

New Associates Making the Client Connection

Understanding the law is one hallmark of a good attorney. Being able to build strong and trusting relationships with clients is another. Two new associates at Woods Fuller Shultz & Smith P.C. are demonstrating a good balance of both qualities.



Jared R. Clark

When an inventor brings their creation to Woods Fuller for patent assistance, Jared Clark understands their passion. Their invention, he says, is like their child. "They have invested a lot of time, and sometimes money, in their invention," explains Jared. "It's important they feel that they've put it in capable hands, knowing we'll secure the best possible protection for them."

Jared became a patent agent before the United States Patent and Trademark Office last spring following two years as a member of the firm's summer clerkship program. After graduating in May 2008 from the University of South Dakota (USD) School of Law, and being admitted to the South Dakota bar, he joined Woods Fuller as an associate, practicing in the area of intellectual property and serving as a patent attorney.

Jared was introduced to intellectual property law while pursuing his electrical engineering degree at South Dakota State University, where he graduated cum laude with Honors College Distinction in 2005. As a student, he worked for the Enterprise Institute, a non-profit corporation that helps researchers, inventors, and entrepreneurs commercialize their ideas.

This Armour, S.D. farm kid was exposed to creative problem solving even earlier, working beside his

father who returned to farm after a mechanical engineering career. Today, Jared expresses his own creativity both in his work with clients and after hours as part of an interactive dinner theater group.

A member of the American Intellectual Property Law Association, Jared says he's pleased to be a part of the only firm in Sioux Falls that has an intellectual property practice. "Woods Fuller offers a variety of opportunities," says Jared. "I'm learning from very experienced attorneys in the field."



Erin L. Beecher

Erin Beecher believes that an attorney must be able to relate and connect quickly with their clients. Those people-relationship skills appear to be second nature to Erin, who joined Woods Fuller as an associate in August.

Growing up in Madison, S.D., Erin graduated from the University of Nebraska-Lincoln in 2004. While an undergraduate student, she considered more than one option, including advertising and optometry, finally settling on psychology and political science. However, it was an experience with the mock trial team at Lincoln that led her to law.

"Our coach was a psychology and law professor, and an attorney," recalls Erin. "He was a great mentor and injected real world application into our mock trial experience." She returned to South Dakota to attend USD School of Law, where she was a member of the Trial Advocacy Team and received the Dean's Certificate for Outstanding Performance in subjects including Commercial Law, Business Planning, Business Associations, and Family Law. Following graduation, she spent a year as a law clerk for the Third Judicial

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Know Construction Dispute Timelines

By *WILLIAM G. BECK AND JUSTIN G. SMITH*

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Whether you're the owner or builder of a residential or commercial property, a construction dispute is not a happy end to a contractual agreement. If you happen to be involved in a construction dispute, it's important to be aware that there are multiple timelines governing construction lawsuits. Following are three major timelines, including the earliest and latest time periods in which construction lawsuits may be filed.

10-year Statute of Repose

Once a commercial or residential building is substantially completed—meaning it can be used for its intended purpose—an owner has a limit of 10 years to file a lawsuit against a builder over an alleged defect in construction. Once the ten years is over, the owner cannot sue under normal circumstances. This statute assumes that most defects should have been discovered within a ten-year period and that problems after that time are more apt to be due to maintenance rather than construction issues.

Six-year Statute of Limitations

Once any defect or damage occurs to commercial or residential property, you have six years to file a lawsuit—as long as it falls within the 10-year Statute of Repose. If a construction defect causes damage to a commercial building one year after completion, for example, the owners have six years from the date it is detected to file a lawsuit. If they wait seven years, on the other hand, they cannot take action even though it falls within the 10-year Statute of Repose.


30-day Pre-Lawsuit Notice

The newest timeline impacting construction disputes is SDCL §15-2A-1, which was recently passed by the South Dakota Legislature. The law is specific to home construction disputes. It requires that before a homeowner can file a lawsuit against a

builder, he or she must send a written notice detailing problems or defects in construction. The builder then has 30 days in which to inspect the house and make an offer to resolve the problem. If the builder does not respond, or refuses to resolve the problem, the homeowner can go forward with the lawsuit.

While the 10-year Statute of Repose, the six-year Statute of Limitations, and the 30-day Pre-Lawsuit Notice are important timelines to know, many others can come into play in a construction dispute. If you are a residential or commercial property owner considering making a claim, or if you're a builder that has received communication from an owner threatening a lawsuit, it's better to contact an attorney earlier rather than later.

