

PHILANTHROPY COMMITTEE

The Philanthropy Committee was appointed by President Tom Fritz and charged with the responsibility of advancing philanthropy through bar activities in South Dakota. The Committee has assisted in the planning and bar sponsorship of the CLE presentation to be held on Thursday, June 18, 1998, during the annual meeting in Sioux Falls featuring Jerry McCoy. The Committee has also begun preliminary work with the South Dakota Planned Giving Council to kick off the state-wide Leave A Legacy Program.

The Leave A Legacy Program is an initiative of the South Dakota Planned Giving Council which is a cooperative effort between local nonprofit organizations, bar and other estate planning professional organizations, community foundations, corporate funders and a variety of media channels. The Leave A Legacy Program encourages people from all walks of life to make gifts from their estates to nonprofit organizations of their choice.

South Dakota practitioners can expect to hear more of the Leave A Legacy Program in the coming months.

Patrick G. Goetzinger, Ch.
Dennis M. Daugaard
Pierce H. McDowell, III

Charles P. Schroyer
Kurt E. Solay

PROFESSIONAL LIABILITY INSURANCE COMMITTEE

Our Committee has been asked to study two questions:

1. Should the rules of professional responsibility be amended to require an attorney to disclose to a client in writing if he or she does not have malpractice insurance?

2. Should attorneys be required to disclose in any advertising if they do not have malpractice insurance?

Our Committee held several meetings concerning this issue and

gathered much information from outside sources. The Committee is very concerned about the lack of insurance carried by many attorneys in the State of South Dakota and the protection of our clients. In that respect, the Committee has come up with a recommendation for the Bar membership to act upon.

The Committee recommends that the Bar adopt mandatory disclosure of non-insurance. Specifically, the Committee unanimously agreed that any attorney or law firm not covered by Professional Liability Insurance shall include that information on their letterhead page and in any print advertisement, yellow page advertisement or TV or radio advertisement. This disclaimer is required only if an attorney is not covered by Professional Liability Insurance. The statement can be placed anywhere on the letterhead. The type must be in black ink and no smaller type than used for the individual lawyer's names. The statement shall be as follows:

This attorney is not covered by Professional Liability Insurance; or

This firm is not covered by Professional Liability Insurance.

The Committee recommends a change in the Rules of Professional Responsibility to accomplish this. The changes would come in 1.4, 7.2, 7.5 and SDCL 16-18-20.2.

To Rule 1.4 we would add a new paragraph as follows:

- c. A lawyer shall inform a client, in writing, by stating on the attorney's letterhead, either that:
 - i. • This attorney is not covered by Professional Liability Insurance; or
 - ii. • This firm is not covered by Professional Liability Insurance.

Rule 7.2 shall be amended by adding a new paragraph, (1) to read as follows:

- (1) Every lawyer shall, in any written or media advertisements, disclose in said advertisement if the lawyer does not have professional liability insurance.

Rule 7.5 shall be changed by adding a paragraph e, which is as follows:

- e. Lawyers shall disclose, ^{to clients} on their letterhead, in black ink with type no smaller than the type used for showing the individual's lawyer's names, the fact that they do not have professional liability insurance.

Finally, we recommend that SDCL 16-18-20.2 under minimum trust accounting procedures, paragraph 2, add a new sentence as follows:

Shall list whether or not professional liability is maintained, who the insurer is with policy number, and the policy limits.

We have recommended that this information be provided to the State Bar by being included in the mandatory reporting requirement to the Supreme Court when trust disclosure requirements are made. In this respect, there will be four questions added to that questionnaire, which include:

1. If you have insurance;
2. Who the insurance is maintained with;
3. Policy Numbers;
4. Limits.

We have recommended that policy limits, for purposes of insurance, be a minimum of \$100,000.

In reaching this decision, the Committee has looked at other jurisdictions. The only other jurisdiction to adopt a mandatory disclosure requirement is the State of Alaska, which is presently in the process of recommending that to their Bar. They have required that

there must be disclosure if a lawyer does not have malpractice insurance of at least \$100,000 per claim and \$300,000 total. This is required by Alaska in written fee agreements in all matters where the fee to be charged is in excess of \$500. The Committee recommends exclusion of lawyers, as set forth in 15-18-20.2, which includes:

1. Full-time members of the judiciary;
2. Non-resident attorneys licensed to practice in South Dakota who comply with comparable trust accounting requirements and reporting requirements in the State wherein they maintain their office; *provided, however, that non-resident attorneys licensed to practice in SD are not included from the disclosure requirement*
3. Non-profit legal services organizations that file a copy of their annual independent audit with the State Bar.
4. Non-resident attorneys, licensed to practice in South Dakota, who have not represented a South Dakota client during the reporting period.
5. Members who have been in an inactive status for the full reporting period; and
6. We feel one additional group should be exempted which is attorneys employed by a governmental entity, or private company, and who do not represent clients outside their official capacity.

