

RULES AND REGULATIONS
FOR
ADMISSION TO PRACTICE LAW
IN SOUTH DAKOTA

EFFECTIVE: May 23, 2018

Compiled by

BOARD OF BAR EXAMINERS
STATE CAPITOL, 500 E. CAPITOL
PIERRE, SOUTH DAKOTA 57501

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Secretary
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BOARD OF BAR EXAMINERS
 Since Adoption of the 1957 Supreme Court Rule
 Establishing the Current Board

	<u>TERM</u>
Karl Goldsmith, Pierre	1957-1958
William McCann, Brookings	1957-1962
John Larsen, Kennebec	1957-1963
Wallace A. McCullen, Rapid City	1959-1967
Howell Fuller, Sioux Falls	1963-1968
Joseph H. Barnett, Aberdeen	1963-1971
William G. Porter, Rapid City	1968-1974
William S. Churchill, Huron	1969-1975
Gale E. Fisher, Sioux Falls	1971-1976
Gerald E. Bollinger, Woonsocket	1975-1980
J. Bruce Blake, Sioux Falls	1976-1980
Thomas E. Simmons, Rapid City	1974-1982
Robert B. Frieberg, Beresford	1981-1983
Lois Ann Rose, Sioux Falls	1984-1987
Linda Lea M. Viken, Rapid City	1987-1988
Thomas C. Adam, Pierre	1981-1991
Louis K. Freiberg, Rapid City	1983-1992
William Taylor, Sioux Falls	1992-1994
R. J. (Jim) Krueger, Aberdeen	1989-1996
Rita D. Allen, Sioux Falls	1991-1996
Jane M. Farrell, Hot Springs	1988-2001
Thomas J. Nicholson, Sioux Falls	1988-2002
A. P. (Pete) Fuller, Lead	1995-2003
Ronald J. Hall	1996-2007
James D. Leach	1997-2008
Susan Sabers, Sioux Falls	2002-present
R. Alan Peterson, Sioux Falls	2002-2017
Patrick Lee, Rapid City	2003-2005
Marya Tellinghuisen, Rapid City	2006-2017
Larry Von Wald, Rapid City	2008-present
Jack Hieb, Aberdeen	2009-present
Neil Fulton, Pierre	2017-present
Jane Wipf Pfeifle	2017-present

Rules for
Admission to Practice Law
in South Dakota*

16-16-1. License from Supreme Court required to practice law--Active membership in state bar--Violation as misdemeanor. No person, except as provided in §16-18-2, may practice as an attorney and counselor at law in any court of record within this state, either by using or subscribing his or her own name or the name of any other person, without having previously obtained a license for that purpose from the Supreme Court of this state and having become an active member in good standing of the State Bar of South Dakota. A violation of this section is a Class 1 misdemeanor.

16-16-1.1. Essential Eligibility Requirements for Admission.

Applicants must be able to demonstrate the following essential eligibility requirements for the practice of law:

- (1) The ability to be honest and candid with clients, lawyers, courts, the board, and others;
- (2) The ability to reason, recall complex factual information, and integrate that information with complex legal theories;
- (3) The ability to communicate with clients, lawyers, courts, and others with a high degree of organization and clarity;
- (4) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (5) The ability to conduct oneself with respect for and in accordance with the law;
- (6) The ability to avoid acts that exhibit disregard for the rights or welfare of others;
- (7) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, tribal, and federal laws, regulations, statutes, and any applicable order of a court or tribunal;
- (8) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts, and others;
- (9) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
- (10) The ability to comply with deadlines and time constraints.

16-16-2. **Qualifications of applicants to practice law.** An applicant for admission to practice as an attorney or counselor at law in this state must be at least eighteen years of age, be a person of good moral character, and satisfy the requirements of the applicable rules.

Prior to admittance an applicant must be a resident of this state; or maintain an office in this state; or designate the clerk of the Supreme Court as his or her agent for the service of process for all purposes.

16-16-2.1. **Standard of good moral character.** Good moral character, required by §16-16-2, includes but is not limited to qualities of honesty, candor, trustworthiness, diligence, reliability, observance of fiduciary and financial responsibility, and respect for the rights of others and for the judicial process. Any fact reflecting a deficiency of good moral character may constitute a basis for denial of admission. In addition, the failure of an applicant to answer truthfully any question in the application or any question propounded by the Board of Bar Examiners, or the failure to supply any documentary material requested by the Board of Bar Examiners, will justify a finding that the applicant has not met the burden of proving good moral character.

16-16-2.2. **Good moral character. Quantum and burden of proof.** The applicant must prove by clear and convincing evidence that the applicant is of good moral character. Applicants admitted to practice as an attorney pursuant to §16-16-17.1 have the continuing burden of proof as to good moral character and compliance with the terms and conditions of the conditional admission until satisfactory completion of the terms and conditions of admission.

