

## THOMAS E. SIMMONS

04/03/2016

University of South Dakota · School of Law 212  
414 East Clark Street · Vermillion, SD 57069-2390  
Email: *tom.e.simmons@usd.edu* · Tel. 605.677.3960

### Employment

**University of South Dakota School of Law, Assistant Professor (2013-)**

- *Past Courses:* Business Organizations I-II, Comparative Estates Law, Holocaust Law, and Elder Law
- *Current Courses:* Comparative [In]tangible Property, Estate Planning, Professional Responsibility, Property, and Trusts & Wills
- South Dakota Law Review, *Advisor* (2013-); China Honorary Ambassadors Student Association, *Advisor* (2015-)

**Gunderson, Palmer, Nelson & Ashmore, LLP (Rapid City, S.D.), Associate (2000-2006); Partner (2006-2013)**

**U.S. Courts, Senior District Court Judge Andrew Bogue (Rapid City, S.D.), Law Clerk (1998-2000)**

### Education

**University of South Dakota School of Law, J.D., Sterling Honor Graduate (1998); South Dakota Law Review, *Editor-in-Chief* (1997-1998)**

**University of South Dakota, B.S., Education and English (1991)**

### Publications

#### *Law Journal Articles*

*The Intersection of Agency Doctrine and Elder Law: Attorney-in-Fact Authority to Arbitrate Nursing Home Claims*, 49 JOHN MARSHALL LAW REVIEW \_\_ (2016) (*forthcoming*)

*Wills Above Ground*, 24 ELDER LAW JOURNAL 343 (2016)

*Deploying the Common Law to Quasi-Marxist Property on Mars*, 51 GONZAGA LAW REVIEW 101 (2015/2016)

*Testamentary Incapacity, Undue Influence and Insane Delusions*, 60 SOUTH DAKOTA LAW REVIEW 101 (2015)

*What Zombies Can Teach Law Students: Popular Text Inclusion in Law and Literature*, 66 MERCER LAW REVIEW 729 (2015)

*Medicaid as Coverture*, 26 HASTINGS WOMEN'S LAW JOURNAL 275 (2015)

*Decanting and Its Alternatives: Remodeling and Revamping Irrevocable Trusts*, 55 SOUTH DAKOTA LAW REVIEW 253 (2010)

*A Guide to South Dakota's Disability Discrimination Laws: Limits and Vantages*, 47 SOUTH

DAKOTA LAW REVIEW 389 (2002)

*'Working' with the ADA's 'Regarded As' Definition of a Disability*, 5 TEXAS FORUM ON CIVIL LIBERTIES AND CIVIL RIGHTS 27 (2000)

*The ADA Prima Facie Plaintiff: A Critical Overview of Eighth Circuit Case Law*, 47 DRAKE LAW REVIEW 761 (1999)

#### ***Other Legal Scholarship***

*The Wrongheadedness of the POMS Pooled Trust Rules and an Unfortunate but Recently Noted Chinese Parallel*, 43 RUTGERS LAW RECORD \_\_\_ (2016) (forthcoming)

*International and Comparative Law on the Rights of Older Persons*, 12 NAELA JOURNAL \_\_ (2016) (review) (forthcoming)

*"Granny Goes to Jail" Redux*, 28 NAELA NEWS 27 (Apr.-June, 2016) (case note) (forthcoming)

*Sexbots; an Obloquy*, 2016 WISCONSIN LAW REVIEW FORWARD 45 (2016) (forthcoming)

*Killer Robots; an Apologia*, COMMON LAW (Mar. 30, 2016)

*Mapping Chinese Trusts with a Patrimony Compass*, JOTWELL (Jan. 28, 2016)

*The Unfortunate Provincialism of the Space Resources Act*, THE SPACE REVIEW (Jan. 25, 2016)

*The Law in Nazi Germany*, 34 SHOFAR 145 (2015) (review)

*Disability Discrimination in the Form of Ad Hoc Examinations*, 6 NEBRASKA LAW REVIEW BULLETIN 2 (2015)

