

NATIONALLY RECOGNIZED LEGAL SOLUTIONS

# SOUTH DAKOTA LEGAL NOTES

JAN/FEB 2019

## Welcome **KELLEY SCROCCA**



**Kelley  
Scrocca**

**Kelley (Colleen) Scrocca** is a northern Minnesota native and serves as a key member of Swier Law Firm's Estate Planning & Probate Practice Group.

Kelley is an expert in estate planning, trusts, estate administration, and tax-related issues. She has extensive experience with estate and tax planning for individuals to address issues related to income, gift, generation-skipping, and estate tax matters. These services range

from drafting simple wills, powers of attorney and living will documents to incorporation of more complex trusts, addressing special-needs situations, the formation of LLCs or other entities, as well as additional estate planning options. Each estate plan is specifically tailored to the individual client's personal situation and their personal wants and requirements.

Kelley earned her undergraduate degree from St. Cloud

State University, her law degree from the University of Minnesota Law School, and her LLM in estate planning from the University of Miami Law School's nationally renowned Heckerling Graduate Program in Estate Planning.

Before joining Swier Law Firm, Kelley worked at a boutique trusts and estates law firm in Philadelphia where she practiced exclusively in trust, estate and probate matters in Pennsylvania, New Jersey and Florida. She also worked with a large law firm in Delaware where she worked with high net-worth individuals on estate planning with corporate fiduciaries, assisting them to take advantage of state-specific trust laws. Kelley also frequently forms and provides ongoing consultation for non-profit groups. She is currently licensed to practice law in six states.

Kelley and her husband, Joe, have three children, Cedar, Sutton, and Shea, and two well-traveled cats. Joe's military commitment has allowed Kelley and her family to move six times, travel to 28 states, and 24 countries. She enjoys travel, reading, hiking, singing, and geocaching.



## CONCERT GIVEAWAY

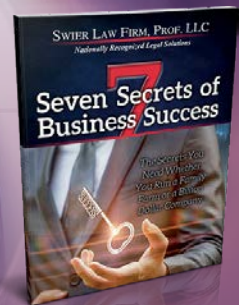
Since the Fleetwood Mac concert in Sioux Falls was rescheduled to February 2nd, you still have a chance to win two tickets!

All you have to do to be entered is:

- **LIKE** the Swier Law Firm Facebook page
- **TAG** your concert buddy in the comments
- **SHARE** the post to your own page

The winner will be chosen on Monday, January 28th - watch our Facebook page for the 9 a.m. announcement. The winner has two hours to respond or someone else will be selected. Good luck!

## FREE DOWNLOAD



Every new business owner wants to create success. We talked with clients, visited with local business leaders and learned the principles so that we could provide you with *The Seven Secrets of Business Success: The Secrets You Need Whether You Run a Family Farm or a Billion Dollar Company*. This is not a motivational book, but rather, a set of reminders that you can apply to your business each day.

You can download this book for free at [SwierLaw.com/Reports](http://SwierLaw.com/Reports).

## AVON OFFICE

202 N. Main Street, P.O. Box 256  
Avon, SD 57315  
p: (605) 286-3218  
f: (605) 286-3219  
toll free: (888) 864-9981

## CORSICA OFFICE

240 E. Main Street  
Corsica, SD 57328  
p: (605) 946-5096  
f: (605) 286-3219  
toll free: (888) 864-9981

## SIOUX FALLS OFFICE

2121 W. 63rd Place, Suite 200  
Sioux Falls, SD 57108  
p: (605) 275-5669  
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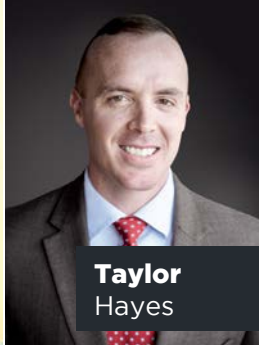
## WHITE LAKE OFFICE

306 S. Johnston Street, Suite 1  
White Lake, SD 57383  
p: (605) 249-2424  
f: (605) 286-3219  
toll free: (888) 864-9981

## WINNER OFFICE

142 E. 3rd Street  
Winner, SD 57580  
p: (605) 842-3373  
f: (605) 842-3375  
toll free: (888) 864-9981

# 5 STEPS NEEDED TO FORM A LIMITED LIABILITY COMPANY



Taylor  
Hayes

*Are you thinking of starting a business? Or maybe you already have and need some help setting up an LLC? The five steps below will guide you in the right direction and set you up for success!*

### STEP #1 - CHOOSE THE LLC'S NAME

South Dakota law requires that an LLC's name include the words "Limited Liability Company" or "Limited Company," or the abbreviations "L.L.C.," "LLC," "LC," or "L.C."

