



THE

Volume 76 Number 5 June 2016

IOWA LAWYER

UNION COUNTY COURTHOUSE

Meet the ISBA's 130th president

SKIP KENYON

Valuing professionalism, collegiality and camaraderie



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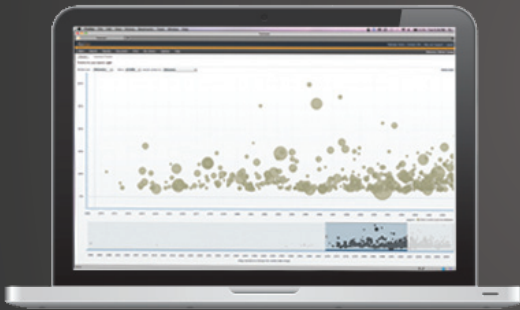
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EDITORIAL TEAM

Editor-in-Chief
Ashlee J. L. Sherrill
515-697-7896
asherrill@iowabar.org

Managing Editor
Virginia Sipes, J.D.
515-697-7897
vsipes@iowabar.org

Copy Editor
Steve Boeckman
515-697-7869
sboeckman@iowabar.org

General Inquiries
515-243-3179
isba@iowabar.org

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THE IOWA LAWYER

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By Steve Boeckman, ISBA Communications Dept.



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Are we there yet? We have "modernized" Medicaid but will we improve it?

The Iowa Department of Human Services designed, implemented and recently completed a plan to transition the vast majority of the 560,000 members in the state's \$4.2 billion Medicaid program to private managed care organizations. Will members have better access to care? Will members receive better care? Will Iowa save money? Read this important assessment based on the information we have now.

By Craig Sieverding, Davis Brown Law Firm, P.C. in Des Moines, Iowa



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What we do every day

Part tutorial on the enforcement and applicability of the Federal Motor Carrier Safety Regulations in Iowa, part tribute to the minutiae in our work that impacts client's lives, one lawyer details her love of the law and what we do every day.

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ABOUT THE COVER

Incoming ISBA President Arnold "Skip" Kenyon, III, is the first ISBA President from Union County, Iowa, and the first from District 5B in more than a century. Kenyon has practiced in many areas of the law ranging from family law issues, to personal injury cases, to estate planning. On page 6, he discusses his priorities for his presidency which emphasizes the value of communication within the legal profession.

Letters to the Editor

To the editor,

The irony of Senator Grassley's recent receipt of the ABA Justice Award for his bipartisanship and his steadfast refusal to afford Judge Merrick Garland a hearing before the Senate Judiciary Committee is palpable.

One of the hallmarks of The Iowa State Bar Association has been its consistent efforts to remove our judicial system from the vagaries of partisan politics. The removal of our selection of judges from party politics has been hailed as one of the crowning achievements of the association and the envy of many less fortunate states in this country.

The integrity of the Supreme Court of the United States of America, the very pinnacle of our judicial system, is now threatened by the same partisan political system this association successfully eliminated in the State of Iowa years ago.

The president of the United States has exercised his constitutional right and duty to fill a vacancy on the Supreme Court. For obvious reasons other than the qualifications of Judge Garland, Senator Grassley as chairperson of the Senate Judiciary Committee is refusing to afford him a committee hearing and an up or down vote. This is an abhorrent abuse of power and malfeasance, worthy of condemnation by this association on principle. It is a perfect example of the very partisan political activity we have sought to eliminate from our judicial system.

Fortunately, the electorate of Iowa will have the opportunity to cast an up or down vote on Senator Grassley this fall.

Very sincerely,

Keith A McKinley,
Past President of the ISBA

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www.iowabar.org isba@iowabar.org

PRESIDENT	Bruce L. Walker	Iowa City	319-354-1104	walker@ptmlaw.com
PRESIDENT-ELECT	Arnold "Skip" Kenyon III	Creston	641-782-1000	skipkenyon@issbank.com
VICE PRESIDENT	Stephen R. Eckley	Des Moines	515-283-4637	sreckley@belinmccormick.com
SECRETARY	Dwight Dinkla	Des Moines	515-697-7867	ddinkla@iowabar.org
IMMEDIATE PAST PRESIDENT	Joe Feller	Sibley	712-754-4654	kkfeller@hickorytech.net
DISTRICT GOVERNORS				
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DISTRICT 2B				
	Victoria Feilmeyer	Ames	515-956-3915	vafeilmeyer@nyemaster.com
	John Jordan	Boone	515-432-4510	john@jordanmahoney.com
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DISTRICT 3A				
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	Ryan Mohr	Storm Lake	712-732-1873	ryan@redenlaw.com
DISTRICT 3B				
	Deb DeJong	Orange City	712-737-4999	deb.dejong@dejunglawpc.com
	Daniel Hartnett	Sioux City	712-277-4561	dhartnett@craryhuff.com
DISTRICT 4				
	Kathleen Kohorst	Harlan	712-755-3156	kate@harlannet.com
	Robert Livingston	Council Bluffs	712-322-4033	Robert.Livingston@stuarttinley.com
DISTRICT 5A				
	Jane Rosien Hardy	Winterset	515-462-4912	jrosien@frcpc.com
	Mason Ouder Kirk	Indianola	515-961-5315	olfirm@qwestoffice.net
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	Roberta Chambers	Corydon	641-870-0108	roberta.a.chambers@gmail.com
DISTRICT 5C				
	Willard Boyd, III	Des Moines	515-283-3172	wlb@nyemaster.com
	Emily Chafa	Johnston	515-986-0914	emily.chafa@iwd.iowa.gov
	Stephen Eckley	Urbandale	515-283-4637	sreckley@belinmccormick.com
	Mark Godwin	Des Moines	515-283-4110	mark@robtullylaw.com
	Matthew Haindfield	W. Des Moines	515-246-5814	haindfield.matt@bradshawlaw.com
	Debra Hockett-Clark	Clive	515-247-9293	debra@hockett-clarklawfirm.com
	Ryan Koopmans	Des Moines	515-283-3173	rkoopmans@nyemaster.com
	Thomas Levis	W. Des Moines	515-274-1450	tom.levis@brickgentrylaw.com
	Anjela Shutts	Des Moines	515-246-5536	shutts@whitfieldlaw.com
	Donn Stanley, Jr.	Urbandale	515-281-5056	dstanle@ag.state.ia.us
	Janice Thomas	Des Moines	515-246-5828	thomas.janice@bradshawlaw.com
DISTRICT 6				
	Matthew Brandes	Cedar Rapids	319-366-7641	mbrandes@simmonsperine.com
	Linda Kirsch	Cedar Rapids	319-365-9461	lmk@shuttleworthlaw.com
	Lori Klockkau	Iowa City	319-338-7968	lklockkau@bkfamilylaw.com
	Robert Leinen	North English	319-664-3441	robertleinen@yahoo.com
	Jonathan D. Schmidt	Cedar Rapids	319-366-1000	jschmidt@nazettelaw.com
DISTRICT 7				
	Randy Current	Clinton	563-242-1832	fhc@iowatelecom.net
	Christopher Surls	Lowden	563-941-5301	cls@wbnlaw.com
	Ian J. Russell	Bettendorf	563-324-3246	irussell@l-wlaw.com
DISTRICT 8A				
	Robert Breckenridge	Ottumwa	641-684-6097	reb@ottumwalaw.net
	Ryan J. Mitchell	Ottumwa	641-682-5447	ryan@ommglaw.com
DISTRICT 8B				
	Rubin Helling	Burlington	319-754-6587	bhelling@seialaw.com
REPRESENTATIVES AND DELGATES				
Iowa Judges Association Representative:				
	Michael Shubatt	Dubuque	563-589-4448	michael.shubatt@iowacourts.gov
ABA Delegates:				
	Alan Olson	Des Moines	515-271-9100	ao@olson-law.net
	David L. Brown	Des Moines	515-244-2141	dlbrown@hmrlawfirm.com
	Jane Lorentzen	Des Moines	515-244-0111	jlorentzen@hhlawpc.com
LEGISLATIVE COUNSEL TEAM				
	James Carney	Des Moines	515-282-6803	carney@carneyappleby.com
	Doug Struyk	Des Moines	515-282-6803	struyk@carneyappleby.com
	Jennifer Tyler	Des Moines	515-282-6803	tyler@carneyappleby.com
ISBA YOUNG LAWYERS DIVISION OFFICERS				
	YLD President Joseph Goedken	Ottumwa	641-682-5447	jggoedken@ommglaw.com
	YLD President-elect Reed McManigal	W. Des Moines	515-223-6860	rmmcmanigal@holmesmurphy.com
	YLD Secretary Thomas Hillers	Des Moines	515-508-6460	hillet@nationwide.com
	YLD Immediate Past President Amos Hill	Des Moines	515-558-0136	amos.hill@mercer.com



Bruce L. Walker

is a partner at Phelan, Tucker, Mullen, Walker, Tucker, Gelman, L.L.P., in Iowa City, where he practices primarily in trial law, insurance litigation, personal injury law, employment law and workers' compensation. www.ptmlaw.com

Looking forward

As I conclude my year as Iowa State Bar Association president, I would rather look forward than back.

When I took the oath of office in June, 2015, I tried to lay out a plan to engage membership which we have continued to try to achieve throughout the year. That started by suggesting vice chairs for all the sections and committees, which has been accomplished to an extent. However, it has not been as extensive as I would have liked.

We appointed two new chairs for Diversity and Inclusiveness and that committee appears to be doing quite well.

The Fast Action Teams headed by Al Fredregill and Steve Eckley have reported now. The Scope and Correlations Committee is taking a look at them for purposes of moving forward with the strategic plan.

The Government Practice and the Corporate Counsel sections have become much more active. It is very important that we continue to try to engage not only government lawyers but also in-house counsel. Mark Schuling and Nicole Schippers have done a good job in this effort.

We have dealt with issues presented by the Iowa Court Rules, not only by education but also by appointing study groups to try to help our members deal with the issues that involve our members by court rules.

Access to Justice is being served by the HOLA Clinic in Des Moines, the New Iowans Legal Advice Clinic in Iowa City and soon will be served in Fort Dodge. Our under-privileged population continues to be underserved. A good step in the right direction to help more attorneys get involved in Access to Justice is the Iowa development and implementation of the 50 State Interactive Pro Bono Website headed by Virginia Sipes. In addition, the study group led by Brett Toresdahl for recommendations concerning the forming of a commission is moving forward.

I believe the Solace Program is working and should be continued.

We should make sure that the Foundation and LawPAC are properly funded in the future.

Transitioning young lawyers into The Iowa State Bar Association leadership roles continues to be a challenge. In addition, we need to be sure that we serve the law students and young lawyers the best we can to try to help alleviate their debt load.

Finally, I want to thank all those individuals who have stepped up to contribute in whatever way that they have without naming all of them. I have attempted to mention a few, but do not want to leave out the rest of you who have contributed to the effort that we started. I challenge all to continue to provide your expertise and donate your time to continue to help the bar association move forward.

Bruce L. Walker

President, The Iowa State Bar Association
walker@ptmlaw.com
319-354-1104



Dedi and Bruce Walker pictured here in April 2016.



ISBA President Bruce Walker with longtime friend and former neighbor Dr. Keith Krell at Equal Justice After Hours, the Iowa Legal Aid Foundation's signature annual fundraising event, March 31, at American Enterprise Group in downtown Des Moines.

Professionalism, collegiality, camaraderie



Arnold "Skip" Kenyon, III
130th ISBA President

HIS PHILOSOPHY

The future of the profession balances efficiency with collegiality. Investing in each other through respectful communication and camaraderie benefits the legal profession as a whole.

GOALS FOR HIS TERM

- Visit each district and county bar association to encourage engagement
- Review the ISBA mission statement and build a strategic plan to help focus efforts
- Improve the efficiency of ISBA board meetings

HIS PRACTICE

Beginning June 1, Kenyon will start as the Iowa State Savings Bank in-house counsel, and head of the trust department. Immediately prior to this new position, Kenyon had a general practice with his partner Todd Nielsen in Creston, Iowa, where he focused primarily on probate, personal injury and bankruptcy matters.

EDUCATIONAL BACKGROUND

Kenyon attended Iowa State University, receiving his undergraduate degree in computer science. He attended the University of Iowa College of Law and began practicing in 1977.

CONTACT

Phone 641-782-1000

Email skipkenyon@issbbank.com

Incoming ISBA president emphasizes the value of communication within the legal profession

Incoming ISBA President Arnold "Skip" Kenyon, III, has practiced for more than 35 years in many areas of the law ranging from family law issues, to personal injury cases, to estate planning. Being versatile in more than one area of the law is a necessity for many general practice firms found in small communities throughout Iowa. While his experience has focused primarily in southwestern counties, he says he has been fortunate to develop long-standing professional relationships with other attorneys around the state.

Kenyon, a proud Creston native, will be the first ISBA president to come from Union County and the first from District 5B in more than a century.

"It's an honor to serve and feel the support of my community," said Kenyon.

In addition to local support, his

family is excited to see him step into this leadership role. His brothers — Tim Kenyon, Union County Attorney, and Greg Kenyon, partner at Bradshaw Law Firm in Des Moines — have served as strong supporters throughout his career. While his father, Arnold O. Kenyon, II, began the family tradition, his daughter Angela Kenyon Davis and niece Elizabeth Lee represent the newest generation to join the legal profession.

Kenyon believes that his leadership role within The Iowa State Bar Association provides an opportunity to emphasize balance between efficiency and collegiality.

"EDMS has added increased efficiency, which ultimately is of great benefit to clients and the profession," he said. "Just as important is the need for personal interaction."



