IOWA STATE BAR ASSOCIATION

RECENT ADMINISTRATIVE LAW DECISIONS
2/26/2016

RICK AUTRY

Monroe Branstad v. State of Iowa, (Iowa 11/6/2015) [Recovery of Costs In PJR] – The DNR investigated a fish kill in the Winnebago river. The DNR investigation led to the farming operation of Monroe Branstad (the governor's brother). As a result of the investigation a litigation report was prepared by the DNR and the matter was referred to the Attorney General for possible prosecution in court under Code §455B.191. Branstad entered into a settlement on the claim of a release of a pollutant, a matter falling within the jurisdiction of the DNR. Branstad reserved the right to contest any responsibility for the fish kill, however. The issue of restitution for the release of pollutant, including the fish kill, falls under rules and procedures of the Natural Resource Commission (Commission). The issue of restitution (fish kill) went through a contested case proceeding, where the hearing was presided over by an Administrative Law Judge with the Department of Inspections and Appeals. The DNR and Branstad were the parties in that case. The ALJ issued a proposed decision which Branstad appealed to the Commission. The Commission heard argument and then adopted the ALJ's proposed decision. In his appeal to the district court Branstad prevailed on the theory that the determination of the size of the kill was made according to a method that was inconsistent with DNR regulations. Branstad then moved for costs and attorney fees under Iowa Code §625.29. That section provides that "the court in a civil action brought by the state or an action for judicial review brought against the state pursuant to chapter 17A other than for a rulemaking decision, shall award fees and other expenses to the prevailing party unless the prevailing party is the state." Iowa Code §625.29(1). This section has numerous exceptions. The district court denied the fee request relying on three exceptions: the State's position was supported by substantial evidence, the role of the State was primarily adjudicative, and an award of fees in the situation would be unjust. Iowa Code §625.29(1)(a)–(c). The Court of Appeals reversed and then the State sought further review.

The Supreme Court zeroed in on whether the role of the State in the matter was "primarily adjudicative." Branstad argued that the "State" should be the DNR (which was a party in the contested case) and not the Commission (which adjudicated the matter). The Court found that

"the DNR, in its investigatory role, was acting under the umbrella of the Commission" since the Commission had the regulatory authority over the "procedures for investigations and the administrative assessment of restitution amounts…" This means that "[t]he Code clearly anticipates that the DNR will act as an investigatory body and the Commission will take the final agency action if the DNR's restitution assessment is appealed." Slip op. at 9. The Court then applied to this its previous gloss on "primary adjudicative." "[I]f an agency's function principally or fundamentally concerns settling and deciding issues raised, its role is primarily adjudicative." Slip op. at 10 (*quoting Remer v. Bd. of Med. Exam'rs*, 576 N.W.2d 598, 601 (Iowa 1998). Applying this definition to the *Commission*, since the DNR was acting under its "umbrella," the Court had little trouble finding that since "the Commission weighed the evidence about the fish kill, applied the rules, considered Branstad's various defenses, and determined that the amount in the restitution assessment was proper…" then it was acting in "an adjudicative body in a contested hearing." Slip op. at 11. Thus the case fell under the "primarily adjudicative" exception.

Note that §625.29(2) requires the applicant for fees and costs be a natural person, or a business with less than 20 employees and either less than a million in business in the last year, or less than two million in the last three years.

Additional exceptions include tort claims brought by the state, eminent domain proceedings, DAS actions, debt collection, cases involving claims for benefits, rate fixing cases, and cases where the state adjudicated an issue between private parties. Notably the unemployment system has been found to be exempt from §625.29 as involving a claim for benefits and because Iowa Code §96.18 bans awards against workforce agencies except for the amount of benefits. *Kent v. Employment Appeal Bd.*, 498 N.W.2d 687 (Iowa 1993).