For more information on timelines that can impact your construction disputes, contact the professionals at Woods Fuller Shultz & Smith P.C. by calling 605-336-3890. □



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Circuit of South Dakota.

Pleased to be back in her home territory, her practice areas at Woods Fuller include business organizations and transactions, and estate planning—giving her an opportunity to hone in on her penchant for hard work and finesse in handling the details.

It also gives this avid reader and music lover a chance to spend more time with her extended South Dakota family.

She's excited, she says, to be part of the Woods Fuller team. "I love it," says Erin. "It's great to be part of a firm which has such a great reputation and history." □

The Tale and Dangers of the Hidden Franchise

By CAREY A. MILLER AND RYAN W. SNELL

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Thrillers are generally a good read, unless, of course, the subject of the story is your business. Unfortunately, some South Dakota businesses could be unwittingly involved in a tale of woe should they be what's called a 'hidden franchise.'

We all know what franchises are supposed to look like: restaurants sporting the familiar golden arches, for example. But being involved in a franchise may not be so obvious. And, if you don't know your business is a franchise, you won't be complying with federal and state regulations. The result could be fines and injunctions on the federal level, or civil penalties and/or criminal prosecution at the state franchise level.

Because the amendments to the Federal Trade Commission's Franchise Rule and South Dakota's new Franchise Act took effect, it's an opportune time for clients who never considered themselves to be a franchise to make certain they don't fall under the franchise classification.

The building blocks of a franchise

It takes three blocks to build a franchise. Without any one of those blocks, a franchise simply cannot exist. However, at times those franchise building blocks may not be obvious. That's where the 'hidden' aspect comes into play. To be a franchise under law:

- A. You need a trademark license, which might be as simple as giving someone the right to use your business name.
- B. There must be a franchise fee, which could encompass monetary exchange for a wide range of items including anything from fees for manuals, products, or advertising assistance.
- C. There must be an element of control between the franchisor and franchisee. That control could be exercised through a marketing or operational plan, a training manual, or assistance.

What about regulations?

At the federal level, the first law dealing with franchises was passed in 1979. Called the FTC Trade Regulation Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, it was enacted to protect franchisees from fraud and unfair conduct by the franchisor. The FTC Rule, which was amended in July, focuses on disclosure documents that a franchisor must provide to a prospective franchisee. These are detailed documents, including a history of the franchisee and financial disclosures.

Typical with many other states, South Dakota's franchise laws are more substantive than the federal version. Not only does the state's new Franchise Investment Act cover disclosure requirements, but it governs the franchise relationship, as well.

If you are found to be a franchise and not in compliance with disclosure rules, the FTC can enact fines or seek an injunction against your business until you comply. Under South Dakota law, the Division of Securities can also seek an injunction. There are also potential civil penalties up to \$5,000 per violation, and certain types of fraud within the relationship can be punished criminally as a felony. Franchisors are also subject to suits for monetary damages, legal costs, and attorney fees. In instances where franchisor behavior is found to be very oppressive, a judge can award three times the amount of a jury award. In other words, there's a lot at stake if you are a franchise and you haven't followed the federal and state regulations.

To find out if you fit the definition of a franchise, or to better understand what a franchise must do to comply with the new FTC Rule or South Dakota Franchise Investment Act, contact Woods Fuller Shultz & Smith P.C. by calling 605-336-3890. □



Marketing Director Joins Woods Fuller

When Michael T. Williamson joined Woods Fuller this summer as its first marketing director in the firm's 120-year history, he didn't have to travel far. His most recent position was as public relations manager and interim director just up the street at the Washington Pavilion.

He brings years of experience in the marketing and graphic design arena, beginning as an intern with the South Dakota Department of Tourism and including positions with the Argus Leader and other businesses in both South Dakota and Scottsdale, AZ.

"I like the variety involved in marketing," says Michael. "It's a field where I can utilize all of my skills, and there's never a dull day." That's especially true at Woods Fuller, where his responsibilities include event planning and traditional marketing duties, as well as serving as

in-house graphic designer, copy writer, and media buyer.

Born in Alabama and raised in Pierre, Michael finds relaxation in time spent with his five-year-old daughter Brooklyn and fiancé, Suellen, as well as golfing and boating. He also finds it interesting that in college, he spent one semester as a pre-law student before choosing another career path. The position at Woods Fuller brings him full circle, combining both interests.

"Traditionally, attorneys have not focused on marketing," explains Michael. "But as the field of legal services becomes more competitive, it's become more important. I look forward to helping spread the positive Woods Fuller message." □



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