worse. I've been there (more than once!), so I know. Some of us learned the hard way, but that means others don't have to. SO, ask your attorney, ask your co-worker, and, yes, ask the clerks at the Supreme Court. You won't regret it.



BE PREPARED.

Don't wait until there is an appeal to start looking at what the rules are, and don't forget the answers to all your questions from tip 1 above. When you have some down time, do the research and make notes. One of the smartest things I discovered about making appeals manageable was when I started at my current job—they had an Appeal Checklist (it was Karen Armstrong's checklist, and she shared it in a past ParaBlog in the Summer 2014 issue of

the *Reporter*). It had the notice requirements, brief requirements, and other cheat sheet notes on it. I ran with it. Every time we had an appeal where something came up that wasn't on the Appeal Checklist, I added it. Every time a rule or statute changed, I updated it. Every time I called the clerks at the Supreme Court with questions, I added their answers with a date. Now, this Appeal Checklist is my appeal rulebook that I fill out and use for every single appeal. I still review and double check the rules/statutes as needed, but now the exact rules/statutes that apply for every portion of the appeal are at my fingertips, thanks to the Appeal Checklist.



KEEP SAMPLES & TEMPLATES.

I have a template for everything and, if we haven't done it yet, but someone else has, I keep their PDF copy as a sample. We don't have to reinvent the wheel, but we do need to think ahead and build a file with all the resources we may need when it's our turn. I'm not the best with all the Microsoft Word features, but I have brief templates from prior appeals that have header/footer sections in place, correct margins, and detailed table of contents and table of authorities set up—and I guard that template well, so it's always ready to go. Sometimes I have to search the help topics if something needs to be modified, but not often. What a time saver templates can be.

So, what's on our Appeal Checklist? Identifying information on the underlying case. The Supreme Court's appeal number and their phone number. The dates of >>



MAKING APPEALS MANAGEABLE

the Notice of Entry of Final Judgment and Notice of Appeal. Then a four-column table with these headings:

- Date Due
- Document
- Statutory Time Requirement
- Date Done

I always put the “date due” in red until I confirm my deadline calculations with the Supreme Court. Don’t ask me why, but it seems like they count differently than me, so I always double check our deadlines; then I turn it to black font. The “document” section has the following rows:

- Petition for Discretionary Appeal
- Notice of Appeal
- Filing Fees
- Docketing Statement
- Notice of Deposit
- Order for Transcripts
- Notice of Review

- Appellant’s Brief
- Appellee’s Brief
- Appellant’s Reply Brief
- Supplemental Brief
- Motions/Notices/Petitions/Pleadings
- Petition for Rehearing

We put requirement details about that document under each section, and in the “statutory time requirement” we have the deadlines with the applicable rule/statute. Finally, we put the “date done” in that column beside each document section.

On the next page of this issue is a copy of our Appeal Checklist for general civil appeals to the South Dakota Supreme Court (*provided for informational purposes only—please confirm current rules/deadlines and preferences with your attorneys and adjust as needed before use*).

As you probably guessed, we have a separate Appeal Checklist for the other appeals we do: administrative appeals and Eighth Circuit Appeals (we don’t do criminal appeals, abuse and neglect appeals, social security appeals, etc.). Some of the details we list are office preferences, some local rules, and some statute requirements, so it can be a custom checklist for your office, attorneys, and venue.

A wise man by the name of Desmond Tutu once said, “There is only one way to eat an elephant: a bite at a time.” Well, the same can be said about appeals—a deadline at a time. Hopefully, the above tips will help you “eat” that appeal “elephant.”



Kristina Brodd
BOYCE LAW FIRM
Sioux Falls

Casi Lee
SD DEPARTMENT
OF CORRECTIONS
Sioux Falls

Katie DeBoer
AUSTIN, STRAIT, BENSON,
THOLE & KOEHN
Watertown

Kirby Van Lint
KOLBECK LAW OFFICE
Sioux Falls



Kirby VanLint works at Kolbeck Law Office in Sioux Falls and was born and raised in Mitchell. She graduated from Northern State University in Aberdeen. She worked in law enforcement and social services prior to joining Kolbeck Law Office as a paralegal in 2020. Kirby and her husband have a 3-year-old son. Her hobbies include spending time with friends and family, disc golfing, being outside, art, music, and going to concerts. Welcome, Kirby!

Attention new members! If you would like to share a photo and a short bio about yourself for an upcoming newsletter, please contact Membership Committee Co-Chair Autumn Nelson, ACP, at AutumnN@HalbachLawFirm.com. We'd love to know more about you!

SUPREME COURT APPEAL CHECKLIST

Case:

Trial Court Civ. No.:

_____ County Clerk Ph:

Supreme Court Appeal No.:

Supreme Court Clerk: 605-773-3511

Date Notice of Entry of Final Judgment served:

Date Notice of Appeal filed:

Date Due	Document	Statutory Time Requirement	Date Done
	<u>Petition for Discretionary Appeal</u> <ul style="list-style-type: none"> • Petition no more than 10 pages SDCL 15-26A-14 • Filed in Supreme Court via email, and mail in originals with \$100 filing fee • See sample • Response to Petition • Per SC, Petition/Response can be in a regular motion/response format (not appellate brief format) 1/16/24 • E-FILE IN ODYSSEY 	W/in 10 days after Notice of Entry SDCL 15-26A-13 Due w/in 7 days of Petition SDCL 15-26A-16	
	<u>Notice of Appeal</u> <ul style="list-style-type: none"> • Trial Court heading • 15-26A-4; Form 1 in Chapter 15-26A • E-FILE IN ODYSSEY 	W/in 30 days after Notice of Entry of Judgment/Order (15-26A-6)	
	<u>Filing Fees</u> <ul style="list-style-type: none"> • \$150 to Circuit Court • 16-2-29.1(1) & 16-2-29(2) • PAY IN ODYSSEY 	W/in 30 days after Notice of Entry of Judgment/Order (15-26A-6)	
	<u>Docketing Statement</u> <ul style="list-style-type: none"> • Supreme Court heading • 15-26A-4; Form 5 in Chapter 15-26A • Attach copy of FOF & COL or Memorandum Decision • E-FILE IN ODYSSEY 	W/in 30 days after Notice of Entry of Judgment/Order (15-26A-6)	
	<u>Notice of Deposit in Lieu of Bond</u> <ul style="list-style-type: none"> • 15-26A-41 • Trial Court heading • \$500.00 (15-26A-23) • E-FILE IN ODYSSEY under "Notice" • Mail check to County Clerk with cover letter and copy of Notice 	W/in 30 days after Notice of Entry of Judgment/Order (15-26A-6)	
	<u>Order for Transcript</u> <ul style="list-style-type: none"> • Trial court heading • Form 6 in Chapter 15-26A 	W/in 10 days after filing Notice of Appeal (15-26A-48)	