Ghost Player LLC v. State of Iowa, (Iowa 2/27/2015) [Exhaustion] – The Plaintiff is movie production company that sought film tax credits. The company entered into a contract with the Department of Economic Development (IDED) which provided for the terms and conditions of the tax credits, and stated "Any IDED determinations with respect to compliance with the provisions of this Contract and the Funding Agreements shall be deemed to be final determinations pursuant to Section 17A…" The legislature had "mandated the IDED to verify

the eligibility of the credit and if verified issue the credit." Slip op. at 9. After IDED issued a final determination refusing to pay all the credits the Plaintiffs filed a breach of contract claim in district court. The district court granted the State's motion to dismiss on the ground that the company was required first to exhaust administrative remedies since the refusal to pay was "other agency action." On appeal the Supreme Court cited to *Papadakis v. Iowa State Univ. of Sci. & Tech*., 574 N.W.2d 258, 260 (Iowa 1997) as setting out the test for other agency action: "if the action or inaction of the agency in question bears a discernible relationship to the statutory mandate of the agency as evidenced by express or implied statutory authorization, a party must first present the claim to the agency for other agency action before the party can proceed to district court." Slip op. at 9. In *Ghost Player* the Court found that the duty to verify and issue the credit bears a "discernible relationship to the statutory mandate," and further noted that the legislature had not devised a separate remedial statutory scheme. Slip op. at 9. The action was thus "other agency action" and exhaustion was required. Ghost Player also argued a lack of rules at IDED violated due process. The Court disposed of the argument by noting what processes were available, though informal, were suited to the issue and adequate to meet the concerns. When Ghost Player argued that by not having a hearing before the IDED, the judicial review process will offend due process the court pointed out that in a PJR of other agency action the district court can hear evidence so that it can "determine what actually occurred at the agency level to facilitate a meaningful review of the agency's action." Slip op. at 12. As for any more than this the Court remarked, rather pointedly, "we cannot decide if the appeal process will offend due process because we are not fortunetellers who can predict what will occur in a judicial review process." Slip op. at 12.

City of Postville v. Upper Explorerland Regional Planning Commission, No. 14-1082 (Iowa Sct. June 10, 2015) [Open Meetings Agenda] – In this open meetings case the City of Postville hinges its argument on posting. The Upper Explorerland Regional Planning Commission is organized under 28E and 28H. It serves five counties and has an office in Postville. "It participates in job training, rehab houses, technical assistance, and rental assistance for residents of the five counties and holds quarterly meetings on the third Thursday of the month." Slip op. at 2-3. During the fall of 2010 the Commission held meetings discussion whether to relocate out of Postville. The City brought suit under chapter 21 claiming that the posting of the agendas for these meetings gave the public inadequate notice. For decades the Commission had posted its

meeting notices on a bulletin board in a hallway in the building where it met. The hallway was not used much, but it was open to the public, although "the public generally is not permitted to wander the hall unaccompanied, but if they were to inquire of the receptionist where the notices were posted they would have been directed to the bulletin board." Slip op. at 3. The Commission also had a decade-old bulletin board for other information that did not include the agendas. That newer board was in the reception area, thus more easily found. The older hallway bulletin board could be seen from the reception area, but its contents could not be made out. The agendas were, however, published in the newspaper. The receptionist of 32 years testified she had never turned away a member of the public, but also she could never recall anyone coming and asking when the Commission met. The Court's analysis noted that "[t]he statute does not require the notice of the meeting be viewable twenty-four hours a day, or that it be in the most visible place available." Slip op. at 8. The key was that "there is no indication that posting the notice on the new bulletin board would have resulted in more members of the public being apprised of the meetings since the only people to frequent the building were those who had business with the Commission or had an appointment. However, if a member of the public would have inquired of the receptionist as to the location, date, or time of the Commission's meetings or the agenda, he would have been directed to the bulletin board located outside the meeting room." Slip op. at 7.