16-16-2.3. **Good moral character-Relevant conduct.**

- (1) The presence of any of the following may be cause for further inquiry:
 - (a) unlawful conduct, including cases in which the record of arrest or conviction was expunged, with the exception of juvenile arrests and dispositions unless they pertain to a serious felony;
 - (b) academic misconduct;
 - (c) making of false statements, including omissions;
 - (d) misconduct in employment;
 - (e) acts involving dishonesty, disloyalty, fraud, deceit or misrepresentation;
 - (f) abuse of legal process, including the filing of vexatious lawsuits;
 - (g) neglect of financial responsibilities;

- (h) neglect of professional obligations;
- (i) violation of an order of a court, including child support orders;
- (j) evidence of mental or emotional instability;
- (k) evidence of drug or alcohol dependency or abuse;
- (l) denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (m) disciplinary action against an applicant in any jurisdiction;
- (n) practicing law while not being so licensed.

The foregoing list is representative, not exclusive.

16-16-2.4. Use of Information.

- (1) In reviewing the relevant conduct identified in 16-16-2.3 the Board shall consider:
 - (a) applicant's age at the time of the conduct;
 - (b) recency of conduct;
 - (c) reliability of the information concerning the conduct;
 - (d) seriousness of the conduct;
 - (e) factors underlying the conduct;
 - (f) cumulative effect of conduct or information;
 - (g) evidence of rehabilitation;
 - (h) applicant's candor in the admission process; and
 - (i) results of applicant's criminal background check.

16-16-2.5. Adverse Recommendation. If an application for admission is denied on moral character grounds, the Board shall set forth in writing its findings upon which the adverse denial is based and shall promptly notify the applicant of the denial.

16-16-2.6. Criminal background investigation required-Procedure-Results furnished to Board. Each applicant for admission to practice as an attorney or counsel at law in this state shall submit to a criminal background investigation, by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation.

The Board of Bar Examiners shall submit completed fingerprint cards to the Division of Criminal Investigation prior to admittance of an applicant. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check. The results of the criminal history check shall be given to the Board of Bar Examiners to determine an applicant's qualification for admission pursuant to §§ 16-16-2 to 16-16-2.3, inclusive.

16-16-3. Composition and appointment of Board of Bar Examiners—Terms of office. The Board of Bar Examiners shall consist of five members of the state bar appointed by the Supreme Court. The court shall designate a chairman and the clerk of the Supreme Court or an officer of the court so designated shall be the ex officio Secretary of the Board. No member shall be affiliated with a law school or engaged directly or indirectly in the preparation of applicants to practice law. The terms shall be for no more than three years from January first following appointment, and vacancies shall be filled for the unexpired term. The length of terms shall be varied at the time of appointment to insure that no more than two terms expire at the same time.

16-16-4. Compensation and expenses of Bar Examiners and Secretary. Each member of the Board of Bar Examiners and the Secretary shall be reimbursed for his traveling and other necessary expenses and shall receive such compensation as the Supreme Court shall approve.

16-16-5. Duty of Bar Examiners—Rules and regulations. The Board of Bar Examiners shall be charged with the duty of administering the requirements for admission to practice law and shall have authority to adopt rules and regulations not inconsistent with this chapter which shall become effective upon approval by the Supreme Court.

16-16-6. Examination required of applicants to practice law—Educational requirements. All applicants for admission, except those applying pursuant to SDCL 16-16-7.6, SDCL 16-16-12.1, or §§ 16-16-12.3 and 16-16-12.4 shall be required to pass satisfactorily an examination conducted by the Board of Bar Examiners. An applicant for permission to take an examination, in addition to the general qualifications prescribed in §16-16-2, must furnish satisfactory evidence that he graduated from a law school accredited by the American Bar Association with a J.D. or LL.B. degree or that he will so graduate prior to the examination, or that he has successfully completed all of the requirements for graduation prior to the examination.

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

16-16-7.1. Practice of nonresident attorneys employed by legal aid bureaus or public defender agencies—Application. A nonresident attorney, licensed to practice law in another jurisdiction within the United States, while actually employed and associated with a bar association sponsored or governmentally funded legal aid bureau or public defender agency within South Dakota, may be admitted to practice before the courts of this state.

Admission shall be upon sworn, written application to the South Dakota Supreme Court containing:

- (1) The post-office address of the applicant;
- (2) The name and post-office address of the legal aid bureau or public defender agency by whom the applicant will be employed;
- (3) The name and address of the supervising attorney of the bureau or agency, who shall be a duly licensed attorney of this state;
- (4) The jurisdictions in which the applicant is licensed to practice law;
- (5) A statement that the applicant is a member in good standing of the bar of the jurisdiction in which he is licensed;
- (6) A statement that the applicant has not been the subject of disciplinary action by the bar or courts of any jurisdiction during the preceding five years;
- (7) A statement that the applicant has not been denied admission to the courts of any jurisdiction during the preceding five years;
- (8) A statement that the applicant is familiar with the rules of the state bar of South Dakota, and will at all times abide and comply with the same;
- (9) A statement that the applicant has simultaneously filed with the Board of Bar Examiners an application for admission to the practice of law in this state.

16-16-7.2. Certificates and affidavits filed with application. There shall be filed therewith:

- (1) A certificate of admission to the bar in such other jurisdictions where the applicant is licensed;
- (2) A certificate from the proper courts therein that the applicant is a member in good standing; and
- (3) An affidavit of the supervising attorney that he is licensed to practice in South Dakota; that the applicant, upon admission, will be employed by and associated with the legal aid bureau or public defender agency; and, that the supervising attorney has found the applicant to be a reputable attorney and recommends his or her admission to practice.

