

# MINUTES

## Code Commission



Michael DeMersseman, Chair  
Margaret V. Gillespie, Vice Chair

**One hundred nineteenth Meeting**  
**Wednesday, January 17, 2018**

**Room 499, Fourth Floor, State Capitol**  
**Pierre, SD**

The one hundred nineteenth meeting of the South Dakota Code Commission was called to order by Chair Michael DeMersseman at 12:01 p.m. CDT, January 17, 2018, in Room 499, Fourth Floor of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Commissioners Michael DeMersseman (Chair), Margaret Gillespie (Vice Chair), Tom Lee, Arthur Rusch and Mike Stevens.

Staff members present were Doug Decker, Code Counsel, and Kelly Thompson, Senior Legislative Secretary.

Lila Hambleton, Anne Barnard, and Joel Hurwitz of Thomson Reuters participated by telephone.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order.

### **Approval of Minutes**

*Commissioner Arthur Rusch moved, seconded by Commissioner Tom Lee, to approve the minutes of the June 21, 2017, meeting. Motion prevailed unanimously on a voice vote.*

### **Opening Comments/Staff Report**

**Chair Michael DeMersseman** welcomed everyone and asked for a staff report. **Mr. Doug Decker**, Code Counsel, advised that he had reviewed the West Publishing Contract to determine if the document needed to be updated to reflect current practices.

### **Review of West Publishing Contract**

The Commission discussed the contract for the publication of the Code with West, a Thomson Reuters Company. Mr. Decker detailed the contract addendums for the past 14 years which included the discontinuation of the CD-ROM product and access to WestlawNext, an online legal research service. The question was raised as to whether the publisher's business name should be updated to reflect the company's acquisition by Thomson Reuters; **Ms. Anne Barnard**, Senior Counsel with West Publishing, responded that West Publishing Company still contracts under the business name stated in the 2003 original contract.

Options for making any necessary updates to the publishing contract to remove stray references and correct outdated information included recontracting with the company and drafting an addendum as has been done in the past.

**Commissioner Arthur Rusch** wondered if redoing the contract and doing an addendum amounted to the same thing. Mr. Decker said any changes could be accomplished through an addendum if all parties involved were in agreement on that action. Ms. Barnard agreed that an addendum could be used to clarify and update information.

**Vice Chair Margaret Gillespie** noted that while redoing the contract provides transparency, having the contract and addendums for reference maintains a good historical presence. **Ms. Lila Hambleton**, West Publishing, inquired whether Commissioner Rusch was proposing a renegotiation of the contract or just the drafting of a cleaned-up version. Chair DeMersseman clarified the commissioner was requesting that a revised contract be drafted incorporating all the changes made in the addendums.

Mr. Decker reported on the steps being taken for the eventual conversion from WordPerfect to another format for the files the LRC provides West and the return of those files from West to the LRC for the pocket supplements. Currently, West must convert the files from WordPerfect for their purposes and convert the files back to WordPerfect before sending them back to the LRC. The issues related to this conversion are becoming increasingly difficult to fix. LRC technical staff is aware of the situation and will continue to work with West to find a solution.

Among the deletions in the 2017 addendum to the contract was the removal of Section 20 dealing with the subscriber list for the CD-ROM product. In response as to whether that amounted to LRC giving up the subscriber list, Ms. Barnard assured the commission that Section 24 of the contract still obligates the company to provide the mailing list.

*Commissioner Rusch moved, seconded by Commissioner Lee, to have West draft a revised contract to replace the 2003 original contract and subsequent addendums. Motion prevailed unanimously on a voice vote.* Chair DeMersseman directed Mr. Decker to work with West Publishing in the drafting of the updated contract.

#### **Staff Direction**

Mr. Decker reminded commissioners that SDCL § 2-16-7.1 allows for the continuation of the Code publishing contract for up to two years if benefits can be derived from doing so. While the contract rewrite may have provided such an opportunity, the commissioners took no such action.

#### **Adjournment**

There being no further business, Commissioner Rusch moved, seconded by Commissioner Stevens, to adjourn. Motion prevailed unanimously on a voice vote.

Chair DeMersseman adjourned the meeting at 12:30 p.m.