Iowa Insurance Institute v. Core Group, IAJ, Iowa Workforce Development et. al. No. 13-1627 (Iowa Sct. June 12, 2015)(amended 9/30/15) [Declaratory ruling standards] – In this matter groups of organizations with opposing interests battle over whether surveillance materials (*e.g.* "Aha! He's supposed to have a back injury but we filmed him lifting his grandkid!") of WC claimants recorded by their employers must be disclosed to any claimant seeking workers' compensation benefits before the claimant is deposed. The administrative law issue is posed by the fact that a group of attorneys representing claimants, the "Core Group," petitioned for a declaratory order from the Commission addressing several issues. The basic issue to be addressed is whether the statutory waiver of privileges contained in Iowa Code §85.27(2) would overcome a "work product" privilege to surveillance materials and thus require their disclosure. The administrative law question was whether a declaratory order should have been issued in the first place. The attack on the decision to issue was two-fold. First it was argued that the ruling "would substantially prejudice the rights of a person who would be a necessary party and who

does not consent in writing to the determination of the matter by a declaratory order proceeding." Iowa Code § 17A.9(1)(b)(1)–(2).

The problem for the Insurance Institute in asserting failure to join a necessary party was that the claim was somewhat inconsistent with the Institute's own petition for intervention which, of necessity, asserted the Institute represented (but could not bind) a broad range of interests. The Institute did not identify "any specific necessary parties that did not participate in the declaratory order proceedings and [did] not explained how the interests of any nonparticipants might differ from the broad range of interests represented by the Institute." Slip op. at 12. Thus a broad range of interests were represented, and the ruling would not, in any event, be binding except as precedent. "We think the prejudice must be more than just precedential effect, especially when a broad range of interests were represented in the declaratory order proceeding and the Institute cannot identify an interest that was not represented." Slip op. at 13.

Next the Court dealt with the argument, based on the agencies rules, that the petition must show some sort of standing to obtain a declaratory order. The fact is the *statute* contemplates dealing with purely hypothetical issues and "[t]his means that in many declaratory order proceedings, it is possible no party can demonstrate the type of concrete or imminent particularized injury we typically require for standing in contested cases." Slip op. at 15. In the end, the Court dealt with the issue by noting that the rule, which was based on the uniform rules, only stated that the agency "may" decline to rule based on a lack of standing.

Finally, the fact that the declaratory ruling was sweeping, and could have achieved the same result through regulation did not mean the agency was required to go through rulemaking. Since the issue was purely legal, and since the agency received input from diverse sources, as it would in rulemaking, meant there was no abuse of discretion in choosing a declaratory order over rulemaking.

Des Moines Area Regional Transit Auth. v. Young. No. 14-0231 (Iowa Sct. June 5, 2015) [Interpretation of Regulations] – In this Workers' Compensation matter an agency regulation, and two somewhat contradictory statutory provision are at play. The legal issue was "whether the commissioner can tax the fees of a physician arising from the evaluation of an employee done outside the process set forth in Iowa Code section 85.39 as 'costs incurred in the hearing'