### STEP #2 - FILE THE LLC'S ARTICLES OF ORGANIZATION

A South Dakota LLC is created by filing Articles of Organization with the Secretary of State. These Articles of Organization must include:

1. the LLC's name and address;
2. the name and address of the LLC's registered agent;
3. whether the LLC will be member-managed or manager-managed;
4. if the LLC is manager-managed, the managers' names and addresses must be provided;
5. the name and address of each organizer;
6. the LLC's duration, if not perpetual; and
7. whether one or more of the members of the company are to be liable for its debts and obligations.

### STEP #3 - PAY THE LLC'S FILING FEE

As of July 1, 2019, the filing fee in South Dakota is \$150.00.

### STEP #4 - APPOINT THE LLC'S REGISTERED AGENT

Every South Dakota LLC must have a registered agent for service of process in the state. This is the person or business entity that agrees to accept legal papers on the LLC's behalf if it is sued. The registered agent must have a physical street address in South Dakota.

### STEP #5 - PREPARE THE LLC'S OPERATING AGREEMENT

Although an LLC Operating Agreement is not required in South Dakota, it is good practice to have one. The Operating Agreement serves as your LLC's "rule book" and provides necessary structure for the business.

*Swier Law Firm is here and ready to help. Contact us today for assistance in setting up an LLC.*



## BUSINESS SPOTLIGHT: ALPHAGRAPHICS

AlphaGraphics, is a locally owned and operated, full-service marketing communications company. We're experts in design, printing, mailing and digital archiving services, as well as direct marketing solutions that include the latest technologies in variable data printing, 1:1 marketing and cross-media campaigns.

**(605) 334-7333**

us451.alphagraphics.com

5020 S. Tennis Lane, Suite 1  
One Block East of 57<sup>th</sup> and Louise Ave.  
Sioux Falls, South Dakota 57108

### TESTIMONIALS:

*"AlphaGraphics is absolutely incredible to work with! They are quick and responsive. Our projects often come up very last minute and they find creative ways to get them done in a short time."*

- Naomi M.

*"I love working with AlphaGraphics. They do such a great job of creating exactly what I'm looking for, get it done quickly and with high quality."*

- Maddie P.

## GET NOTICED. GET BUSINESS.®

SWIER LAW FIRM, PROF. LLC

# SWIER LAW FIRM VETERAN OF THE GAME

*It might be cold outside, but summer and baseball season will be here before you know it!*

**Nominate any Active-Duty, Reserve, or Retired military member at [SwierLaw.com/Veteran](http://SwierLaw.com/Veteran)**



# MIDWEST HONOR FLIGHT



The American Veteran is one of our greatest treasures, those men and women who answered our nation's call, especially in times of great need. Our mission is to honor and thank those veterans – especially our WWII veterans – by bringing them to Washington DC for a trip of honor – AT NO COST TO THEM. Please join us in sending them to experience their memorial built 60 years after they came home. Volunteer or send support, it all makes the difference for a group that gave so much and asked for so little.

*Their next mission is scheduled for May 7th, 2019.*

To volunteer at events or donate:  
[SwierLaw.com/HonorFlight](http://SwierLaw.com/HonorFlight)



## ★★★★★ REFERRAL REQUEST

### TESTIMONIAL:

*“Scott and his team are just an outstanding group of people. Each member of his firm is caring, respectful, honest, intelligent, and genuine. His firm has expert, top shelf attorneys that are a perfect fit for any legal issue that may arise in my life. I have called on Scott and his staff to provide me the expert help I need more than once. They always deliver, and I feel that I can trust his firm. Just a darn good group of folks that feel like an extension of my family.”*