The Committee has been troubled by the high number of attorneys that it has been estimated nationwide do not maintain malpractice insurance. It is estimated that this level could be between 25% to 40% of the practicing lawyers. There is no specific information concerning South Dakota; however, it is likely that South Dakota mirrors the national trend. In that respect, the Committee in the past, has studied the question of mandatory insurance. The Committee feels unanimously that mandatory insurance is an important issue which should be looked at implementing in the future. At this time, the Committee was not willing to recommend that the Bar adopt mandatory insurance; however, the Committee feels very strongly that this issue should continue to be studied and presented to the Bar

membership at a later date.

Jeffrey T. Sveen, Ch.
Thomas H. Foye
Jean M. Massa

Michael S. McKnight
Charles P. Schroyer

PUBLIC INFORMATION COMMITTEE

This year the Committee's main project was the Ask-A-Lawyer Program. This program has been successfully presented by the Bar for several years and has grown to include call-ins from South Dakota residents spanning several nights. Over three evenings, volunteer attorneys answered 1,426 calls with 719 of these in Rapid City and 707 of them from Sioux Falls. This compares to 1,214 calls answered in 1997. As in the past year, the bulk of the calls related to Domestic Abuse/Family Issues, Estate and Wills, and Real Estate.

Volunteer attorney counseling is the backbone of this program, with 48 attorneys volunteering from Sioux Falls and 39 attorneys giving free legal advice in Rapid City. Most work 1 ½ hour shifts although several each evening agree to answer phones for the entire 3 hour period. The program was publicized on KELO, KSFY, and KDLT television stations in eastern South Dakota. State Bar President Tom Fritz graciously agreed to do a commercial spot for both TV and radio which was taped in Rapid City and forwarded to the other stations. In addition to television and radio, newspapers were also involved. We utilized the South Dakota Press Association to distribute news releases to all of the newspapers in South Dakota for a minimal charge. East River press releases were mailed to 32 radio stations along with letters naming local attorneys as contacts for interviews for more information. Attorneys agreeing to be the local contacts in Eastern South Dakota included Reed Rasmussen, Aberdeen; John Blackburn, Yankton; Eric Rasmussen, Brookings; David Strait, Watertown; John Theeler, Mitchell; and Darla Rogers, Pierre. This resulted in several radio interviews bringing the message to those communities at no additional advertising costs.

As noted above, this program depends on the cooperation and assistance of attorneys willing to volunteer their time, talent and

expertise. We had a tremendous response from lawyers who participated in both the Sioux Falls and Rapid City areas.

A hearty thanks is given to Cheryle Wiedmeier and Susan Kirkvold from Sioux Falls and Linda Lea Viken from Rapid City for their diligent efforts. These attorneys did a great job in organizing the event and involving committee and bar members in this very worthwhile and productive project.

Traditionally, the Public Information Committee has assisted the Supreme Court in presenting and organizing its oral arguments which take place from time to time out of the Supreme Court chambers. This year it was no different and the committee appreciated its opportunity to assist the court in this regard.

Finally, the Committee would like to thank Tom Barnett and the State Bar staff for its assistance throughout the year.

Douglas G. Fosheim, Ch.
Thomas E. Carr
Timothy M. Gebhart
Jan L. Holmgren

Susan J. Kirkvold
Sabrina S. Meierhenry
Thomas J. Schmitz
Steven R. Smith

REAL PROPERTY, PROBATE AND TRUST LAW SECTION

The Guardianship Forms Committee has completed the guardianship forms which are available in print and on Dakota Disc. The South Dakota Guardianship Forms Manual is available by sending a check to the State Bar of South Dakota payable to Capital Copies and Computers in the amount of \$35.00 plus tax. For those of you who have asked for additional copies of the South Dakota Probate Forms Manual, these are also available by sending a check to the State Bar of South Dakota payable to Capital Copies and Computers for \$35.00 plus tax.

The Title Standards Review Committee under the leadership of Rodrick L. Tobin continues their work to develop a model set of standards. This is a large project and the work is ongoing.