when the employee submits a written report of the evaluation at the hearing….[and] if the assessment-of-costs rule is limited to the cost of the doctor's report or whether the rule also includes the fees of the underlying medical examination that was the subject of the report." Slip op. at 9-10. The Commission had interpreted the agency hearing costs rule as authorizing recovery of the expense of a medical exam conducted outside of the statutory process but which is the basis of a report used at hearing. The case is only notable from an administrative law standpoint because the Court, in discussing deference to the Commissioner and quoting a *pre-Renda* case wrote "'[W]e give an agency substantial deference when it interprets its own regulations,' so long as such interpretation is not in violation of the rule's plain language and clear meaning." Slip op. at 5. The Court then immediately went on to the usual point that "When discretion has been vested in the commissioner, 'we reverse only if the commissioner's application was 'irrational, illogical, or wholly unjustifiable.'" but "'if discretion has not been clearly vested, "then the court must disregard any interpretation by the agency that it finds erroneous.'" Slip op. at 5. But the Court does nothing to determine if the Commissioner has been vested with the authority to interpret the agencies own regulations. *See Eyecare v. Department of Human Services*, 770 N.W.2d 832 (Iowa, 2009)(ruling DHS has no power to interpret own regulations). Instead the Court moves onto the statute, but without setting out the well-established rule that the Work Comp commissioner has no authority to interpret the workers' compensation *statute*. *See Waldinger Corp. v. Mettler*, 817 N.W.2d 1, 5 (Iowa 2012); *Coffey v. Mid Seven Transp. Co.*, 831 N.W.2d 81, 88 (Iowa, 2013); *Roberts Dairy v. Billick*, 861 N.W.2d 814, 817 (Iowa 2015). The Court finds the interpretation of the Commission to conflict with the plain language of the statute and thus invalidates the interpretation as being in clear conflict with the statutory scheme. We are thus left wondering if it is still true that agencies now will receive "substantial deference when it interprets its own regulations, so long as such interpretation is not in violation of the rule's plain language and clear meaning…" Slip op. at 5. Or not.

Butt v. Board of Med., No. 14-1764 (Iowa Sct. Oct. 28, 2015) [Proceedings On Remand] – This case points out why I actually prefer a straight reversal to a remand if at all possible: remands *always* get messy. The Court of Appeals, back in 2013 affirmed in part and reversed in part findings of the BOM which had caused BOM to impose discipline on Dr. Butt. The Court

then, in 2013, remanded to the district court with directions that the district court remand to the agency. The purpose of the remand was so that the agency could reassess the discipline imposed in light of the partial reversal. "On remand, the board was to reconsider the penalty in light of our rejection of several fact findings. The board was afforded no authority to make additional fact findings or determinations of ultimate fact." Slip op. at 5. But on remand the BOM then added a finding concerning the treatment of employees that "The Board believes that such conduct interferes with, or has the potential to interfere with, patient care and/or the effective functioning of health care staff." This was a new finding and the Court of Appeals found it outside the scope of the remand. Then the Court actually required the BOM to amend its communication with the National Practitioner DataBank to answer "No" to the question "Is the Adverse Action Specified in this Report Based on the Subject's Professional Competence or Conduct, Which Adversely, or Could have Adversely Affected, the Health or Welfare of the Patient?" Thus the Court seems to take jurisdiction, in a contested case appeal, over the actions of the BOM outside of the contested case process. In other words it not only reviewed the decision, but the reporting of the decision which is required by federal law. Notably, the Court rejected the argument that reference to a specific ground for discipline ("disruptive behavior") could be implied by charging the licensee with a more generic "violation of the standards and principles of medical ethics."

AJS of Des Moines v. Varaha, Inc, No. 14-0750, (Iowa App. 2/25/2015)[Improper Rule 1.904(2) Motion] – After losing on a petition for judicial review a petitioner must make sure to preserve error on any issues raised but not addressed by the district court. This is done through a motion to expand findings under rule 1.904(2). Such a process is made explicitly applicable to an appeal of a *contested case* decision by I. R. Civ. Pro. 1.1603. Similarly, rule 1.981(3) makes the 1.904(2) process applicable to cases where summary judgment is rendered on the entire case. In *AJS* the court granted summary judgment on the entire case and the plaintiff filed a rule 1.904(2) motion as allowed. But a rule 1.904(2) motion "is improper where the motion only seeks additional review of a question of law with no underlying issue of fact….A motion also is improper where it is no more than a rehash of legal issues raised—and decided adversely to it—by way of summary judgment before trial." Slip op. at 4. An improper motion will not toll the filing period to appeal to the Supreme Court. In *AJS* the plaintiff filed a motion to reconsider saying "it appears neither counsel pointed the court to controlling authority that appears to be