Date Due	Document	Statutory Time Requirement	Date Done
	<ul style="list-style-type: none"> Original to reporter, copies to all parties & Circuit Court Clerk E-FILE IN ODYSSEY When we get Ct Reporter's Endorsement back—E-FILE IN ODYSSEY 		
	<p><u>Notice of Review</u></p> <ul style="list-style-type: none"> 15-26A-22; Form 2 in Chapter 15-26A Must include Section B of the Docketing Statement Proof of service on all other parties Specify order/judgment to be reviewed and attach copy Designation of Additional Transcripts, if transcript not included in Appellant's Order for Transcript E-FILE IN ODYSSEY Rule 19-01 (Per SC Rule 23.10, original doesn't need to be mailed in.) 	<p>W/in 20 days after service of Notice of Appeal (15-26A-22)</p> <p>Designation of Transcripts: Within 10 days of Order of Transcripts. (SDCL 15-26A-50)—serve Designation on Appellant, Ct Reporter, Clerk of SC.</p> <p>Appellant has 10 days to order Appellee's Transcript. Appellee within the following 10 days may file Order of Transcript or seek Order Requiring Appellant to do so.</p>	
	<p><u>Appellant's Brief</u></p> <ul style="list-style-type: none"> Supreme Court heading "Courier New" font, 12 point, 40 pg limit "Georgia" font, 32-pg limit 15-26A-60 for contents 15-26A-66 for requirements 15-26A-69 for binding/margins (1.5"left) 15-26A-69.1 for citations Appendix Table of Contents, highlight salient portions of Appendix, bookmark PDF, and tab bound copies (15-26A-60) (no requirement on Appendix Bates No. font size) See SC Rule 13-11, transcripts filed electronically with SC not part of App. Form 4 in Ch 15-26A contains outline Proof of service (15-26A-79) Footnotes 12 pt. font (15-26A-66(b)) Rule 19.01—E-FILE IN ODYSSEY Brief/Appendix as one PDF doc as the lead doc, then Brief in Word format as attachment Rules 19.03, 23.06, 23.12—mail in original Brief/App (original can have /s/ __ atty signature-per SC clerk 2/19/19) (SC Rule 13-11) (Per SC 8/17/23, if Appendix is too large for our normal binding on the original, we can call SC to get permission to bind the Brief and Appendix separately on the 	<p>W/in 45 days after service of transcript (15-26A-75) (or 45 days after notice of appeal—if no transcript ordered)</p> <p>Objections to taxation of costs due within 10 days of service of Cert of Costs. (15-30-9 & SC Rule 23.15)</p> <p>Replies to Objections due w/in 5 days of service of Obj. (15-30-9; Rule 23.15)</p>	

Date Due	Document	Statutory Time Requirement	Date Done
	<p>original that we mail in—note it on your cover letter)</p> <ul style="list-style-type: none"> • E-FILE CERT OF COSTS IN ODYSSEY (Per SC Rules 2023 & ph call w/SC Clerk 3/6/23, don't mail original) • Serve hard copy of brief on non-represented parties (i.e. heirs in probate) 		
	<p><u>Appellee's Brief</u></p> <ul style="list-style-type: none"> • Supreme Court heading • "Courier New" font (or use Cert of Compliance—include footnotes) • 40 pg limit (if "Georgia" font, 32 pg limit) • 15-26A-66 • Proof of service • E-FILE IN ODYSSEY (see rules above) • Mail original 	<p>W/in 45 days after service of Appellant's Brief (15-26A-75)</p>	
	<p><u>Appellant's Reply Brief</u></p> <ul style="list-style-type: none"> • Supreme Court heading • "Courier New" font, 20-pg limit (if "Georgia" font, 16 pg limit) • 15-26A-60, 15-26A-62, 15-26A-66—only need Argument and Conclusion sections • Cert Service & Cert Compliance • E-FILE IN ODYSSEY (see rules above) • Mail Original 	<p>W/in 30 days of service of Appellee's Brief (SC Rule 19.17 enacted 8/2019) 15-26A-75</p>	
	<p><u>Supplemental Brief</u></p> <ul style="list-style-type: none"> • 10-pg limit • 15-26A-73 • E-FILE IN ODYSSEY (see rules above) • Mail Original 	<p>Up to the time case is called for hearing, or by leave of court thereafter. (SC Rule 23.05)</p>	
	<p><u>Motions, Notices, Petitions, Pleadings, and All Documents:</u></p> <ul style="list-style-type: none"> • E-FILE IN ODYSSEY Rule 19-01 • Per SC Rule 23.07 (& ph call w/SC Clerk 3/6/23), don't mail in original. 	<p>Response to Motions Due within 10 (business) days of service of Motion (15-26A-87.2) Plus 3 business days for service, if by mail.</p>	
	<p><u>Petition for Rehearing after SC Decision issued</u></p> <ul style="list-style-type: none"> • SDCL 15-30-4 • E-FILE IN ODYSSEY Rule 19-01 (& Per SC Rule 23.14, don't mail original) <p>SC returns (remittitur) the file to the Circuit Court on the 21st day after SC Opinion issued.</p>	<p>W/in 20 days of filing formal SC Opinion or of Order Summary Disposition Response, if any, due within 10 days of service of the Petition</p>	

*** Pursuant to 15-26A-81, **briefs "shall be deemed to be filed as of the date of mailing."**—Per Amy, SC Clerk, 1/17/23, **if we efile our brief by 11:59 pm on due date, we can mail in our original the next day.**

1. Cover letter to SC: enclose original brief/appendix
2. IF Non-Represented parties (i.e. heirs), 1 hard copy mailed to each.
3. Email or mail copy to client; make unbound copy for office file.



Even More COMMON Grammar MISTAKES

by Karen Armstrong, PP, PLS

I want to thank Jen Frederick for stepping up to the plate and writing the Grammar Check article for the last newsletter when I was sick. Jen is a great co-worker and friend and I appreciate her very much.