Incoming ISBA President Arnold "Skip" Kenyon, III, with his spouse Mary Ann Kenyon pictured here in their garden.



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April 13

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Joshua T. Mandelbaum, Staff Attorney, Environmental Law & Policy Center

April 18

Top 10 Tips for Unemployment Insurance Appeal Hearings

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Emily Chafa, UI Appeals Manager, Iowa Workforce Development

April 19

Guide to Calculating Damages in Patent Infringement

Sponsored by The Iowa State Bar Association Intellectual Property Law Section

Shawn Fox, CPA/ABV, CFA, ASA of Willamette Management Associates

April 22

2016 Commercial and Bankruptcy Law Seminar (In-Person or Live Webinar)

Sponsored by The Iowa State Bar Association Commercial and Bankruptcy Law Section

Nick Critelli, Critelli Law

Larry Eide, Pappajohn, Shriver, Eide & Nielsen, P.C.

Nicole Hughes, Telpner, Peterson, Smith, Ruesch, Thomas & Simpson, L.L.P.

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Don Molstad, Molstad Law Firm

Hon. Charles L. Nail, Jr., Chief Bankruptcy Judge, District of South Dakota

Gary Norton, Whitfield & Eddy, P.L.C.

Hon. Anita L. Shodeen, Chief Bankruptcy Judge, Southern District of Iowa

Kristina Stanger, Nyemaster Goode, P.C.

April 28

2016 Juvenile Law Seminar (In-Person or Live Webinar)

Sponsored by The Iowa State Bar Association Family and Juvenile Law Section

Rachel Antonuccio, Iowa City Public Defender's Office, Juvenile Division

Erin Carr, Carr & Wright, P.L.C.

Barb Davis, Barbara Durden Davis, P.C.

Jami Hagemeyer, Williams & Hagemeyer, P.L.C.

Thomas Mayes, Iowa Department of Education

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Mike McInroy, Service Area Administrator, Iowa Department of Human Services

Hon. Rose Anne Medford, District Associate Judge

Hon. Bill Owens, Associate Juvenile Judge

Charles Phillips, Iowa Attorney General's Office

Ellen Ramsey, Kacena, Attorney at Law

Caitlin Slessor, Shuttleworth & Ingersoll, P.L.C.

Hon. Colin Witt, District Associate Judge, District 5C

April 29

2016 Criminal Law Seminar (In-Person or Live Webinar)

Sponsored by The Iowa State Bar Association Criminal Law Section

Gordon Allen, Visiting Professor, Drake University Law School

B. John Burns, Federal Public Defender Office

Jerry Foxhoven, Drake Legal Clinic

Terry Klooster, Finality Investigations

John M. Sandy, Sandy Law Firm, P.C.

Matthew Sease, Kemp & Sease

Dean Strang, Strang Bradley

April 29

62nd Annual Spring Tax Institute

Sponsored by The Iowa State Bar Association Taxation Section

Tamara Borland, Low-Income Taxpayer Clinic, Iowa Legal Aid

Cynthia Boyle Lande, BrownWinick

Kristy Maitre, Center for Agricultural Law and Taxation

Jeff McGuire, IRS Special Agent

Judge Cary Pugh, U.S. Tax Court

Kevin Techau, U.S. Attorney for the Northern District of Iowa

Adam Thimmesch, University of Nebraska College of Law

The business of the ISBA's mission statement and strategic development is a top priority. In addition, Kenyon also wants to foster a supportive environment for young attorneys.

"One of the major benefits of practicing in Union County has been the development of long-standing professional interactions and camaraderie among attorneys," he explained. I would like to work toward a climate where we can balance efficiency and collegiality within the profession."

Kenyon has already started the conversation with district bar associations, encouraging outreach and communication, even on issues where clients are adversarial and emotions run high.

"Addressing difficult or uncomfortable situations in a respectful manner can really help develop professionalism among attorneys," he said.

He went on to explain that brief conversations, both inside the courthouse and in social settings, can make a tremendous difference in the outcome of a case. He expressed interest in encouraging young attorneys to attend ISBA events where there is a natural opportunity to connect with other professionals.

"Those small conversations can go a long way toward developing a meaningful legal network within our state," he said. "I look forward to the upcoming year. The opportunity to take part in advancing goals of the legal profession in our state is an honor."

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Jerry Anderson trades classroom for dean's office July 1

New Drake dean outlines initiatives to ensure the school meets changing legal needs

By Steve Boeckman, ISBA Communications Dept.

Drake University Law School's long-time professor of environmental and property law, Jerry Anderson, will soon be trading his classroom for the dean's office. While the 25-year veteran Richard & Anita Calkins Distinguished Professor of Law said he will miss the teaching and scholarship he has been involved with his entire career at Drake, he also wanted "to continue to develop as a professional and stretch myself in a different way."

He'll start down that road when he takes over the deanship on July 1, succeeding Ben Ullem, who is retiring after two years as dean.

The Hutchinson, Kansas, native, received his undergraduate degree in Business Administration with honors from the University of Kansas in 1981 and his J.D. (Order of the Coif) from Stanford University Law School in 1984. He has a number of initiatives in mind designed to help Drake's legal education keep pace with the changing legal marketplace. He's also optimistic about the future of legal education, even though recent years have seen nationwide application and enrollment declines not experienced since the 1990s.

Among the initiatives he wants to implement as quickly as he can are expanding the law school's MJ (masters of jurisprudence) program into the regulatory compliance field, enhancing and promoting the school's LLM (master of laws) degree program, increasing Drake's international presence, and boosting Drake's reputation nationwide.

Expanding the MJ program

Drake has offered a masters of jurisprudence degree in health law for approximately a year. Led by Denise Hill, the program allows employees in the healthcare field to understand government regulations better, to acquaint themselves with how administrative agencies work, and to give themselves a basic understanding of the legal system through a 28-credit course of instruction. Working with the College of Business and Public Administration, Drake plans to expand the MJ program into "compliance" generally, to reach employees in fields such as insurance and financial services.

"A lot of people in the Des Moines area work in regulatory compliance," Anderson said. "We've been talking with business leaders in the community about what they need, and they are very excited. They see it as a way for their mid-level people to get additional credentials and enhance their value in the company."

Some might see training non-lawyer employees in legal matters as reducing the need for lawyers. Anderson said there haven't been any repercussions from lawyers, and he doesn't anticipate any in the future. Basically the MJ degree will "make them more effective employees," he said. "They're still going to need outside counsel because they are not lawyers. In fact, the training might help them to recognize legal issues and communicate those better to outside counsel."



Incoming Drake Law School Dean Jerry Anderson stands in the second-floor hallway of Carpenter Hall at the law school. Anderson assumes the dean's role on July 1.

Enhancing LLM program

Drake currently offers an LLM degree in Individualized Legal Studies, as well as Intellectual Property Law. The LLM is an internationally recognized higher academic degree which establishes that the recipient has achieved an advanced understanding of U.S. or international legal principles. As attorneys seek to expand their services or make mid-career changes, the one-year LLM degree can give them the required credentials, Anderson said.

His goal is to make the LLM degree more accessible to working attorneys by offering more classes at night and online – or at least with some online components.

Increasing Drake's international presence

Even though Drake is in the middle of Iowa, "a lot of our businesses compete globally, and it's good for our students to think more about the global legal environment," he said. He plans to tackle the international presence issue by establishing relationships with law schools in other countries, and by actively recruiting more foreign students.

Drake presently has relationships with law schools in France and China. Anderson wants to expand that to other countries.

Currently less than five percent of the law school's student body consists of international students. "It would be good for us to have more foreign students come to Iowa because we don't want to be isolated from the rest of the world," he said. "The marketplace is becoming more global in terms of legal education, so we need to make sure we stay abreast of that."

Increasing Drake's nationwide reputation

Drake has a good regional reputation, but places on the coasts don't know the Drake name as well, "partially because we don't have a big-name football team," he laughed. All kidding aside, though, "we have wonderful students and professors, doing important research; we just need to get them out presenting at conferences more often. And, we need to bring more scholars to Des Moines to see the things we're doing."

Drake has made some inroads in this process already. One example is Professor Jonathan Rosenbloom, who is completing a nationally competitive fellowship at the University of Oregon School of Law to help that school jumpstart its sustainability program. At Drake, Rosenbloom teaches a course on sustainability and climate change. His students work with communities on ways to revise their ordinances to make them more environmentally friendly.

The course has received national recognition for the “really impactful way” it is presented, Anderson said. “The students like it because it’s not just learning the subject, but it’s making a difference in the world. Cities are looking for help. A lot of times, they don’t know how to approach the sustainability issue, or they don’t have the resources.”

The course also fits the public service emphasis of the law school, best exemplified by Drake’s innovative and active Legal Clinic.

Future of legal education

Despite the downturn in applications and enrollments around the country, Anderson is optimistic that interest in law school is on the way up. He said applications to Drake are up about six percent from a year ago.

Even though applications have increased, there is more competition for the smaller pool of applicants. He said Drake needs alumni support to provide scholarships and other incentives to attract quality applicants.

As applications increase, Drake isn’t “going to immediately increase the size of its classes,” however, he said. During the downturn, the school downsized to about 100 students from about 145 per entering class and plans to stay at that size for the foreseeable future. Smaller entering classes allow the school to focus on quality of its graduates, and on matching the supply of graduates with the availability of jobs. He thinks the job market, which has been tight, will quickly catch up with the smaller number of graduates. In part by reducing class size, Drake has been able to maintain an overall employment rate of 92 percent, well over the 85 percent national average.

Ample job opportunities exist, or will exist, in many rural communities, he believes. He wants to work with the bar association and the legislature to figure out how to help young attorneys “get out to those communities and start their careers.”

To accommodate the changing environment of legal education, Drake will be adding more online classes to make it easier for part-time students. For some courses, the online format offers a better learning experience, he said. However, full-time JD students will continue to take most of their courses in the classroom.

To get ready for the expanded online classes, the law school is installing updated technology this summer. The next step will be training more professors to teach online.

Anderson’s goal is to have the MJ program ramped up by the fall of 2017. He doesn’t have specific dates in mind for the other initiatives, although “I want to get going as fast as I can,” he said.

All of these initiatives take money, he acknowledged. As dean, a major component of his job will be raising money to support scholarships, scholarly efforts and marketing. He will need support from alumni and friends, he said.

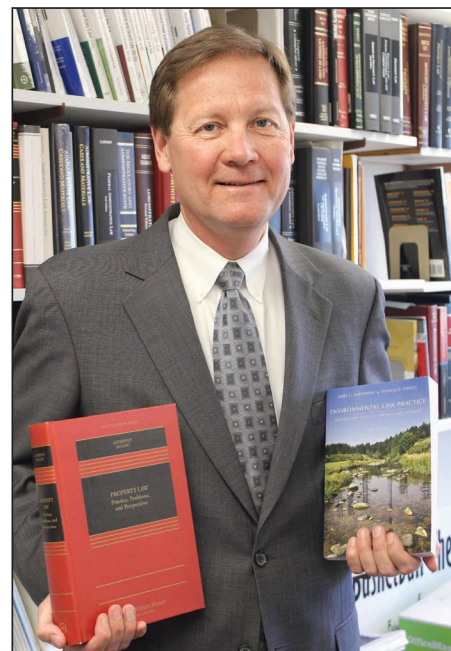
Anderson acknowledged that the changes he envisions for Drake, and the changes that he will undergo personally in the move from full-time teaching and research, will be challenging. His guiding mantra, however, is that legal education is evolving and he believes that he can move the

law school forward to keep pace with the shifting legal marketplace. His predecessor, Dean Ben Ullem, brought a lot of energy to the position and increased the external resources for the school.

“Dean Ullem and Associate Dean, Andrea Charlow, have done excellent work to lay a foundation for several important initiatives that I plan to carry forward,” he said.

“A dean has so many constituencies to deal with, but I’m trying to stress an openness to students, faculty, staff and alumni, as well as the larger business and legal communities,” he said. “I can’t solve all the concerns they may have, but at least I can explain why things are being done the way they are.”

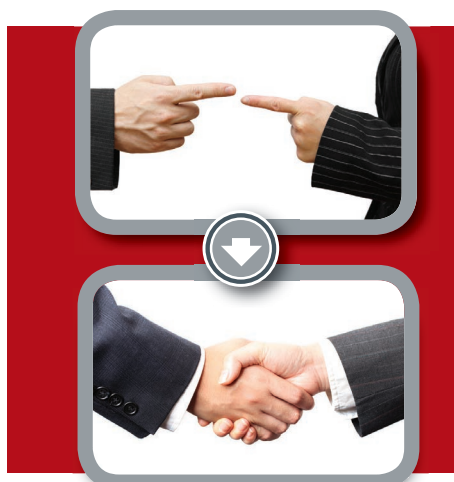
Maybe he’ll get to exercise his love for teaching once in awhile, even though the current model is that deans don’t teach very often. He’s thinking that perhaps the increase in online courses will at least give him the opportunity to be in a virtual classroom.



Jerry Anderson holds two textbooks he co-authored. Both provide for practical application of the principles learned in class. On the left is a property law book, being revised for its fourth edition, that is being used in about 30 law schools around the country. On the right is an environmental law book which comes with six Hollywood-produced videos that give students real-life case scenarios for which they have to develop appropriate legal responses.

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Ten facts about Iowa Legal Aid

By Elisabeth Reynoldson, Iowa Legal Aid's Board of Directors President

Iowa Legal Aid has been part of the legal community in Iowa since its birth in 1977 when five local legal aid offices joined together to provide free legal services in civil cases to low-income and other eligible Iowans across the state. Today Iowa Legal Aid operates out of ten regional offices located in Cedar Rapids, Council Bluffs, Des Moines, Davenport, Dubuque, Iowa City, Mason City, Ottumwa, Sioux City and Waterloo. Criminal cases are not part of Iowa Legal Aid's work.