directly on point." Slip op. at 2. Since the appeal was timely from the date of the order denying reconsideration, but not from the original order the 1.904(2) motion must be proper for the Court of Appeals to have jurisdiction. The plaintiff at first argued that since rule 1.981(3) *expressly* makes rule 1.904(2) applicable in this situation it follows that the motion was proper. The Court of Appeals ruled that while the 1.904(2) motion was clearly available, "the cited language of rule 1.981(3) is subject to a judicial gloss." Slip op. at 3. The Court then held, notwithstanding the express application of rule 1.904(2) to such cases, it was still true that "to receive the benefit of the 'tolling exception,' a party must…have filed the motion 'for the proper reason.'" Slip op. at 3-4 Thus in *AJS* when summary judgment was granted on the entire case rule 1.981(3) would make rule 1.904(2) applicable, but only to extent that the rule 1.904(2) motion is proper. Because the motion in *AJS* sought only to point out overlooked precedent the Court of Appeals found it was not filed for a "proper purpose" and the appeal was untimely. It seems clear that under *AJS* the mere fact that I. R. Civ. Pro. 1.1603 makes rule 1.904(2) applicable to contested case appeals does not mean that an improper rule 1.904(2) will toll the filing period. As in *AJS* the explicit reference in another rule does not alter the requirements of a proper motion.

Bell v. 3E, No. 14-0044, (Iowa App. 3/11/2015)[Credibility Findings] – In this Workers' Compensation case an inside salesman slipped in the company lobby and hurt his wrist, shoulder, and – inevitably – his back. He obtained a 5% industrial disability rating and appealed to the district court. The claimant's administrative law argument was to argue that the agency decision "failed to satisfy Iowa Code section 17A.16 because it did not separate its findings of fact from its conclusions of law and did not offer credibility findings concerning the witnesses." Slip op. at 7. The Court noted that "[w]e do not hold the commissioner to technical compliance with this provision as long as we can determine where finding of facts end and conclusions of law begin or otherwise can track the commissioner's analytical process." Slip op. at 7-8. The decision was divided up so that findings of fact could be separated from conclusions of law. More importantly, "The decision gives specific findings on Bell's credibility and while other credibility findings are not explicit, they can be discerned from the direction of the analysis." Slip op. at 8. Through the miracle of the internet the agency decision can be found at: http://decisions.iowaworkforce.org/workerscomp/2011/July/Bell,%20Jr.,%20Steven-5034021D.doc

Lull-Gumbusky v. Great Plains Communication, No. 13-1886 (Iowa App. 2/11/15) [Rule Violation Sanctions] – This case catches the eye because the Industrial Commissioner excluded from evidence the majority of the claimant's exhibits because they were not formatted correctly. The Commissioner requires exhibits to be ordered chronologically by provider. The attorney for the claimant organized the exhibits chronologically. The attorney "had been warned on multiple occasions about presenting exhibits in violation of the rule" and was told by the deputy that "noncompliance would lead to the exclusion of the exhibits." The attorney responded that "the hearing assignment order 'wasn't adopted by a rule in any case,' and [that] strict chronology provides a better understanding of medical treatment." Slip op. at 4. The exhibit was excluded and on appeal the claimant argued the exclusion was error. The Court of Appeals dealt with the issue quickly. It first noted the finding by the commissioner that ""[t]he division and its professional staff have a workflow and internal practices which make the presentation of exhibits in a uniform manner a necessity." Slip op. at 12. Then the Court stated the standard of review as abuse of discretion. Under this standard, "[i]t is of no concern to a court reviewing an administrative sanction whether a different sanction would be more appropriate or whether a less extensive sanction would have sufficed; such matters are the province of the agency." Slip op. at 13 (*quoting Marovec v. PMX Industries*, 693 N.W.2d 779, 786 (Iowa 2005)). The court then promptly affirmed under this deferential standard. The lesson from this case: do not poke the decisionmaker with a stick.