I struggled with finding a specific topic for this article. I finally settled on writing about some of the grammar mistakes I have heard or read over the past month or so. I apologize if I am boring you because some of these issues are a repeat of what I have written about in previous newsletters, but mistakes are still being made out there!

1. WHO VS. THAT

It can be tricky to determine which word (“who” or “that”) to use when you are describing someone or something. Look at this sentence:

Amy is a friend of mine that loves to go to the movies.

This sentence really doesn't sound that bad or strike you as awkward. But it is incorrect. When deciding whether to use “who” or “that” when describing someone or something in a phrase like this, it boils down to this. If you are describing a person, you need to use “who”:

Amy is a friend of mine who loves to go to the movies.

If you are describing an object, use “that”:

My computer is the one that locks up the most often.

That's simple, right? Person = who. Object = that.

2. ME VS. I

I hear this mistake often. My grandkids are finally getting the hang of this concept. Don't tell my pastor, but I heard him make this mistake in a sermon last Sunday! It went something like this:

If we understand that the Abrahamic Covenant is an unconditional covenant, that's good news for you and I.

Do you see the mistake? How can you determine whether you should use “I” or “me” in this situation? Here is a little trick you can use so you will know for sure whether to use “me” or “I” at the end of a sentence like this. Try taking out the name of the other person at the end of the sentence. In the sentence above, the other person's name would be “you”:

If we understand that the Abrahamic Covenant is an unconditional covenant, that's good news for I.

That definitely sounds wrong! So if it sounds awkward when you remove the other person's name from the sentence, then you would use “me” instead of “I”:

If we understand that the Abrahamic Covenant is an

unconditional covenant, that's good news for you and me.

There—that sounds much better. Here is another example:

When you finish writing that section of the brief, could you please forward it to Jen and I?

Try the trick you learned above. Remove the other person's name (Jen) from the sentence, and see if this sounds correct:

When you finish writing that section of the brief, could you please forward it to I?

That isn't right! So then you know that you should use “me” instead of “I”:

When you finish writing that section of the brief, could you please forward it to Jen and me?

3. THEIR VS. THEY'RE VS. THERE

I'm almost positive I have written about this issue before, but there is still a lot of confusion out there and these words are often misused.

THEIR is a possessive. It refers to something owned by a group.

Their musical productions are the best in the metropolitan area.

THEY'RE is a contraction. It is short for “they are”—remember that the apostrophe is used in place of the letter (or letters) that were removed.

They're going to the Chinese restaurant after the movie.

THERE refers to a specific place.

He is going to high school, and the performance is going to be held over there.

Here is a sentence using all three options:

They're going to hate going there—I heard their food and service are horrible!

4. OF VS. HAVE

When we speak, a lot of us get lazy and use a version of words like this:

I shoulda studied for the test over the weekend, but I partied instead.

I coulda gone to the grocery store, but I didn't want to change my clothes.

The words “shoulda” and “coulda” in the sentences above are short for something else. But are these sentences correct?

I should of studied for the test over the weekend, but I partied instead.

I could of gone to the grocery store, but I didn't want to change my clothes.

When you say them out loud, “shoulda” and “coulda” sound like shortened versions of “should of” and “could of,” but they are really short for “should have” and “could have.” Here are the correct versions of these sentences:

I should have studied for the test over the weekend, but I partied instead.

I could have gone to the grocery store, but I didn't want to change my clothes.



This is enough for this time. If you have any grammar-related issues you would like addressed, please let me know @ Karen@SchoenbeckLaw.com.

IRISH SODA BREAD

by Rebecca Goeken

To go well with your Guinness beef stew or corned beef and cabbage for St. Patty's Day, this rustic, crackly baked good is an important part of Irish history and is also one of the fastest bread recipes you will ever bake.



INGREDIENTS

- 4 cups of flour
- 4 tbsp sugar
- 1 tsp baking soda
- 1 tbsp baking powder
- ½ tsp salt
- ½ cup softened butter
- ¼ cup melted butter
- 1 ¼ cup buttermilk
- 1 egg

INSTRUCTIONS

- Preheat oven to 375°
- Grease a baking sheet
- Mix together flour, sugar, baking soda, baking powder, and salt

- Add ½ cup of butter, 1 cup of buttermilk and egg to dry ingredients and mix until combined
- Flour work surface
- Turn out dough and knead briefly
- Shape dough into a round shape and place on prepared sheet
- Whisk together ¼ of cup melted butter with ¼ cup of buttermilk
- Brush loaf with buttermilk mixture
- Brush with buttermilk mixture every 15 minutes or so while baking
- Bake 45 minutes or until toothpick inserted into the middle comes out clean

DID YOU KNOW? WESTLAW EDGE PINPOINT CITATIONS

You can copy and paste quotes from cases, etc., and Westlaw will paste them into your document with the citation.

- Bring up the case you want to pull a quote from. Highlight the quote and choose "Copy with Reference:" ---->
- Paste into your document and you'll get this:

The proper standard for ruling on a discovery motion is whether the information sought is "relevant to the subject matter involved in the pending action...."

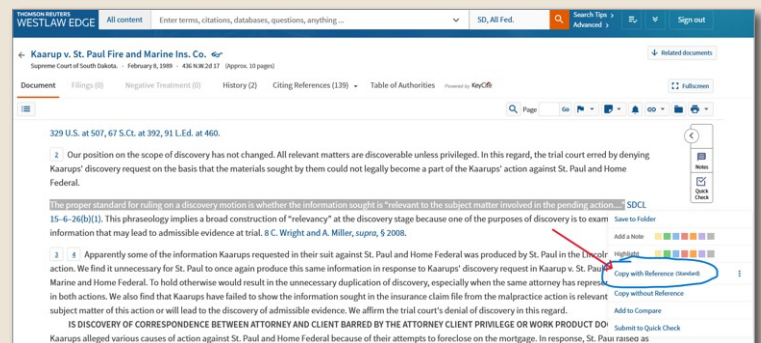
Kaarup v. St. Paul Fire & Marine Ins. Co., 436 N.W.2d 17, 20 (S.D. 1989)

- Edit the formatting as necessary within your document:

The proper standard for ruling on a discovery motion is whether the information sought is "relevant to the subject matter involved in the pending action...."

Kaarup v. St. Paul Fire & Marine Ins. Co., 436 N.W.2d 17, 20 (S.D. 1989).

Does your employer use LexisNexis? Never fear, you can find a similar tool there, too!