16-16-7.3. Order of admission--Duration. If the Supreme Court shall find that the applicant is of good moral character and otherwise qualified to practice law, the Court may make an order of admission to be effective upon the filing of the oath of attorney in the office of the clerk.

The admission to practice under this section shall remain in effect until the occurrence of the earliest of the following events:

- (1) The failure to sit for the first bar examination administered by the Board of Bar Examiners subsequent to the order of admission; or
- (2) The announcement by the Board of Bar Examiners of this state of the results of the first bar examination following the applicant's admission under this section, provided, however, that as to any applicant who passes such examination his or her admission under this section shall continue in effect for sixty days, during which time applicant may proceed to be admitted to practice pursuant to §16-16-17; or
- (3) The termination of the applicant's employment with the legal aid bureau or public defender agency under which the applicant was admitted under this section; or
- (4) The termination by the Supreme Court of the applicant's admission under this section.

It shall be the duty of the supervising attorney of the legal aid bureau or public defender agency by whom such attorney is employed under §16-16-7.2 to inform the Supreme Court immediately of the termination of employment of such attorney admitted to practice pursuant to this section.

For the purpose of subdivisions (1) and (2) above, the bar examination referred to means the combined Multistate Essay Examination which includes an Indian Law question, and Multistate Performance Test, and the Multistate Bar Examination administered by the Board of Bar Examiners as well as the Multistate Professional Responsibility Examination.

16-16-7.4. Submission to disciplinary board jurisdiction—Revocation of admission or referral to board for misconduct—Venue. Under §16-16-7.1 the filing of an application requesting admission by a nonresident attorney shall constitute his or her submission to the jurisdiction of the disciplinary board of the state bar.

If after admission to practice in this state, the applicant engages in professional misconduct as that term is defined by the rules governing the state bar of South Dakota, the Supreme Court may revoke his or her admission to practice. In addition, the matter may be referred to the disciplinary board of the state bar or other proper authority as is deemed necessary and desirable. The county in which the legal aid bureau or public defender agency is located shall be considered the county of the applicant's residence for the purpose of determining venue in any disciplinary action taken against him or her.

16-16-7.5. Extent of practice—Compensation. The admission of the nonresident attorney under §16-16-7.3 will allow the attorney to practice in the courts or administrative agencies of this state solely in the capacity as a member of the legal aid bureau or public

defender agency by whom he or she is employed. The nonresident attorney shall not receive compensation from the person on whose behalf he or she renders services, but this shall not prevent the legal aid bureau or public defender agency from paying compensation to the attorney nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

16-16-7.6. An attorney licensed to practice law in another jurisdiction within the United States, while actually employed by the Unified Judicial System as its state court administrator, or while actually employed by the University of South Dakota law school as a full-time administrator or as a full-time faculty member, may be admitted to practice in this state upon submission of a sworn, written application to the Supreme Court of South Dakota containing the following:

- (1) The name and post office address of the applicant;
- (2) The jurisdictions in which the applicant is licensed to practice law;
- (3) A statement that the applicant is a member in good standing of the bar of the jurisdictions in which he or she is licensed;
- (4) A statement that the applicant has not been the subject of disciplinary action by the bar or courts of any jurisdiction during the preceding five years;
- (5) A statement that the applicant has not been denied admission to the courts of any jurisdiction during the preceding five years; and
- (6) A statement that the applicant is familiar with the rules of the State Bar of South Dakota and will at all times abide by and comply with the same.

Such application will be accompanied by the following:

- (1) A certificate of admission to the bar in the jurisdictions in which the applicant is licensed to practice law;
- (2) A certificate from the proper courts therein that the applicant is a member in good standing.

A full-time administrator or faculty member other than the full-time dean shall also submit:

- (1) An affidavit of the dean of the law school that the applicant is a full-time administrator or faculty member of the University of South Dakota law school in good standing and that the dean recommends the applicant for admission to practice.

A full-time administrator includes the dean, librarian, associate or assistant deans, or other administrators holding academic appointment.

A full-time faculty member is one who during the academic year devotes substantially all working time to teaching and legal scholarship, participates in law school governance and service, and has no outside office or business activities, and whose outside professional activities, if any, are limited to those that relate to major academic interests or enrich the faculty member's capacity as scholar and teacher, are of service to the legal profession and the public generally, and do not interfere with one's responsibility as a faculty member. A full-time faculty member may hold a joint appointment with the University of South Dakota law school and another college or school within the University of South Dakota.

16-16-7.7. Order of admission and duration. If the Supreme Court shall find that the applicant is of good moral character and otherwise qualified to practice law, the court may make an order of admission to be effective upon the filing of the oath of attorney in the office of the clerk. Such admission under this section shall remain in effect until the occurrence of the earliest of the following events:

- (1) The announcement by the Board of Bar Examiners of this state that such applicant has passed such examination and the applicant's subsequent admission to practice under §16-16-17, et seq.; or
- (2) The termination of applicant's employment with the University of South Dakota law school or a change in the status of applicant's employment from full-time administrator or full-time faculty member to some other status; provided however, that the membership of such member admitted pursuant to SDCL 16-16-7.6 will not terminate when the member's employment at the University of South Dakota School of Law terminates if the member has served as a full-time administrator or full-time member of that faculty and been admitted to the bar in South Dakota for a minimum of five of the seven years immediately preceding termination of the employment; or
- (3) The termination of applicant's employment with the Unified Judicial System or a change in status of applicant's employment from state court administrator to some other status; or
- (4) The termination by the Supreme Court of the applicant's admission under this section.

