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December 15, 2006

Honorable Chief Justice David Gilbertson
 Supreme Court of South Dakota
 500 East Capitol Avenue
 Pierre, SD 57501-5070

SUPREME COURT
 STATE OF SOUTH DAKOTA
 FILED

DEC 18 2006

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

Shirley A. Johnson Long
 Clerk

Dear Chief Justice Gilbertson:

I would appreciate your making these comments known to the rest of your brethren on the Supreme Court. I, therefore, submit an original and ten copies of these comments. I would like these comments considered at the February 15, 2007 annual rules hearing.

I am extremely opposed to the proposed changes above-referenced. I made my feelings known at the State Bar Convention last summer when this matter was being introduced to members of the Bar. While it is true that a majority of those present voted in the affirmative, it was, in fact, a very close vote. Moreover, several members of the Bar who voted in favor of the proposal thought they were voting simply to confirm the committee report, not to endorse the merits of the proposed bill.

My concerns include the following:

1. South Dakota is a rural state. Many of us currently use non-certified paralegals not only as paralegals but as paralegal-secretaries. Paralegals have as their primary purpose the reduction of costs to the client while allowing the lawyer to render a high quality of legal service. The push by the Certified Paralegal Association to have this legislation adopted is absolutely certain to have a monopolistic effect and drive the price of paralegal services up and the availability of paralegals down. Most definitely, the paralegal-secretary which benefits the vast majority of lawyers in this state will cease to exist. As you know, most certified paralegals refuse to serve as secretaries or receptionist. Small law offices will suffer.
2. Most paralegals currently are trained by lawyers to become extremely expert in very specific narrow areas of the law. As you may know, for example, my own wife, Carole, who is a registered pharmacist has become one of the primary sources of information for lawyers around the state when they are seeking advice on subrogation matters, FRISA, worker's compensation matters, and law office management (including trust accounting methods). Her services have benefited lawyers state wide.

Honorable Chief Justice David Gilbertson
Re: Proposed changes to SDCL 16-18-34 through 16-18-34.7
December 15, 2006
Page 2

She is not a formally trained paralegal, nor is it likely that she would be knowledgeable in several of the areas which are contained in the certified paralegal national test. She does not have an interest in becoming expert in those areas since our practice is narrow and confined. Not only do lawyers contact her, but certified paralegals contact her as well.

According to Marya Vrooman Rogers' letter to the members of the State Bar dated October 27, 2006, Carole will soon be out of business if this bill passes. Many qualified paralegals will be put out of business if this bill passes. To my knowledge, no one has done a complete study on the overall affects on the legal system of passing a bill such as this, but it is very clear to me from my personal knowledge that a number of very highly qualified paralegals will no longer be paralegals, and since their lawyers will not be able to charge for their time, their salaries will ultimately be reduced or at least level off. The certified paralegals are, of course, watching out for their own interests in promulgating and pushing this bill, and it is to be anticipated that their increased salaries will come at the expense of many highly qualified people. It is also possible that the overall number of paralegals available to serve as such in South Dakota will greatly diminish.

Where is the public good and purpose in requiring certified paralegals to be able to pass a national test in areas in which they will never practice and in areas in which they have no desire in which to practice. Why should they be required to become expert in matters totally irrelevant to their lives in order to practice a profession they love.

3. It is also predictable that many of the lawyers in our state will not be able to afford to hire certified paralegals as cash flow is always a constant concern in the smaller law practices.
4. An incentive will be created for those lawyers who can no longer bill for a paralegal's time to pad their own hours in order to keep revenues at the necessary level. While, obviously, this is unethical, it is going to happen when we put smaller firms into a difficult financial condition simply to give a monopolistic advantage to a small group of people.
5. A careful reading of this proposed bill will show that there is a highly detrimental affect on the legal profession. Lawyers will essentially be "boxed-in" by this bill and will lose much of the autonomy in their practices that they now enjoy. This is not the age where lawyers should be giving up that kind of autonomy. This bill will likely come back to "bite" the legal profession.
6. The bill will not significantly increase incentives for certification any more than the possibility of "more pay with more training" already does.

Honorable Chief Justice David Gilbertson
Re: Proposed changes to SDCL 16-18-34 through 16-18-34.7
December 15, 2006
Page 3

I am attaching Ms. Vrooman's letter of October 27, 2006, to the Members of the State Bar to my letter as "Exhibit A." It contains the explicit examples of some very high quality paralegals who will no longer be able to serve as paralegals. Please specifically look at Example Four and ask yourself why "Henry" should not be able to continue as a paralegal benefiting the law firm he works for and the clients that they serve.

While advancement in education and certification are laudable goals, allowing only certified paralegals to serve as paralegals and preventing all the highly skilled law-office-trained paralegals (as well as formally educated uncertified paralegals) from serving will do a lot of harm to the Bar and to the public. It is this exclusivity that the "certifieds" are seeking to require that is unnecessary and does not serve the public interest.

With that, I respectfully submit these comments and rest my case.

Thank you for your kind consideration.

Very truly yours,

NASSER LAW OFFICES, P.C.


N. Doan Nasser, Jr.

NDN/cn
Enclosure
cc w/enc:

Thomas C. Barnett, Jr., Secretary-Treasurer, The State Bar of South Dakota
Sara Hartford, South Dakota Trial Lawyers Association
Shirley Jameson-Fergel, Clerk of the South Dakota Supreme Court