

## SOUTH DAKOTA LEGAL NOTES

JULY 2014 | [INFO@SWIERLAW.COM](mailto:INFO@SWIERLAW.COM) | [WWW.SWIERLAW.COM](http://WWW.SWIERLAW.COM)



## Swier Law Firm Holds Grand Opening for Corsica Office

On June 18, Swier Law Firm, Prof. LLC officially opened its new Corsica office. This is Swier Law Firm's fourth office and represents a significant expansion of the firm's service to Corsica and the surrounding communities.

Jake Fischer will lead the Corsica office. Fischer is a Parkston native and heads the firm's Agricultural Law Practice Group. Fischer focuses his practice on agricultural law, including crop insurance disputes, employment law disputes, agricultural litigation, entity selection and general corporate matters, environmental concerns and disputes, governmental regulation, purchase and sale of agricultural property, and taxation issues.

"The firm's commitment to client service and its expansion to South Dakota's rural communities are what drew me to Swier Law Firm," Fischer noted. "I look forward to becoming involved in Corsica and the surrounding communities and developing strong relationships with the many business, civic, and charitable organizations."

"The firm's new Corsica office represents the next phase of our plan to have a substantial presence throughout South Dakota," said Scott Swier, the Founder and Managing Partner of Swier Law Firm. "Adding Jake to our firm and opening our Corsica office brings even greater depth and experience to the services we can provide our clients."

# Three Tips for a South Dakota Business Responding to a Subpoena

Here are three tips for a South Dakota business to consider when responding to a subpoena:

## **Tip #1 - Determine possible objections to the subpoena**

Objections to a subpoena range from procedural problems to privilege issues. Examples of possible objections include:

- Lack of personal service
- Witness fees & mileage costs
- After discovery deadline
- 100-mile rule
- Unreasonable response time
- Relevancy
- Undue burden and expense
- Lack of possession, custody or control
- Trade secrets and confidential information
- Privileges

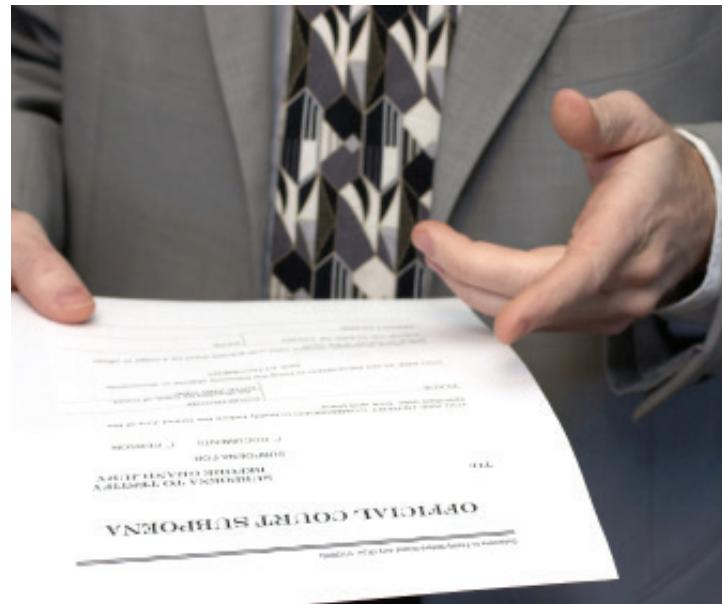
## **Tip #2 - Present objections to the subpoena**

There are basically two ways to present objections to a subpoena. First, a South Dakota business can serve a written list of objections within 14 days after receiving the subpoena. Second, a South Dakota business can file a "timely" motion to quash or modify the subpoena.

## **Tip #3 - Comply with the subpoena**

The last step that a South Dakota business can take in responding to a subpoena is to simply comply with those aspects that are not objectionable.

These three tips will help a South Dakota business reduce the risks of failing to properly respond to a subpoena.



## **South Dakota Pasture/ Rangeland Rental Rates Continue to Rise**

Cash rental rates for South Dakota non-irrigated pasture/rangeland continued to appreciate in 2014 according to results from a farm real estate survey conducted by agricultural economists at South Dakota State University.

The 2014 average cash rental rate for South Dakota non-irrigated pasture/rangeland was \$28.40 per-acre; an increase of \$1.75 per-acre or 6.6% from last year. This percentage increase was smaller than reported increases from the past three years. For example, annual increases of 17.9, 9.2, and 11.3% were reported in 2013, 2012, and 2011, respectively.

*Read more at: [http://www.tristateneighbor.com/news/regional/south-dakota-pasture-rangeland-rental-rates/article\\_fd6b378a-f7cf-11e3-af7d-001a4bcf887a.html](http://www.tristateneighbor.com/news/regional/south-dakota-pasture-rangeland-rental-rates/article_fd6b378a-f7cf-11e3-af7d-001a4bcf887a.html)*

# The Supreme Court's Decision in Clark v. Rameker - What It Means for South Dakota Estate Planning

On June 12, 2014, the United States Supreme Court issued its unanimous decision in *Clark v. Rameker*, holding that funds in an individual retirement account (IRA) that a bankruptcy debtor obtained through inheritance are not "retirement funds" that the debtor may exempt from her bankruptcy estate.

