

## THE ELDER LAW FORUM

By Michael Myers  
USD School of Law

### IRS: Happy Seventy-and-Half Birthday!

The IRS keeps track of birthdays. It takes particular note when you turn 70, because six months later you may have to do something you would rather not do:

Begin withdrawing monies from your IRA, 401(k), 403(b), or individual retirement account, locations where your savings have earned interest and have been safe from federal and state taxmen and taxwomen. The withdrawals are called RMDs, or "required minimum distributions." They must begin by April 1 of the year following when you turn 70-and-a-half.

The RMD amount will be based on the December 31 value of the account in the year prior to the year you turn 70-and-a-half. In all subsequent years the RMD must be distributed by December 31. But qualified employer retirement plans offer additional flexibility, allowing you to delay taking RMDs as long as you continue to work.

"Does that mean I don't have to start taking out monies from my retirement accounts?" asked a 71-year-old senior helpline caller. He has spent the last 20 years working for a national banking system that maintains a contributory retirement plan. Assuming it is "qualified," he would not have to begin withdrawals until April 1 of the year following his retirement. "When do you plan to retire?" I asked. "I don't," he responded. "I've been rat-holing money for 50 years,"

he said. "I worked for a processing company for 30 years and now 20 with this bank. I've never made big money, but I've lived within my means and taken full advantage of the tax-shelters built into both retirement plans." He called because of conflicting reports. "It's confusing," he said.

Here is the current status: Required minimum distributions from IRAs and defined contribution plans were suspended in 2009, allowing those typically required to take distributions to further grow their account values without penalties. But RMDs returned in 2010. I advised him to contact human resources and verify that it is a "qualified plan," exempt from the RMD withdrawal. The failure to withdraw a full RMD on time in any year exposes a person to an IRS penalty of 50% of the required amount that wasn't

distributed.

Eventually the caller will have to begin withdrawing monies from one or both of his retirement plans. If he doesn't need the RMDs for living expenses, he should consider re-investing the after-tax proceeds into tax-efficient accounts such as a mutual fund or municipal bond fund; or invest the proceeds in a 529 college savings plan for his grandchildren.

Fifty years on the job and "rat-holing tax-free money" is paying off.

*(Pro bono legal information and advice is available to person 55 and older through the USD Senior Legal Helpline, 1-800-747-1895; mmyers@usd.edu. Opinions are solely those of the author and not the University of South Dakota.)*

## FOR THE RECORD

#### Feb. 19-25, 2010

George W. Campbell, 2114 Myrtle St., Sioux City, IA: No drivers license, \$51 plus costs.

Lindsay Megan Parker, 226 High St., Vermillion: Renewal registration during assigned month, \$51 plus costs.

Anne Marie Grady, 1014 Elm St. #1031, Vermillion: Failure to make proper stop at stop intersection, \$51 plus costs.

Steven Paul Wolter, 916 Eastgate, Vermillion: Renewal registration during assigned month, \$51 plus costs.

Arnon W. Breen, 327 N. Pine St., Vermillion: Renewal registration during assigned month, \$51 plus costs.

Dell Schmidt, 803 Birdie Dr., Dell Rapids: Municipal speeding, \$16 plus costs.

Cynthia Baker, 501 Dakota, Centerville: Municipal speeding, \$16 plus costs.

Gerald Vocks, 510 ? W. 6th St., Yankton: Seat belt violation, \$25.

Ashley Honke, 2418 S. Main St., Sioux Falls: Municipal speeding, \$36 plus costs.

Molly Baum, 510 Thomas St., Vermillion: Overdriving road conditions, \$51 plus costs.

Seth M. Wagner, 31368 Taylor St., Meckling: Renewal registration during assigned month, \$51 plus costs.

Andrew Jonathon Meyer, 4206 E. Main St., Vermillion: License not in immediate possession, \$25.

Zachary G. Scherrer, 400 N. Pine, Norton #413, Vermillion: License not in immediate possession, \$25.

Lindsey Quasney, 114 N. Pine, Vermillion: Renewal registration during assigned month, \$51 plus costs.

Michel Morse, 708 S. Dakota St., Vermillion: Seat belt violation, \$25.

Jennifer Ann Huber, 301 Bunker Ln. #11, Mission Hill: Speeding on state highway, \$36 plus costs.

James Bernard Doohen, 5705 W. 43rd St., Sioux Falls: Municipal speeding, \$16 plus costs.

Jesse Searles, 29931 464th Ave., Centerville: Tow trailer without safety chains, \$51 plus costs.

Edward W. Lewis, 7019 S. Oakley, Chicago, IL: Municipal speeding, \$16 plus costs.

Joseph Wingo, 108 Carr St., Vermillion: Renewal registration during assigned month, \$51 plus costs.