*Understanding the Challenges and Limitations of Guardianship Proceedings*, ESTABLISHING A GUARDIANSHIP FOR ELDER LAW CLIENTS, pp. 105-24 (2013) (Aspatore) (chapter contributor)

*Judicial Memoirs*, 16 THE NEBRASKA LAWYER 13 (Jan.-Feb., 2013) (review)

*Pooled Trusts*, 27 SOUTH DAKOTA REPORT 3 (2012)

*Integrating SNTs with IRAs*, NAELA SPECIAL NEEDS LAW NEWSLETTER 8 (Fall 2010)

*Using Trusts to Settle Lawsuits*, 19 PROBATE & PROPERTY 6 (2005)

*When Gift Planning Goes Awry*, 27 NATIONAL LAW JOURNAL 23 (2005)

*Rights of Access to the Courts by Individuals with Disabilities*, 19 SOUTH DAKOTA REPORT 3 (2004)

*Territorial Justice under Fire: The Trials of Peter Wintermute, 1873-1875*, 31 SOUTH DAKOTA HISTORY 91 (2001)

*How Medication Affects the Existence of an ADA Disability*, 16 SOUTH DAKOTA REPORT 6 (2000)

*State Immunity from Federal Disability Discrimination Laws: Provisions of the ADA and Rehabilitation Act Declared Unconstitutional*, 15 SOUTH DAKOTA REPORT 8 (1999)

*A Brief Survey of Selected South Dakota Supreme Court Cases Decided in 1997*, 43 SOUTH DAKOTA LAW REVIEW 260 (1998) (co-author)

*Highways, Hunters, and Section Lines: Tension Between Public Access and Private Rights*, 2 GREAT PLAINS NATURAL RESOURCES JOURNAL 240 (1997) (comment)

*Twisted Interests: People in Interest of S.A.H. and the State of Open Adoptions in South Dakota*, 42 SOUTH DAKOTA LAW REVIEW 537 (1996/1997) (case note)

### **Select Presentations and Papers**

*Topographical Emphases in Hugh Glass Narratives, 1825-2015*, 47<sup>th</sup> Annual Dakota Conference, CENTER FOR WESTERN STUDIES (Sioux Falls, S.D.) (2015)

*Cutting and Bleeding Edge Medicaid Planning*, WEST RIVER ESTATE AND FINANCIAL PLANNING COUNCIL (Rapid City, S.D.) (2014)

*In Defense of Asset Protection and South Dakota Asset Protection Trusts*, SIOUXLAND ESTATE PLANNING COUNCIL (Sioux City, Nebr.) (2014)

*How the Crummey Crumbles: Present Interest Planning with Trusts*, Tax Update XXXV, SOUTH DAKOTA BAR ASSOCIATION (Sioux Falls, S.D.) (2013)

*Business Trusts, S-Corp Trusts, Pre-Mortem Planning, and Other Recent Developments in Trust and Estate Law*, Business Law, SOUTH DAKOTA BAR ASSOCIATION (Rapid City, S.D.) (2013)

*Grantor Trusts*, Tax Update XXXIV, SOUTH DAKOTA BAR ASSOCIATION (Sioux Falls, S.D.) (2012)

*Estate Planning for Individuals with Disabilities*, Trusts 101, NATIONAL BUSINESS INSTITUTE (Rapid City, S.D.) (2012)

*Substituted Judgment: Powers of Attorney, Guardianships, and Conservator-Created Estate Plans*, SIOUX FALLS ESTATE PLANNING COUNCIL (Sioux Falls, S.D.) (2012)

*Elder Law*, SOUTH DAKOTA BAR (Sioux Falls, S.D.) (2011) (program chair)

*Closing the Estate*, Probate Process Start to Finish, NBI (Rapid City, S.D.) (2011)

*Pooled Trusts: An Introduction and Personal History*, NAELA SPECIAL NEEDS SUMMIT (New Orleans, La.) (2010)

