

SOUTH DAKOTA OFFICE OF INDIGENT LEGAL SERVICES

Wednesday, January 21, 2026, 10:00 a.m.

Members Present

- Betsy Hodgen
- Joe Kippley
- Dean Neil Fulton
- Judge Bobbi Rank
- Judge Larry Long
- Dick Travis
- Heather Lammers-Bogard

Excused

- Senator Jim Mehlhaff
- Rep. David Kull

Guests

- Chris Miles

Call to Order:

Dean Fulton called the meeting to order at 10:05 a.m. and established a quorum

Approval of Minutes of Prior Meeting

A motion to approve the minutes was made by Mr. Travis. Seconded by Judge Long. Motion carried.

Case Handling and Status Update

Christopher Miles provided an update on current caseload. There have been 92 clients appointed to the South Dakota Office of Indigent Legal Services and approximately 104 appellate cases. Some clients have multiple appeals. Cases are being handled effectively and distributed evenly among attorneys. A one-page summary of protocols was sent out to attorneys for easy reference at the beginning of the year. The protocols were sent out to reduce service issues and improve case transition. Attorneys have found the condensed protocol helpful. Communication and case handling have improved significantly, especially with public defender offices.

Dean Fulton indicated a budget hearing is scheduled for Friday with the Joint Committee on Appropriations. Discussion will include appellate numbers and potential proposal for trial-level representation starting next year.

Rules Promulgation

Mr. Miles circulated the latest draft of rules to the committee prior to the meeting.

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Mr. Miles indicated consistency in terminology has been updated to use "Indigent Representation Services" throughout the draft. The draft applies broadly to criminal defense and abuse/neglect cases.

Discussion was held on whether performance guidelines should be included in the current draft of administrative rules or be published separately for more detail. Further discussion was held on the advantages or concerns of attaching performance guidelines to administrative rules versus publishing them separately. The consensus was to lean toward removing guidelines from initial rules package and addressing them separately and explore informal comment process via outreaching to UJS, Defense Bar, and bar newsletter link for feedback.

Judge Rank raised concerns about minimum qualifications for Class 1-3 felony representation. Specifically, the requirement for attorneys to provide names of three judges as references. Mr. Miles clarified the intent is to ensure quality representation for serious felony cases with severe consequences. The requirement would apply during the process of joining the panel, not at the time of appointment. Dean Fulton added the focus is on raising quality for higher-level felonies without discouraging attorneys who handle lower-level cases (e.g., DUI) from participating.

Discussion was held on minimum qualifications for felony panels. Judge Rank noted challenges for rural practitioners and suggested a need for a workaround or discretion for judges in such cases. Mr. Miles confirmed the current draft does not include a workaround but is open to adding language to allow flexibility. He emphasized the goal is not to exclude capable attorneys but to ensure quality representation. Judge Long pointed to language in the application section regarding attorneys who have provided representation services within the previous year, suggesting it could serve as a grandfathering provision or basis for flexibility. Ms. Hodgen recalled prior discussion about including a grandfather clause to address this concern. Ms. Hodgen also envisioned mentorship opportunities for younger attorneys to meet qualifications over time, possibly through co-chairing cases. The Board agreed to explore adding flexibility language or grandfathering provisions to avoid excluding qualified attorneys in rural areas.

Dean Fulton raised a question whether to promulgate as-is and solicit comments, acknowledging likely refinements later. He noted potential pushback from some stakeholders advocating for stricter standards. Judge Rank expressed concern about sending rules through formal process without flexibility language; prefers adding discretion before promulgation. Judge Rank warned that lack of comments during formal review could make later changes difficult. Ms. Hodgen supported opening for comments and expects significant feedback on jury trial requirements for Class 3

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felonies. She emphasized the importance of balancing quality standards with practical realities in rural areas.

Mr. Miles highlighted potential issues with requiring references from three judges, especially for attorneys who have tried multiple cases before the same judge. He asked whether trial count or judge references pose the bigger challenge.

Judge Long suggested drafting a section allowing judges to appoint the most qualified available attorney when no fully qualified attorney is in the service area. Ms. Hodgen emphasized that any exceptions should involve oversight by Mr. Miles's office to maintain consistency and ensure training opportunities for less experienced attorneys.

Dean Fulton confirmed that under SDCL 1-26-4, rules can be amended after public comment. Dean Fulton proposed moving forward with promulgation as-is, anticipating significant feedback on qualification standards. He highlighted that board members can submit comments individually and that notice can emphasize this issue for public input.

Dean Fulton proposed a motion to move forward with promulgation of the rules with the performance guidelines removed for now, and to highlight eligibility requirements in the notice for public comment.

Ms. Hodgen moved to approve Dean Fulton's proposal. Seconded by Judge Rank. Motion carried.

Mr. Miles and Dean Fulton will begin the process of promulgation with performance guidelines removed. They will prepare a discussion memo on performance guidelines for informal feedback from judges, defense bar, and other stakeholders. They will highlight eligibility standards in public notice to encourage comment.

Public Comment

Dean Fulton opened the floor for public comment.

Mr. Nicholas Toth of Rapid City suggested labeling rules under consideration separately from finalized rules to encourage feedback. He expressed concern that lack of comment might be misinterpreted as lack of interest. He supported higher standards for attorney qualifications but noted challenges in rural areas and suggested exploring dual-licensed attorneys or firms from other states. He emphasized the importance of oversight and flexibility to ensure quality representation. He concluded by commending the Board's efforts to improve indigent defense. Dean Fulton thanked Mr. Toth for his comments.

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No additional public comments were offered.

Adjourn

Motion to adjourn made by Judge Long. Seconded by Ms. Lammers-Bogard. Motion carried.

The meeting adjourned at 11:04 AM.