Iowa Legal Aid is funded by a grant from the national Legal Services Corporation, which brings with it a multitude of federal regulations and oversight of the program's work. Other primary funding sources are the state of Iowa, 16 United Ways across the state of Iowa, many Iowa businesses, hundreds of individual donors and many other sources.

There are common misconceptions about Iowa Legal Aid's work. Facts addressing some of the most frequently heard misconceptions are listed below:

1. **FACT: Iowa Legal Aid helps Iowans in all 99 counties every year.** Iowa Legal Aid's intake system allows clients to reach the program toll free by telephone during normal business hours. Individuals can also apply online 24/7 or walk in to an office during regular business hours. A report by the Legal Services Corporation's Office of Program Performance, following a 2015 onsite, week-long review of Iowa Legal Aid, said, "Iowa Legal Aid has a very efficient and effective intake system that consists of a number of portals for clients to access legal services including telephone, walk-

in, outreach and on-line."

2. **FACT: Iowa Legal Aid provides a full range of legal services to clients.** The work of Iowa Legal Aid is similar to the work of most attorneys. Clients are represented in administrative appeal hearings, court hearings and appeals to the Iowa Court of Appeals, Iowa Supreme Court and Eighth Circuit Court of Appeals. Clients receive advice as to their rights and responsibilities. Sometimes Iowa Legal Aid provides brief service, for example by contacting a landlord or a creditor to try to quickly and informally resolve a dispute. In many situations, advice and brief service is all clients need.
3. **FACT: Iowa Legal Aid can sometimes represent people who do not have documentation of their legal status in the United States and can represent many persons who are not U.S. citizens.** Federal regulations generally prohibit Iowa Legal Aid from helping people who are not lawfully present in the United States. Services can, however, be provided to individuals who are victims of domestic violence, regardless of immigration status. In 2015, Iowa Legal Aid provided services to 165 individuals under this domestic violence exception. Help is available for persons who are lawful permanent residents, refugees, asylees and other persons who have lawful status.
4. **FACT: Iowa Legal Aid provides legal services to as many clients as staff is able to help.** Due to limited resources, Iowa Legal Aid operates under a priority system established by Iowa Legal Aid's Board of Directors, a majority of whom

are Iowa lawyers appointed by the ISBA. Legal needs studies across the country show that only one in five legal problems of low-income people is addressed by the legal system. In 2014, over 11,000 persons who contacted Iowa Legal Aid were not served or did not get all of the assistance that they wanted due to lack of resources. Priority cases are targeted to those types of legal problems that will have the most severe ramifications if they are not addressed by the legal system. Priority cases involve domestic violence, access to safe and stable housing, healthcare, and income.

5. **FACT: Iowa Legal Aid does not discriminate in favor of women when choosing family law cases to take on for extended representation.** Iowa Legal Aid's priorities provide that legal problems involving domestic violence are a high priority. Approximately one-third of Iowa Legal Aid's cases involve family law and over 40 percent of the time spent on casework involves family law matters, most of which involve domestic violence. Women are much more likely to be victims of domestic violence, so more of Iowa Legal Aid's family law matters do involve representation of women. Iowa Legal Aid also represents men who are victims of domestic violence.
6. **FACT: Iowa Legal Aid is capable of reacting quickly to address clients' emergencies.** Many cases that are at the core of Iowa Legal Aid's practice are by their very nature emergencies. Evictions, civil protective orders, and garnishments are cases that have very tight deadlines, often requiring advocates to build their cases in a matter of a few days or less before a hearing. The outcome of these hearings are especially crucial in preventing homelessness, violence, and total economic deprivation for these households.

In a report following a 2015 onsite review of Iowa Legal Aid's work, the Legal Services Corporation's Office of Program Performance said about Iowa Legal Aid, "It is highly productive, providing high quality legal services to a significant number of clients. It is also a program that is constantly engaging in



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self-analysis as well as trying to improve from learning from others and adopting new ideas. Its continued strategic planning efforts are exemplary and could serve as a model for other programs.”

7. **FACT: Iowa Legal Aid does a significant number of divorce and custody cases, but tries to strike a balance with other crucial needs.** Iowa Legal Aid handles many divorce and custody cases. About one-third of Iowa Legal Aid’s work is in family law. Almost all involve domestic violence. Dissolutions of marriage and custody orders are obtained by Iowa Legal Aid attorneys in the most egregious abuse cases where safety is a concern. Many other dissolution and custody matters are referred to Iowa’s Volunteer Lawyers Projects.
8. **FACT: Iowa Legal Aid counts cases referred to volunteer attorneys as clients served because the Volunteer Lawyers Project is an integral part of delivering services to low-income Iowans.** Volunteer attorneys are a vital component of providing legal services to low-income Iowans. There are currently 3,384 lawyers signed up for the two volunteer lawyers projects in Iowa (Iowa Legal Aids Volunteer Lawyers Project and the Polk County Bar Association Volunteer Lawyers Project). In 2015, an estimated 600 lawyers accepted cases. In addition, many lawyers assist with intake of new cases as a part of Iowa Legal Aid’s intake system. An average valuation of \$190 per hour for the 17,836.75 hours reported by volunteer attorneys results in donated services valued at \$3,388,982.50.
9. **FACT: Iowa Legal Aid provides assistance to low-income, vulnerable Iowans.** With some exceptions, clients must meet both income and asset tests to be financially eligible for services. Most clients have incomes below 125 percent of the federal poverty guidelines, which for a family of three is \$25,113. Iowa Legal Aid will investigate further and take appropriate action if issues arise regarding the accuracy of eligibility information provided.
10. **FACT: Iowa Legal Aid raises legitimate and appropriate defenses consistent with our ethical responsibilities.** What some may consider “technical defenses” are, from the clients’ perspective, hard-won procedural rights that protect vital

interests in basic needs, like shelter, safety and economic stability. Iowa Legal Aid preserves these rights by raising them in appropriate situations, which benefits not only the clients who receive the representation, but also our society as a whole.

For further information about the work of Iowa Legal Aid and the impact Iowa Legal Aid and volunteer attorneys have on the lives of low-income Iowans, contact Dennis Groenenboom, Executive Director, Iowa Legal Aid, 1111 9th Street, Suite 230, Des Moines, Iowa 50314 or visit Iowa

Legal Aid’s public website and website for volunteer attorneys.

<http://www.iowalegalaid.org/>
<http://www.probono.net/iowa/>



Elisabeth Reynoldson, partner at Reynoldson & Van Werden, L.L.P., in Osceola, Iowa, is president of the Iowa Legal Aid Board of Directors, vice president of the Iowa State Bar Foundation board of directors, a past president of the ISBA YLD and is heavily involved with multiple ISBA sections and committees. She can be contacted at ereynoldson@iabar.org.

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Private employer drug testing in Iowa: A short list of compliance requirements and issues to consider

by Ben Roach

Iowa Code Section 730.5 establishes the legal requirements for private sector employer drug testing in Iowa. Section 730.5 does not apply to government employers, and does not apply to employees where testing is required by federal statutes or regulations. The section regulates when a private employer can test applicants or employees for the presence of drugs or alcohol, provides procedural requirements for testing, including Medical Review Officer review, provides notice requirements for positive test results, grants employees retest rights and sets forth confidentiality, liability and immunity provisions.

The “Cliff notes” version of section 730.5 reads -- if an employer denies an applicant a job based on unlawful testing, terminates an employee based on unlawful testing, or otherwise unlawfully tests the employee for drug or alcohol use, the employer faces legal liability. Damages can include re-instatement, lost wages and reimbursement of an employee’s attorneys’ fees.¹

The vast majority of employers I work with have not encountered problems with pre-employment drug or alcohol testing. This is likely because the ability to test pre-employment is clear cut and the procedures are not as onerous. On the other hand, section 730.5 makes it very hard for many employers to comply with all requirements for testing existing employees. The documentation, procedure and notice requirements for testing current employees are burdensome, and just one mistake can invalidate a positive test result and create legal liability.²

In any civil action under section 730.5, the employer has the burden of proving all requirements of the drug testing law were met.³

Despite the difficulty of complying with the law, many employers feel it is important and worth the risk to conduct drug and alcohol testing for safety, quality control and other reasons.

There are several requirements that employers must meet to comply with the law.

In short, the primary requirements to comply with the Iowa drug testing statute are:

- Testing is only permitted in five distinct circumstances: (1) pre-employment; (2) reasonable suspicion; (3) testing during or after drug or alcohol rehabilitation; (4) unannounced testing by selecting from specific pools of employees; and (5) post-accident;
- There must be a written policy containing requirements of Iowa Code section 730.5(9);
- The policy must be provided to employees and available for review by employees and applicants;
- Copies of the policy must be provided to parents of minors;
- Two hours of initial and one hour annual required training of supervisor;
- The employer pays all costs of testing, even retests for diluted or other unconfirmable results;
- Written notice by Certified Mail, return receipt requested, is required for

- positive test result of current employee;
- Notice of a positive test must inform employee of ability to request retest of split sample within seven days, the cost of a retest and that the employee has the choice of retest facility;
- Applicants do not get option of retest.

Over the past few years, I have seen a few recurring problems encountered by employers trying to comply with the drug testing law. Many of these problems are easy to avoid or correct.

Five tips for avoiding simple-to-correct mistakes by employers and their testing partners:

- Audit to ensure you have proof of receipt of policy, or handbook with policy included, by all employees;
- Make sure procedures are set up so that the testing lab gets both specimens of split sample;
- Make sure the MRO spoke with the employee before issuing a confirmed positive test result;
- Make sure the written notice of positive test to current employee is sent by certified mail, and identifies the right to request a retest and the cost of a retest;
- Make sure you have provided the initial two hours and annual one hour of supervisor training.

Three more complicated issues arising with more frequency

When is it an “accident” that allows post-accident testing?

Section 730.5(8)(f) authorizes a post-accident test whenever there is property damage estimated to be \$1,000 or more, or a person, not necessarily an employee, suffers an injury that would be OSHA recordable or reportable, if it was suffered by an employee. This generally means an injury that results in a person missing one or more days from work, or that requires medical treatment beyond first aid.

Some employers have interpreted this to allow testing whenever an employee requires medical treatment for a work-related injury. However, such a policy ignores the requirement that there must have been an “accident” to trigger post-accident testing. The Iowa Court of Appeals has

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Mike Mesch
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Partner

held that a repetitive motion injury is not an “accident” sufficient to authorize post-accident testing, and that an employer’s policy of testing any time an employee requires medical treatment does not comply with Section 730.5.

⁴Thus, it is important that there be a discrete event that constitutes an accident to allow post-accident testing.

Inability to provide testing samples

Employers are likely to encounter situations when employees are unable to provide a sufficient urine sample. Section 730.5 provides no guidance on how to deal with this issue. Employers also must take into consideration whether the applicant or employee has a medical condition that could be considered a disability requiring accommodation. Federal DOT regulations contain very specific procedures that a collection site must follow in these situations, with specific waiting times, amount of fluid that may be consumed and other requirements, including a medical opinion if needed.⁵

Because the Iowa statute provides no specific guidance, I recommend employers follow the DOT regulations in these situations when there are difficulties collecting samples.

Job site required testing

A common rule of construction sites, often coming from building owners or a general contractor, requires all workers to pass a drug test before they are allowed to work on the construction site. Companies may also seek to impose a similar requirement on other contractors or consultants working on their premises. While this may be allowed if the subcontractor or employer is hiring new employees to work on a particular job site, this situation creates problems for existing employees. Iowa Code Section 730.5 does not expressly allow testing in this situation.⁶

It would be permissible to set up a pool of employees assigned to that particular construction site for random, unannounced testing, but that would not satisfy the owner or contractor’s requirement that all employees pass a drug test. Unfortunately, there does not appear

to be an easy solution to this issue under Iowa law. My recommendation to employers facing this dilemma is to speak with the owner or general contractor to explain that all employees would have passed pre-employment drug screening, and all employees are also subject to reasonable suspicion testing that would catch any employees under the influence after passing the initial pre-employment screen. Outside of providing these assurances, or terminating all employees and then rehiring them to work on a specific job site, I have not come up with any good solution that complies with section 730.5. This is an area where it would be helpful for the Iowa Legislature to amend the statute to add another circumstance for when testing is allowed for existing employees.

Complying with Iowa Code Section 730.5 requires diligence and attention to detail. Keep a close eye on employer procedures, and section 730.5, to maintain a compliant testing program.

¹ Iowa Code § 730.5(15)(a)(1).

² See, e.g., *McVey v. Nat’l Organization Service, Inc.*, 719 N.W.2d 801 (Iowa 2006) (court finds fact issue for trial when employee claims she did not receive a copy of written drug testing policy); *Tow v. Truck Country of Iowa, Inc.*, 695 N.W.2d 36 (Iowa 2005) (employer violated statute by not paying for cost of second test required when applicant’s first test sample came back diluted); *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003) (positive test invalid because oral notice is not sufficient under statute, even though employee did not contest actual positive test results); *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553 (Iowa 1999) (cannot single out one employee for random testing even if employee agrees in writing to allow testing).

³ Iowa Code § 730.5(15)(b).

⁴ See *Skipton v. S & J Tube, Inc.*, 2012 WL 3860446 (Iowa Ct. App. 2012).

⁵ See 49 C.F.R. Part 40, Section 40.193.