It shall be the duty of the individual to inform the Supreme Court immediately of the termination or change in status of applicant's employment.

16-16-7.8. Submission to disciplinary board jurisdiction - Revocation of admission or referral to board for misconduct – Venue. Under §16-16-7.6, the filing of an application requesting admission by the state court administrator or by a law school full-time administrator or faculty member shall constitute his or her submission to the jurisdiction of the disciplinary board of the state bar.

If, after admission to practice in this state, the applicant engages in professional misconduct as that term is defined by the rules governing the state bar of South Dakota, the Supreme Court may revoke his or her admission to practice. In addition, the matter may be referred to the disciplinary board of the state bar or other proper authority as is deemed necessary and desirable. Clay County shall be considered the county of the full-time administrator or faculty member's residence for the purpose of determining venue in any disciplinary action taken against him or her. Hughes County shall be considered the county of the state court administrator's residence for the purpose of determining venue in any disciplinary action taken against him or her.

16-16-8. Application for admission on examination. Application for admission on examination shall be filed with the Secretary of the Board of Bar Examiners at such time and in such form as the Board shall prescribe. The failure of an applicant to furnish information or answer truthfully interrogatories of the Board pertinent to his application may result in denial of the application.

16-16-9. Time and place of examination. The Board of Bar Examiners shall conduct examinations at such times and places as the Board shall by rule determine.

16-16-10. Subjects covered by examination--Public notice. The subjects upon which applicants shall be examined shall be such as the Board of Bar Examiners deems necessary to prepare properly for the practice of law in this state, including the subjects of legal ethics and Indian Law. The Board shall make public such subjects, giving full and ample public notice of any change or addition thereto and written notice to the dean of the law school, University of South Dakota.

16-16-11. Re-examination after three failures prohibited. An applicant who fails three times to pass the bar examination in any jurisdiction or combination of jurisdictions, may not be permitted to take another examination in South Dakota except by permission of the Supreme Court upon a showing that the reasons for previous failures no longer exist and there is a reasonable likelihood the applicant will pass the examination if allowed to take it.

16-16-12.1. Admission without examination. Eligibility by practice. An applicant may be eligible for admission without examination if the applicant:

- a. meets the requirements of SDCL 16-16-2;
- b. furnishes satisfactory evidence of graduation from a law school accredited by the American Bar Association, and;
- c. provides documentary evidence showing that for the last five (5) years immediately preceding the application for admission without examination, the applicant, as principal occupation, has been actively, continuously, and lawfully engaged in the practice of law, in a state or states that allow South Dakota attorneys substantially similar admission without examination, as:

- 1) a sole practitioner;
- 2) a member of a law firm, professional corporation or association;
- 3) a judge in a court of record;
- 4) an attorney for any local or state governmental entity;
- 5) inside counsel for a corporation, agency, association or trust department; and/or,
- 6) an attorney with the federal government or a federal governmental agency including service as a member of the Judge Advocate General Department of one of the military branches of the United States.

16-16-12.2. Admission without examination-Application requirements.

The application for admission without examination shall be filed with the Secretary of the Board of Bar Examiners in such form as the Board shall prescribe. The failure of an applicant to furnish information or answer truthfully interrogatories of the Board pertinent to the application may result in denial of the application. The application shall be accompanied by:

- a. the applicable fees;
- b. the criminal background check required by SDCL 16-16-2.6;
- c. a certified copy of the application for admission to the bar in each jurisdiction in which the applicant has previously been admitted to practice law;
- d. a certification of admission to practice by the admitting authority in each jurisdiction that the applicant identified in (c) as having admitted the applicant to the bar;
- e. a certification from the proper authority in each jurisdiction where the applicant has been admitted stating that the applicant is in good standing;
- f. a certification by the attorney disciplinary authority in each jurisdiction where the applicant has been admitted to the bar of the applicant's disciplinary history and indicating whether the applicant is the subject of a pending complaint or charge of misconduct;
- g. a report of the National Conference of Bar Examiners as to the applicant's character; and
- h. a copy of the rule in the state or states in which the applicant has been practicing law which allows South Dakota attorneys substantially similar admission without examination.

To the extent that the state or states that allow South Dakota attorneys substantially similar admission without examination have additional requirements for South Dakota lawyers seeking admission without examination, the board of bar examiners may impose the same additional requirements for applicants seeking admission in South Dakota without examination.

16-16-12.3. Attorney licensing when spouse is a member of the armed forces. Notwithstanding any other provision in law, any attorney licensed to practice law in another jurisdiction within the United States, shall be admitted to practice in this state if:

- (1) His or her spouse is a member of the armed forces of the United States;
- (2) His or her spouse is the subject of a military transfer to South Dakota for active duty military service;
- (3) He or she left employment to accompany the applicant's spouse to South Dakota; and
- (4) He or she meets the requirements in § 16-16-12.4.

