



Received
1/18/23

January 9, 2023

David Schied
P.O. Box 321
Spearfish, SD 57783

**RE: David Schied v. South Dakota Department of Social Services
Lawrence County 40CIV22-000116
South Dakota Supreme Court Appeal No. 30187**

Dear Mr. Schied:

Please find enclosed a true and correct copy of the following:

1. Appellee's **Motion to Dismiss**; and
2. **Memorandum** of Law **in Support of Motion to Dismiss**, with attached Exhibit A.

The same is intended as service by mail upon you.

Very truly yours,

MORRIS LAW FIRM, Prof. LLC


Robert L. Morris

RLM/slt
Enc.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

DAVID SCHIED,)	
)	Supreme Court No. 30187
Appellant,)	
)	
v.)	
)	
SOUTH DAKOTA DEPARTMENT)	
OF SOCIAL SERVICES,)	
)	
Appellee.)	
)	

APPELLEE'S MOTION TO DISMISS

COMES NOW the undersigned, as attorney of record for Appellee, South Dakota Department of Social Services, and hereby moves the Court for dismissal of the subject appeal for the reason the Appellant failed to comply with the statutory requirements of SDCL 15-26A-4, SDCL 15-26A-5, SDCL 16-2-29.2, and SDCL 16-2-29.3. More specifically, the Appellant did not provide an affidavit, in lieu of a filing fee, as required by SDCL 15-26A-5 and his appeal is not perfected. Therefore, the appeal was not timely filed, and the Court lacks jurisdiction.

The grounds, reasons and arguments for said motion are more fully set forth in the Memorandum of Law in Support of Appellee's Motion to Dismiss, which is incorporated by reference herein.

Wherefore, Appellee requests the motion be granted and an appropriate order be entered accordingly.

Dated this 9th day of January, 2023.

MORRIS LAW FIRM, PROF. LLC

Attorney for Appellee

South Dakota Department of Social Services

/s/ Robert L. Morris

Robert L. Morris

P.O. Box 370

Belle Fourche, SD 57717-0370

Phone: (605) 723-7777

bobmorris@westriverlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing document, **APPELLEE'S MOTION TO DISMISS**, upon the persons herein next designated, on the date below shown, as follows:

David Schied P.O. Box 321 Spearfish, SD 57783 <i>Appellant – Pro Se</i>	<input checked="checked" type="checkbox"/> U.S. Mail – First Class, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Odyssey File and Serve <input type="checkbox"/> E-mail
--	--

Dated this 9th day of January, 2023.

/s/ Robert L. Morris

Robert L. Morris

DAVID SCHIED,)
)
 Appellant,)
)
 v.)
)
 SOUTH DAKOTA DEPARTMENT)
 OF SOCIAL SERVICES,)
)
 Appellee.)
)

Supreme Court No. 30187

COMES NOW the undersigned, as attorney of record for Appellee, South Dakota Department of Social Services, and hereby submits Appellee's Memorandum of Law in Support of Motion to Dismiss, as follows:

The Appellant, Mr. Schied, filed a purported “Affidavit of Indigency In Lieu of Filing Fee” with his appeal documents. (Exhibit A). This document is not an “affidavit” that is made out before any person authorized to administer an oath. It is instead, a self-serving declaration made by Mr. Schied that was not made under oath.

Schied v. SDDSS
Memorandum in Support of Appellee's Motion to Dismiss
Page 1 of 5

B. Background and Relevant Facts.

On June 10, 2022, Appellant filed pleadings appealing a Final Order of Dismissal dated May 12, 2022, issued by the Office of Administrative Hearings, **Erich** H. Monson, Administrative Law Judge, OAH#22-365 and Case #00128694, to the Fourth Judicial Circuit, Lawrence County. The Honorable Eric J. Strawn entered an Order and Judgment of Dismissal on October 28, 2022. Notice of Entry of Order was served upon Mr. Schied on October 31, 2022, via First Class Mail.

Mr. Schied served a Notice of Claim of Appeal, “Affidavit of Indigency in Lieu of Filing Fee,” Docketing Statement and Certificate of Service, dated November 23, 2022. These documents were accepted for filing by the Lawrence County Clerk of Court on November 30, 2022.

