



President's Message

Douglas Abraham

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This newsletter is the first newsletter since new officer elections occurred for this organization last Fall. For those of you who do not know me, I want to take the opportunity for a brief introduction. I am a partner at the May Adam law firm in Pierre and have been with the firm for about 12 years. My background is primarily in insurance/public liability defense, but I also lobby during our short legislative session and have a handful of other one-off type engagements that I have been participating in for a number of years.

INSIDE THIS ISSUE:

President's Message

Save-the-Date

Legislative Update

Surviving & Thriving
as an Associate

Our board will have an in-person annual meeting on November 3, with seminar on November 4. We are anticipating an excellent panel of speakers and strongly encourage your attendance. Our annual program committee is working to shore up the speakers for the seminar and you can expect to see a save the date email in the near future to be followed by registration information. This year, the annual meeting and seminar will be hosted in Sioux Falls. I hope you will take advantage of this great opportunity to reconnect with colleagues through the association.

The board also continues efforts to be proactive with the next generation of lawyers through the law school at USD. We also have a handful of committees that continue to seek members, so if you are interested in participating further through the SDDLA, I encourage you to give me a call or send email or reach out to other board members. We would be thrilled to have you participate on one of our committees.

President's Message, Continued

Throughout the course of the year, we will attempt to expand the reach of the organization and reach out to some of the areas that may be underserved in the defense community, particularly, throughout the public entities including the state, counties, and municipalities. I look forward to working with each of you throughout my term as President and hope that we can expand the use of our list-serve to assist each other in securing experts, sharing testimony, and generally providing assistance to our colleagues that are presented in our area of work.

SAVE THE DATE!!

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Legislative Update

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The South Dakota legislative session just wound up with its veto day on March 28, 2022. There were a number of interesting bills that had the potential to significantly impact our profession. This article is not meant to be all-encompassing, but highlights a few of those bills, as well as one piece of legislation in regards to which SDDLA took a position. I will start with HB 1073 which was the bill that would have brought a diploma privilege back to South Dakota. At present, Bar admission standards are governed by rules passed by the South Dakota Supreme Court. HB 1073 would have enabled full legislative control of that process through the institute of diploma privilege for South Dakotan's who graduate from the law school at USD. Notably, it would not have applied to non-residents. The SDDLA wrote a letter in opposition and submitted it to the legislative research council and committee members expressing our organization's opposition to the change and affirming that the legal profession was best positioned with that authority remaining with the South Dakota Supreme Court. Other professional organizations such as South Dakota Trial Lawyers Association, and the South Dakota Association of Criminal Defense Lawyers also opposed along with the Bar Association. The bill died in its first hearing in House State Affairs on a 8/4 vote to kill the bill.

There are a number of bills that would have created a private cause of action for injuries employees suffered due to employer's mandatory vaccination policies as well as a number of bills in different variations that expanded exceptions to mandatory vaccination policies. Notably, due to the substantial disagreement between the House and Senate, all of those bills eventually died.

Two bills were submitted in response to the Supreme Court's decision in *Godbe vs. City of Rapid City*, 2022 SD 1. Those bills were HB 1167 which would have expanded the duty of public road repair and maintenance, and HB 1204 which would have created a private cause of action for spoliation of evidence and would have modified the burden of proof concerning spoliation. Each of the aforementioned bills were overwhelmingly killed in their first committee hearings. It is interesting to note how quickly legislators will react to Supreme Court decisions as the *Godbe* opinion was filed on January 5, 2022, and we still saw two bills that originated from the case this session.

Senate Bill 70 sought to modify the amount of time to report an injury for worker's compensation purposes. It would have changed the three-business day requirement that is currently in SDCL 62-7-10 to 30 days. The bill died 8/1 in Senate commerce.

Legislative Update, Continued

Senate Bill 195 is a bill that justifies taking another look for those of you dealing with suits involving civil liability from claims of assault where self-defense may be raised. The bill passed the Legislature and was signed by the Governor and creates a standard for immunity from civil liability that is applicable in some self defense situations.

Another bill that passed by the legislature and was signed by the Governor that justifies another look is Senate Bill 135. The bill significantly modified provisions regarding agritourism liability and expanded liability protection for agritourism activities. There are some signage and notice requirements, but it is definitely a bill that justifies mention for those of you who have clients operating in this space.