Iowa Public Information Board Opinions –

5/21/15 – Attendees At Closed Session:

> "As Iowa Code section 21.5 is silent as to who may be invited to attend a closed session, we are of the opinion that it is at the discretion of the governing body as to who it may invite to attend.[3] This Board lacks the authority to read into the statute a laundry list of who can be invited to attend a closed session and who cannot. Such a determination would require an amendment to the statute by the legislative branch or an interpretation of the statute by the judicial branch."

11/19/15 –

> "Documents Discussed & Viewable at Public Meetings Become Public Records" – "The issue was recently raised concerning whether discussing and making viewable a document at a public meeting made the document a public record. We are of the opinion

that a document that is discussed and made viewable to the public at a public meeting makes the document a "public record" that shall not be treated as confidential under Iowa Code section 22.7. We note there are times when a confidential record is discussed or referenced at a public meeting. We do not deem such situations as removing the confidential nature of the record. Rather, this opinion applies solely to situations when the document is also made viewable or accessible to the public at the meeting."

GITS Manu. v. St. Paul Travelers Inc., 855 N.W.2d 195 (Iowa 2014)[Standard of review] – Although an older case this Supreme Court case is notable for its reaffirmation of the limited nature of factual review by the Judicial Branch. The district court had affirmed the Iowa Workers' Compensation Commission finding that the claimant was disabled under the odd-lot doctrine. The Court of Appeals "reversed the district court by discrediting the evidence that Frank had no reasonable prospect of steady employment in the competitive labor market." The Supreme Court granted further review, and reversed the Court of Appeals. In so doing the Court cited to its "previously announced….legal analysis a district court or appellate court should use when reviewing an agency decision for substantial evidence when the credibility of the evidence is involved." The Court then quoted from *Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007):

> Making a determination as to whether evidence "trumps" other evidence or whether one piece of evidence is "qualitatively weaker" than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision. It is the commissioner's duty as the trier of fact to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue. The reviewing court only determines whether substantial evidence supports a finding "*according to those witnesses whom the [commissioner] believed.*"

Eight Nasty Traps Of The PJR

Number One: Double Rehearing Won't Extend Deadline

- A second application for rehearing by the same party will not extend the deadline to file a Petition for Judicial Review unless the first application resulted in an amended order that altered the judgment. Zafar v. Board of Medicine, 13-0476 (Iowa App. 12/18/2013).

Number Two: Must Await Outcome Of *Any* Rehearing

- Cooper v. Kirkwood Community College, 782 N.W.2d 160, 167 (Iowa Ct.App.2010) (interpreting Iowa Code section 17A.19(3) to require party to wait until agency decides pending application for rehearing before appealing - this holding approved by SCT in *Christiansen*)
- Christiansen v. Iowa Bd. of Educ. Examiners, 831 N.W.2d 179 (Iowa 2013)("We resolve the tension in the statutory language and underlying

policies by interpreting section 17A.19(3) to require the party to await the final agency decision on the last pending application for rehearing before filing a petition for judicial review, even if more than thirty days has transpired since the agency denied that party's application for rehearing.")

Number Three: EDMS Won't Get Service Done.

- "Original notices must be served upon the party against whom an action has been filed in accordance with the Iowa Code and the Iowa Court Rules." Rule 16.316(3)
- Rule 16.201:"Electronic service cannot be used to serve an original notice"
- My Filings Reference Guide, p. 3 (Regarding original notice, "Important Note! Be sure the status is 'Filed' before the documents are printed and taken to the sheriff or process server" and "Note! It is the Filer's responsibility to serve the other party of this court matter".
- "Electronic service cannot be used to serve an original notice or any other document that is used to confer personal jurisdiction." *General Commentary on Electronic Filing Rules,* p. 9
- Harvey v. Polk County Bd. of Review, slip op. p.21 n.1 (Iowa App. Feb. 5, 2014) – email cannot serve a PJR

Number Four: Mailing Is Not Filing

- Gordon v. Wright County Board of Supervisors, 320 N.W.2d 565 (Iowa 1982)(in general)
- Sharp v. Iowa Department of Job Services, 492 N.W.2d 668 (Iowa 1992)
- Wunschell v. Iowa Dept. of Public Safety, 2001 WL 1285043 (Iowa 2001)("Mailing of the notice to the clerk's office does not constitute filing in the clerk's office for purposes of section 17A.19(3)"); *accord Chicago Athenaeum v. EAB,* No. 05-1116 (Iowa App. January 19, 2006).