⁶ See Iowa Code Section 730.5(8).



Ben Roach is a shareholder in the Litigation and the Labor and Employment Departments at Nyemaster Goode, P.C. His practice includes employment law where he both consults and is continuously involved in litigation for employers involving drug testing, wage and hour, discrimination, harassment, whistle-blower, retaliation, wrongful termination and non-compete issues.

IN MEMORIAM

Doug Oberman, 71, of Cedar Falls, Iowa, died April 17.

Oberman was born in 1945 in Kentfield, California. He earned his J.D. from the University of Missouri Law School. Oberman then joined Swisher & Cohrt, P.L.C., in Waterloo, Iowa, where he practiced for 25 years. As a polio victim for 63 years, Doug spent his life working toward the eradication of polio, which he continuously worked toward through fundraising and outreach both in the United States and around the world.

James Van Ginkel, 93, died April 3 in Atlantic, Iowa.

Van Ginkel was born in 1923 in Prairie City, Iowa. He served in the Army Air Corps during World War II, then completed his J.D. at Drake University Law School in 1953. He spent three years as a special agent for the FBI, then began his practice in Atlantic in 1956 where he spent 40 years as the city attorney.

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On the trolley and glen plaid suits

By Hon. Robert J. Blink

Life is a trolley. People get on. People get off. There is a stop at the courthouse. Judges, like everybody else, take the ride.

Three decades ago a man in a glen plaid suit stepped down from the trolley and entered his chambers. In his suit and Oxford shoes, his fine blond hair was thicker then. Though he was a contemporary, I had not known him as a lawyer. We fought in different arenas: I in the criminal, he in the juvenile. He presided over a bench filled with children – sick children, abandoned children, abused, foolish and even evil children. Here is where I met the judge in the glen plaid suit.

It was late in my career as a trial lawyer. I met him because of my client Stan, or more specifically Stan's father, the doctor. A gifted surgeon, he had saved many lives and improved the quality of countless more. Stan, on the other hand, took and ruined lives. Raised in affluence, given all and more than he needed to reach his clear life's potential, Stan preferred beer, girls and fast cars. On an autumn night, fueled by alcohol and a young woman's rejection, he plowed his Mustang into a family-filled car, leaving only carnage in the intersection. He fell squarely in the category of "foolish" and "spoiled." He also fell within the category of "killer."

Stan sat beside me at counsel's table, a handsome, promising lad. His appearance was impeccable, dressed in well-pressed clothes from the finest upscale clothiers. His intellect was evident. He was attentive to the judge. He listened and abided by his counsel's directives. He spoke only when addressed in his articulate youthful voice. Stan was too bright not to know the score.

The fate of my young client rested with the quiet man in the robe. Throughout the prosecution I came to recognize the singular characteristic of the man on the bench: impartiality. He was not invested in a particular verdict, a given result. There was no flash, no

panache. The trial was not about him. He did not seek to take the case where he wanted it to go, but watched it go where it must of its own accord. Just a calm mien that assured my client that maybe, just maybe there was hope that this foolish boy who had damaged so many lives might be treated fairly. This was remarkable. For how often does a courtroom offer hope?

In most criminal cases the question is not one of guilt, but of degree and commensurate consequences. The question was no different in Stan's case. The prosecutor knew it, we knew it and the judge knew it too. With a vengeance I had rarely seen, the government strove for the maximum punishment. It was clear that in the government's eyes this case was bigger than Stan.

For the state the question was whether wealth could afford a "better" justice. Stan's father's skill in the surgical theater afforded his son the finest of experts in the judicial theater. We played the cards we held. The judge turned the government away from adult court and prison. The prosecutor's face was livid with frustration. With but one hearing to go, the only question that remained was probation or the State Training School.

How often we measure our risks, and rewards, based on those around us who show their "true colors." By this we mean they show us what they really think, what they really believe, what judgments they have made. But the face of this judge showed none of this – neither impending mercy nor tragedy. Yet I knew from his attentiveness that no evidence had escaped him.

Glen plaid is like that. Muted from a distance, it reveals deep vibrancies of color only when seen up near. With the appearance of no clear tone from afar, close inspection reveals well-ordered variations of hue. While the sum of all the threads is neutral, the fabric itself accounts for all the detailed variations of the spectrum. The character and decision-making of this judge was much

like his suit: neutrality comprised of all the fine threads of evidence.

And so it was. Stan did not receive probation. It was not the result we sought. But it was a result woven of the facts. It was not the harshest of consequences or the least – just one well suited to the record. There could be no viable appeal. The ruling was entwined too finely of reason and practicality.

Not long after that trial I rode the trolley to the courthouse, stepped off and walked into my own chambers. The man in the glen plaid suit welcomed me. He reminded me where I would sit: in the best seat in the house. This short phrase defined his philosophy of judging: watch, listen, decide. Let the facts come to you in all their varied shades and nuances. Blend them and weave them into a neutral fabric. Wrap the parties in a cloak of justness.

His hair is thinner now and no longer blond. As he went out the courthouse door and walked toward the trolley stop I could see hearing aids behind his ears. But his suit? It was still of a most wonderful glen plaid. He carried with him a briefcase filled with a score and 10 years of watching, of wisdom. Then he took his seat and another stepped down.

His briefcase was empty. He was untried. And when he had settled in his chambers, I went to welcome him. From the doorway of his chambers I asked, "You do realize' don't you, that you now have the best seat in the house?"

We all ride the trolley of life. It is not the ride itself that matters. What gives us worth is how we touch other lives at each of our stops.



Judge Blink is a district court judge in the Fifth Judicial District.

Defending the largest lawsuit ever

By Russ Ipsa

I handle very little insurance defense work, so when an Iowa insurance company sent me a case to defend, I was excited. It was a “slip and fall” case filed by a pro se plaintiff. I called my friend, Bob Conners, to find out how I got involved in this case, since I knew that his firm regularly represented this insurance company.

“How did I get this case?” I asked Bob on the phone. “I thought you guys did all of their defense work.”

“We do,” he replied. “This is a case filed pro se by Sam Watchel, isn’t it?” “Yes,” I said. “What has that got to do with it?” I asked.

“You’ll find out. He has just worn us out,” Bob replied. “We told the company to send any further lawsuits filed by him to someone else. Good Luck.”

I had no idea what he was talking about, but it seemed like a pretty straight-forward case, so I dug into it. I started by filing an interrogatory asking for the value that Mr. Watchel put on his case. He replied to the interrogatory right away saying his claim was “priceless.” Of course, that forced me to file a Motion to Compel.

The case was assigned to Judge Fortrum, who ruled on the motion before any response was filed to my motion and without granting

a hearing. Judge Fortrum ruled: “The Court has, in previous litigation, made it clear to this plaintiff that he has an obligation to respond to discovery requests asking for the specific amount of any claim for damages. Plaintiff shall specify the amount of his claim within seven (7) days or the case will be dismissed.”

The next day, I received an amended answer to my interrogatory from Mr. Watchel. He amended his answer from “priceless” to “2 undecillion dollars.” I read the amended answer and thought, “this is a made up word”, thinking I would just renew my motion to compel.

However, my secretary convinced me to look the word up in a dictionary before I responded. I looked it up and, sure enough, there is such a number – it’s a 2 followed by 36 zeros. I moved the court to dismiss Mr. Watchel’s claim alleging that the answer to my interrogatory was not made “in good faith.”

Once more, the Court ruled on my motion without waiting for a response from Mr. Watchel and without setting a hearing. Judge Fortrum’s ruling was short and to the point: “The court has conducted some research to determine the exact amount of Mr. Watchel’s claimed damages. According to the court’s research, the

total value of the goods and services produced by humanity since the dawn of man is approximately \$2.4 quadrillion. Using this estimate, the total value of the goods and services produced by humanity from now until the end of the Stelliferous Era (the time when scientists believe the stars in the universe will begin to burn out) will still not be enough to satisfy the damages sought by Mr. Watchel. Plaintiff’s claim is dismissed with prejudice because this court does not have the jurisdiction to issue a judgment that must inherently be unsatisfied until the end of time. Costs are taxed to the plaintiff.”

So, that was the end of my experience as an insurance defense lawyer. Now, whenever I am at a seminar where Judge Fortrum speaks, he singles me out, telling the audience that I successfully defended the largest personal injury claim in the history of Iowa. I have gained a new respect among my fellow members of the bar, but I make it a point to avoid giving them any details of the case.

Russ Ipsa is an Iowa attorney and member of the Iowa State Bar Association. Most of the time, he thinks he is a successful practitioner but always enjoys his legal career.



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Are we there yet? We have “modernized” Medicaid but will we improve it?

By Craig Sieverding

In the short span of two years, the Iowa Department of Human Services designed, implemented and recently completed a plan to transition the vast majority of the 560,000 members in the state’s \$4.2 billion Medicaid program¹ to private managed care organizations. While sizeable challenges were overcome, the main challenge arguably lies ahead — demonstrating that the transition can deliver on its promises to improve health care quality and access while reducing costs.²

Medicaid is a state program that makes healthcare services available to individuals with inadequate financial resources, including children and elderly and disabled persons. Historically, Medicaid programs made services available by contracting with providers on a “fee for service” basis, meaning that the programs contract directly with providers and pay the providers for each service performed (e.g. for each office visit).

Over the past 20 years, many state Medicaid programs have transitioned to managed care delivery-and-payment models.³ With a comprehensive managed care model, the programs contract directly with managed care entities, including MCOs, to accept a set per-member-per-month payment (i.e. a capitated rate) in exchange for delivering services through a network of participating providers. The widely-held view behind this trend is that a state may see improved care coordination and cost savings, or at the very least, some predictability on expenditures.

As of today, 48 states and the District of Columbia have implemented some form of Medicaid managed care.⁴ Approximately 80 percent of Medicaid members receive some service through managed care; 55 percent receive most of their services through managed care.⁵ Prior to April 1, 2016, Iowa operated a handful of managed care programs, which collectively covered a relatively narrow range of services and/or member groups.⁶

In early 2014, Iowa DHS began to develop a plan for the transition of Iowa Medicaid to a comprehensive managed care model — then dubbed “Medicaid Modernization” — and, on April 1, 2016, DHS effectively transitioned the operation of the vast majority of the program to three MCOs. This came after many challenges. The Centers for Medicare & Medicaid Services (“CMS”), for example, delayed its approval of the plan and the original transition date of January 1, 2016.⁷ The MCOs scrambled to develop the infrastructure to meet contractual and regulatory obligations and specifically appeared to fall short on developing their provider networks in time for the original transition date.⁸ Unsuccessful bidders to the RFP process challenged the contract procurement process in court. Medicaid members and providers expressed frustration, confusion and fear about the transition.⁹

While these past challenges are not entirely resolved, Iowa’s patients, providers and MCOs¹⁰ — as well as the attorneys who represent them — will have to focus on addressing new challenges that arise

with the ongoing operation of Iowa’s new managed care model. Central to that effort should be the interest to evaluate whether the new model is delivering on its promises of improved quality and access at lower costs.

Will members have better access to care? In the short term, access to care will be disrupted by under-developed systems and provider networks. Consumers, for example, have reported that MCOs have misidentified providers, failed to identify guardians (i.e. healthcare decision makers), and failed to timely provide for transportation to appointments.¹¹ Providers have reported that MCOs still have not agreed to contract terms with them, are making errors in identifying the MCO’s own members, and have failed to timely authorize services and not made timely payments for authorized services. While some of these “growing pains” will resolve over time, we can expect that other issues, such as provider reimbursement issues, will remain.¹²

In the long term, a transition to managed care has generally been found to increase utilization of primary care, while reducing utilization of inpatient stays and emergency rooms.¹³ The Iowa Department of Human Services will be collecting information on inpatient stays/emergency visits as well as other information related to access from the MCOs and other sources, and we can expect reports on those topics from the agency in December 2016 and annually thereafter.¹⁴ If national trends hold, Iowa may see some modest shifts in utilization away from certain higher-cost care settings and some mixed, anecdotal evidence on other access issues (e.g. scheduling challenges with specialists).

Will members receive better care? While there are case studies of successful care management initiatives (e.g. targeting persons discharged from hospital to nursing home), system-wide studies have reported little evidence of broader improvements on quality within Medicaid managed care.¹⁵ We can expect that the MCOs in Iowa will continue to initiate quality initiatives, (e.g. performance bonuses to provid-

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ers). How such initiatives, and MCO plan design generally, impact quality is the unanswered question. The Iowa Department of Human Services will be collecting a significant amount of information on performance measures (e.g. breast cancer screenings) and we can expect such data will be evaluated in the near future. If Iowa's experience is similar to that of other states that have recently transitioned to comprehensive Medicaid managed care, the early results may be mixed as to certain performance measures and (unfortunately) largely inconclusive overall.

Will Iowa save money? The Iowa Governor's Office budgeted over \$100 million in savings for FY 2017 on account of the transition to managed care.¹⁶ Case studies around the country have shown mixed and "lower-than-expected" savings on the state level.¹⁷

Is there hope for Iowa? An often-cited observation is that states with more generous Medicaid reimbursement rates have seen some savings with a transition to managed care (because payments are subsequently reduced)¹⁸ and by some measures, Iowa has had relatively low rates for some services.¹⁹ A case study of an early managed care program in Iowa, however, showed modest savings.²⁰ Contracting with MCOs may increase the state's administrative costs.²¹ Connecticut, in a notable example, recently ended its contracts with MCOs, determining that the administrative costs with managed care outweighed any quality improvements.²² With early reports on expenditures, we can expect to hear claims to certain savings and revised budget forecasts. As for firmer evidence on overall savings or losses, we should expect that to be years down the road.