Do you want to learn more about how to use Westlaw or Lexis, or are you already using one of these services but wish you had more advanced skills? Check out these free resources:

Westlaw intro video: Click [here](#).

Westlaw Edge training videos: Click [here](#).

Westlaw Classic training videos: Click [here](#).

LexisNexis training videos: Click [here](#).

If your employer subscribes to either of these services, you can have a free one-on-one training session with your account representative if it's covered within your employer's subscription. Just ask!

SPEED THINGS UP!

ADOBE, ETC: Make PDFs text searchable. Convert scanned files into text-searchable PDFs with optical character recognition (“OCR”). In your PDF editing software, look for a button that says OCR or Recognize Text.

OFFICE:

Search for text. Hold down Ctrl key, then tap the letter F on your keyboard to search for text.

Select everything. Hold the Ctrl key, then tap the letter A on your keyboard to select all.

Dictate documents and emails. Instead of typing, use the Dictate button in Word or Outlook to dictate documents and emails. This works on the mobile apps, as well.

OUTLOOK:

Show your calendar next to your inbox. View your calendar and email side by side with the To-Do Bar in Classic Outlook (View Ribbon > To-Do Bar > Calendar) or My Day in the New Outlook.

Open your calendar in a new window (and get a second monitor if you're only using one!). You can have your inbox on one screen and your calendar on another by opening your calendar in a new window. Right-click on the calendar icon and select Open in New Window to open your calendar in a new window.

TO DO: Stay focused with My Day. If you use Microsoft To Do as your task list, add today's most important tasks to My Day smart list to keep yourself focused on what matters most each day. My Day starts over with a blank list every day, letting you choose your priorities every morning.

VIDEO CALLS: Share your whole screen. When sharing your screen on a video call, you can typically choose between sharing a single window/document or everything on one screen. Choose a monitor or screen to share everything and eliminate the need to stop and restart sharing every time you need to share something else.

WORD:

Customize your Microsoft Office Quick Access Toolbars. Add frequently used commands to the Quick Access Toolbar (QAT) to get one-click access no matter what ribbon you're working on. Right-click on a button in the ribbon to add it to the QAT.

Show the ruler. The ruler shows your document's margins, indents, and tab stops at a glance. To turn it on, on the view ribbon, check the box for ruler.

BONUS ADOBE TIP!

If your PDF has hyperlinks, either to a website or to different pages in the document, you can delete the hyperlinks (required before e-filing). You can delete one link or all links at once.

TO DELETE ONE LINK:

- Open the PDF and go to the page with the link
- Go to Tools, and click Edit PDF
- Click on Link
- Add/Edit Web or Document Link, this will put a box around all links in your document
- Right click on the link you want to remove
- From the drop down menu, click Edit, Delete

TO DELETE ALL LINKS:

- Open the PDF and go to the page with the links
- Go to Tools, and click Edit PDF
- Click on Link
- Add/Edit Web or Document Link, to put a box around all links
- Press Control A on your keyboard, this will select all links
- Right click on one link, and from the drop down menu click Edit, Delete

BONUS OFFICE TIP!

Make a file read-only.

Have you ever opened a Microsoft Office document that you intended to use as a template, but accidentally saved your changes over it because you forgot to Save As at the beginning? You can prevent yourself from making that mistake by controlling the file properties. From your desktop (or wherever your file is located), right-click on the document. One of the options in the pop-up list will be Properties - select that. At the bottom of the next window, check the Read-only box. Click Apply at the bottom right, then click OK at the bottom center. Now, when you open the document and try to save, it'll give you a pop-up telling you that the document is Read-Only, and your only choice will be to save it as a new document.

HAVE A QUESTION OR TIP TO SHARE?

Contact Jessi Stucke, ACP, CEDS at JStucke@rwwsh.com or Jennifer Frederick, CP at Jen@SchoenbeckLaw.com.

AUDIT

Chair: Tasha Altmann, ACP
Tasha.Altmann@mrEnergy.com
EC Liaison: Sara Shelbourn
Member: Vicki Blake, ACP

I have reviewed the SDPA savings, checking and credit card statements from September through December 2023. Savings: As of December 31, 2023, the SDPA savings account balance is [omitted]. There was an [omitted] increase from the September statement. Checking: As of December 31, 2023, the SDPA Checking account balance is [omitted]. Below are some noted discrepancies and/or comments: I am not able to reconcile the November Statement and am currently waiting for the following receipt: Check #1125 - Courtney VandenBerg \$43.54. The receipt was sent to the Education committee, but I don't have it. Credit Card: I have not received the December credit card statement as of this writing, so this report is only through November 2023. I am not able to reconcile the October statement and am currently waiting for the following receipt: Lewis Drug Brookings - \$329.70 – Gift cards – the receipt was sent to the Education Committee – but I don't have it. As of November 13, 2023, the SDPA Credit Card balance was \$0.00.

CLE LUNCHEON

Chair: Jessi Stucke, ACP, CEDS
JStucke@rwwsh.com
Members: Vicki Blake, ACP
Jennifer Frederick, CP
Jessica Huyck, ACP
Rebecca Goeken
Rebekah Mattern

If you have ideas for topics for or can recommend a presenter (or if you would like to present), please contact Jessi.

EDUCATION

Co-Chairs: Rebecca Goeken
GoekenR@GoosmannLaw.com
Courtney Vanden Berg, CP
Courtney@StrangeLaw.com
EC Liaison: Sara Shelbourn
Members: Stephanie Bahr
Stephanie Bentzen

The Education Committee is gearing up for another educational experience. This June the Annual Meeting and Seminar will be in Pierre. The Committee is in the early stages of planning the agenda and locating speakers. We will be requesting CLE credits from NALA. Once again, we will also be setting up a Facebook event, which will provide a great platform for updates and suggestions, so be on the lookout for that. Reminder, you do not have to be a member of the SDPA to attend the seminar, so please feel free to invite any parale-

gals you know throughout the state. The Education Committee welcomes any recommendations on topics, speakers, and ways to improve our seminars. Please email any recommendations for the upcoming seminar to Rebecca and Courtney. We look forward to the coming year, meeting new members, and encourage all members to think about joining the Education Committee.

ETHICS

Chair: Jennifer Frederick, CP
Jen@SchoenbeckLaw.com
EC Liaison: Sara Shelbourn
Members: Dixie A. Bader, CP
Rebecca Goeken

Nothing to report.

