



United States District Court

## DISTRICT OF SOUTH DAKOTA

### LR 44.1 ATTORNEYS

- A. Bar of the Court.** The bar of this court consists of those attorneys admitted to practice before this court.
- B. Eligibility.** Any person of good moral character who is an active member of the State Bar of South Dakota is eligible for admission to the bar of this court as hereinafter provided.
- C. Procedure for Admission.** An attorney who is eligible to practice law as provided in section B of this rule may apply for admission to the bar of this court. The application sequence is as follows:
1. The applicant must complete an application for admission.
  2. The applicant must consent to an inquiry concerning the applicant's fitness and qualifications for admission. Submission of a completed application is consent and waiver of privacy regarding inquiry into the applicant's fitness and qualifications.
  3. The clerk of court will make any inquiry that may be deemed necessary to obtain information concerning an applicant's fitness and qualifications to practice law.
  4. At least two active judges in this district must approve the application before an applicant may be admitted. In the absence of two active district judges, a senior judge may be the second approving judge.
  5. The clerk of court will report to a district judge in the division in which an application for admission is pending the approval or disapproval of the active judges.
  6. When an application is approved or disapproved, the applicant will be notified.
  7. An applicant approved for admission will be contacted by the court to schedule the applicant's admission ceremony.
  8. Within six months of being approved for admission, an applicant must appear for an admission ceremony with a member of this bar who will vouch for applicant's legal qualifications, integrity, and good moral character. Upon oral motion of a member of the bar, taking the prescribed oath of admission, signing an oath of admission, and paying the required fee, the applicant will be admitted to the bar of this court. Upon admission, the clerk of court will issue a certificate of admission to the new bar member.

**D. Oath of Admission.** The following oath/affirmation will be administered to an applicant for admission to the bar of this court:

I solemnly affirm that I will support and defend the Constitution of the United States, that I will represent my clients conscientiously and ethically, and that I will conduct myself uprightly and according to law in proceedings in this court.

**E. Appearance of Attorney Pro Hac Vice.** An attorney who is not a member of the bar of this court, but who is a member in good standing of the bar of another United States district court, may, upon motion and approval by the court, participate in the conduct of a particular case. Such motion may be allowed only if the applicant associates with a member in good standing of the bar of this court as local counsel. Any prior or pending disciplinary actions or actions resulting in sanctions against the attorney seeking admission pro hac vice must be disclosed in the motion.

Local counsel must sign and file all documents and must continue in the case unless another attorney admitted to practice in this court is substituted. Local counsel must be present during all court proceedings (which include telephone or video conference hearings) in connection with the case, unless otherwise ordered, and must have full authority to act for and on behalf of the client in all matters, including pretrial conferences, trial, and any other hearings.

**F. Attorneys for the United States and Federal Public Defender.**

**1. Resident Attorneys.**

a. **Regular Admission.** Except as provided elsewhere by this rule, an attorney who resides within this district and represents the United States government or any agency or instrumentality thereof or the Federal Public Defender's Office must be admitted to the State Bar of South Dakota before the attorney is permitted to practice before this court.

b. **Provisional Admission.** An attorney who is a member of the bar of another United States district court and has not yet been admitted to the State Bar of South Dakota, but either is a:

(1) resident assistant United States attorney;

(2) resident attorney representing agencies of the United States government; or

- (3) resident assistant federal public defender has 12 months from the date of the attorney's oath of office for the position in South Dakota to be admitted to the State Bar of South Dakota.
- (4) If an attorney is on a term fellowship with the United States or Federal Public Defender, that attorney may be admitted provisionally to practice before this court for the period of that fellowship.

During this period, the attorney may be admitted provisionally to practice before this court.

The procedure for provisional admission follows the procedure for admission outlined in Section C of this rule, except that resident attorneys provisionally admitted will not pay the required fee until they are admitted to the State Bar of South Dakota, at which time the clerk of court will issue a certificate of admission to the attorney.<sup>2</sup>

## **2. Nonresident Attorneys.**

The following nonresident attorneys may be admitted on the attorney's motion, without payment of fees, to practice in this court during the pendency of the attorney's employment, appointment, or designation if the attorney is a member in good standing of the highest bar of any state or the District of Columbia. An application for admission is not required.

- a. An attorney designated as "Special Assistant United States Attorney" by the United States Attorney for the District of South Dakota;
- b. An attorney appointed by the Attorney General of the United States or employed by a federal agency with independent litigation authority to represent the interest of the United States government;
- c. An attorney hired by the Federal Public Defender's Office for the District of South Dakota; or
- d. An attorney employed by the Federal Public Defender's Office for the District of North Dakota.

A judge advocate of the armed forces of the United States representing the United States government in proceedings supervised by judges of this court is not subject to this rule.