Measured against its own goals, the transition to comprehensive Medicaid-managed care in Iowa will have the jury out for some time. In the meantime, there will be many issues for lawyers and others to address, including access to services from out-of-state providers, denied payments to providers and the market pressure for providers to consolidate or diversify for purposes of improving care coordination. If change truly begets more change, we should expect these issues and others will keep us interested and engaged in "Medicaid Modernization" for some time.

¹ While termed a "program," Iowa maintains multiple Medicaid programs, each designed for a different patient population or service. Iowa has transitioned Iowa Medicaid, Healthy and Well Kids in Iowa (hawk-i) and Iowa Health and Wellness Plan. Iowa has not transitioned the HIPP Program, American Indians or Alaskan Natives, PACE, and Medicare Savings Program.

² See, e.g., Iowa Department of Human Services, "Medicaid Modernization Transition Fact Sheet," https://dhs.iowa.gov/sites/default/files/Modernization_Transition_Factsheet_072015.pdf.

³ For example, federal spending for Medicaid managed care increased from \$27 billion in 2004 to \$107 billion in 2014. Government Accountability Office, *Medicaid Managed Care: Trends in Federal Spending and State Oversight of Costs and Enrollment*, Dec. 2015.

⁴ Center of Medicare and Medicaid Services, "Managed Care State Profiles and State Data Collections," <https://www.medicare.gov/medicaid-chip-program-information/by-topics/delivery-systems/managed-care/managed-care-profiles.htm>.

⁵ Center of Medicare and Medicaid Services, "Managed Care," <https://www.medicare.gov/medicaid-chip-program-information/by-topics/delivery-systems/managed-care/managed-care-site.htm>; Kaiser Family Foundation, "Medicaid Managed Care Market Tracker," <http://kff.org/data-collection/medicaid-managed-care-market-tracker/>.

⁶ For example, MediPASS provided primary care case management services to children and low-income adults in select counties and the Iowa Plan for Behavioral Health Plan provided comprehensive behavioral health services to enrollees statewide.

⁷ Vikki Wachino, Director, Centers for Medicare & Medicaid Services, letter to Mikki Stier, Medicaid Director, State of Iowa, Department of Human Services, Dec. 17, 2015, found at https://dhs.iowa.gov/sites/default/files/CMS_Letter_to_Iowa_12-17-15.pdf.

⁸ *Id.* at 3. For example, no MCO provider network contained more than 34% of the critical access hospitals that provide services in rural communities in the state.

⁹ *Id.* at 4.

¹⁰ The three participating MCOs are Amerigroup Iowa, Inc., UnitedHealthcare Plan of the River Valley, Inc., and AmeriHealth Caritas Iowa, Inc. The managed care program is now termed "IA Health Link."

¹¹ Leys T, "Medicaid shift brings lots of hassles, few catastrophes," *Des Moines Register*, Apr. 30, 2016, found at <http://www.desmoinesregister.com/story/news/health/2016/04/30/medicaid-shift-brings-lots-hassles-few-catastrophes/83664980/>.

¹² Sparer M., *Medicaid Managed Care: Costs, Access, and Quality of Care*, Robert Wood Johnson Foundation, Sept. 2012, at 15-16, found at <http://www.rwjf.org/content/dam/farm/reports/reports/2012/rwjf401106>.

¹³ *Id.* at 16.

¹⁴ The Iowa Department of Human Services Appropriations Bill, HF 2460, includes numerous provisions on Medicaid Managed Care Oversight, such as data collection and reporting by the agency. As of the date of this article, the bill had been sent to the Governor but not yet signed into law.

¹⁵ Sparer et al., *Medicaid Managed Care: Costs, Access, and Quality of Care*, at 19.

¹⁶ See, e.g., Iowa Governor's Office, "Fiscal Year 2017: Iowa's Program and Budget," found at https://dom.iowa.gov/sites/default/files/documents/2016/01/bib_final_with_cover.pdf.

¹⁷ Sparer et al., *Medicaid Managed Care: Costs, Access, and Quality of Care*, at 11-12.

¹⁸ Duggan M et al., *Has the Shift to Managed Care Reduced Medicaid Expenditures? Evidence from state and local-level mandates*, National Bureau of Economic Research, 2011.

¹⁹ See, e.g., Kaiser Family Foundation, "Medicaid-to-Medicare Fee Index," <http://kff.org/medicaid/state-indicator/medicaid-to-medicare-fee-index/>; Nasseh, K et al., *A Ten-Year, State-by-State, Analysis of Medicaid Fee-for-Service Reimbursement Rates for Dental Care Services*, Health Policy Institute, Oct. 2014, found at <http://www.aapd.org/assets/11/7/PolicyCenter-TenYearAnalysisOct2014.pdf>; Eljay LLC, *A Report on Shortfalls in Medicaid Funding for Nursing Center Care*, Dec. 2012, found at https://www.ahcanca.org/research_data/funding/Documents/2012%20Report%20on%20Shortfalls%20in%20Medicaid%20Funding%20for%20Nursing%20Home%20Care.pdf.

²⁰ A study determined that the transition to a primary care case management (PCCM) program in Iowa resulted in a 3.8% reduction in expenses, from 1989 to 1997. Momany, E et al., *A Cost Analysis of the Iowa Medicaid Primary Care Case Management Program*, Health Serv. Res. (Aug 2006).

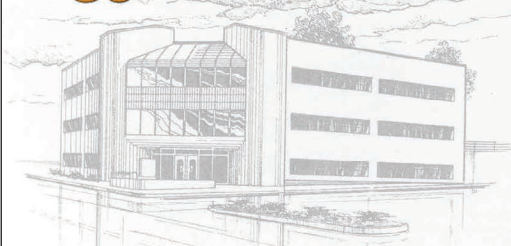
²¹ Sparer et al., *Medicaid Managed Care: Costs, Access, and Quality of Care*, at 12.

²² Kaiser Health News, "Jury Is Still Out On Medicaid Managed Care," (June 2014), <http://khn.org/news/jury-out-on-managed-care-of-medicaid/>.



Craig Sieverding is special counsel at the Davis Brown Law Firm where he focuses on providing regulatory, transactional and litigation counsel to clients in the health care field. As a member of the firm's Health Law Department, he represents a wide variety of health care providers, including health systems, hospitals, long-term care facilities and home health care agencies, on regulatory and compliance, medical staff, licensing, internal audits and investigations, government investigations, data privacy and security, contracting and reimbursement matters.

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Affordable Care Act: recap and look ahead

by Cynthia Lande

Since it was signed into law over six years ago, the Affordable Care Act has been a top concern for employers and individuals. In that respect, 2016 is no different than prior years. With almost all of the new requirements under the ACA now in effect, it is a good time to review the rules implemented over the past six years and plan for the changes still yet to come.

A summary of the most significant changes in benefits and the health insurance industry for employers and individuals since 2010 follows.

2010

Market Reforms: Some of the first changes to take effect upon enactment of the ACA in 2010 were new requirements relating to the types of insurance policies that can be issued and restrictions insurers can place on insureds. They included:

- Coverage for adult children up to age 26;
- Coverage for individuals with pre-existing conditions;
- Prohibition on annual and lifetime limits; and
- Coverage of preventive services without cost-sharing.¹

Small Business Tax Credit: Certain small businesses with fewer than 25 full-time employees are eligible for tax credits offsetting the cost of employee health insurance. Beginning in 2010, the maximum credit amount was 35 percent of the employer's share of employee coverage.

2011

Medical Loss Ratio: Beginning in 2011, at least 80percent (85percent in the case of certain employer-sponsored plans) of the cost of health insurance premiums must be spent on health care services. Insurance companies must report whether their policies meet this requirement. If an insurance policy fails to meet this requirement, the insurance company must rebate a portion of the premiums paid to customers.

2012

Summary of Benefits and Coverage: Group health plans and insurers must provide participants, on an annual basis, a summary of benefits and coverage that explains in plain language the benefits

and coverage provided under the plan.

W-2 Reporting: Certain large employers must report the total cost of employer-sponsored health coverage provided to each employee and the employee's family. This includes the portion paid by the employer and the portion paid by the employee. This requirement does not change the rules that allow employees to exclude the value of employer-provided health coverage from their taxable income. The cost of coverage reported on the employee's W-2 is merely informational.

2013

Notice of Health Insurance Exchange and Premium Tax Credit: Employers are required to notify employees at the time of hiring of the existence of the exchanges and the availability of premium tax credits for purchasing health insurance on the exchanges. The Department of Labor issued model notices that employers can use to meet this requirement. At the same time, the Department of Labor revised the model COBRA election notice to provide information about health insurance available through the Health Insurance Marketplace.

Medicare Tax: Taxpayers must pay an additional tax of 0.9% on wages, compensation, or self-employment income in excess of \$200,000 (\$250,000 for married taxpayers filing a joint return).

Health FSA Limits: Beginning in 2013, individual health FSA contributions are limited to \$2,500 per year (indexed on an annual basis).

2014

Health Insurance Exchange: In 2013, individuals could begin purchasing health insurance on the Health Insurance Marketplace for calendar year 2014. Individual health insurance purchased on the Health Insurance Marketplace is made more affordable by tax credits available to individuals between 100 percent and 400 percent of the Federal poverty line who do not have access to other affordable coverage. The credits are advanceable, so individuals can use the credits to offset the cost of coverage throughout the year rather than waiting until they submit their tax returns. The credits are also refundable, so they can benefit taxpayers with little or no taxable income.



Individual Mandate: Beginning in 2014, individuals must have health coverage or pay a penalty. The penalty is the greater of the applicable flat dollar penalty or percentage of household income. The flat dollar penalty for 2016 is \$695 per person in the family (divided in half for individuals under the age of 18), up to a maximum of \$2,085. For 2016, the percentage of household income penalty is 2.5% the taxpayer's household income. A taxpayer's penalty is limited to the average national bronze plan premium.

Small Business Tax Credit: Beginning in 2014, the small business tax credit (described above) increased to a maximum of 50 percent of the employer's share of employee coverage.

2015

Employer Mandate: Beginning in 2015, the employer mandate will apply to all employers with at least 100 full-time employees, including full-time equivalents. For 2015 only, employers with 50-100 full time employees, including full-time equivalents, are not subject to the employer mandate. Employers subject to the employer mandate must offer all full-time employees coverage that is affordable and provides minimum value. Coverage is affordable if the employee's cost of employee-only coverage does not exceed 9.5%² of the employee's household income. Coverage provides minimum value if the policy pays at least 60 percent of covered costs. Failure to offer coverage, or offering coverage that is not affordable or does not provide minimum value, could subject employers to penalties.

Employee Insurance Reimbursement: Prior to enactment of the ACA, employers often would reimburse employees for the cost of individual health coverage rather than purchase a group policy. This practice violates two of the market reforms under the ACA – (1) the prohibition on annual limits; and (2) the requirement to provide preventive services without cost sharing – and subjects employers to penalties of \$100 per employee, per day. Because this prohibition caught many employers by surprise, the IRS previously issued transition relief from these penalties for certain small employers. The transition relief expired on July 1, 2015, and any employers offering this type of an arrangement could be subject to significant penalties.

2016

Employer Mandate: Beginning in 2016, the employer mandate applies to all employers with at least 50 full-time employees, including full-time equivalents. These employers are deemed “applicable large employers,” or “ALEs,” and must offer coverage meeting the affordability and minimum value requirements (described above) to all full-time employees.

Employer Reporting: ALEs (including those between 50 and 100 full-time employees) must begin reporting their offers of coverage to the IRS and their employees this year. The 2016 reporting reflects offers of coverage made during the 2015 calendar year. Initially the deadline for these reporting requirements was set to coincide with W-2 reporting deadlines. However, in December of last year, the IRS delayed the ACA reporting requirements for 2015. ALEs were required to provide Form 1095-C to employees by March 31, 2016. ALEs must file Form 1094-C with the IRS by May 31, 2016 if filing paper forms, or June 30, 2016 if filing electronically. Employers filing 250 or more Form 1095-Cs must file electronically.

Future Changes

Cadillac Tax: The “Cadillac Tax” is a 40 percent tax on the cost of employee coverage in excess of certain threshold amounts. The Cadillac Tax was initially set to take effect in 2018, but many employers were already concerned about how it would impact them. In December of 2015, Congress delayed the effective date of the Tax until 2020. The IRS is continuing to draft regulations that address the specifics of the Tax.

Insured Plan Nondiscrimination Rules: The ACA prohibits employers who maintain fully insured health insurance plans from discriminating in favor of highly compensated employees with respect to eligibility and benefits. This prohibition is similar to the prohibition that previously applied to self-funded health plans. While the nondiscrimination rules were initially scheduled to take effect several years ago, the IRS has not yet issued regulations implementing the rules and has delayed enforcement of the nondiscrimination rules indefinitely.