Rory Moore, 4500 S. Quail Run Ave., Sioux Falls: Seat belt violation, \$25.

Whitney Hollingsworth, 414 S. Crawford Rd., Vermillion: Overdriving road conditions, \$51 plus costs.

Alicia Renee Meinke, 725 E. Clark, Vermillion: Municipal speeding, \$16 plus costs.

Janani Sindha Ragothaman, 316 Sycamore Ave., Vermillion: Obey traffic device unless directed by policeman, \$51 plus costs.

Tasha Tayborn, 411 Stanford #40, Vermillion: Pet violations - animal at large dog/cat, \$20 plus costs;

Centerville: Tow trailer without safety chains, \$51 plus costs.

Edward W. Lewis, 7019 S. Oakley, Chicago, IL: Municipal speeding, \$16 plus costs.

Peter Gordon Nelson, 800 N. Plum St. #304, Vermillion: Possession of alcohol by minor, \$51 plus costs.

Randy R. Decora, PO Box 574, Winnebago, NE: Driving with suspended (not revoked) license, \$85 plus costs.

Casey's Retail Company, 615 Jefferson St., Vermillion: Give person alcohol ages 18-21 or w/o parent, Dismissed - motion by prosecutor.

Flint Griffen Farley, 401 N.

Dakota #444, Vermillion: Possession of alcohol by minor, \$51 plus costs.

Jeanne Nies-Donahoe, 316 N. Washington St., Vermillion: Obstructed view, Dismissed - motion by prosecutor.

Brian Barta, 1570 Brandon Dr., Vermillion: Obey traffic device unless directed by policeman, \$51 plus costs.

Darcy Marie Murphy, 700 E. Cherry #335, Vermillion: Municipal speeding, \$56 plus costs.

Nicholas Haley, 47278 Lincoln Trl., Renner: Possession of alcohol by minor, \$51 plus costs.

Karl Tanderup, 88815 578th Ave., Newcastle, NE: Failure to yield to traffic at yield sign, \$51 plus costs.

Scott A. Peterson, 2124 Augusta, Vermillion: Seat belt violation, \$25.

Shelby Luce, 1008 S. Crawford #2, Vermillion: Seat belt violation, \$25.

Vermillion: Possession of alcohol by minor, \$51 plus costs.

Korey Miller, 1001 W. Main St., Vermillion: Fail to maintain financial responsibility, \$66 plus costs.

Mark Roland Patterson, 4216 W. Mesa Pass, Sioux Falls: Municipal speeding, \$16 plus costs.

Thomas R. Emory, 315 4th St., Petersburg, ND: Log book/other violations, \$101 plus costs.

Amber L. Somers, 12 E. Cherry St., Vermillion: Municipal speeding, \$16 plus costs.

Donald P. Foley, 601 Bill Baggs Rd. PO, Yankton: Failure to make proper stop at stop intersection, \$51 plus costs.

**Judge Tami Bern** presiding Feb. 10-25, 2010

Fernan Rubio-Martinez, 4498 Buford Hwy. #440, Norcross, GA: Driving under influence - first offense, \$350 plus costs; Speeding other roadways, No plea entered.

## Court/ from page 1

question?" Collier asked the judge.

"If you want to submit something, I won't preclude you from doing it," Jensen replied.

The judge agreed to give the attorneys a week to file that additional information.

The Board of Regents had 30 days to respond to a complaint filed in First Circuit Court in Vermillion on Feb. 3 by Collier on behalf of PETA. The response included a motion by the board for a change of venue.

Luce noted that the corporate offices of the Regents are located in Hughes County, specifically, in Pierre.

"As such, we would request that the court change the venue, based upon the venue statutes," Luce told Jensen. "Venue is obviously a creature of statute, and there is no other provision ... for venue anywhere else other than the residence of the defendant. For public bodies and corporations, it would be their principle place of business."

Luce also cited a past legal decision that states that the courts would have no discretion to grant a change of venue if a response is properly filed.

The court complaint filed by PETA last month seeks information from USD and the South Dakota Board of Regents about experiments conducted on animals by researchers on the university campus.

PETA is claiming that the Regents and USD are violating South Dakota's open records law, and stated in a press release issued Feb. 3 that USD administrators have failed to provide the organization with documents related to the university's taxpayer-funded experiments on monkeys.

"The action is PETA versus the South Dakota Board of Regents and the University of South Dakota," Collier told Jensen, "so we move that USD is a proper defendant in this case. They (USD) have been named in other cases. In this case, a USD employee, not a member of the Board of Regents, handled this particular FOI (Freedom of Informa-

tion) request. It is the USD employee that basically said 'no, these are the things you can't have,' and the BOR (Board of Regents) delegates a lot of its administrative power to institutional executives."