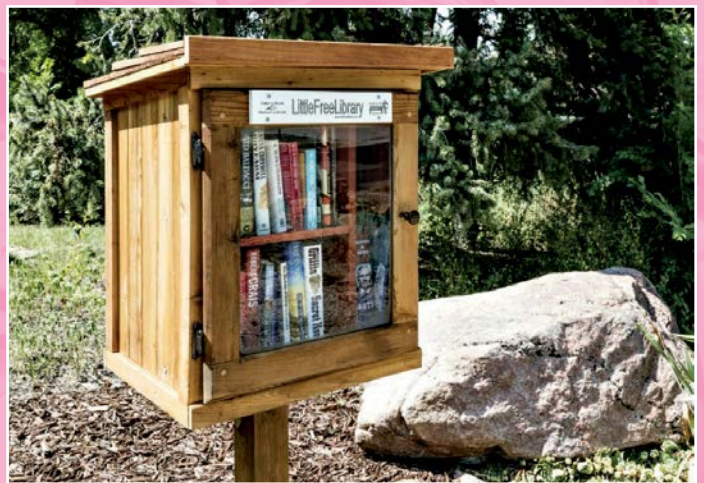
– L.B.

Perhaps the greatest compliment you can give our firm is a referral. Referrals are a huge part of our business and it means everything that you would recommend us to friends and family! If someone you refer to us hires our firm, we will send you – the referrer – a free gift.

**Do you know anyone who could benefit from our services? Have them give us a call today!**

## LITTLE FREE LIBRARY

Although we've installed six Little Free Libraries in recent months, we still have four left! Little Free Libraries inspire a love of reading, build community and spark creativity by fostering neighborhood book exchanges.



Do you have a spot in YOUR front yard for a Little Free Library? Or if you want it to be somewhere that's more accessible, it can go in a park, picnic area or even downtown. If you have the perfect place, please email our Executive Director, Sara Travis, at [Sara@SwierLaw.com](mailto:Sara@SwierLaw.com).



# VARSITY BASKETBALL SPORTSMANSHIP CHALLENGE

Swier Law Firm has selected 10 schools throughout South Dakota to participate in our first ever "Varsity Basketball Sportsmanship Challenge!"

The requirement to win is straight-forward - your team cannot receive any technical fouls during the season (including any post-season play). If the challenge is completed successfully, the teams will win \$400 (\$200 per team) to spend on team camps, shooting shirts or any other way the coaching staff sees fit.

"Good sportsmanship offers an ideal opportunity for any student to develop life skills such as character, teamwork, honor and fair play, excellence and hard work, discipline, overcoming adversity and failure, resiliency and perseverance, citizenship, and the importance of unselfishness," said Scott Swier. "To me, 'sportsmanship' is one of those terms that we all know but probably would explain differently if asked. To me, sportsmanship is an attitude that shows fairness, respect for one's opponent, and grace in winning or losing."

We wish each participating team the best of luck!

- Avon High School
- Burke High School
- Dell Rapids High School
- Gregory High School
- Harrisburg High School
- Lennox High School
- Mount Vernon High School
- Platte-Geddes High School
- Wagner High School
- Winner High School



# THREE IMPORTANT LEGAL TIPS FOR EVERY SMALL BUSINESS OWNER IN SD



Scott Swier

## TIP #1 - SEPARATE YOUR BUSINESS FROM YOUR PERSONAL FINANCES

Most companies choose to create a legal entity – whether a limited liability company, corporation, or other – to avoid personal liability to shareholders or members. This way, the personal assets of the company’s owner – including homes, cars, savings, and possessions – are not at risk for actions taken by the company.

This limited liability is often referred to as the “corporate veil” because the owners of the company are generally protected by it. One of the best ways to prevent your corporate veil from being pierced is to maintain corporate formalities.

For example, keep a separate bank account for your business. Any payments made to the business owner from the business should be in the form of a paycheck written from the business account to the owner’s account. The owner should never simply take cash out of the business account for personal use.

Other ways to avoid personal liability arising from your limited liability business include obtaining a federal tax ID number for your business, and either having enough money in your bank account to cover expected liabilities for the business, or taking out an insurance policy to cover those liabilities.