16-16-12.4. Contents of application for licensing when spouse is a member of the armed forces. Any attorney seeking admission to practice in South Dakota under § 16-16-12.3 shall submit a sworn, written application to the Supreme Court of South Dakota containing the following:

- (1) The name and post office address of the applicant;
- (2) The jurisdictions in which the applicant is licensed to practice law;
- (3) A statement that the applicant is a member in good standing of the bar of the jurisdictions in which he or she is licensed;
- (4) A statement that the applicant has not been the subject of disciplinary action by the bar or courts of any jurisdiction during the preceding five years;
- (5) A statement that the applicant has not been denied admission to the courts of any jurisdiction during the preceding five years; and
- (6) A statement that the applicant is familiar with the rules of the State Bar of South Dakota and will at all times abide by and comply with the same.

Such application will be accompanied by the following:

- a. A certificate of admission to the bar in the jurisdictions in which the applicant is licensed to practice law; and

- b. A certificate from the proper courts therein that the applicant is a member in good standing.

16-16-13. Fees payable with application for admission—Disposition of fees. An applicant for an admission on examination shall pay a fee of three hundred dollars, and a fee of one hundred seventy-five dollars for subsequent examinations. An applicant for admission without examination shall pay a fee of four hundred fifty dollars. An applicant shall also pay the National Conference of Bar Examiners the applicable fee for preparation of an initial or supplemental character report. If an applicant fails to appear for the examination, the fee paid shall only be applied to the next scheduled combined Multistate Essay Examination which includes an Indian Law question and Multistate Performance Test, and/or to the Multistate Bar Examination. The fees thus paid to the Secretary shall be retained in a special fund and shall be paid out by the state court administrator when authorized by the Secretary for the compensation and necessary expenses of the Board of Bar Examiners.

16-16-14. Discrimination on account of sex prohibited. No person shall be refused a license under this chapter on account of sex.

16-16-15. Bar Examiners' investigations and hearings on applicants for admission. The Board of Bar Examiners is empowered to make inquiries and investigations concerning the character, fitness and general qualifications of applicants for admission. In the conduct of investigations and upon hearings, the Board may take and hear testimony and compel, by subpoena, the attendance of witnesses and the production of books, papers and documents. Any member of the Board may administer oaths and issue subpoenas.

The contents of any report received by the Board of Bar Examiners relating to the character, fitness and general qualification of an applicant as well as the author of such report, shall be privileged and confidential between the author of the report and all members of the Board of Bar Examiners, its staff, and the applicant, and as appropriate, between the author of the report and the South Dakota Supreme Court. This rule of confidentiality does not prohibit the Board of Bar Examiners from furnishing relevant information to the disciplinary board when the Board is conducting an investigation concerning the character, fitness and general qualifications of an attorney.

16-16-16. Review by Supreme Court of Bar Examiners' decision as to qualifications of applicant. If an applicant be aggrieved by the decision of the Board of Bar Examiners as to his qualifications and shall so request, the Secretary of the Board shall transmit the applicant's file and other available information to the Supreme Court for review. The Court shall thereupon conduct such investigation as it deems necessary to a decision as to the qualifications of the applicant for admission. The decision of the Court shall be communicated by the Secretary to the applicant and shall be final. Any such request for review must be filed with the Court within thirty days of the decision of the Board of Bar Examiners.

16-16-16.1 Review by Supreme Court of Bar Examiners' decision on ADA request. If an applicant be aggrieved by the decision of the Board of Bar Examiners as to a request made under the Americans with Disabilities Act (ADA), the Secretary of the Board

shall transmit the applicant's file and other available information to the Supreme Court for review. The Court shall thereupon conduct such investigation as it deems necessary to a decision as to the ADA request. The decision of the Court shall be communicated by the Secretary to the applicant and shall be final. Any such request for review must be filed with the Court within ten days of the decision of the Board of Bar Examiners.

16-16-17. Recommendation to Supreme Court for admission to practice--Order and certificate of admission--State bar membership fee. Every applicant who has complied with the requirements of the applicable rules shall be recommended by the Board to the Supreme Court for admission to practice law, provided, however, that such recommendation by the Board of Bar Examiners shall be effective for a period not exceeding one hundred twenty days. The Court, for good cause shown, may extend such period of time. If the Court is satisfied as to the qualifications of the applicant so recommended, the Court will make an order of admission, which order shall become effective and certificate of admission from the clerk of the Supreme Court shall issue upon payment to the clerk of membership fee in the state bar and the fee as fixed in §16-2-29.1 for the certificate of admission and upon filing in the office of the clerk the oath of attorney. The clerk shall notify the Secretary of the state bar of such admission and remit the membership fee.

16-16-17.1. Conditional admission. In its sole discretion, the Board of Bar Examiners may recommend to the Supreme Court that an applicant be admitted to the bar on a conditional basis in accordance with these Rules. The recommendation may incorporate such terms, conditions and restrictions and be for such duration as the board determines appropriate. The Supreme Court may accept, reject, or modify the recommendation.