C. Legal Authority and Argument.

Pursuant to SDCL 15-26A-6, “An appeal from a judgment or order must be taken within thirty days after the judgment or order shall be signed, attested, filed and written notice of entry thereof shall have been given to the adverse party.”¹ SDCL 15-26A-4 sets forth the steps for taking an appeal to this Court. SDCL 15-26A-4(4) provides in pertinent part: “Before the expiration of the time to appeal, appellant shall file the notice of appeal and docketing statement with the clerk of the trial court in which the judgment or order was entered. The clerk of the trial court shall not accept for filing a notice of appeal unless accompanied by a docketing statement and proof of service of copies thereof on each party other than the appellant, *together with the*

¹ The deadline for filing Mr. Schied’s notice of appeal would have been December 5, 2022, including three days for mailing pursuant to SDCL 15-6-6(e).

required statutory filing fees unless exempt by law. (Emphasis added). SDCL 15-26A-5 provides, “In lieu of the filing fees provided for in 15-26A-4, appellant may file an affidavit of indigency...”

SDCL 16-2-29 also addresses the fees charged by the clerk of courts, and directs that “The clerk of courts shall charge and collect the following fees... (2) For all service connected with the preparation and transmission of a settled record to the Supreme Court... fifty dollars...” SDCL 16-2-29.2 permits the Court to waive the payment of filing fees² “... on motion to the court upon the affidavit of the moving party and the entry of an order thereon.” However, pursuant to SDCL 16-2-29.3, an “affidavit” is “required by §16-2-29.2 of the moving party.”

SDCL 19-4-1 specifies, “An affidavit may be made in or out of this state *before any person authorized to administer an oath.*” (Emphasis added). In this case, Mr. Schied filed what he titled as an “affidavit” of indigency, allegedly supporting his failure to remit the otherwise required filing fees for appeal. However, his writing was not sworn to before an authorized person, as required by SDCL 19-4-1, and therefore does not meet the statutory requirements for a waiver of fees. (See attached Exhibit A).

Unless a document “consist[s] of a statement sworn to before a person who has authority under the law to administer oaths,” it is not an affidavit. *Roth v. Illinois Farmers Insurance Co.*, 202 Ill.2d 490, 494, 270 Ill.Dec. 18, 782 N.E.2d 212 (2002). “A document lacking the obligation of an oath should not be regarded as a defective affidavit or an inchoate affidavit. Rather, it is

² SDCL 16-2-29.1 states, “The clerk of the Supreme Court shall charge the following fees and shall collect them in advance: (1) For each action or proceeding originally commenced in or brought to the Supreme Court by appeal, to be advanced by the party commencing or bringing such action or proceeding, fifty dollars.

quite simply not an affidavit; it is something other than an affidavit.” *Id.* See also, *State Farm Fire and Casualty Co. v. Air Vents, Inc.*, 577 F.Supp.3d 941, n.7 (N.D. Iowa 2021) (a “declaration” is not an “affidavit” because it was not signed in front of a notary).

In *Hansen v. South Dakota Board of Pardons and Paroles*, 601 N.W.2d 617 (SD 1999), this Court held that an inmate’s appeal was not perfected by his mailing a notice of appeal to the clerk of circuit court, due to his failure to pay the filing fee or obtain a waiver of the fee within the thirty-day deadline for filing an appeal. This Court stated, an appeal “is not perfected unless and until the filing fee or appropriate waiver is deposited with the clerk of the circuit court.” The Court affirmed dismissing the appeal due to having been untimely filed. *Id.* at 619. Mr. Schied’s unsworn statement does not comply with the statutory requirements to obtain a waiver and his appeal has not been perfected.

While pro se pleadings are held to “less stringent standards,” self-represented litigants are otherwise held to the same standard as attorneys, including the obligations to comply with rules of procedure and evidence. *Zhi Gang Zhang v. Rasmus*, 2019 S.D. 46, ¶ 37, 932 N.W.2d 153, 164. Procedural and evidentiary rules, like the substantive requirements of the law, apply universally to all parties, regardless of whether they are represented. *Id.*

Mr. Schied failed to perfect his appeal before the time for filing an appeal expired. Therefore, any notice of appeal filed after the prescribed period expired failed to confer jurisdiction upon this Court. Failure to timely serve and file a notice of appeal is jurisdictionally fatal to the appeal. *Hardy v. W. Cent. Sch. Dist.*, 478 N.W.2d 832, 834 (S.D.1991) (citing *W. States Land & Cattle Co., Inc. v. Lexington Ins. Co.*, 459 N.W.2d 429, 432 (S.D.1990)).

Wherefore, Appellee respectfully requests that Mr. Schied’s appeal be dismissed.

Dated this 9th day of January, 2023.