**G. Attorney Discipline.**

1. **Automatic Suspension.** Any member of the bar of this court who has been suspended or disbarred from the Supreme Court of the State of South Dakota or who has been convicted of any criminal offense in any United States District Court will, upon appropriate notice from the clerk of court, be suspended from practice before this court.
2. **Discipline by this Court.**
  - a. This court, independent of action taken by the Supreme Court of the State of South Dakota, may disbar or suspend a member of the bar of this court from practice for a definite time, or reprimand for good cause shown, after opportunity has been afforded such member to be heard.
  - b. An application for the disbarment or discipline of a member of the bar of this court will be made to or before the chief judge of this court unless otherwise ordered by the chief judge. At least two district judges of this court will sit at the hearing of such application unless the attorney against whom the disbarment or disciplinary proceeding is brought states in writing or in open court the member's willingness to proceed before one district judge.
  - c. If an investigation is necessary, the chief judge, with the approval of a majority of the district judges, will appoint a member of the bar (hereinafter referred to as "investigator") to investigate charges against any member of this bar. If, as a result of the investigation, the investigator will be of the opinion that there has been a breach of professional ethics by a member of this bar, the investigator, as an officer of the court having special responsibilities for the administration of justice, will file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension, or reprimand. The investigator will be paid from the pro hac vice fund.
3. **Disciplinary Record.** The clerk of court keeps a separate attorney discipline docket. Orders of disbarment, suspension and public reprimand are a matter of public record. All other documents, hearings and records required under the provisions of this Rule will not be publicly disclosed or made available for use in any other proceeding, except upon order of this court.

## **H. Reinstatement of Disbarred and Suspended Attorneys.**

1. An attorney who has been disbarred or suspended in this court may petition for reinstatement at any time. Upon the filing of such petition with the clerk of court, the chief judge may appoint an investigator and may enter an order setting a date for the hearing on said petition on providing at least 21 calendar days' notice. An attorney may be reinstated without a hearing upon a unanimous vote of all district judges who desire to participate in such determinations.

Any investigator appointed will investigate the facts alleged in the petition for reinstatement and will present to the court, in affidavit form or otherwise, any facts in support of or against the granting of said petition. Two district judges of this court will sit at the hearing on said petition, and the order denying or granting reinstatement will be made in writing by said judges.

2. An attorney who has been disbarred or suspended by the Supreme Court of the State of South Dakota and thereafter reinstated by that court to practice in the state courts will not be permitted to practice in this court, notwithstanding such reinstatement, until a petition for reinstatement as prescribed in section 1 above, incorporating a certified copy of the order of reinstatement by the Supreme Court of the State of South Dakota, has been filed in this court and reinstatement ordered after a hearing as above provided. The hearing may be waived by the attorney with the consent of the court.

## **I. Law Students.**

1. **Student Practice.** Any law student acting under a supervising attorney will be allowed to make an appearance and participate in proceedings in this court pursuant to these rules.
2. **Eligibility.** To be eligible to appear and participate, a law student must:
  - a. Be a student in good standing in a law school approved by the American Bar Association.
  - b. Have completed legal studies amounting to four semesters or the equivalent if the law school is on some basis other than a semester basis.
  - c. File with the Clerk of court:
    - (1) A certificate by the dean of the law school that he or she is of good moral character and meets the requirements of

rule 44.1 I.2 and is qualified to serve as a legal intern. The certificate should be in a form prescribed by the court.

(2) A certificate by the law student stating that he or she has read and agrees to abide by the rules of the court, and all applicable codes of professional responsibility and other relevant federal practice rules. The certificate should be in a form prescribed by the court.

(3) A notice of appearance must be filed in each case in which he or she is participating or appearing as a law student. The notice must be signed by a supervising attorney who is a member of the bar or this court.

d. Be introduced to the court in which he or she is appearing by an attorney who is a member of the bar of this court.

3. **Certificate of Admission.** Upon the completion and filing of the certificates required by these rules, the clerk of court will issue a certificate of admission to the law student in a form prescribed by the court. This certificate expires contemporaneously with the expiration date of the dean's certificate unless it is sooner withdrawn. Any law student's certificate of admission may be terminated at any time by the court without notice or hearing and without any showing of cause.

4. **Restrictions.** No law student admitted under these rules will:

a. Request or receive any compensation or remuneration of any kind from the client. This will not prevent the supervising attorney, law school, public defender, or the government from paying compensation to the law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require.

b. Appear in court without the presence of the supervising attorney.

c. File any documents or papers with the court that he or she has prepared which have not been read, approved, and signed by the supervising attorney.

5. **Supervising Attorneys.** Any person acting as a supervising attorney under this rule must be a member of the bar of this court and must:

- a. Assume personal professional responsibility for the conduct of the law student being supervised.
- b. Sign all pleadings and other papers prepared by the law student.
- c. Advise the court of the law student's participation, always be present with the student in court and be prepared to supplement oral or written work of the student as requested by the court or as necessary to ensure proper representation of the client.
- d. Be available for consultation with the client.