A conditional admission shall be confidential except that the Board of Bar Examiners shall advise the secretary-treasurer of the State Bar and the secretary of the State Bar's Disciplinary Board of such conditional admission, and except as provided in §§ 16-16-15 and 16-19-99. An applicant admitted to the practice of law pursuant to this section is bound by the terms of such conditional admission. Applicants aggrieved by the decision of the Board of Bar Examiners may seek review pursuant to § 16-16-16.

16-16-17.2. Limited purpose of conditional admission. As provided by 16-16-7.3, conditional admission may be employed to permit an applicant who currently satisfies character and fitness requirements to practice law while his or her continued participation in an ongoing course of treatment or remediation for previous misconduct or unfitness is monitored to protect the public. Conditional admission is neither to be used as a method of achieving fitness nor as a method of monitoring the behavior of all applicants who have rehabilitated themselves from misconduct or unfitness.

16-16-17.3. Limited circumstances under which conditional admission may be considered. The Board of Bar Examiners may recommend that an applicant be admitted to the bar conditioned on the applicant's compliance with relevant conditions prescribed by the Board. To be eligible for conditional admission an applicant must satisfy all requirements for admission to the bar, possess the requisite good moral character and fitness for admission, and be engaged in a sustained and effective course of treatment for or remediation of one of the following:

- a. substance abuse or dependence;
- b. a diagnosed mental or physical impairment that, should it reoccur, would likely impair the applicant's ability to practice law or pose a threat to the public; or
- c. neglect of financial affairs.

Conditional admission may be employed only when an applicant has been engaged in a sustained and effective course of treatment or remediation for a period of time sufficient to demonstrate his or her commitment and progress.

16-16-17.4. Report of recommendation to Supreme Court. In the event that a majority of the members of the Board of Bar Examiners votes to recommend the conditional admission of an applicant, the Board shall report to the Supreme Court the matters of concern, the nature, substance, and duration of the course of treatment or remediation in which the applicant is engaged, complete and detailed information regarding the applicant's progress in connection therewith including any lapses or failures, the Board's recommendation regarding the terms and conditions of admission, any additional facts relevant to the recommendation, and confirmation of the applicant's consent to admission on a conditional basis.

16-16-17.5. Review of conditional admission. The Board of Bar Examiners shall review each conditional admission no later than the date specified in the Supreme Court's order granting conditional admission. The Board shall recommend to the Supreme Court that:

- (1) The conditional admission be terminated, resulting in loss of license; or
- (2) That the conditional admission be modified and/or extended; or
- (3) That full admission be granted.

The Supreme Court may accept or reject the recommendation.

16-16-18. Oath of attorney--Form and administration. The oath of attorney shall be administered by a justice or judge of any state appellate court or court of general jurisdiction or by a justice or judge of any federal appellate or district court. The form of the oath of attorney shall be in the substance as follows:

I do solemnly swear, or affirm, that:

I will support the Constitution of the United States and the Constitution of the state of South Dakota;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from that client or with the client's knowledge or approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

16-16-19. Rights and privileges conferred by license to practice law. The license referred to in §16-16-1 shall constitute the person receiving the same an attorney and counselor at law, and shall authorize him for and during his good behavior and his maintenance of active membership in good standing in said state bar of South Dakota to practice in all the courts of this state and to demand and receive compensation for any services he may render as an attorney and counselor at law in this state.

16-16-20. Roll of attorneys maintained by clerk of Supreme Court. The clerk of the Supreme Court shall maintain a permanent roll of all persons admitted to practice law. The records of his office shall show whether or not persons enrolled maintain active membership in the state bar of South Dakota.

16-16-21. Reinstatement of inactive attorneys—Persons eligible. The provisions of §§16-16-22 to 16-16-24, inclusive, apply only to a person who:

- (1) has been duly licensed to practice law in this state;
- (2) has not maintained status as an active member of the state bar of South Dakota;
- (3) is of good moral character; and
- (4) may under bylaws of such state bar regain such active status and the resulting privilege of practicing law in this state only by obtaining from the Supreme Court certification of qualifications for resumption of such practice.

16-16-22. Application for reinstatement—Fee and charges—Determination of eligibility. The application for certification pursuant to §16-16-21 and the supporting proof shall be in such form as the Supreme Court may direct. The applicant shall pay to the

clerk of such court and to the Secretary of the Board of Bar Examiners the same fees and charges as required of applicants for a license to practice law. If the court is satisfied as to the prerequisites stated in §16-16-21 for entertaining such application, there shall be determined as provided in §16-16-23 the qualifications of the applicant for such certification.

16-16-23. Examination required of applicant for reinstatement--Examination dispensed with if applicant manifestly qualified. Except as otherwise hereinafter specifically stated, certification pursuant to §16-16-21 shall be issued only if the applicant satisfactorily passes the examination for which provision is made in §§16-16-9 and 16-16-10. If, however, such court is satisfied from the proof submitted and from such independent investigation as may be made by the court that the applicant is manifestly qualified to practice law in this state, the court may, in its discretion, issue such certification without such examination. In determining whether or not the court shall certify the applicant without requiring examination the court shall take into consideration such factors as it may deem pertinent, such as the extent of the applicant's experience and practice of law; his past success in the profession; his demonstrated proficiency therein; the character of his business or professional work other than practice of law; and the extent, if at all, to which such other business or professional work has related to legal problems. If an applicant for certification pursuant to §16-16-21 is required to take such examination and fails three times to pass the same, he may not be permitted to take another examination except by permission of the Supreme Court.

