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February 21, 2007

Hon. Chief Justice David Gilbertson
South Dakota Supreme Court
500 East Capitol
Pierre, SD 57501-5070

RE: Proposed Changes to Rule SDCL 16-18-34 through 16-18-34.7

Dear Chief Justice Gilbertson:

At the February 15, 2007 Rules Hearing you directed that any further proposed changes to the Proposed Rule be submitted to the Court within ten days of the Hearing. This letter and its enclosure is intended to comply with that directive.

I'm sure everyone agrees that the Hearing was productive and had the effect of enlightening all who participated on the various issues. The interest of the certified paralegals to distinguish themselves from other persons who assist lawyers is admirable, and I have grown to appreciate that interest much more than I did prior to the hearing.

I am hopeful that we can grant that distinction to the paralegals in such a fashion that it does not interfere with non-paralegal personnel being able to assist lawyers in an appropriate way in the distribution of legal services in our State.

I attach hereto and incorporate herein by reference the original and ten copies of my proposed modification of SDCL 16-18-34. The modification does two things:

- First, it identifies paralegals as being a distinguishable group among the groups of persons who assist licensed attorneys in the delivery of legal services.
- Second, in the last sentence of proposed SDCL 16-18-34 (with apologies to Justice Konenkamp since I did not write down his exact suggested change), I have tried to capture the spirit of his suggested change.

SDCL 16-18-34, if adopted, will deal only with "paralegals" and SDCL 16-18-34 through SDCL 16-18-34.7, inclusive, very adequately deals with all current concerns about the regulation of paralegals. I have, therefore, seen fit in my suggested changes not to make any other or further changes to those proposed rules. Notably, SDCL 16-18-34.1(6) and (7) would remain deleted under my proposal.

Hon. Chief Justice David Gilbertson, South Dakota Supreme Court
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In view of the fact that the said inclusive statutes aforesaid will deal comprehensively with paralegals (but will then not deal at all with those who assist lawyers but are not paralegals). I have adopted the suggestion of the Justices at the Rules Hearing who thought that there should possibly be a separate category for legal assistants who are not paralegals. I am, therefore, enclosing a proposed new addition to the statutes which will deal with "legal assistants" and "other personnel" who are not paralegals or legal assistants but who do "assist" lawyers in the delivery of legal services. In my proposal I have, as to legal assistants, fully incorporated the attorney's obligations regarding paralegals and have made them applicable to "legal assistants" as well. This will help to distinguish certified paralegals from "legal assistants" while preserving the ethical requirements which ought to be observed in a law office.

Finally, I am enclosing a second proposed new rule regarding the "other personnel" (such as bookkeepers and accountants, office managers, investigators, nurses, administrative assistants, and legal secretaries, etc.) to clarify that:

- A. It is also proper for them to "assist" lawyers in their respective capacities provided the ethical requirements are maintained as to these personnel; and
- B. These other personnel are distinguished from paralegals and legal assistants so that these "other personnel" will not be accused of unlawfully performing "paralegal" or "legal assistant" duties.

I am emailing the enclosures to your clerk Shirley Jameson-Fergel.

Thank you for your kind consideration.

Very truly yours,
NASSER LAW OFFICES, P.C.


N. Dean Nasser, Jr.

NDN/cn

Enclosure

cc (w/enc):

Marya Vrooman-Rogers, Esq.

Peri J. Braun, CP

Thomas C. Barnett, Jr., Sec-Treas, State Bar of South Dakota

Roger A. Tellinghuisen, Esq.

Henry K. Evans, Esq.

2. AMENDMENT OF SDCL 16-18-23. Definition of ~~legal assistant~~ paralegal. ~~Legal assistants (also known as p~~Paralegals) are a distinguishable group of persons among the groups of persons who assist licensed attorneys in the delivery of legal services. Through formal education, training, and experience, ~~legal assistants~~ paralegals have knowledge and expertise regarding the legal system, substantive and procedure law, the ethical considerations of the legal profession, and the Rules of Professional Conduct as stated in chapter 16-18, which qualify them to do work of a legal nature under the employment and direct supervision of a licensed attorney. This rule shall apply to all unlicensed persons employed by a licensed attorney who are represented to the public or clients as possessing training or education which qualifies them to assist as a "paralegal" in the handling of legal matters or document preparation for the client.

___ Adoption of a new rule: Addition of SDCL 16-18-34.8. An attorney may also employ "legal assistants" who are not paralegals to assist the attorney in the delivery of legal service, upon the following conditions:

(a) That the attorney's use of non-paralegal "legal assistants" shall be, as to said "legal assistant," deemed to bind the attorney to the requirements of SDCL 16-18-34.2-7, inclusive, to the same extent as if said non-paralegal "legal assistant" was a paralegal employed by said attorney; and

(b) That said attorney shall not represent to the public or clients that any person employed by said attorney and who is assisting the attorney in the delivery of legal services is a "legal assistant" (or similar designation) unless said person has first satisfied either of the following requirements:

- 1) A minimum of three years of law related experience under the supervision of a licensed attorney, including at least six months of in-house training as a "legal assistant;" or
- 2) Two years of in-house training as a "legal assistant."

Provided, further, that a "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 legal education of the employee by a licensed attorney 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" and the Rules of Professional Conduct as stated in this chapter.

Persons who have not met these minimum requirements may not use the "legal assistant" designation.

___ Adoption of a new rule: Addition of SDCL 16-18-34.9. Nothing contained herein shall prevent the attorney from employing or utilizing the service of persons other than paralegals and legal assistants to assist the attorney in the performance of the attorney's work for clients (such as bookkeepers and accountants, office managers and administrative assistants, investigators, nurses, computer technicians, legal secretaries, etc.) provided attorney does not hold said persons out to the public or clients as being paralegals or legal assistants unless such persons have first qualified as a paralegal or legal assistant under these rules.

In the event attorney does utilize such other personnel to assist the attorney in the attorney's work for clients as aforesaid, the attorney's use thereof shall, as to said personnel, be deemed to bind the attorney to the requirements of SDCL 16-18-34.2 and 16-18-34.3.