FINANCE

Clara Kiley, CP
PKKiley@msn.com

No report (full report to be provided for the Annual Meeting in June).

JOB BANK

Chair: Laura Stewart
LStewart@FullerAndWilliamson.com
EC Liaison: Autumn Nelson, ACP
Members: Kayne Larimer, ACP
Ashly Luke
Jackie Schad, ACP

Open positions are listed on page 19. The job information is available on our website [here](#). If you are an employer or know of an employer seeking legal staff, please contact Laura.

LIBRARY

Courtney Vanden Berg, CP
Courtney@StrangeLaw.com

The library is up to date on all CLE materials including the luncheon CLEs. All CLE materials are ready for anyone looking to stay up on their CLE requirements for NALA. If you or someone you know is in need of CLE credits please keep the library in mind. We have the library catalog available online [here](#), and all materials can be checked out through the SDPA store which the website committee has been diligently working to update, keep current, and striving to making checking materials out easy. If you have 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 (2) 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-Chairs: Autumn Nelson, ACP
AutumnN@HalbachLawFirm.com
Jessi Stucke, ACP, CEDS
JStucke@rwwsh.com
EC Liaison: Sara Shelbourn
Members: Dixie Bader, CP
Rebecca Goeken

As of March 1, 2024, we have 88 members. If you work with or know any paralegals or legal assistants who are interested in joining SPDA, please have them contact Autumn. 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 AutumnN@HalbachLawFirm.com. If we did not receive your renewal by February 29, your membership is in process of being terminated. (These individuals will still be included in the emailing of this issue of the *Reporter*). We do not want to lose any of you! If you have an issue with renewing by the deadline and need to visit with Membership Committee, please contact Autumn.

Jessi sent out an email in January regarding pre-planning for membership mixers. We have been hoping to start mixers in towns around the state other than Sioux Falls. We are looking for members who are interested in facilitating a mixer in their community. We are hoping to have one held in March and one in August in two different communities. If you are interested (and if there is anyone who would be interested in doing this with you), you would be responsible for putting together a list of firms/individuals in your area that may be interested in attending (including non-members). The Membership Committee would send invites to everyone on your list and then work with you to make arrangements for a venue and food/beverages. We will also have applications ready - anyone who signs up as a member at the mixer will get \$25 off either their membership application fee or a seminar registration! Please contact Autumn if you're interested!

NEWSLETTER

Co-Chairs: Jennifer Frederick, CP
Jen@SchoenbeckLaw.com
 Jessi Stucke, ACP, CEDS
JStucke@rwwsh.com
 EC Liaison: Michelle Tyndall, ACP
 Members: Karen Armstrong, PP, PLS
 Jessica Huyck, ACP

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! We welcome 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: Carrie Reider, CP
cjReider@fnbsf.com
 EC Liaison: Autumn Nelson, ACP
 Members: Vicki Blake, ACP
 Rebecca Goeken

The committee has nothing to report at this time.

PROFESSIONAL DEVELOPMENT

Chair: Rebekah Mattern
RMattern@LynnJackson.com
 EC Liaison: Autumn Nelson, ACP
 Members: Jessica Huyck, ACP
 Carrie Reider, CP

No report.

PUBLIC RELATIONS

Chair: Vicki Blake, ACP
Vicki@ddLawSD.com
 EC Liaison: Shelly Tyndall, ACP
 Members: Vacant

No report.

WEBSITE

Chair: Jessica Huyck, ACP
Jessica.Huyck@SDstate.edu
 EC Liaison: Autumn Nelson, ACP
 Members: Carrie Reider, CP
 Jessi Stucke, ACP, CEDS

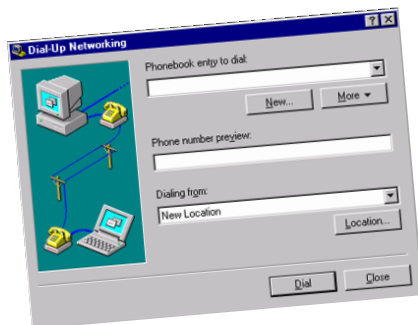
The Website Committee has updated SDPA's website with the new committee assignments for 2024 and continues to update the Careers section of the website with job postings. You can check out past seminars/CLE luncheon webinars if you need CLE credits: SDparalegals.com/Store.

HORIZONTAL

2. Language for webpages
6. Provides data to other computers
7. Clickable link on the web
9. Local area network technology
10. Company behind initial IMPs
14. Query network registrations
15. Provides network hardware address
17. Point of interaction
18. Transmission control protocol

VERTICAL

1. Error-reporting protocol
3. Metropolitan area network
4. National research network
5. Rules for data exchange
8. Co-inventor of TCP/IP
11. Academic computer network
12. Early discussion system
13. Network connection point
16. Produced first website



Crossword courtesy of Puzzle Maker Online (c) 2024. Images publicly available on the world-wide web \(_^)/.

COURT OPINION SUMMARIES

~ from the USDLaw List Serve ~

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](#).

The following are recent decisions from the South Dakota Supreme Court and the 8th Circuit Court of Appeals. All of the decisions are available [here](#). Decisions from the 8th Circuit Court of Appeals are available [here](#).

UNITED STATES v. SEJNOHA

USCA 23-2606 – January 5, 2024
D.S.D. Southern Division

Defendant entered a guilty plea to child pornography charge, with the written plea agreement containing an “appeal waiver” provision. After sentencing, Defendant filed this appeal challenging the sentence imposed. His attorney filed a motion to withdraw together with an *Anders* brief. The 8th Circuit dismissed the appeal, stating, “Upon careful review, we conclude that the appeal waiver is valid, enforceable, and applicable to the issues raised in this appeal.”

BREWER v. UNITED STATES

USCA 22-3452 – January 10, 2024
D.S.D. Southern Division

Defendant, pled guilty to both Voluntary Manslaughter and also to the offense of “discharging a firearm during and in relation to a crime of violence.” He was sentenced to 97 months and 120 months, to run consecutively. Thereafter, Defendant moved to vacate the firearm conviction on the grounds that manslaughter is not a crime of violence. The trial court denied relief (Hon. Lawrence L. Pierson). The 8th Circuit affirmed, holding, “voluntary manslaughter has as an element the use of force against the person of another.”