Ruth Heffron created an IRA. When she died, the account passed to her daughter Heidi. Heidi and her husband later filed Chapter 7 bankruptcy and claimed the inherited IRA as exempt from their bankruptcy estate under 11 U.S.C. § 522(b)(3)(C), which provides that a debtor may exempt "retirement funds to the extent those funds are in a fund or account that is exempt from taxation" under the Internal Revenue Code. The bankruptcy trustee and unsecured creditors



objected to this claimed exemption on the basis that the funds were not "retirement funds" within the meaning of the law.

The Supreme Court held that the funds in an inherited IRA are not set aside for the debtor's retirement and are not "retirement funds" under the law. The Court noted the following in support of its decision - First, unlike traditional IRAs, holders of an inherited IRA may never invest additional money in the account. Second, holders of inherited IRAs are required to withdraw money from the accounts, no matter how many years they are from retirement. And

third, the holder of an inherited IRA may withdraw the entire balance of the account at any time and for any reason without penalty. This is not true of traditional IRAs.

## Maxx Hickey Discusses South Dakota's New Texting Ban on KSFY-TV

*Swier Law Firm attorney Maxx Hickey was featured on KSFY-TV on June 27, 2014. Hickey was interviewed for the story "Statewide Texting Ban Goes Into Effect On July 1st."*

**From KSFY.com:**

Many South Dakota communities already have local texting and driving bans, but starting July 1st, it'll be a state-wide law.

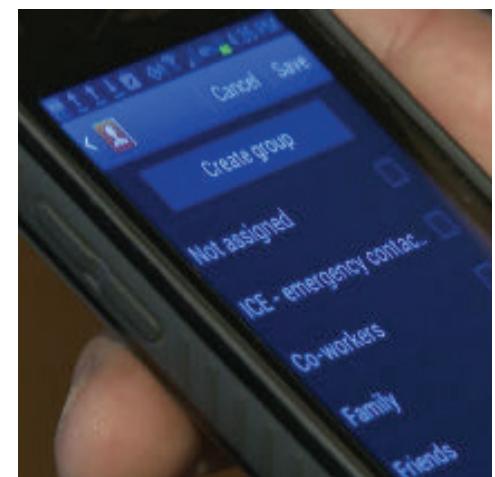
This law tells us that when we're sitting in the drivers seat, save your hands for the wheel, your eyes for the road, and just drive.

And with the state's new law against texting while behind the wheel, it raises questions if the ban is at odds with the supreme court's recent ruling protecting our rights to cell phone privacy. They say police can't search your phone without a warrant.

But some say this ruling won't change a thing when it comes to the ban on texting while driving.

Attorney Maxx Hickey said "the Supreme Court ruling really focused on the fact that when you're arrested, they have to get a warrant to search your phone, you're not going to be arrested for a primary offense such as a speeding ticket, they're not going to be able to search your phone at that time."

Sioux Falls Police officer Sam Clemens said "the way we've been operating against prohibitive use of electronic devices, we haven't been seizing phones and going through those. I think that's maybe a common misconception that people think that we're currently stopping cars if people are texting or on the internet, and grabbing their phones and going



through them but that's simply not the case."

"This ruling by the us supreme court really isn't going to change the way we do things as far as this texting ban," Clemens said.

Taking a break from our phones is a hard habit to break, but anyone who texts while driving in South Dakota after July 1st, is breaking the law.



## National Academy of Family Law Attorneys Names Chris McClure "Top 10 Attorney Under the Age of 40"

Swier Law Firm Attorney Chris McClure has been selected by the National Academy of Family Law Attorneys as a "Top 10 Attorney Under the Age of 40."

The National Academy of Family Law Attorneys is an organization devoted to recognizing the top family law attorneys in the nation. Through a stringent selection process, the NAFLA awards the best family law attorneys in each state with its most prestigious honor of being named "TOP 10."

## kids corner

We have had a busy summer! Kate and I played softball. I played in a tournament and our team got third place!

On July 4th, we got to go to the lake and ride a Jet Ski and swim. Later that night we had all our neighbors come over to our house. We had a picnic and shot fireworks!

Will, Kate, and I have spent a lot of time at the pool this summer. We also are taking swimming lessons. My favorite part is jumping off of the diving board.

Will, Kate, and I got to spend time with Grandma and Grandpa Swier this summer. Kate went on a boat and shopping. Will got to go to a carnival and eat supper on a train. I got to go DeSmet to the Little House on the Prairie pageant. We all had a lot of fun!

We took a vacation to Minnesota. We went shopping at the Mall of America and got to ride some rides. We went swimming at the hotel. We also went to a Twins baseball game. The Twins lost, but the game was a lot of fun!



Chris McClure



Brooke Schloss



Scott Swier



Maxx Hickey



Jake Fischer

## SWIER LAW FIRM, PROF. LLC

### 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) 286-3218 | f: (605) 286-3219  
toll free: (888) 864-9981

### SIOUX FALLS OFFICE

5024 W. Bur Oak Place, Suite 214  
Sioux Falls, SD 57108  
p: (605) 275-5669 | 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

[info@swierlaw.com](mailto:info@swierlaw.com) | [www.swierlaw.com](http://www.swierlaw.com)

