

# SOUTH DAKOTA OFFICE OF INDIGENT LEGAL SERVICES

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Wednesday, November 12, 2025, 10 a.m.

## Members Present

- Betsy Doyle
- Rep. David Kull
- Heather Lammers Bogard
- Joe Kippley
- Judge Larry Long
- Dean Neil Fulton
- Dick Travis

## Excused

- Senator Jim Mehlhaff
- Judge Bobbi Rank

## Guests

- Chris Miles

## **Call to Order**

Dean Fulton opened the meeting at 10:00 am and established a quorum

## **Approval of Minutes of Prior Meeting**

**Motion:** A motion to approve the minutes was moved by Mr. Travis and seconded by Judge Long. The motion carried.

## **Case Handling and Status Update**

Christopher Miles provided an update on current caseload. There are currently 67 open appellate files. The office has received a total of 81 appointments to date. Overall, case handling is proceeding smoothly. Some trial attorneys remain unfamiliar with the appellate process. Court administration has provided a list of attorneys taking court appointments, but some of the attorneys may not have received updated information. Efforts are ongoing to ensure all relevant attorneys receive protocols and communications.

In one instance, a trial attorney failed to provide a court-appointed counsel application to the client. The office has since been appointed to the case and the issue is being addressed. No ineffective assistance of counsel claim would apply to the appellate office because it was not appointed until after the issue occurred.

Attorneys who follow the protocols are submitting cases without issue and often go above and beyond in providing necessary information.

In abuse and neglect cases, a procedural issue has been noted. In some cases, the newly appellate attorneys are not served with the Notice of Appeal. This can be corrected, if within the 30-day filing window. Future training sessions may be needed to address service issues.

The office has contracted with two attorneys to provide appellate representation in appellate conflict cases. Both attorneys have experience in abuse and neglect cases and appeals. These attorneys will be appointed when multiple parties qualify for court-appointed appellate counsel on appeal. Efforts are ongoing to expand the roster of qualified attorneys.

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Compensation will follow the current court-appointed attorney guidelines. This approach is budget-neutral, shifting costs from county to state budget. A flat-fee contract model may be considered in the future depending on frequency and volume.

## **Rules Discussion**

Mr. Miles discussed the current court-appointed attorney guidelines in South Dakota. Current guidelines state that representation ends after judgment of conviction is entered. Trial attorneys are advised to consult with clients about appeals and request appointment of appellate counsel, if needed. Mr. Miles emphasized the need to monitor and potentially revise administrative rules to prevent gaps in representation during the 30-day appeal window.

Protocols are in place requiring service of Notice of Appeal to the appellate office. Notifications are being received from trial court clerks and the Supreme Court Clerk's office once appointments are made or cases are docketed. In most cases, the appellate office is receiving timely notice of appointment. Trial attorneys are generally providing early notification when an appeal is forthcoming.

## **Proposed Administrative Rule Updates**

Mr. Miles aims to clarify and reinforce trial counsel's duties upon sentencing, for example, consulting with clients who demonstrate a reasonable interest in appealing and filing a Notice of Appeal if the client wishes to proceed. Mr. Miles stated that trial counsel's involvement in post-sentencing representation is critical for ensuring constitutional rights are upheld. It also promotes meaningful client conversations about potential appellate issues and filters out non-meritorious appeals before they reach the appellate office. If the office is appointed before a Notice of Appeal is filed, the office ensures the appeal is perfected within the 30-day window and all parties are properly served.

County public defender offices will be asked to provide regular data to help assess appropriate caseload standards for indigent defense attorneys in South Dakota. Old standards may allow too many cases while the new standards may be unrealistic for lower-level offenses (e.g., Class 2 misdemeanors). The next steps may be to consider consulting with a group to develop state-specific, case-weighted caseload standards. The office has received data from Minnehaha County (2024 figures) and is awaiting similar data from Pennington County for comparison.

Dean Fulton emphasized the need to run any proposed caseload weights through UJS and gather broader input before setting formal numbers and expressed concern that setting caseload limits too low or too high could lead to pushback or require early revisions. Mr. Miles agreed and suggested removing specific numerical standards for now, focusing instead on broad expectations of counsel. Ms. Doyle supported this approach, noting attorneys are already exercising discretion in declining cases when overloaded.

Mr. Miles agreed to omit specific caseload numbers from the current draft of administrative rules and instead focus on general representation standards and expectations.

Dean Fulton proposed a timeline for Mr. Miles to work with Ryleigh Christopherson to prepare a shareable draft by end of calendar year. The draft can be provided to UJS and other stakeholders for feedback. The target timeline for promulgation will be post-legislative session.

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Dean Fulton encouraged continued written comments or suggestions on the rules. Mr. Miles welcomed input and will continue refining the draft accordingly.

## **Budget Request**

Dean Fulton informed a flat budget request was submitted for the upcoming fiscal year. He noted that in a flat budget year, not going backward is a positive outcome. Dean Fulton anticipated legislation to be dominated by property tax relief discussions, particularly focused on school funding. This environment may limit opportunities for new funding initiatives.

Dean Fulton addressed trial-level representation expansion. While no request will be made this year, there is interest in planning for a formal proposal in the 2027 legislative session. The goal would be to secure funding for trial-level representation beginning in fiscal year 2028. Dean Fulton also announced Mr. Miles is exploring the mechanics and staffing implications of such an expansion.

Representative Kull noted that property tax reform will dominate the legislative session and may crowd out other initiatives. He expressed concern about the impact on local government budgets. Mr. Kippley agreed that schools are likely the primary focus of reform. He suggested using this session to educate legislators on the appellate office's work and momentum, in addition to trial-ballooning ideas for future cost-shifting from counties to the state. Mr. Kippley acknowledged this will likely be a defensive session, focused on mitigating bad proposals rather than advancing new ones. Dean Fulton emphasized the importance of strategic timing and data gathering to support future expansion efforts.

## **Other Business**

Dean Fulton will coordinate with Ms. Henze to schedule bi-monthly meetings for 2026. Special meetings will be scheduled as needed.

## **Public Comment**

No public comments were received.

## **Adjourn**

**Motion:** Judge Long made the motion to adjourn, it was seconded by Mr. Travis. The motion carried.

The meeting adjourned at 10:34 AM.