16-16-24. Notice to state bar of reinstatement of attorney--Payment of membership fees. Upon issuance of certification pursuant to §16-16-21, the clerk of the Supreme Court shall notify the Secretary of the state bar thereof, whereupon the applicant shall be entitled to enrollment as an active member of such state bar upon payment by him to the Secretary of such state bar of the current fees required of active members and all other membership fees, if any, owing from such applicant to such state bar and all delinquency penalties as to any such fees.

* Citations are to the South Dakota Codified Laws.

REGULATIONS OF THE
BOARD OF BAR EXAMINERS
STATE OF SOUTH DAKOTA

The following regulations are those adopted from time to time by the Board of Bar Examiners; approved by the Supreme Court of South Dakota pursuant to SDCL 16-16-5, and now in effect.

(1) **Application for Admission to Practice Law.** Each applicant for admission to practice law shall file with the Secretary of the Board of Bar Examiners a written application, together with five complete machine or photo copies thereof, in the form prescribed by the Board of Bar Examiners. Such application and copies thereof shall be postmarked on or before November 1 for the February examination and on or before April 1 for the July examination and shall be accompanied by the fee prescribed in the applicable rules of court and a recent photograph of the applicant, and DCI and FBI fingerprint cards.

Each applicant for admission shall also file a request for preparation of a character report and application with the National Conference of Bar Examiners. Such request and application shall be postmarked on or before November 1 for the February examination and on or before April 1 for the July examination and shall be accompanied by the fee prescribed by the National Conference of Bar Examiners.

(1.1) **Application for admission without examination.** Each applicant for admission to practice law without examination shall file with the Secretary of the Board of Bar Examiners a written application, together with five complete machine or photo copies thereof, in the form prescribed by the Board of Bar Examiners. Such application and copies thereof shall be accompanied by the applicable fees, a recent photograph of the applicant, and DCI and FBI fingerprint cards.

Each applicant for admission without examination shall also file a request for preparation of a character report and application with the National Conference of Bar Examiners. Such request and application shall be accompanied by the fee prescribed by the National Conference of Bar Examiners.

(2) **Application Forms and Payment of Fees.** All fees shall be paid by money order or certified check. The application form shall require each applicant to waive confidentiality and privacy rights in order to allow the Board of Bar Examiners to inquire into the applicant's moral character through examination of state, federal, police, court and security records.

(3) **Bar Examination Subjects.** All applicants, except those applying pursuant to SDCL 16-16-7.6, SDCL 16-16-12.1, or SDCL 16-16-12.3 are required to take the bar examination which consists of the Multistate Essay Examination (MEE), an essay question on Indian Law, the Multistate Performance Test (MPT), the Multistate Bar Examination (MBE), and the Multistate Professional Responsibility Examination (MPRE). Subject matter outlines for the MEE, MPT, MBE, and MPRE are available at the National Conference of Bar Examiners' website at <http://www.ncbex.org/>.

The MEE is a two and one half hour examination consisting of five essay questions. The MEE will test both general and South Dakota principles of law.

Indian Law includes basic principles of federal Indian law, including but not limited to civil and criminal jurisdiction, the Indian Civil Rights Act, the Indian Child Welfare Act, and the Indian Gaming Regulatory Act. It does not include tribal laws or customary laws. Indian Law is tested by one essay question after the MEE.

The MPT consists of two ninety-minute questions which test the fundamental skills of problem solving, legal analysis and reasoning, factual analysis, communication, organization and management of a legal task, and recognizing and resolving ethical dilemmas. Each question shall contain all of the resource material necessary to complete the performance examination. The MPT will test both general and South Dakota principles of law.

The MBE is an objective six-hour examination containing 200 multiple-choice test questions covering the subjects:

Constitutional Law	Contracts
Criminal Law and Procedure	Evidence
Real Property	Torts
Civil Procedure (effective February 2015 bar exam)	

The MPRE consists of 50 multiple-choice test questions and measures an applicant's knowledge of the ethical standards of the legal profession.

(4) Passing Score.

The bar examination is comprised of three portions:

- A) The combined MPT, MEE, and Indian law portion,
- B) The MBE, and
- C) The MPRE.

An applicant must pass each portion of the examination. A general average of 75% or higher on the combined MPT, MEE, and Indian law portion of the examination shall be deemed a passing score on that portion of the examination. A scaled score of 133 or higher shall be deemed a passing score on the MBE portion of the examination. An applicant may receive additional points on their MBE score, not to exceed three additional points, based on their score on the combined MPT, MEE, and Indian law portion of the examination as follows: 80 to 84 percent, one point; 85 to 89 percent, two points; and 90 percent or more, three points. These additional points may not be transferred to an examination administration other than the one in which they are obtained. A scaled score of 85 shall be deemed a passing score on the MPRE portion of the examination. The Board of Bar Examiners shall determine the passing score on each portion of the bar examination in advance of the examination. Written notice of any deviation from the scores enumerated in this regulation will be given to the dean

of the University of South Dakota School of Law and all applicants for admission to practice law by examination.