Number Five: Venue Is Jurisdictional

- 17A allows filing either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business
- §17A.19(2)
- Many statutes allow for expanded venue, check them. E.g. adult abuse allows filing in district where the person resides. §235B.10(3); Unemployment cases can be filed where the claimant was last employer. 10A.601(7)
- Venue is jurisdictional. Anderson v W. Hodgeman & Son, 524 N.W.2d 418 (Iowa 1994).

Number Six: A Motion To Expand Must Be Filed To Preserve Error

- "[A] motion under rule 179(b) is an essential post-trial procedure when used to preserve error based upon the failure of the district court to resolve an issue." Meier v. SENECAUT III, 641 N.W.2d 532 (Iowa, 2002)(The case further holds that "even if a rule 179(b) motion is not available to a party to challenge a district court ruling, as Senecaut III alleges in this case, that party must still request a ruling from the district court to preserve error for appeal on an issue presented but not decided.")
- *Arnold v. Lang*, 259 N.W.2d 749, 753 (Iowa 1977) ("[I]t is now well settled a rule 179(b) motion is essential to preservation of error when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted for adjudication.").
- But this is not necessary if you win. *E.g. State v. Cromer*, 765 N.W.2d 1, 7 n.4 (Iowa 2009) ("A successful party in district court is not

required to request the district court to rule on alternative grounds raised, but not relied upon by the district court in making its ruling, in order to assert those grounds in support of affirming the ruling of the district court when appealed by the opposing party."); *accord McMahon v. Iowa Department of Transportation*, 522 N.W.2d 51, 56 (Iowa 1994); *Barnes v. Iowa Department of Transportation*, 385 N.W.2d 260, 263 (Iowa 1986)..

Number Seven: Second Motion To Expand Only Lengthens Appeal To SCT If Decision Changed

- "[A] rule 1.904(2) motion filed by a party following a denial of the party's prior rule 1.904(2) motion is improper and cannot extend the time for appeal if the judgment remained unchanged following the first motion. [However] a rule 1.904(2) motion filed after a new judgment or decree has been entered by the court in response to a prior rule 1.904(2) motion is permitted under the rule and extends the time for appeal." *In re Marriage of Okland*, 699 N.W.2d 260, 265-66 (Iowa 2005).

Number Eight: A "Please Change Your Mind" Motion To Expand Does Not Toll Deadline From DCT.

- "[A] rule 1.904(2) motion is improper where the motion only seeks additional review of 'a question of law with no underlying issue of fact.' *In re Marriage of Okland*, 699 N.W.2d at 265 n. 2... Additionally, if the posttrial motion amounts " 'to no more than a rehash of legal issues raised and decided adversely' " to the movant, the motion is not appropriate….Thus, a rule 1.904(2) motion is not proper if it is used merely to obtain reconsideration of the district court's decision." *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.,* 832 N.W.2d 636, 641 (Iowa 2013)
- "When a rule 1.904(2) motion amounts to nothing more than a rehash of legal issues previously raised, we will conclude the motion does not toll the time for appeal. Explore Info. Servs. v. Ct. Info. Sys., 636 N.W.2d 50, 57 (Iowa 2001). By contrast, when used to obtain a ruling on an issue that the court may have overlooked, or to request the district court enlarge or amend its findings when it fails to comply with rule 1.904(1), the motion is proper and will toll the time for appeal." *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 668-69 (Iowa 2013)