McLANE WESTERN, INC. v. S.D. DEPARTMENT OF REVENUE

2024 S.D. 1 – January 11, 2024
Taxpayers request for refund of overpayment denied under “make whole” doctrine

Taxpayer is a wholesaler of tobacco products in South Dakota. Through a miscalculation, Taxpayer overpaid its sales tax obligation by some \$530,000. Taxpayer sought a refund from the SD Dept. of Revenue (DOR). DOR eventually denied the request. After a contested hearing before the Office of Hearing Examiner, the DOR’s denial was confirmed. Appeal to the Circuit Court also resulted in an affirmance. On appeal, the SD Supreme Court agreed with the taxpayer that it had overpaid the required sales tax, thereby disagreeing with the DOR and lower court. Nonetheless, the Taxpayer was denied relief on appeal because it had passed the overpaid tax obligation on to its purchasers and had been “made whole” in regard to the obligation. The Court stated in ¶¶ 15-16:

¶15.] Because McLane calculated the tax it owed based on the higher price it paid to UST Sales, it overpaid the tobacco taxes due under SDCL 10-50-61. The Department erred in concluding otherwise.

¶16.] However, this does not mean that McLane was entitled to a refund for these overpaid amounts. Although McLane overpaid its advance tax obligation, it fully recovered the advance tax it paid from the dealers to whom it subsequently sold the OTP. McLane was made whole by its resale of the OTP and is not entitled to any refund. On this

basis, we affirm the Department’s denial of McLane’s request for a refund.

This decision is unanimous with opinion authored by Justice Myren.

STOCKWELL v. MCCOOK COUNTY BOARD OF COMMISSIONERS

2024 S.D. 2 – January 11, 2024
County zoning ordinance divides Justices 3-2

This dispute involves the interpretation of a county zoning ordinance in McCook County which was enacted in 2014. BACKGROUND: In 1999, Landowner had sought to re-zone some 5 platted lots (ranging in size from 3.8 to 5.4 acres) from agricultural to rural residential. The county officials approved the request at that time, but that decision was overturned by an election in the County, initiated by County Residents. In 2022, Landowner made a 2nd Zoning request, arguing that the plain language of the County’s 2014 Zoning Ordinance in fact permitted “single family dwellings” in land previously zoned as agricultural for “lots of record.” The County Officials and the Trial Court ruled against the Landowner, holding the history and overall effect of the 2014 Ordinance was intended to grandfather in the prior determination. The SD Supreme Court reversed, stating:

¶23.] The circuit court erred by deviating from these well-established rules of statutory construction in favor of its effort to ascertain what it believed to be the broader “intent of the zoning regulations.” In so doing, the court failed to apply the unambiguous text of the 2014 ordinance, which the court acknowledged made clear that Stockwell’s lots were, indeed, lots of record.

¶35.] The 2014 ordinance’s lot of record definition unambiguously refers to the effective date of the 2014 ordinance. Despite recognizing that Stockwell’s lots satisfy this definition, the circuit court erroneously supplanted a plain application of the text with a determination of the BOC’s intent to hold Stockwell’s lots were in fact not buildable. We reverse.

The Court’s decision is a 3-2 ruling. Justices DeVaney and Kern dissent, with the dissenting opinion authored by Justice DeVaney.

STATE v. STEVENS

2024 S.D. 3 – January 18, 2024
Consecutive sentencing for drug offenses upheld

Defendant was convicted, by jury, of drug offenses and sentenced to 1 year, 5 years and 10 years, to run consecutively. The state’s primary witness was Defendant’s “former roommate and fellow methamphetamine user, testified for the State in exchange for immunity.” Defendant’s appeal is premised upon “the circuit [court’s failure to] give corroboration or cautionary accomplice jury instructions” in >>

regard to the roommate’s testimony and the assertion of ineffective assistance counsel in regard to his trial counsel’s “for failing to propose accomplice testimony instructions.” Since the first issue was not preserved for appeal at trial, this appeal is addressed under the plain error standard of review. The SD Supreme Court affirmed the trial court, holding that trial counsel’s effective cross-examination of the roommate foreclosed the issue of “prejudice” need for reversal on the basis of plain error. The holding in regard to lack of prejudice further dictates a rejection of the ineffective-assistance-of-counsel assertion. The Court’s ruling is unanimous (5-0) with opinion authored by Chief Justice Jensen. Justice Salter filed a concurring opinion in which he opined, “I do not believe that absence of a corroboration instruction should be categorically regarded as error, plain or otherwise.” NOTE: the rule that the testimony of an accomplice requires corroborating evidence is found in SDCL 23A-22-8 which is cited and discussed in both opinions.

STATE v. HORSE

2024 S.D. 4 – January 18, 2024

Consecutive sentence for third-degree rape upheld

Defendant was convicted by jury of third-degree rape and was sentenced, “to serve twenty years in the penitentiary, consecutive to a sentence he was already serving.” Defendant’s appeal raises three “issues involving the validity of a search warrant for location data from his phone, comments made during trial by the State about the victim’s motivation to testify, and opinion testimony given by the detective who investigated the case.” The SD Supreme Court rejected all three issues and affirmed the lower court. This ruling is unanimous with opinion authored by Justice Kern.

REDLIN TRUST v. FIRST INTERSTATE BANK

2024 S.D. 5 – February 1, 2024

Trustees protected against claim of imprudent investment

Daughter of deceased trustor brought suit against co-Trustees (her brother and a bank) for imprudent handling of funds. Some \$3 million in cash assets were simply deposited in a money market account, earning only modest interest income. Daughter proceeds on numerous theories including breach of fiduciary duty, gross negligence, and bad faith. The trial court granted summary judgment for the Defendant Trustees, relying, inter alia, on the provision of the trust instrument which established a waiver of the Prudent Investor Rule. The SD Supreme Court affirmed. This decision is unanimous with opinion authored by Justice Kern.

UNITED STATES v. TOTARO

USCA 22-3521 – February 2, 2024
D.S.D. Southern Division

After establishing a scheme “in which he bilked investors out of millions of dollars,” this Federal inmate was convicted of “sixty-one counts of mail fraud, wire fraud, money laundering, engaging in unlawful money transactions, and RICO racketeering,” sentenced to 30 years and ordered to pay restitution of well over \$2 million. In 2022, inmate secured an early “compassionate release based on his age, time served, and serious deterioration of his health due to aging,” but was inmate was also ordered to pay \$1,000 monthly in restitution, increasing from previous order of \$200 per month. He appeals the order increasing his restitution payment. The 8th Circuit Affirmed.