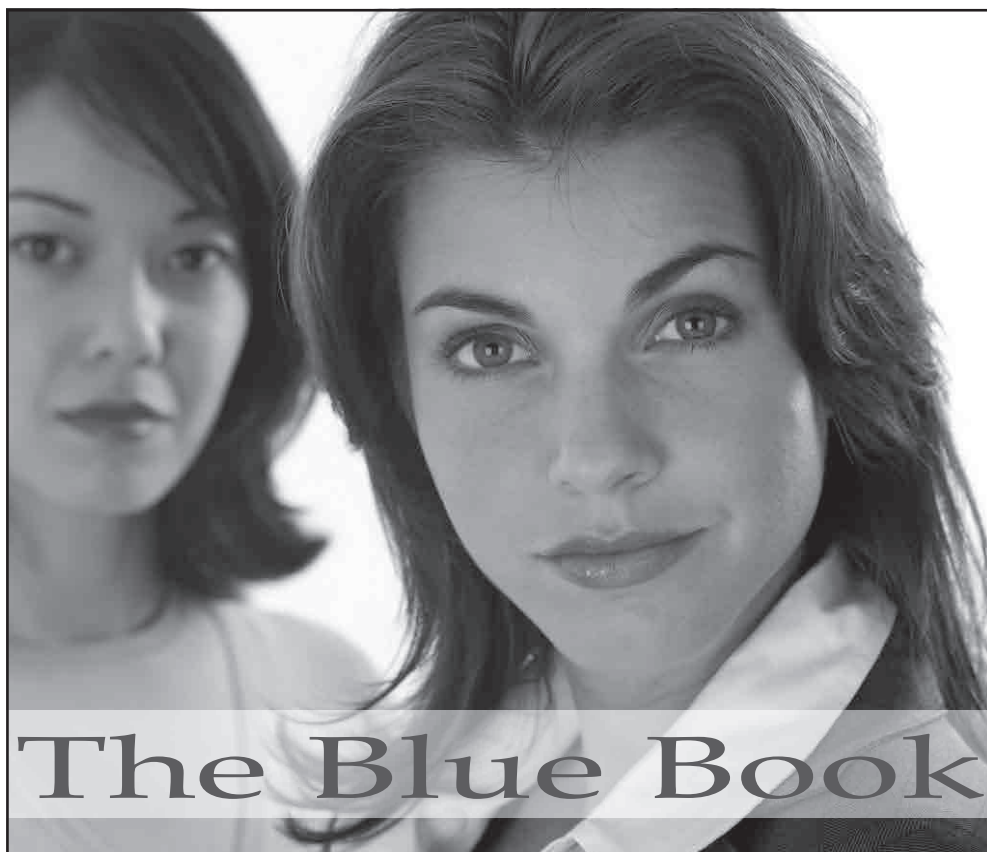
¹ The prohibition on annual limits and mandatory coverage for individuals with pre-existing conditions were subject to phased implementation and did not fully take effect until 2014.

² This statutory percentage is adjusted to 9.56% for 2015, 9.66% for 2016, and subject to additional adjustments in future years.



Cindy Lande is an associate with BrownWinick and serves as Co-Chair of BrownWinick’s Business and Corporate Law Practice Group.

Lande represents clients in the areas of taxation, employee benefits and general business transactions. Her practice includes but is not limited to helping small and large employers design and administer executive compensation, retirement and welfare benefit plans and assisting employers with plan compliance requirements including those related to the Affordable Care Act.



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Change in our profession – Is it real?

By Nicolle Schippers

The word change is being used often these days in relation to the legal profession. Whether it refers to the “uberization” of legal services, technology advancements or the move towards non-lawyers providing these services, change is becoming the buzz word in our profession.

As a corporate attorney, I am required to be innovative in my thinking and quickly adapt to changes in technology, my business and how I deliver legal services to my client. So I hear the word “change” all of the time. But as I talk to attorneys across the U.S., mostly from solo and small general practices, many are not aware of the changes that are being contemplated by the legal industry and outside influencers. Of those who have heard some talk of change, many tell me that the changes either won’t happen or won’t impact their businesses so they don’t need to worry about it.

My response: change will come as it is already happening. From Limited Licensed Legal Technicians (non-lawyers) in the state of Washington providing legal assistance for divorce and family law matters to technology

companies providing automated legal documents to Ohio now allowing non-active attorneys to engage in limited legal practice to provide pro bono services, change is here and it will have impacts. The question becomes why do we need change? In 2014, there were nearly 1.3 million licensed attorneys in the U.S. – yet experts estimate that only 20 percent of the legal needs of low income and 40 percent of the legal needs of middle income people are being met.¹

Only 24 percent of people with a civil justice problem used an attorney. The following reasons were given by those who did not use an attorney:

- 70 percent said they didn’t see a need for help or that it would make a difference
- 17 percent didn’t seek assistance because of the perceived cost
- 9 percent said they didn’t seek assistance because they didn’t know who to ask
- 4 percent said seeking assistance was too stressful²

The United States tied for a ranking of 65 out of 102 with eight other countries for overall accessibility and affordability to civil justice in 2015. We tied with Botswana, Ecuador, Jamaica, Pakistan, South Africa, Tanzania, Turkey, and Uzbekistan.³

These statistics show that there is a need that is not being met. Now legal leaders, state bar associations, consultants, and outside influencers are trying to find ways to meet these needs. In 2014, the American Bar Association developed the Commission on the Future of Legal Services, which has held countless meetings and innovative brainstorming sessions, to look into and develop solutions for this issue, which encompasses not only low income/legal aid needs but also addresses the needs of more moderate-income Americans.

“It has been widely estimated for at least the last generation that all the programs and resources devoted to ensuring access to justice address only 20 percent of the civil legal needs of low-income people in the United States.”⁴ The State Supreme Courts are also addressing the need for change. In August of 2015, Resolution 5 was adopted at the Conference of the Chief Justices of all states. The resolution sets a goal for every state to provide 100 percent of its citizens, regardless of income, access to legal services. Many states already have commissions and committees looking into the future of the delivery of legal services and

“Most law firms are working not much differently in 2013 than they did in 1953, despite 60 years of advancements in every other industry in the areas of technology, division of labor, and business process.”

—Jordan Furlong

some have even made changes to their rules, like Washington, or changes through technology and other innovative advancements.

Many attorneys read about these changes but still have an “it won’t happen to me” mentality. But perhaps the biggest drivers of change come from outside the legal profession and they will affect all of us: consumer demand, technology and money.

Consumers, including us lawyers, have changed. We want services how we want them, when we want them. We want to “click” to find the answer immediately; we want to look at ratings and reviews before we buy services; and we want answers at our fingertips. Most law firms don’t provide this.

“There is a serious disconnect between the way that lawyers communicate with their clients and the way that clients are communicating with everyone else,” says legal industry influencer, Stephanie Kimbro.

If you are still not convinced that change will impact your business, consider technology. Technology has driven a change in almost every other profession – so why not the legal profession? Jordan Furlong, a leading consultant and analyst of the legal profession states, “Most law firms are working not much differently in 2013 than they did in 1953, despite 60 years of advancements in every other industry in the areas of technology, division of labor, and business process.”

Richard Susskind, an expert on the future of the legal profession, wrote in his book *Tomorrow’s Lawyers*: “You can call me radical, but it seems to me that if we can see the day when the average desktop machine will have more processing power than all of humanity combined, then it might be time for lawyers to rethink some of their working practices. It is simply inconceivable that information technology will radically alter all corners of our economy and society and yet somehow legal work will be exempt from any change.”

Technology advancements in other professions, consumer expectations and unmet demands have become attractive to businesses outside the legal industry as they see this opportunity as a very profitable one. Legal Transformation Institute estimates the legal market to be worth \$400 billion:

- \$274 billion in practicing lawyer market;
- \$7.2 billion in research,
- \$5.5 billion in e-discovery,

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- \$5.17 billion in Government Rules and Compliance,
- \$ 5 billion in in-house legal,
- \$1.5 billion in legal temp staffing,
- \$1.1 billion in legal process outsourcing.

The Institute finds that the rest of the worth, about \$100 billion, is untapped potential with consumers and small businesses that encounter legal events but do not use a lawyer.⁵

Non-lawyer businesses see an area of need that could have significant returns on investment and many have been very vocal about change and the future of legal services. Furlong believes that “lawyers are not seeing the change we are talking about. The biggest mental block we, as lawyers, have to overcome is that we are no longer the only path to an outcome that is satisfactory to clients in the legal sphere.”

So what should you do about these current and future changes?

1. Stay educated – keep informed of what is going on in the legal industry, in other states and in Iowa.
2. Adopt new technology in your practice to make your firm more efficient and consumer friendly. Learn what is out there and research whether it will work for your practice. “As a solo, adopting new technology is easy. Change is relatively easy when you do not have to overhaul a massive, ponderous business organization.”⁶
3. Distinguish your firm to consumers. “Lawyers need to think about the real value they can give to their clients, like counsel, empathy and good advice and then talk about themselves differently to share that value,” says Furlong.

Change in our profession is real and it will impact your practice. So why not use the change to your firm’s advantage?

¹ *Lawyer Demographics*, ABA 2014

² *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, Rebecca Sandefur, American Bar Foundation August 8, 2014

³ *The World Justice Project Rule of Law Index*, Mark David Agrast et. Al. 2015

⁴ Report of the Summit on the Use of Technology to Expand Access to Justice, Dec. 2013

⁵ “Make that \$400 billion for US Legal Market Size.” Legal Transformation Institute. February 24, 2014

⁶ *Is There a Future for Solos and Small Firms*, Sam Glover, August 11, 2014



Nicole Schippers is the Associate General Counsel and Legal Industry Advocate at ARAG, a legal insurance company. Schippers currently serves as the ISBA Corporate Counsel Section Chair and is on the Polk County Bar Association Board, Board of Directors for the Association of Corporate Counsel, Global and Iowa Chapters, the ISBA Public Service Project Board of Directors and was recently nominated to become a Fellow of the American Bar Foundation.

Disciplinary ACTIONS

Hon. Joseph Sevcik Cedar Falls, Iowa Supreme Court Opinion - April 8, 2016 Public Reprimand

Joseph Sevcik has served as a part-time magistrate in Black Hawk County for approximately ten years. He has practiced law in the State of Iowa for more than 25 years and maintains an office in Cedar Falls, Iowa, for his private practice. Prior to this action, Sevcik had never been disciplined either as an attorney or as a magistrate.

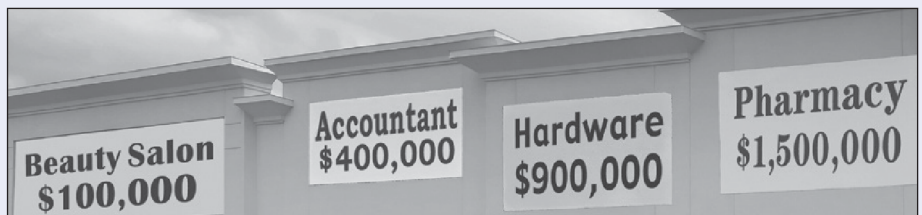
Sevcik obtained copies of two criminal files containing records of deferred judgments which had been expunged. The expunged files contained confidential documents and were only available to specific persons and agencies, including magistrates. Iowa Code §§ 907.4(2), .9(4)(b) (2013). Acting as a private attorney, Sevcik used these files during a civil proceeding. Sevcik both requested the presiding judge to take judicial notice of the files and used one file to impeach a witness in the hearing.

In their analysis, the Supreme Court stated the real issue was whether requesting and receiving two confidential files from the clerk, followed by using one of those files during a cross examination as an attorney, violated the Iowa Code of Judicial Conduct.

The first rule examined by the court was 51:1.1 (compliance with the law). The court found that, as a magistrate, Sevcik was entitled under Iowa

Code 907.4 to receive the expunged criminal files and the information contained in those files and thus did not violate any provision of the Iowa Code by obtaining the files. However, the court did find a violation of Rule 51:3.5 (intentional use of nonpublic information for a purpose unrelated to judicial duties) for Sevcik’s intentional disclosure and use of the information in the hearing. The court next found a violation of Rule 51:1.2 (independence, integrity, and impartiality of the judiciary while avoiding impropriety), holding that the behavior could undermine a judge’s independence, integrity, and impartiality. Finally, the court did not find a violation of Rule 51:1.3 (abuse of judicial office to advance personal or economic interests of the judge or others), holding that nothing Sevcik did demonstrated use of the “prestige” of the office. Rather, he made a request of the clerk that any other judge would and was exercising his legal authority. For those reasons, the court found no violation of Rule 51:1.3.

The court issued a public reprimand after comparing the facts of this case with other recent decisions related to judicial discipline. The court decided the public reprimand was necessary because this case contained evidence of a clear violation of the rule against using judicial authority for purposes unrelated to the work of a magistrate rather than simply a misunderstanding. The court found violations of Canons 1 and 3 of the Iowa Code of Judicial Conduct as well as rules 51:1.2 and 51:3.5.



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Iowa Academy of Trial Lawyers

The Iowa Academy of Trial Lawyers, a group of the top trial attorneys in the State of Iowa, elected the following attorneys as their leadership for 2016:

Martha L. Shaff, partner at Betty, Neuman & McMahon, P.L.C., in Davenport, Iowa, was selected as president. She is a graduate of Drake University Law School and maintains a practice in civil litigation, commercial litigation, employment litigation, personal injury defense and products liability.

Les V. Reddick, partner at Kane, Norby & Reddick, P.C., in Dubuque, Iowa, was elected to the board of governors for the first district. He is a graduate of the University of Iowa College of Law and practices litigation and workers' compensation.

Neven J. Mulholland, partner at Johnson, Kramer, Mulholland, Cochrane, Driscoll & Cochrane, P.L.C., in Fort Dodge, Iowa, was elected to the board of governors for the second district. He is a graduate of the Creighton University School of Law and practices personal injury, medical malpractice and workers' compensation.

John C. Gray, partner at Heidman Law Firm, L.L.P., in Sioux City, Iowa, was elected to the board of governors for the third district. He is a graduate of the Creighton University School of Law and practices personal injury, medical malpractice and workers' compensation.

John M. McHale, partner at Peters Law Firm, P.C., in Council Bluffs, Iowa, was elected to the board of governors for the fourth district. He is a graduate of the University of Nebraska College of Law and practices personal injury, medical malpractice, product liability, insurance defense and workers' compensation.