*Decanting a Vintage Trust*, 7<sup>th</sup> Annual Estate Planning for Professionals Seminar, SECURITY NATIONAL BANK (Sioux City, Nebr.) (2009)

South Dakota Uniform Trust Code, SOUTH DAKOTA BAR ASSOCIATION (Sioux Falls, S.D.) (2006) (panel)

*Domestic Asset Protection Trusts*, WEST RIVER ESTATE PLANNING COUNCIL (Rapid City, S.D.) (2006)

*Developing Communication Skills and Relationships with Diverse Clients*, NAELA ANNUAL SYMPOSIUM (San Francisco, Calif.) (2005) (panel chair)

Tax Update XXVI, SOUTH DAKOTA BAR ASSOCIATION (Sioux Falls, S.D.) (2004) (program chair)

*Who and What is Taxed*, Real Property Taxation, LORMAN (Rapid City, S.D.) (2003)

*Federal and State Laws*, Disability Discrimination, LORMAN (Rapid City, S.D.) (2003)

#### **Admitted to Practice**

U.S. Supreme Court, U.S. Court of Appeals for the Eighth Circuit, U.S. District Court for the District of South Dakota, and South Dakota; previously admitted to practice in Nebraska and Wyoming and accredited by the U.S. Department of Veteran's Affairs

#### **Honors and Awards**

American Bar Foundation, *Fellow* (2016-); American College of Trust and Estate Counsel (ACTEC), *Fellow* (2013-); Martindale-Hubbell, *AV Rating* (2012-)

#### **Professional Positions and Memberships**

ACTEC, Asset Protection Committee (2016-)

American Bar Association (ABA)

- Section of Legal Education and Admissions to the Bar (2013-)
- Section of Real Property, Trust, and Estate Law (2001-)
  - Income and Transfer Tax Planning Group (2015-)
  - Estate and Gift Tax Committee (2015-)
  - Trust and Estate Legal Education and Uniform Laws Group (2015-)

American Society for Legal History (ASLH) (2015-)

Association of American Law Schools (AALS) (2013-)

NAELA Journal Editorial Board, *Editor* (2012-2014); *Co-Executive Editor* (2014-2016)

National Conference of Commissioners on Uniform State Laws, Divided Trusteeship Committee, *Observer* (2014-)

National College of Probate Judges (2016-)

South Dakota Bar Association

- Ask-a-Lawyer, *Volunteer* (2005-)
- Elder Law Committee, *Chair* (2010-)
- Ethics Committee (2015-)
- Lawyer's Committee on Diversity and Inclusion (*ad hoc*) (2015-)
- Real Property, Probate and Trust Section, *Chair* (2007-2008, 2010-2011);  
*Executive Council* (2005-2013)
  - Digital Assets Committee (2014-)
  - Trust Committee, *Chair* (2012-)
  - Uniform Trust Code Committee (2005-)
- South Dakota Bar Foundation, *Fellow* (2016-)

South Dakota Board of Pardons and Paroles, *Member* (2013-2014); *Auxiliary Member* (2016-)

South Dakota Governor's Task Force on Trust Administration Review and Reform (2014-)

**Civic Service**

Alzheimer's Association-South Dakota, *Past Board Member*; Black Hills Area Habitat for Humanity, *Past Executive Board Member*; Canyon Lake United Methodist Church, *Past Trustee*; Clay County Historical Society, *Member*; Dakotas United Methodist Foundation, *Past Executive Board Member*; Friends of the Rapid City Public Library, *Past President*; Friends of the Vermillion Public Library, *Member*; Lifeways, Inc., *Past Board Member*; Pooled Advocate Trust, Inc. (PATI), *Past President*; Rapid City Arts Foundation, *Past President*; United Way of the Black Hills, *Past Board Member*; West River Estate and Financial Planning Council, *Past Vice President*; Western Dakota Technical Institute Foundation, *Past Board Member*

**Personal**

Married with two children