An applicant who has failed only one portion of the exam may elect to retake both portions of the examination or only that portion which the applicant failed; however, a passing score on one portion of the examination shall only be valid for a period of two years to exempt the applicant from retaking that portion of the examination. An applicant who elects to retake both portions of the examination must obtain a passing score on both portions of the examination in that administration of the bar examination in order to pass. An applicant who fails either: A) the MPT, MEE, and Indian law portion of the examination: and/or B) the MBE portion of the examination three times must receive Supreme Court permission pursuant to SDCL 16-16-11 to take another examination.

(5) Acceptance of Multistate Bar Examination Results from Other States. In its discretion, the Board of Bar Examiners may accept an applicant's previous scores on the MBE administered in a jurisdiction other than South Dakota if taken within two years prior to the next scheduled examination, if the score on the MBE is a scaled score of 135 or above and if the applicant passed the entire bar examination in the other jurisdiction. The Board of Bar Examiners may accept an applicant's MPRE score if taken within twenty-eight months prior to the next scheduled examination and if the score is a scaled score of 85 or above.

(6) Transfer of Multistate Bar Examination Results to other States. An applicant seeking to transfer an MBE score to another jurisdiction shall apply to the National Conference of Bar Examiners for transfer and pay its fee for transfer.

(7) Places and Dates of Examinations. Unless different times and places are fixed by the Board of Bar Examiners, the examinations will be administered at the following times and places:

The MPT, MEE, Indian Law Question and MBE are given on the last Tuesday and Wednesday of February and the last Tuesday and Wednesday of July in Pierre, South Dakota. The MPT, MEE and Indian Law Question are given Tuesday; the MBE is given on Wednesday.

The MPRE is given in March, August and November.

Notice of the times and places shall be given each applicant at the time of granting permission to take such examinations.

(7.1) Law Student Registration. Applicants to law school and first-or second-year law students who intend to take the South Dakota bar examination following graduation may register with the Board of Bar Examiners on forms prescribed by the Board. The registration must be accompanied by the \$50 South Dakota registration fee as well as the fee required by the National Conference of Bar Examiners' law student registrant program for an initial character report. Registration under the rule is not deemed an application for permission to take the bar examination.

The Board of Bar Examiners shall review the registration and character report to identify character and fitness issues that may hinder or preclude later admission. The Board will report its findings to the registrant. The Board's findings are both preliminary and non-binding in nature. Additionally, the findings will not constitute permission to take the bar examination or a waiver of the consideration of facts or conduct that are either later discovered or occur after the Board's review under this rule.

(8) **Appeal.** The Secretary of the Board of Bar Examiners shall make an initial determination regarding whether any act taken by an applicant pursuant to these rules satisfies the requirement of the rules. In addition, whenever the rules provide for a waiver of any deadline or other exercise of discretion by the Board including acceptance of results from other states the Secretary of the Board of Bar Examiners shall make an initial determination which shall, within twenty days, become a final decision of the Board unless appealed as provided herein. Nothing in this rule shall prohibit the Board from sua sponte altering or reversing any initial decision of the Secretary of the Board of Bar Examiners or from directing the Secretary of the Board of Bar Examiners to transfer any case, issue or question directly to the Board without entering an initial decision without notice to the applicant; however, such action shall constitute final action by the Board for the purpose of review by the Supreme Court pursuant to §16-16-16. In addition, the Secretary of the Board of Bar Examiners or an applicant may submit an application or other issue directly to the Board of Bar Examiners for determination whenever an application, or acknowledgement by an applicant, discloses a facial violation of bar entry requirements. The procedures provided in Rule 9.1 will apply except that the Secretary of the Board of Bar Examiners shall make a recommendation to the Board of Bar Examiners regarding the issue submitted directly to the Board. Results of examinations administered by the Board are not determined by the Secretary and constitute final action by the Board.

(8.1) **Procedure.** Whenever an applicant is aggrieved by an initial decision of the Secretary of the Board of Bar Examiners the applicant shall request that the Secretary reduce the determination to writing if necessary and may, within twenty days of the date of mailing of Secretary's initial decision, appeal to the Board of Bar Examiners. Any applicant seeking review of the Secretary's initial decision shall transmit to the Board a copy of the initial decision sought to be reviewed together with such argument, authorities and evidence in the form of sworn affidavits as the applicant deems necessary. The submission may not exceed sixty pages in length and shall consist of an original and nine copies of the submission. Upon receipt of a request for review the Secretary shall respond setting forth the reasons for taking the action under review. A copy of the Secretary's response shall be served upon the applicant and Board.

The Board of Bar Examiners in its sole discretion may seek additional evidence or explanation, including testimony under oath, from the applicant or the Secretary. In addition, the Board may request oral argument from the applicant. When the Board of Bar Examiners has satisfied itself that it is fully informed in the premises, it may adopt, modify and adopt as modified, or reverse the Secretary's initial decision. In the event the Board reverses the Secretary's initial decision it shall render a final decision which shall be communicated to the applicant in writing. The foregoing shall constitute final action by the Board of Bar Examiners for the purposes of review by the Supreme Court pursuant to SDCL 16-16-16.

NOTE: Applications for admission to practice law may be obtained from the Secretary, State Board of Bar Examiners, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota 57501