MORRIS LAW FIRM, PROF. LLC
Attorney for Appellee
South Dakota Department of Social Services

/s/ Robert L. Morris
Robert L. Morris
P.O. Box 370
Belle Fourche, SD 57717-0370
Phone: (605) 723-7777
bobmorris@westriverlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing document, **APPELLEE'S MOTION TO DISMISS**, upon the persons herein next designated, on the date below shown, as follows:

David Schied P.O. Box 321 Spearfish, SD 57783 <i>Appellant – Pro Se</i>	<input checked="checked" type="checkbox"/> U.S. Mail – First Class, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Odyssey File and Serve <input type="checkbox"/> E-mail
--	--

Dated this 9th day of January, 2023.

/s/ Robert L. Morris
Robert L. Morris

UNDER THE U.S. CONSTITUTION and the SOUTH DAKOTA CONSTITUTION
and the SPIRIT and LETTER of ALL LAWS COMPORTING WITH THE
COMMON LAW(S) OF THE LAND, AND THIS "ARTICLE III COURT OF RECORD"

IN THE MATTER OF "RIGHT TO APPEAL":

David Schied, one of the sovereign American People living in South Dakota as a totally and permanently disabled quad-amputee; a BENEFICIARY of the social welfare system; a Common Law GRIEVANT / CRIME VICTIM and CLAIMANT acting in his *Sui Juris* Private capacity; as well as in his "EX REL" capacity of a PRIVATE, PUBLIC PROXY on behalf of the South Dakota and American "TAXPAYERS" "Beneficiary / Private Public Proxy" –

Sui Juris Relator

v.

The ADMINISTRATIVE "DEEP" STATE of the STATE OF SOUTH DAKOTA as represented by multiplicity of GOVERNOR Kristi Noem, the BUREAU OF ADMINISTRATION as represented by Scott Bolinger And Catherine Williamson; ATTORNEY GENERAL and his/her agents as "assistants;" the S.D. DEPARTMENTS OF "DHS" and "DSS" acting by and through Laurie Gill Shawnie Rechtenbaugh and their respective BAR attorneys Jenna Howell, Jeremy Lippert, Eric Monson, Wade Reimers, and SUBPOENAED named others as "DOES #1-26" operating as a proven Corrupt Racketeering Criminal Enterprise "CO-TRUSTEES" acting in their Private and Public capacities

SOUTH DAKOTA SUPREME COURT
On APPEAL from the
UNIFIED JUDICIAL SYSTEM
THE "STATE CIRCUIT COURT"
(as referred to by "ALJ" Eric Monson
on 5/12/22)
FOURTH JUDICIAL CIRCUIT
LAWRENCE COUNTY
CASE # CIV22-116
SUPREME COURT Case #30119
ADMINISTRATIVE CASE NUMBERS
INCLUDED HEREIN AS "APPEALED"
Case # OHE # PRR 22-02 (fraudulent)
referenced by "CO-TRUSTEES" on 5/6/22
Case # 001286794 (fraudulent) and
OAH # 22-365 (fraudulent)
referenced by "CO-TRUSTEES" on 5/12/22

WITH NOTICE OF
CLAIM OF CONUSANCE
and
DEMAND FOR MULTI-
COUNTY CRIMINAL GRAND
JURY INVESTIGATION

DEMAND FOR
TRIAL BY JURY

BENEFICIARY / RELATOR / PRIVATE PUBLIC PROXY David Schied's:
"AFFIDAVIT OF INDIGENCY" IN LIEU OF FILING FEE

I swear that as of today, 11/20/22, and ever since May 2018 when I nearly died and lost my legs and fingers to a suddenly acquired SEPSIS due to no fault of my own – and rendering me a "totally and permanently disabled quad-amputee" with only one kidney remaining and now in "STAGE 3 renal disease" and with numerous other medical complication – that I have been financially indigent.

I swear that both before and after that near death experience in 2018, I was also indigent due to being a repeatedly proclaimed CRIME VICTIM of the STATE BAR OF MICHIGAN and its "R/K/O" human elements engaged in both "chain" and "wheel" conspiracies of STATE and NATIONAL "insurrection" and "domestic terrorism" against which I still maintain the documents of my decade-and-a-half patriotic plight to both report these crimes to STATE law enforcement, and to seek financial and other relief and protections under STATE and UNITED STATES "CRIME VICTIMS' RIGHTS LAWS," which I helped to institute while as a "Founding Advisory Board" member of the COALITION ON VICTIMS' EQUAL RIGHTS (C.O.V.E.R.) founded by Doris Tate, the mother of

the Manson-murdered actress. Sharon Tate, and by my subsequent association with the JUSTICE FOR HOMICIDE VICTIMS in California.