Connie L. Diekema, attorney at Finley Law Firm, P.C., in Des Moines, Iowa, was elected to the board of governors for the fifth district. She is a graduate of Drake University Law School and practices professional liability defense, product liability, medical malpractice defense, insurance defense, administrative law and civil litigation.

Patrick M. Roby, partner at Elderkin & Pirnie, P.L.C., in Cedar Rapids, Iowa, was elected to the board of governors for the sixth district. He is a graduate of the University of Iowa College of Law and practices personal injury, civil litigation and professional liability defense.

Robert V.P. Waterman, Jr., partner at Lane & Waterman, L.L.P., in Davenport, Iowa, was elected to the board of governors for the seventh district. He is a graduate of the University of Iowa College of Law and practices commercial litigation, product liability and mass torts, medical malpractice and professional malpractice.

Michael J. Moreland, member at Harrison, Moreland, Webber & Simplot, P.C., in Ottumwa, Iowa, was elected to the board of governors for the eighth district. He received his J.D. from the University of Iowa College of Law.

David J. Dutton, partner at Dutton, Braun, Staack & Hellman, P.L.C., in Waterloo, Iowa, was elected to the board at large. He is a graduate of the University of Iowa College of Law and practices trial law.

Sharon Soorholtz Greer, member at Cartwright, Druker & Ryden Law Offices in Marshalltown, Iowa, was elected to the board at large. She is a graduate of the University of Iowa College of Law and practices insurance litigation, insurance law, personal injury litigation, family law and construction litigation.

James P. Hayes, partner at Hayes Lorenzen Lawyers, P.L.C., in Iowa City, Iowa, was elected to the board at large. He is a graduate of the University of Iowa College of Law and practices medical malpractice, personal injury, motor vehicle accidents and products liability.

Glen L. Norris, member at Hawkins & Norris, P.C., in Des Moines, Iowa, was elected to the board at large. He is a graduate of the University of Iowa College of Law and practices in personal injury, products liability, medical malpractice and business tort.

Lex Hawkins, member at Hawkins & Norris, P.C., in Des Moines, Iowa, was elected as dean of the academy. He is a graduate of Drake University Law School and practices personal injury, medical malpractice, products liability and business tort.

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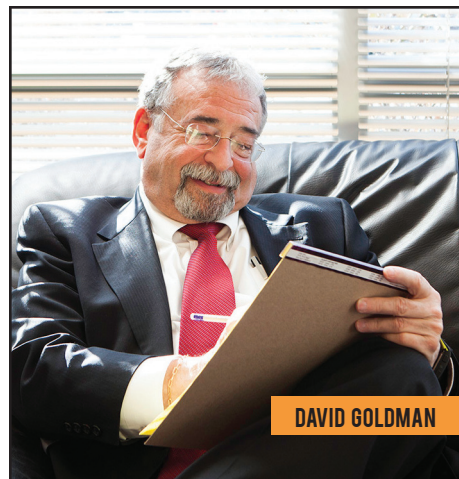
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References Available On Request



Brashers-Krug

Gail Brashers-Krug joined Simmons, Perrine, Moyer, Bergman, P.L.C., in Cedar Rapids, Iowa, as an associate attorney. She earned her B.A. degree from the University of Chicago and her J.D. from Harvard Law School in 1994. Brashers-Krug previously served as a trial attorney for the U.S. Department of Justice and as an adjunct professor at the University of Iowa College of Law. She will serve clients with litigation needs.



Charnetski

Ashley Charnetski joined Whitfield & Eddy, P.L.C., in Des Moines, Iowa, as an associate attorney. She graduated from Drake University Law School in 2013 with a certificate in Food and Agricultural law. Charnetski will provide clients assistance with trust and estate planning and probate needs.



Colacino

Antonio Colacino joined Bradshaw, Fowler, Proctor, & Fairgrave, P.C., in Des Moines, Iowa, as a shareholder. Colacino practices primarily in the areas of real estate transactions, sales, leases and easement development, with significant experience in eminent domain law and utility issues.



Elgin

Susan Elgin has joined Faegre Baker Daniels, L.L.P., in Des Moines, Iowa, as an associate. She graduated from the University of Iowa College of Law in 2013, then spent time as a law clerk for the Eighth Circuit Court of Appeals and as a bureau attorney within the U.S. Treasury Department.

Elgin will maintain a practice focused on labor and employment litigation.



Farmer

Tim Farmer joined Trey Sucher Law, P.L.C., in Perry, Iowa, as an associate attorney. He received his J.D. from the University of Iowa College of Law in 2015. Farmer will maintain a practice focused on immigration, criminal and family law.



Gilmer

Michael Gilmer joined the Davis Brown Law Firm in Des Moines, Iowa, as special counsel. He earned his J.D. from Drake University Law School where he served as projects editor for the Drake Law Review.

Gilmer will practice primarily in tax law, incorporation and mergers, acquisitions and estate planning.



Hellstern

David Hellstern was named a shareholder at Sullivan & Ward, P.C., in West Des Moines, Iowa. He received his J.D. from Drake University Law School in 2014. Hellstern practices primarily in business/corporate law, construction law, real estate and estate planning/probate.



Hill

Charles Hill has recently been promoted to assistant managing attorney at Iowa Legal Aid's Central Iowa Regional Office in Des Moines, Iowa. He graduated from Drake University Law School in 2007. Hill previously worked in Iowa Legal Aid's health and law project as a staff attorney.



Jennings Meier

Margaret Jennings Meier was named partner at Larson King, L.L.P., in St. Paul, Minnesota. She graduated magna cum laude from Drake University Law School. Meier maintains a practice blended between business litigation and agricultural law.

Michael S. Eganhouse and **Joseph F. Wallace** were named shareholders at Simpson, Jensen, Abels, Fischer & Bouslog, P.C., in Des Moines, Iowa.



Eganhouse

Eganhouse graduated from Drake Law School in 2010 and has been with the firm since 2008, beginning as a law clerk. He maintains a general practice with a concentration in estate planning, probate and civil litigation.



Wallace

Wallace joined the firm in February after spending several years in private practice in Des Moines. He maintains a general practice with a concentration in residential and commercial real estate transactions, land use and regulation, property development, title examination, landlord/tenant representation, civil litigation and corporate transactional matters.

The new address for Simpson, Jensen, Abels, Fischer & Bouslog, P.C., is 400 Locust Street, Suite 400, Des Moines, Iowa 50309.



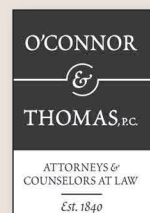
Smetka

Marcus Smetka joined McKee, Voorhees & Sease, P.L.C., in Des Moines, Iowa. He received his J.D. and LL.M. from the University of New Hampshire School of Law in 2013. Smetka will maintain a practice focused on patent prosecution in mechanical arts.



Taylor

Gregory Taylor joined the Cutler Law Firm, P.C., in West Des Moines, Iowa, as an associate attorney. He earned his J.D. from the University of Iowa College of Law in 2012. Taylor maintains a general practice with a focus in workers' compensation.



O'Connor & Thomas Law Firm, P.C., has moved to 1000 Main St. in Dubuque, Iowa. The firm was founded in 1840 as Davis & Crawford.

TRANSITIONS SUBMISSIONS

To submit a transition item, please follow the same style published here and keep submissions short and to the point. The focus of the announcement should be on the individual involved, not the law firm.

Please include a high-resolution (300 dpi) color photo of the individual in the ".jpg" format and the announcement as plaint text or as a Microsoft Word ".doc."

E-mail submissions to communications@iowabar.org. Include office phone number and name of person furnishing the copy. Questions? Please call 515-697-7898.

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IOWA STATE BAR ASSOCIATION — 2016 Affirmative Legislative Program

Bill No./Subject	Description	Status
HF 2400 2014 Amendments to Uniform Voidable Transactions Act (Current IA Code Chapter 684, "Fraudulent Transfers")	The Uniform Fraudulent Transfer Act was approved by the Uniform Law Commission in 1984. It has not been revised or updated since its original approval. Iowa adopted the Act, which is presently found in IA Code Chapter 684. In 2014, the Uniform Law Commission adopted amendments to update the Act, which are being proposed to update IA Code Chapter 684 as follows: <ul style="list-style-type: none"> • Change the name of the Act from "Uniform Fraudulent Transfer Act" to "Uniform Voidable Transactions Act". • Choice of Law- Provide that a claim for relief is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or obligation is incurred. • Evidentiary Matters- Provide uniform rules on allocation of burden of proof and standards of proof relating to operation of the UVTA. • Delete the special definition of "Insolvency" for partnerships. • Revise provisions relating to defenses available to a transferee or obligee. • Clarifies that the UVTA applies to transactions in which a series organization engages. • Replace references to "writing" with "record." 	Signed by Governor Branstad on 3/30/16.
SSB 3076 Benefit Corporations	Amends IA Business Corporation Act (Chapter 490) to authorize formation of "Benefit Corporations", which are formed not only for the purpose of shareholder profitability but also for a social purpose or public benefit.	Referred to Senate Judiciary Committee. Did not advance.
HF 2359 Corrective amendments to IA Business Corporation Act (Code Chapter 490)	Amends Code Sections 490.1320(1) and .1320(3)(a) and (b), "Notice of Appraisal Rights", to replace references to "part" and "chapter" with references to "division."	Signed by Governor Branstad on 4/6/16.
HF 2447 (Formerly HSB 645/SSB3174; Formerly SF 376) Calculation of Probate Court Costs	Relates to how the clerk of probate court determines and collects charges in connection with services provided in probate matters. Excludes from the determination of court costs property over which the court lacks probate jurisdiction and for which the clerk renders no services. Specifies that for purposes of calculating the costs for other services performed by the court in the settlement of the estate of any decedent, minor, person with mental illness, or other persons laboring under legal disability, the value of such a person's personal property and real estate is equal to the gross assets of the estate listed in the probate inventory minus, unless the proceeds of the gross assets are payable to the estate, joint tenancy property, transfers made during such person's lifetime such as to a revocable trust, and assets payable to beneficiaries.	Recorded as a Study Bill; Assigned to Ways and Means; Fiscal Note issued on 4/4/16. Did not advance.
SF 2112 Uniform Fiduciary Access to Digital Assets Act (UFADAA)	Adopted by the Uniform Law Commissioners in July 2014, the Act ensures that legally appointed fiduciaries can access, delete, preserve, and pass along a person's digital assets (i.e., documents, photographs, e-mail, and social media accounts) as appropriate.	Senate amended and passed on 2/22/16, 49-0. Referred to House Judiciary Committee on 2/24/16. Did not advance.
HF 2335/SF 2184 Notice Under the Iowa Trust Code; IA Probate Code Amendment; Iowa Uniform Power of Attorney Act Technical Corrections	This proposal does the following: <ul style="list-style-type: none"> • Amends Iowa Trust Code by inserting new Section 633A.1109 ("Methods and Waiver of Notice"), which provide for notices to trust beneficiaries and notices of judicial proceedings. The Trust Code currently provides for notice provisions for creditors, heirs and surviving spouses, but otherwise, notice provisions default to the Iowa Rules of Civil Procedure. The proposed amendment would address such notices except as otherwise provided. • Amends Iowa Probate Code Section 633.389 to simplify notices regarding sale of property. • Makes several technical corrections to Iowa Code Chapter 633B, "Iowa Uniform Power of Attorney Act." 	HF 2335 signed by Governor Branstad on 4/13/16.
SSB 3032 Attorney Fees and Court Costs in Action to Quiet Title After Request for a Quitclaim Deed.	Updates Code Section 649.5, which relates to attorney fees and court costs for a party who succeeds in an action to quiet title and who requested a quitclaim deed from the party holding an apparent adverse interest prior to bringing the action to quiet title. Brings the dollar amounts closer to current market rates and maintains the moving party's ability to request attorney fees.	Referred to Senate Judiciary Committee. Did not advance.
HHF 2326/SF 2150 Forcible Entry & Detainer Actions After Forfeiture of Real Estate Contracts	Makes changes to procedures for eviction after forfeiture of a real estate contract. Grants statutory authority under Code Chapter 648 for a vendor in a real estate installment contract to seek Forcible Entry & Detainer action against holdover vendee who fails to vacate after forfeiture proceedings are complete, while affording holdover vendees proper due process. Allows small claims magistrates to hold preliminary hearings in forfeiture cases and to enter judgments of removal only if the defendant defaults or appears and does not raise facts which would constitute a defense to eviction. Provides that a judgment of eviction also operates against persons holding under the defendant, such as subtenants, the defendant's children, and persons living on the premises by permission of the defendant.	Senate deferred on 4/12/16. Did not advance.
SF 220 Expert Witness Fees	Amends Code Section 622.72 to remove the \$150 per day cap on expert witness fees and to permit the district court to assess as costs a fair and reasonable expert witness fee in an amount not to exceed \$2,500 for the expert's time testifying at trial or in depositions used at trial.	Senate passed 48-2 on 3-10-15. Referred to House Judiciary Committee 3-11-15. No further action.
SF 2232 Redemption from Tax Sale of Property Owned by Persons with Disabilities	Remedies issues arising from Iowa Court of Appeals decision <i>Firestone v. FT13</i> (Filed 4-30-14) relating to redemption issues arising from ownership of property by minors or persons of unsound mind.	Senate passed on 2/23/16, 50-0. Referred to House Judiciary Committee on 2/24/16. Did not advance.
HSB 577/SSB 1248 Requirements for Timely Filing of Releases or Satisfactions of Mortgages	Remedies ambiguities and inconsistencies in existing statutes & provides remedies for failure of mortgagees to issue releases of mortgages.	Bills referred to House & Senate Judiciary Committee respectively. Placed on hold by ISBA for further work.
HF 2282/SF 2060 Appointment of Guardian Ad Litem (GAL) for Minor Child in Adoption Proceedings	Amends Code Section 600.5 to require an adoption petition to state whether a GAL should be appointed for a minor child to be adopted, and if not, the reasons why a GAL should not be appointed. Adds New Code Section 600.6A which requires the Court, prior to ordering a hearing on the adoption petition, to make a determination of the need for a GAL for a minor child to be adopted and, in writing, appoint or waive the appointment of a GAL for purposes of the adoption proceeding in the order setting the adoption hearing.	Signed by Governor Branstad on 4/6/16.
SF 2264 Clarification of Roles in Child Representation	Amends Code Section 598.12 to clarify roles of child's attorney, guardian ad litem, and custody investigator. Existing 598.12 provisions for child representation are not compliant with ABA standards for child representation.	Passed by Senate. Passed House Judiciary Subcommittee 3/09/16. Funneled. Did not advance.
SSB 3033 Waiver of 90-Day Waiting Period in Dissolutions	Allows for waiver of 90-day waiting period at the court's discretion upon the agreement of the parties. Current Code Section 589.19 requires a 90-day waiting period before the court can grant a decree dissolving a marriage unless grounds of emergency or necessity exist which satisfy the court that immediate action is warranted or required.	Referred to Senate Judiciary Committee. Did not advance.