Overall, the 2022 session saw the largest bill introduction total since the late 90's. There were a massive amount of special appropriation bills due to the significant influx in ARPA dollars in the state's coffers. Not surprisingly, those appropriations and the general appropriations bill occupied much of the legislature's attention this year. Should you have any questions concerning any of the bills mentioned or others impacting your practice areas, I would be happy to discuss any of those issues with you.

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Surviving & Thriving as an Associate

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Being a new associate is not easy. It does not take long to realize that law school did not teach you many of the practical skills and knowledge necessary to actually practice law. And now, you are faced with the reality that you need to keep multiple bosses (partners) happy, all of whom have different styles and personalities. Below is a list of tips for young associates to survive and thrive. I realize that many of the attorneys reading this are not associates. If you fit that bill, feel free to pass these along to the young associates in your life that you would like to see survive and thrive in the art of practicing law.

“I am Proud” - There is a story that is passed down to young associates in my firm about a retired partner who once gave an associate a stamp that read, “I am proud.” The retired partner did not literally want the associate to stamp that he was proud of his work product, but it was meant to remind the associate to proofread and polish their work product before providing it to a partner or client. To this end, do not give a partner a work product you would not sign your name to or file with the court. Partners expect you to have typos and misspellings corrected before you give them your work product. We all make mistakes but try to minimize them as much as possible. A good work product coupled with a good work ethic will help you earn the trust of each partner. This will make life easier for you as time goes on, as you will eventually be given the benefit of the doubt if you should have to ask to move a deadline or decline work because you are super busy.

Manage Up and Communicate - The partner is essentially your client – manage up. When work is delegated to you, keep in mind that the partner wants to know that it has not fallen into the abyss. A periodic update is good. Plan to give the partner enough time to deal with the deadline. Never surprise a partner with a problem – communicate, communicate, communicate. If a problem or question arises, offer at least one possible alternative or solution. Do not unilaterally decide whose work is important; ask the partner. If you have competing deadlines, go talk to the partner who gave you the work and let them know about the issue. Otherwise, stay late and figure it out before asking for someone to move their deadline. Think ahead and preemptively help or check in with the lead attorney rather than sitting back and waiting for instructions. You can never give too much notice. This applies to almost everything.

Say “Yes” Whenever Possible - Unless you have to, do not say no to opportunities like getting involved in a trial, taking depositions, etc. Do not turn down work but do be honest about your commitments on other projects. Look for a solution to help the partner who is requesting the work to be done, do not just decline. Partners remember who turned down the request to do the work. Do not make that be what they remember.

Keep Learning - Learn the statutes, do not just use the forms/examples you are given. If someone sends you a form, read the statute that is referenced and understand why you are using it – if you have to argue the motion, you better know the statutes you cited. Do not be afraid to ask the lead attorney questions about judges and strategy in the case. Learn from the more seasoned lawyers regarding what they are doing so you can learn. Just ask if they have a second to talk and then start asking questions.

Surviving & Thriving as an Associate, Continued

Be a Light and Use Your Help - Be friendly to all partners, associate, paralegals, and staff. Do not just go into your office and do your work. Learn about the people in the office. Their families and kids. This will help develop a culture where you and others want to work. Rely on your staff whenever and wherever you can. You are only going to get busier as the years pass, and they are specifically there to help you. Ask yourself, "Is this something I personally need to do?"

Sit on It - Do not write emails or letters that you would not want to show to a judge unless you share them with someone else ahead of time. When in doubt, do not send the email or letter. Adopt the 24-hour rule if there is any internal anguish on whether to send it.

Do Not Be on An Island - When in doubt, talk to someone. You do not want to be on an island and make a bad decision without discussing it with others.

Always get a Deadline and Know the Deadlines - Always get and know the deadlines for internal and external projects. If you do not ask when a project is due, you are setting yourself up to fail. Even when a partner says there is no deadline, consider coming to an agreement on an internal deadline and then beating the deadline. Partners notice these efforts. Build-in time in your own time management for the assignment of new projects you now do not anticipate.

This Too Shall Pass - As much as you can, do not live and die with every project. Remember that you cannot control everything. Control what you can control and try not to stress about what you cannot. All you can do is do the best you can and then let the chips fall where they may. Every associate I know has felt overwhelmed at certain points over their first couple of years. Once you get some experience under your belt and come to terms with what you cannot control, things start to seem less overwhelming.

Manage Your Calendar and Get Some Sun - Stay organized and carefully manage your calendar. If you do this, you can significantly reduce the times when you are drowning in work. To this end, schedule your vacation and put it on your calendar. Do not be afraid to take time off. Just manage your projects, so they are done before you are gone.