I swear, as a former “*professionally certified*” public “*special education*” schoolteacher, that both before and after my near-death experience and the “*total and permanent*” loss of my legs and fingers, I had been – and continue today – to be a *bona fide* government “WHISTLEBLOWER” being targeted and retaliated against. I have resultingly been – and continue to be – subject to DISCRIMINATION and other “*civil*” acts of instituted CRITICAL RACE THEORY and CANCEL CULTURE by the “*powers that be*” in the STATE OF MICHIGAN ... if not because of my politico-racial-ethnic national identity as an “*Anglo-American male*” and “*one of the sovereign ‘People’*” identified in the “*Posterity*” of the PREAMBLE of the CONSTITUTION OF THE UNITED STATES for the People of the united States, it was because of the refusal of my *persecutors* and criminal *perpetrators* CRIMINALLY using their “*abuse of power*” to combat my outspoken political status by way of an orchestrated ATTEMPTED MURDER, for which I have sufficient “*findings of fact*” and “*conclusions of law*” to prove in support of my persisting allegations.

I swear that, as a result of what has been succinctly attested to above, I have long never and probably never will own anything of financial worth or substance. I own no home and the only automobile I have cannot be used because I have not owned a STATE-issued “*license to drive*” since I was incapacitated in 2018 by the deadly SEPSIS disease. This is also because the “*principals and agents*” in the STATE OF SOUTH DAKOTA have taken STATE BAR attorney Jenna Howell’s lead – as the “*SPECIAL ASSISTANT ATTORNEY GENERAL*” under employ of both the former “*convicted and impeached*” ATTORNEY GENERAL Jason Ravensborg and DHS “*SECRETARY*” Shawnie Rechtenbaugh as their joint “*legal counsel*” – to “*cancel*” my very part-time weekly ACCESS to the community where I live by also cancelling my “*chore*” or “*homemaker*” services that I had in 2021 to drive that automobile for grocery and other necessary runs from my leased apartment. Incidentally, my RECORDS show that Jenna Howell did this while DEFRAUDING the “*TAXPAYERS*” of the STATE and the UNITED STATES by way of continuing to INVOICE the STATE for “*chore services*” being provided to me that were otherwise NOT actually being provided to me; thus, using me to commit other CRIMES upon the sovereign People unwittingly sponsoring the “*chain*” and “*wheel*” conspiracies of so-called “*government*” operating here in South Dakota in a similar “*RIC’O*” fashion that is proven to be the case in the STATE OF MICHIGAN, in multi-tiered “*Continuing Financial Crimes Enterprises*.”

I swear that, as the captioning of this CASE AGAINST THE “*DEEP STATE*” depicts on the instant “*cover page*,” I am still being discriminated against, retaliated, and kept at the “*status of a pauper*” by those named as “*C’O-TRUSTEES*” of the PUBLIC TRUSTS of the STATE and UNITED STATES constitutions, in spite of their solemn OATHS and DUTIES that I have “*accepted for value*” and now have financial CLAIMS against in DEMAND for the locations and access to their “*SURETY*,” whether in the form of PERFORMANCE BONDS, private or “*blanket*” INSURANCE contracts – including contracts for “*ERRORS AND OMISSIONS*” and “*TERRORISM*” insurance “*riders*” and any other form of “*BONDING*” their “*corpus*” in the event that these government “*actors*” consider themselves or their collective as “*the STATE*” to be ridiculously “*self-insured*.”

I swear that, until my financial CLAIMS are recognized and taken seriously by the same “*STATE*” that refuses to hold itself accountable and to prosecute itself for the alleged CRIMES for which I hold mounds of EVIDENCE against. I will continue to be VICTIMIZED by these same criminals DENYING to me needed “*MEDICAL ASSISTANCE*” which is otherwise FORCING into never-

EXHIBIT A

002

ending DEBT SLAVERY and “*involuntary servitude*” – in blatant violation of the THIRTEENTH AMENDMENT to the U.S. CONSTITUTION, by my being ILLEGALLY coerced into paying for the twenty-percent (20%) of all “*covered necessary medical expenses*” that MEDICARE does not cover at 80%.