Collier was referring to Laura Jenks, USD vice president for research. In July 2008, PETA submitted a public records act request to Jenks, and also to James Shekleton, general counsel for the Regents.

The request was denied, and an appeal through the South Dakota Board of Hearing Examiners was also turned down.

Action by the South Dakota Legislature during its session last year amended South Dakota law pertaining to public records, prompting PETA to once again request records from USD.

According to court papers filed Wednesday, USD responded on July 31, 2009, claiming that certain information requests were denied based upon exemptions in the new law and that USD would charge an estimated fee of \$2,000 to provide the requested information.

Court files show PETA requested 19 pieces of information in the summer of 2009, ranging from protocol revision request forms and veterinary medical records, to video and photographic footage of experiments, and copies of various reports, correspondence and minutes.

That request was ultimately denied. PETA made a third request in late October, paring its list of requested documents from 19 to 11. It also asked for

copies of three records pertaining to the use of rabbits in experiments at USD.

Jenks responded to this request from PETA with a specific reason for denying nearly every document. In some cases, she noted, the requested document didn't exist. Some of the materials being sought were exempt from South Dakota public records law to protect specific details of the research.

In some instances, Jenks agreed to provide information, such as meeting minutes pertaining to experiments, but personnel names were redacted in accordance to state law.

"This was a vice president at USD that was making these decisions," Collier said.

"Why isn't that person named (in the complaint)?" Jensen asked Collier, "if they are the person who made the decision."

Collier cited a state statute that requires that court actions be tried in the county where the "cause" for the action arose. "We did not name this specific person, but we did name the institution," she said, referring to USD, "as separate from the Board of Regents."

She referred to Jenks as a public official. "We believe the statutes that we're looking at pertaining to this information specifically talks about public officers and public officials."

Jenks, Collier said, is not a public official to the extent that her position was created by statute. "However, she is the person who is involved in making the determinations, and they were made in Clay County."

The South Dakota Public Records Act imposes duties on public officials and entities, she said. "The entity, USD, is a proper defendant, so the proper county (for the legal proceedings) is here where USD is located."

Collier added that USD wasn't added as a defendant to the complaint as a means of controlling venue.

"The Board of Regents was added as a requirement because they are the administrative body ahead of USD," she said. "The actions that took place, parties that are actually involved, all of the witnesses, everything that is involved is here in Clay County."

Collier cited several lawsuits that have gone to court in recent years involving the Regents and USD. "Venue was appropriately found in Clay County," she said. "I don't think this is any different than any of those other actions."

Luce noted that the one of the statutes Collier was referring to talks specifically about action against a public officer or person.

"That's not what this action is," he said. "She can talk about some public officer being involved, but the subsection in the venue statute clearly does not relate to state agencies or anything other than actions against officers or persons."

He told Jensen it would be improper to turn the filed complaint, which does not name a public officer or person, "into such to avoid the venue problem."

Luce discounted the argument that the University of South Dakota is a proper party because they have been sued

before, and that the court action has taken place in Clay County.

"They may have been sued on issues regarding employment and things like that, but the statute that I cited in my demand for a change of venue is very specific," Luce said.

That statute, he said, indicates that the Board of Regents is the "body corporate" to be sued regarding holding, leasing and managing property belonging to educational institutions under its control.

"That's what we're dealing with here," Luce said. "The issue is controlling public records, and whether those should be released under the public records act."

PETA's declaratory judgment, filed last month, requests that:

- The court require the disclosure of all public records requested by PETA last October, which USD and the Regents have already agreed not to disclose.

- The court requires USD and the Regents to waive the costs of production, or reduce the costs based upon an accurate estimate.

- That USD and the Regents pay all of PETA's attorneys fees, tax and costs incurred by taking this legal action, and

- Any other relief to PETA deemed just by the court.

## Thank You

A sincere and blessed Thank You to all the wonderful people from this community, who helped us get back to "somewhat normal." Through your generous donations of food, supplies, clothing, shelter and money — the human basic needs. After my family's house fire in early December, words cannot express the feeling of helplessness I felt when I was unable to provide those basic needs for my family after the fire. With the community's help through the Yankton Police Dept., Vermillion Police Dept., Clay County Sheriff's Office, Sanford Hospital, Avera Hospital, local schools, church groups and private donations, we are now able to see the light at the end of the tunnel. At this time we are still in temporary housing — compliments of Brian & Anita Emmick and E Circle E hunting lodge — but can see a better future for us as a family. People have said, "Everything happens for a reason." I still don't like the idea of having a house fire to leave you with nothing, however it gives you a new appreciation for friends and family and how we truly need each other to survive.

Sincere thanks, blessings and appreciation to all,  
Doug, Staci, Shelby, Shandra, Samuel, Jordan  
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