## TIP # 2 - HIRE A CAPABLE ACCOUNTANT

Hire an accountant who is familiar with your company’s industry. Your accountant will give you advice on what can and cannot be deducted and – almost as importantly – give you an idea which deductions are likely to raise red flags for Internal Revenue Service agents and lead to an audit.

While there are plenty of books explaining business tax deductions, there is a huge difference between theory (what may legally be deducted) and practice (what actually can be deducted without causing an audit). It may not be worth deducting a questionable item that will save you \$500 if that deduction triggers an audit that costs \$1,000.

## TIP # 3 - TREAT LAWSUITS SERIOUSLY

Some small businesses do not appreciate the legal consequences from an unanswered lawsuit.

In South Dakota state court, you have 30 days from the date you are served with a complaint to respond to it. The response is a document called an “answer.”

Failing to respond to a complaint results in a default judgment. Legally, a default judgment is the same as a judgment obtained by jury trial.

Some small business owners believe that if they do not respond to a complaint, there will be only a small consequence, fine, or penalty. This is not true.

If a South Dakota business fails to respond to a complaint –

even if the complaint is completely frivolous – the plaintiff can get a judgment for the value they requested in the complaint.

Finally, your business account can be executed upon, meaning money is taken out of the account – with the help of the court – and given to the plaintiff – or the company can have its physical assets taken by the court and given to the plaintiff.

## CREAMY CHICKEN AND WILD RICE SOUP

*Every Midwesterner knows that January and February are the most bone-chillingly cold months of winter. Beat those subzero temps with this recipe for hearty, creamy chicken and wild rice soup. Serve it up with some crusty bread and park yourself in front of a good movie for a warm and cozy night in!*

### INGREDIENTS:

- 3 tbsp. butter
- 1 onion, chopped
- 2 large carrots, sliced into rounds
- 2 stalks celery, thinly sliced
- 1 lb. boneless skinless chicken breasts
- 1 tbsp. fresh thyme leaves, plus more for garnish
- 3 cloves garlic, minced
- Kosher salt
- Freshly ground black pepper
- 3 tbsp. all-purpose flour
- 4 c. low-sodium chicken broth
- 1 c. heavy cream
- 1 c. wild rice



### DIRECTIONS:

1. In a large pot or Dutch oven, melt butter. Add onion, carrots, and celery. Cook, stirring, until vegetables are tender and liquid has evaporated, 6 minutes. Add chicken and cook until golden, 10 minutes, then add thyme and garlic and stir until fragrant, 1 minute. Season generously with salt and pepper.
2. Add flour and whisk until golden, 1 minute. Pour over chicken broth and milk and season with salt and pepper. Add rice and bring to a simmer until rice is tender and chicken is cooked through. Serve and enjoy!

### WE WANT YOUR RECIPES!

*Do you have a favorite recipe you want to share with the Swier Law Firm family? We’d love to hear from you! Here’s what you should send to [Sara@SwierLaw.com](mailto:Sara@SwierLaw.com):*

- 1) **A detailed recipe, including ingredients and steps**
- 2) **A photo of your finished dish**

*If your recipe is selected for an upcoming newsletter, we’ll make sure to send a little thank you gift your way.*



**Scott Swier**

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*DakotaCon*



**Brooke Schloss**



**Jake Fischer**



**Mike Henderson**



**Amanda Work**



**Taylor Hayes**



**Kelley Scrocca**

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# DAKOTACON

MARK YOUR CALENDARS FOR THE 9<sup>TH</sup> ANNUAL DAKOTACON – SOUTH DAKOTA’S PREMIER CYBERSECURITY EVENT!

DakotaCon is a weekend-long event established by faculty, students, alumni and friends of the College of Computing at Dakota State University. Its mission is to make cutting-edge knowledge and exposure to the latest cybersecurity trends accessible to everyone.

Industry renowned speakers from across the world are brought to the DSU campus to present their research in all areas of cybersecurity. Training sessions are also offered during the three day event.

**We'll see you on March 29th through the 31st!**

For more information, contact Taylor Hayes at [Taylor@SwierLaw.com](mailto:Taylor@SwierLaw.com) or check out [dakotacon.org](http://dakotacon.org).