I swear that, moreover, where I have persistently been unable to complete private “*Hardship Applications*” proffered by “*medical service providers*” for waiving that 20% of deeper debt, because I have no fingers to complete such “*paper*” applications and/or other “*office*” resources for reproducing all banking statements, apartment contracts, utility bills, etc. for proving what is COERCED by those “*hardship*” application forms– or unwilling to complete those applications because I am unable to LIE in order to FALSELY “*promise to pay*” by “*monthly installments*” when I other know that I cannot do so with a clean conscience – I must submit to constantly deteriorating conditions of health because I am otherwise being constructively DENIED the many medical and dental health services that are “*medically necessary*” and “*prescribed by doctors*” as a “*BENEFICIARY*” of the “*WELFARE*” system ... all because of the dereliction, criminal gross negligence and malfeasance, and the SEDITIOUS and TREASONOUS actions of those being named in this instant lawsuit, which additionally includes the “*DOES 1-26*” who are still being allowed to repeatedly victimize me in spite of multiple THIRD PARTY reports of “*neglect and abuse*” of a disabled and elderly adult.

I swear to the above STATEMENTS – issued under “*penalty of perjury*” for lying – are being delivered as “*true and correct to best of my knowledge and belief*” on this 22nd day of November, 2022.

/s/ **David Schied** ** – one of the sovereign American People acting directly as “*Beneficiary*” and as “*Private, Public Proxy*” on behalf of the sovereign People as “*TAXPAYERS*” living in both the STATE OF SOUTH DAKOTA and elsewhere in the UNITED STATES

** The above signature is authorized by David Schied as a “*totally and permanently disabled quad-amputee*” with “*reasonable accommodations*” exercised by Right according to laws provided by the AMERICANS WITH DISABILITIES ACT. Also, given that this “*quad-amputee*” is not being properly afforded public transportation, prosthetic legs, or mobility devices maintained by the STATE; and given that he does not “*drive*” or have a “*driver’s license*,” it is a “*reasonable accommodation*” to provide such a disabled individual the entitlement to “*serve process*” upon all the courts of the UNIFIED JUDICIAL SYSTEM and the named “*CO-TRUSTEES*” of the “*DEEP*” STATE by electronic email instead.

CERTIFICATE OF SERVICE

On Wednesday, 11/23/22, I sent – to the, being Carol Latuseck in care of her “*DEPUTY CLERK*” Kristie Gibbens – by UNITED STATES POSTAL SERVICE, a true and correct copy of the above-referenced document captioned as “*BENEFICIARY / PRIVATE, PUBLIC PROXY / SUJURIS RELATOR David Schied’s: ‘AFFIDAVIT OF INDIGENCY’ IN LIEU OF FILING FEE*” by both email and by UNITED STATES POSTAL SERVICE via “*Certified*” mail delivery or other verifiable “*tracking*” method with “*signature confirmation*.” That address used was: P.O. Box 626 Deadwood, S.D. 57743-0626; with the email for Kristie Gibbens being:
kristie.gibbens@ujs.state.sd.us

EXHIBIT A

003

Additionally a copy of the above-captioned was sent for filing, along with a "Cover Letter" and other documents to the address publicly posted for the SOUTH DAKOTA "SUPREME COURT" at: 500 East Capitol Ave. Pierre, SD. 57501 via email delivery to the last know viable e-mail address for Shirley Jameson-Fergel as the CLERK OF COURTS for the SOUTH DAKOTA SUPREME COURT: scclerkbriefs@ujs.state.sd.us

The above-captioned was sent for filing, along with a "Cover Letter" and other documents to the address publicly posted for the SOUTH DAKOTA "SUPREME COURT" at: 500 East Capitol Ave. Pierre, SD. 57501.

/s/ **David Schied** **— one of the sovereign American People acting directly as "Beneficiary" and as "Private, Public Proxy" on behalf of the sovereign People as "TAXPAYERS" living in both the STATE OF SOUTH DAKOTA and elsewhere in the UNITED STATES

** The above signature is authorized by David Schied as a "totally and permanently disabled quad-amputee" with "reasonable accommodations" exercised by Right according to laws provided by the AMERICANS WITH DISABILITIES ACT. Also, given that this "quad-amputee" is not being properly afforded public transportation, prosthetic legs, or mobility devices maintained by the STATE; and given that he does not "drive" or have a "driver's license," it is a "reasonable accommodation" to provide such a disabled individual the entitlement to "serve process" upon all the courts of the UNIFIED JUDICIAL SYSTEM and the named "CO-TRUSTEES" of the "DEEP" STATE by electronic email instead.

EXHIBIT A

004

No Postal Markings



Morris Law Firm, Prof. LLC
P.O. Box 370
Belle Fourche, SD 57717

David Schied
P.O. Box 321
Spearfish, SD 57783