UNITED STATES v. RED FEATHER

USCA 23-2911, 23-2914 – February 7, 2024
D.S.D. Southern Division

Defendant was sentenced to 96 months and 77 months, to be served consecutively for assault with a dangerous weapon and assault on federal officer. This is an *Anders* appeal in which Defendant challenges the “consecutive” sentencing. The 8th Circuit rejects this appeal, relying on the “appeal waiver” contained in the plea agreement. The Court also states, “we have independently reviewed the record and conclude that no other non-frivolous issues exist.”

BOHN v. BUENO

2024 S.D. 6 – February 8, 2024

City of Sturgis rebuffed

This dispute involves the City of Sturgis and an effort to remove the position of City Manager from City Government. Upon receipt of a petition with 900 signatures, Sturgis City officials refused to certify an election. The trial court refused to issue a mandamus requiring the election. The SD Supreme Court reversed, stating:

Because a petition to remove the city manager position was presented to the city council, and the petition requested an election on the proposition of employing a city manager, the city council had a clear duty to schedule an election. We remand to the circuit court to enter a writ of mandamus directing the city council to schedule and hold an election consistent with SDCL 9-10-1 as presented in the petition.

This decision is unanimous with opinion authored by Justice Myren. Justice DeVaney filed a separate concurring opinion. Petitioning Citizens were denied appellate attorney fees (because not authorized by statute or other authority) but were awarded costs.

BIALOTA v. LAKOTA LAKES, LLC

2024 S.D. 7 – February 8, 2024

New decision on tax deed dispute

(NOTE: The Court handed down a written decision in this dispute on 10/25/23, but subsequently withdrew the opinion, granted a rehearing, and rendered this decision.) Trial court set aside a tax deed issued by Pennington County, at the request of the title owner of the real estate, accepting the title owner’s argument that proper notice had not been delivered. The SD Supreme Court reversed and remanded, upholding the tax deed. The Court’s ruling is 3-2, with majority opinion authored by Chief Justice Jensen upon reassignment. Justice Kern filed a dissenting opinion, in which Justice DeVaney joined.

ELLINGSON DRAINAGE v. DEP’T OF REVENUE

2024 S.D. 8 – February 8, 2024

“Use tax” dispute resolved

This is a contest regarding South Dakota’s use tax. The dispute, its history and result on appeal are described in the opening paragraph of the opinion, as follows:

[¶1.] The South Dakota Department of Revenue (DOR) imposed a use tax on Ellingson Drainage, Inc. (Ellingson), after an audit revealed it

had not paid use tax on equipment used in 30 South Dakota projects but purchased elsewhere. Ellingson filed an administrative appeal challenging the constitutionality of the tax, but the appeal was dismissed because the claim was deemed not cognizable in an administrative forum. Ellingson then appealed to the circuit court, which affirmed the imposition of the tax, holding it did not violate the Due Process Clause of the Fourteenth Amendment or the Interstate Commerce Clause, as applied to Ellingson. Ellingson appeals, and we affirm.

This ruling is unanimous with opinion authored by Justice Salter.

ORTHOPEDIC INSTITUTE, ET AL v. SANFORD HEALTH PLAN, INC.

2024 S.D. 9 – February 8, 2024

Health plan must allow other providers to participate

This is an action by numerous health care providers, seeking a declaratory judgment that they should be permitted to participate as “any willing provider” (pursuant to SDCL 58-17J-2) under Sanford Health Plan. The trial court ruled for the providers. The SD Supreme Court affirmed. This decision is unanimous with opinion authored by Chief Justice Jensen, stating:

[¶1.] The [trial] court determined that SDCL 58-17J-2 does not permit SHP to exclude a fully qualified and willing health care provider from participating as a panel provider in every health benefit plan offered by SHP. We affirm.

Circuit Judge Lovrien participated in this decision in lieu of Justice Salter.

UHRE REALTY v. TRONNES

2024 S.D. 10 – February 8, 2024

Sellers prevail in dispute with realtor

This is a dispute between the Sellers and Realtor and the Realtor’s related Property Management Company. The trial court ruled for Sellers (except on their claim for tortious interference) and awarded attorney fees to the Sellers. The SD Supreme Court affirmed the victory for Sellers but reversed the attorney fee award. This decision is unanimous (5-0), with opinion authored by Justice Salter.

UNITED STATES v. RADERMACHER

USCA 23-1243 – February 8, 2024

D.S.D. Southern Division

Defendant, having been convicted by jury of “conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 846, and 851(a)” appeals arguing error in the admission of a prior drug conviction into evidence and entitlement to a judgment of acquittal. The 8th Circuit rejected Defendant’s arguments and affirmed.

IN THE MATTER OF THE INTERPRETATION OF SOUTH DAKOTA CONSTITUTION AND STATE LAW RE: STATE LEGISLATOR’S INTEREST IN STATE OR COUNTY CONTRACTS

2024 S.D. 11 – February 9, 2024

The Court’s decision is authored by Justice Salter. Justice Kern dissented in part. The Court’s conclusion, as expressed in ¶¶ 63-64 is as follows:

[¶63.] This case presents an appropriate instance to exercise our advisory opinion jurisdiction under Article V, § 5. The current state of our decisional law concerning Article III, § 12 is not sustainable. Our holdings in Asphalt Surfacing and Pitts, which equated general appropriation for ordinary and current expenses with legislative authorization to enter into specific contracts, are contrary to well-established constitutional limits on general appropriation legislation set out in Article XII, § 2 and our cases. These holdings expressed in Asphalt Surfacing and Pitts are, therefore, overruled.

[¶64.] Our answer to the Governor’s restated question whether Article III, § 12 prohibits all contracts between legislators and the State is: No, it does not. The contract restriction stated in Article III, § 12 is not a categorical bar on all contracts funded by the State. Instead, it prohibits a legislator, or former legislator within one year following the expiration of the legislator’s term, from being interested, directly or indirectly, in contracts that are authorized by laws passed during the legislator’s term. The purpose and effect of general appropriation legislation is restricted to simply allocating money to fund state government; it does not, itself, authorize specific contracts relating to ordinary or current expenses.

