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Legal Assistants Committee of the State Bar  
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February 5, 2007

South Dakota Supreme Court  
500 East Capitol  
Pierre, SD 57501-5070

Re: Proposed changes to SDCL 16-18-34 through 16-18-34.7

Dear Justices:

I am writing as the Chair of the Legal Assistants Committee of the State Bar. I will attend the Rules hearing scheduled for February 15<sup>th</sup>, as a proponent of the proposed changes to SDCL 16-18-34 through 16-18-34.7.

The proposed Rule changes, as voted favorably on by the bar membership in June, 2006, are the collaborative work of the Legal Assistants Committee and the Professional Development Committee of the South Dakota Paralegal Association, which is chaired by Teri Braun. These proposed changes reflect two years of work by both of these committees.

The major change is found in SDCL 16-18-34.1. The changes in the other statutes are limited to changing the term "legal assistant" to "paralegal." A legal assistant and a paralegal are the same thing and the terms are interchangeable under the current statute; however, lawyers, judges and even legal assistants/paralegals themselves, often misuse the terms. The rule change suggests the substitution/or replacement of the term legal assistant throughout SDCL 16-18-34 through SDCL 16-18-34.7 with the term paralegal. It is hoped that this change will eliminate the confusion and misuse of the terms.

The more significant changes are found in SDCL 16-18-34.1. I have attached copies of the original rule adopted by this Court in 1992 (Appendix A) and the subsequent revision of the rule which was adopted in 1997 (Appendix B). I am also attaching an article that was published last summer in the Legal Assistant Today, which outlines the paralegal licensing/regulations for all states. (Appendix C)

South Dakota has been progressive in dealing with the issue of regulating paralegals. Some states have no regulations. Currently, no states require licensing; however, Wisconsin's Supreme Court has a pending petition regarding the Licensure and Regulation of Paralegals. The Task Force Final Report is found in Appendix D. This Petition was filed in October 2004, and is currently number three on the Supreme Court's agenda. There are many in the field who think that once Wisconsin embraces licensure, it will have a "domino effect." (Appendix E, AAPI Annual Seminar, Legal Assistants Today.)

The proposed rule change is not a licensing statute. The changes suggested do tighten the requirements for being minimally qualified as a paralegal in the state of South Dakota. Furthermore, everyone who qualifies under the current statute is "grandfathered" in. The statute would require either certification or graduation from an ABA approved program of study. I have set forth the requirements of the three national certifying examinations. (Appendix F) The proposal does eliminate the sections which allowed "in-house" training. The problem seen in the industry, is that the lawyers are too busy to give real "in-house" training. It is also important to note that twenty years ago, there were no paralegal schools in South Dakota (or really any where else). Now, we have two ABA approved schools in Rapid City and one that has pending approval in Sioux Falls. For someone who is working in a law firm with no formal education, certification is available.

The proposed changes will advance both the profession and professionalism of South Dakota paralegals and will promote the protection of the public. On behalf of the Legal Assistants Committee, we respectfully request that the Court adopt the proposed rule changes.

Sincerely

Marya Vrooman Rogers  
Chair, Legal Assistants Committee

Appendix A

SOUTH DAKOTA 1992 SESSION LAWS  
1992 REGULAR SESSION OF THE 66TH LEGISLATURE

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Additions and deletions are not identified in this document.

Ch. 370 (Supreme Court Rule No. 92-5)  
WEST'S No. 367  
LEGAL ASSISTANTS--QUALIFICATIONS--ETHICAL GUIDELINES

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE ADOPTION OF A NEW )  
RULE RELATING TO THE UTILIZATION OF )     RULE 92-5  
LEGAL ASSISTANTS )

Pursuant to a hearing held on February 13, 1992, at Pierre, South Dakota, relating to the adoption of a new rule regarding the utilization of legal assistants, the Court having considered the proposed new rule, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that the following new rule be and it is hereby adopted to read in its entirety as follows:

**Definition of Legal Assistant.** Legal assistants (also known as paralegals) are a distinguishable group of persons who assist lawyers in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which will qualify them to do work of a legal nature under the direct supervision of a licensed lawyer.

**Certain Individuals Disqualified.** Any person having been convicted of a felony shall not serve as a legal assistant in the State of South Dakota, unless upon application to the Supreme Court of South Dakota, establishing good moral character and restoration of full civil rights, and its approval

thereof.

Minimum Qualifications.

- (1) Successful completion of the Certified Legal Assistant (CLA) examination of the National Association of Legal Assistants, Inc.; or
- (2) Graduation from an ABA approved program of study for legal assistants; or
- (3) Graduation from a course of study for legal assistants which is institutionally accredited but not ABA approved, and which requires not less than the equivalent of sixty semester hours of classroom study; or
- (4) Graduation from a course of study for legal assistants, other than those set forth in (2) and (3) above, plus not less than six months of in-house training as a legal assistant; or
- (5) A baccalaureate degree in any field, plus not less than six months in-house training as a legal assistant; or
- (6) A minimum of three years of law-related experience under the supervision of a lawyer, including at least six months of in-house training as a legal assistant; or
- (7) Two years of in-house training as a legal assistant.

Provided, further, that any legal assistant hereunder shall have a high school diploma or general equivalency diploma (GED).

For purposes of these standards, "in-house training as a legal assistant" means lawyer education of the employee concerning legal assistant duties and these guidelines. In addition to review and analysis of assignments, the legal assistant should receive a reasonable amount of instruction directly related to the duties and obligations of the legal assistant.

Utilization of legal assistants is subject to the following rules:

- (1) A lawyer may permit a legal assistant to assist in all aspects of the lawyer's representation of a client, provided that:
  - (a) The status of the legal assistant is disclosed at the outset of any professional relationship with a client, other lawyers, courts or administrative agencies, or members of the general public;
  - (b) The lawyer establishes the lawyer-client relationship, is available to the client, and maintains control of all client matters;
  - (c) The lawyer reviews the legal assistant's work product and supervises performance of the duties assigned;