Justice Kern filed a separate opinion in which she expresses a dissent in part and a concurrence in part. Justice Kern’s view, as articulated in ¶67, is as follows:

[¶67.] I respectfully dissent from the portion of the majority opinion which overrules decades of established precedent to exempt general appropriations from Article III, § 12 of the South Dakota Constitution. This approach disregards the constitutional text and may ultimately prove difficult to interpret as the majority opinion adopts a capacious understanding of interest, prohibiting legislators from having any interest whatsoever—no matter how indirect or attenuated—in contracts authorized by special appropriations. Nevertheless, I join the majority opinion’s important holding that Article III, § 12 applies to “law[s] passed during the legislator’s term. . . not merely. . . laws for which the legislator cast a vote.” (Emphasis added.) Additionally, although I agree that the circumstances surrounding the Governor’s request indeed constitute a solemn occasion under Article V, § 5, which permits this Court to exercise our original jurisdiction, I question whether the submitted interrogatories present “important questions of law involved in the exercise of [her] executive power.” Rather, they seem more akin to questions from legislators regarding their individual concerns, which is not properly within the purview of an advisory opinion. See S.D. Const. art. V, § 5.

SCOTT v. UNITED STATES

USCA 23-1540 – February 13, 2024

D.S.D. Southern Division

Defendant was sentenced to 262 months, later reduced to 131 months, for drug trafficking (meth). Thereafter, acting pro se, Defendant filed this “motion for habeas relief,” asserting various claims of ineffective assistance of counsel. The trial court denied relief, without a hearing, but issued a certificate of appealability on two issues:

“(1) whether an evidentiary hearing is necessary to determine if Scott’s counsel provided ineffective assistance when he failed to investigate the parole status of his co-defendant; and (2) if so, whether counsel’s

ineffective assistance serves to overcome procedural default of the sentencing disparity claim.”

The 8th Circuit also denied relief.

UNITED STATES v. CRAWFORD

USCA 23-1676 – February 16, 2024
D.S.D. Southern Division

Entering a “conditional guilty plea” in regard to the offense of “being a prohibited person in possession of a firearm, in violation of 18 U.S.C. § 922(g),” Defendant challenged the warrantless search and seizure of evidence. The trial court (“adopting the report and recommendation, as modified, of the Honorable Veronica L. Duffy, United States Magistrate Judge”) found probable cause existed. The 8th Circuit affirmed.

STATE v. FOSHAY

2024 S.D. 12 – February 22, 2024

HSC patient/inmate entitled to dismissal of criminal charges

Criminal Defendant was found “incompetent to stand trial” in 2017 and committed to the SD’s Human Services Center (HSC) for “competency restoration treatment.” Thereafter, “as a result of a series of ‘re-commitments,’ [Defendant] remains committed.” Defendant sought a dismissal of criminal charges in 2021, pursuant to SDCL 23A-10A-14 (requiring dismissal when “there is no substantial probability that the defendant will become competent to proceed in the foreseeable future.”)

The trial court denied dismissal. The SD Supreme Court reversed and remanded “for the entry of an order dismissing the criminal charges against Foshay,” and further stating/instructing:

“Although the record contains a recommendation by the director of the facility in which Foshay is currently placed that he continue to be held for the reasons set forth in SDCL 23A-10A-14, any further determinations as to those recommendations must be addressed through a civil commitment proceeding, as noted in this statute.”

This is a 4-1 ruling with the majority opinion authored by Justice Salter. Justice Kern filed a dissenting opinion in which she disagrees with the majority opinion’s factual finding in regard to the probability of competency in the foreseeable future – a finding which she believes, “amounts to a cursory de novo review.”

UNITED STATES v. DULL KNIFE

USCA 22-2884 – February 26, 2024
D.S.D. Western Division

Defendant pled guilty to assault with a dangerous weapon and was sentenced to 72 months in prison, a substantial upward deviation from the guidelines. Defendant appeals the sentence, arguing that the trial court improperly relied upon conduct that was “underlying” the companion charges which had been dismissed. The 8th Circuit rejected Defendant’s argument and affirmed the trial court (Hon. Jeffrey L. Viken).

UNITED STATES v. NADEAU

USCA 23-2527 – February 26, 2024
D.S.D. Central Division

Defendant was originally sentenced to prison in 2009, after pleading guilty to second-degree murder. After he was released from prison in 2017, Defendant was found to have violated conditions of “supervised release” on three separate occasions. On the first two revocations, Defendant was sentenced to 3 months. On the third revocation (which is the subject of this appeal), Defendant was sentenced to 24 months with no supervision. The 8th Circuit rejects Defendant’s claim that the sentence was “substantively unreasonable,” affirming the lower court (Hon. Karen E. Schreier).

UNITED STATES v. SIERRA

USCA 23-1345, 23-1368 – February 28, 2024
D.S.D. Western Division

By jury trial, primary Defendant was convicted of multiple offenses and his co-defendant brother was convicted of aiding and abetting two of the offenses (kidnapping and interstate domestic violence). The events giving rise to this prosecution involved travel from “Rapid City to Oglala on the Pine Ridge Indian Reservation [and subsequent travel to] Chadron, Nebraska.” The trial court sentenced primary Defendant “to a term of life on the kidnapping and aggravated sexual abuse by force counts and concurrent terms of 120 months on the remaining counts” and sentenced co-defendant “to concurrent terms of 121 months on his counts of conviction.” Both appeal. The 8th Circuit affirmed.

STATE v. KURTZ

2024 S.D. 13 – February 29, 2024

Five-year prison sentence vacated; presumptive probation ordered

Upon entry of guilty plea to possession of controlled substance, the Trial Court sentenced the Defendant to 5 years in prison, the maximum possible sentence. Defendant claims entitlement to presumptive probation in accordance with SDCL 22-6-11. The trial court did not order presumptive probation because of “aggravating circumstances” articulated in ¶8 as follows:

[The Trial Court] detailed several aggravating factors it found to exist, including prior failures to comply, prior probation and parole violations, previous failures to appear, and failures to pay court-ordered fines. The court emphasized [the Defendant’s] 15 prior felony convictions and noted that the current crime occurred while he was on parole. The court also referred to [the Defendant] being arrested for simple assault while on parole on September 27, 2022, a charge that, according to the court, was later reduced to disorderly conduct.

But the trial court also made the finding that the Defendant “did not pose a significant risk to the public.”

The Supreme Court vacated the sentence and remanded directing the trial court to enter “a sentence of probation.” The Court’s decision is a direct application of the language found in SDCL 22-6-11. This decision is unanimous with opinion authored by Justice DeVaney.



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