Bill No./Subject	Description	Status
HF 2270/SF 2062 Amendment of Code Section 232.2(39) Definition of "Parent"	Amends the definition of "parent" to include a father whose paternity has been legally established by operation of law. The Iowa Supreme Court in <i>In re J.C.</i> , 857 N.W.2d 495 (Iowa, 2014) determined that a legal father of a child (not a biological parent but father whose paternity was established by operation of law by marriage to the mother) was NOT a necessary party to a Child in Need of Assistance proceeding. This proposal makes the legally established parent a necessary party and conforms the definition of "parent" in Code Section 232.2(39) with the Bridge Order statute [Section 232.103A(1)(b)].	Signed by Governor Branstad on 4/13/16.
Codify Formula for Division of Defined Benefit Plans	The case of <i>In re Marriage of Benson</i> provides a formula for division of a defined benefit plan. This proposal amends Code Section 598.21(6) to codify the formula.	Placed on hold by ISBA for further drafting work.
HSB 525/SSB 3029 Uniform Child Support Payment Processing	Child support payments are processed differently depending on the type of case and the existence of an income withholding order. This proposal amends Code Section 598.22, Chapters 252B & 252D so that all child support payments will be paid into the Collections Services Center (CSC).	HSB 525 referred to House Judiciary Committee. SSB 3029 referred to Senate Judiciary Committee. Neither bill advanced this session.
HF 2378 Appeal Deadline for Private Termination of Parental Rights Actions	Amends Code Section 600A.9(2) to reduce the 30-day appeal deadline for private termination of parental rights (TPR) actions to a 15-day appeal deadline to be consistent with Chapter 232, which governs TPR actions initiated by the State.	Approved by House Judiciary Committee and placed on House Calendar on 2/22/16. Funneled. Did not advance.
SF 2233 Uniform Deployed Parents Custody & Visitation Act (UDPCVA)	Approved by the Uniform Law Commission in 2012, the UDPCVA addresses issues of child custody and visitation that arise when parents are deployed in military or other national service.	Signed by Governor Branstad on 4/13/16.
Proceedings to Establish Paternity	Amends Code Section 600B.8 to allow fathers to file an action to establish paternity consistent with the Iowa Supreme Court's decision in <i>Callender v. Skiles</i> , 591 N.W.2d 182 (Iowa 1999). Updates Code Chapter 600B.	Placed on hold by ISBA for further drafting work.

In addition to the legislative proposals above, The Iowa State Bar Association supports the following positions as a part of its 2016 Affirmative Legislative Program:

- Full funding of indigent defense and adoption of legislation providing for an automatic, periodic increase in indigent defense fees.
 - **SF 2109** provides a supplemental appropriation of \$3 million for the indigent defense fund for fiscal year 2016. Signed by Governor Branstad on 4/29/16.
 - **HF 2458** appropriates \$29.6 million for fiscal year 2017. Not yet signed by governor.
- Full funding of the Judicial Branch.
 - The Judicial Branch requested a 4.6% increase for a total request of \$190 million.
 - **HF 2457** provided funding consistent with fiscal year 2016 at \$181.78 million. Not yet signed by governor.
- Polk County Justice Center
 - **SF 2324** ("RIIF") Allocates \$6.7 million for furniture and equipment at the Polk County Courthouse. This bill was signed by Governor Branstad on 4/17/16.
- Full funding for Legal Services.
 - **HF 2458** appropriates \$2.4 million for fiscal year 2017. Not yet signed by governor.
- Full funding for the Office of Substitute Decision Maker to protect the interests of Iowans who have no one else to manage their financial and health care needs.
 - **HF 2460** increases funding from \$144,333 from fiscal year 2016 to \$350,000 for fiscal year 2017 and provides an additional year to establish local offices.
- Support child abuse prevention and treatment efforts and funding for child abuse prevention and treatment.
- Oppose the legalization of title insurance.
 - No bill was introduced on this subject this session.
- Will monitor issues regarding lawyer abstracting under Iowa Title Guaranty.
 - **HF 2164** regarding waiver requirements was introduced but did not succeed.
- Oppose absolute immunity legislation.
 - **SF 2218** regarding possession of emergency drugs by first responders was signed by governor on 4/6/16.
- **SF 2117** regarding student loans would allow a person to deduct the full amount of interest paid on a student loan for income from Iowa income tax purposes. This bill did not advance.

Updated 5/25/16



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ESTATE PLANNING ASSOCIATE – Woods, Fuller, Shultz & Smith, P.C., Sioux Falls, South Dakota – Seeking a lawyer for its Sioux Falls office with three to five years of experience in estate planning for its growing estate planning practice group. Successful candidate will be licensed or able to become licensed in South Dakota. Please send confidential cover letter and resume to: Woods, Fuller, Shultz & Smith P.C., Attn: David Kroon, PO Box 5027, Sioux Falls, SD 57117-5027. (76-6)

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REAL ESTATE ATTORNEY – Davis Brown Law Firm, Des Moines, Iowa – Seeks an attorney with 3-5 years of experience in real estate for the Des Moines office. Candidates must have strong academic performance, work ethic, and interpersonal skills, as well as solid time management skills. Please send resume, cover letter, references and law school transcript to BarbHardy@davisbrownlaw.com. (76-6)

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and challenges in its practice areas. J.D. from an accredited law school. Iowa and Illinois Bar Admission. Excellent written and oral communication skills. Excellent attention to detail and strong organization and project management skills. To apply, email cover letter and resume to ESTrate@hhlwpc.com.

(76-6)

ASSOCIATE ATTORNEY – Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, Iowa – Seeking an Iowa attorney with 3-5 years of experience in litigation. Candidates should have strong analytical, writing and interpersonal skills, be well organized and able to handle multiple transactions concurrently, have superior negotiation and communication skills and a strong work ethic. Please send cover letter, resume, and copy of law school transcript to Jim Hellman, Dutton, Braun, Staack & Hellman, P.L.C., P.O. Box 810, Waterloo, IA 50704, or hellmanj@woolaw.com. (76-7)

ASSOCIATE ATTORNEY – BrownWinick Law Firm, Des Moines, Iowa – Seeking a highly motivated, full-time associate with 2-4 years of litigation experience. Must have outstanding analytical, interpersonal, research and writing skills. Salary commensurate with level of experience and qualifications, along with full benefits. Inquiries will be held in confidence. If you have any questions, please contact Rachel Rowley, Recruiting Partner at rowley@brownwinick.com or 515-242-2417. Send resume directly to Rowley or submit online at <http://www.brownwinick.com/careers/default.aspx>. (76-6)

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COLLABORATIVE LAW / MEDIATOR TRAINING – Collaborative Law Training

(Sept. 8 & 9, 2016) – The training will help you to develop a basic plan to set up a collaborative law practice. This training is for Mediators, Lawyers, CPAs, Financial Planners and Child Advocates. 40-Hour Family Law Mediator Training (Sept. 19-23, 2016) A comprehensive training that will form a foundation for your Mediation Practice and provide a thorough background in dispute resolution to enable you to develop your own style and area of mediation. Please visit our website at www.CrillyMediation.com for more information and to download registration forms. If you have any questions, please call Chris Crilly at (319) 363-5606. (76-6)

FOR SALE


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ISBA CLE Calendar

Visit www.iowabar.org/calendar for more information on any of our upcoming CLE opportunities.

June 13 - 15

Annual Meeting
Community Choice Credit Union
Convention Center
Des Moines

July 12

Recent Developments in Patent Law
(Live Webinar)

August 11

New Patent Filing Option in Europe
(Live Webinar)

August 11 - 13

Solo and Small Firm Conference
Ameristar Casino Hotel
Council Bluffs

September 8 - 9

Bridge the Gap Seminar
West Des Moines Marriott
West Des Moines

September 13

Ethics in Intellectual Property Law
(Live Webinar)

September 23

Corporate Counsel and Trade Regulation Seminar
In-person or Live Webinar

October 14

Labor and Employment Seminar
Hilton Garden Inn
Johnston

Solo & Small Firm Conference

August 11 - 13
Ameristar Casino Hotel
Council Bluffs

SCHEDULE

THURSDAY, AUGUST 11

4:00 - 6:00 - Welcoming Reception and Registration

FRIDAY, AUGUST 12

7:00 - 8:00 - Registration and Breakfast

8:00 - 9:00 - Tweets, Bleats, Blogs and Chats: Ethics in the Cloud - Dustin Cole, Attorneys Master Class

9:00 - 10:00 - Breakouts

Practice Management Software: A New Outlook - Scott Baird, Tabs3

Employment Law in 60 Minutes: The Basics Every Employer and Attorney Should Know - Catherine Cano, Jackson Lewis

Blogging/Social Media - Matthew Gardner, Gardner Law Firm

10:00 - 10:15 - Break

10:15 - 11:15 - Breakouts

Cyber Liability and Protecting Confidential Client Information - Todd Scott, Minnesota Lawyers Mutual

Real Estate - Deborah Petersen, Petersen Law

The When, How, Why - and Why Not - of Advertising and Public Relations - Dustin Cole, Attorneys Master Class

11:15 - 11:30 - Lunch Pick-Up (provided with registration)

11:30 - 12:30 - Small Firms, Big Markets - Mary Vandenack, Vandenack Williams LLC

12:30 - 12:45 - Break

12:45 - 2:45 - Topic TBD - Robert Clements, Benchmark Business Group

2:45 - 3:00 - Break

Schedule continued on the following page

3:00 – 4:00 – Breakouts

Succession Planning/Buying or Selling a Practice – Joseph Feller, Koopman Kennedy & Feller

Estate Planning: Breaking Down the Basics – Laura Essay, Dvorak & Donovan Law Group

4:00 – 5:00 – “Beer and Bull” Small Group Sessions: Discussions on Productivity/Time Management Tips, Marketing and

Staffing (beverages and snacks provided)

SATURDAY, AUGUST 13

7:30 – 8:30 – Breakfast

8:30 – 9:30 – Breakouts

Alternative Fees: Making Them Profitable – Mary Vandenack, Vandenack Williams

Family Law 101: Best Practices and Pitfalls – Brandie Fowler, Higgins Law

Introduction to NebDocs – Joel Carney, Larson, Kuper, Wenninghoff & Carney

Introduction to IowaDocs – Brian Hegg, The Iowa State Bar Association

9:30 – 9:45 – Break

9:45 – 10:45 – Breakouts

Staffing/HR-Recruiting for Small Markets – Katie Samples Dean

Representing Business Clients – David S. Houghton, Houghton, Bradford & Whitted

Introduction to the Nebraska Child Support Calculator – Adam Astley, Slowiaczek, Albers & Astley

10:45 – 11:45 – Breakouts

Mobility in Representation: Taking Technology from the Desk to the Bench – Rick Sheehy, P&L Technology, Lincoln

Juvenile Law Basics: Interviewing and Counseling the Youth Client – Christine Henningsen, University of Nebraska Center on Children & Families

Introduction to Casemaker – Jim Corbett, Casemaker

Introduction to Fastcase – Christina Steinbrecker Jack, Fastcase Representative

REGISTRATION FORM: SOLO & SMALL FIRM CONFERENCE

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Nebraska State Bar or Iowa State Bar Dues-Paying Members - \$350

Non-Nebraska State Bar or Iowa State Bar Dues-Paying Members - \$550

SOCIAL ACTIVITIES

Attending Thursday’s Welcoming Reception Yes No

Attending Friday’s Breakfast Yes No

Attending Friday’s Lunch Yes No

Attending Friday’s “Beer and Bull” Sessions Yes No

Attending Saturday’s Breakfast Yes No

MATERIALS

Attendees will receive an electronic copy of the materials. A hard copy of the materials can be purchased for \$30.

I would like a hard copy of the materials (include \$30 with registration fee)

Method of Payment: ___ Check enclosed Check Number _____

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Written notification can be mailed, faxed, or e-mailed to the Bar Office.

What we do everyday

by Siobhan Briley

Recently, I represented a client who had been charged with violating the Federal Motor Carrier Safety Regulations,¹ which the states must adopt (at least in part) to receive certain federal funds. In Iowa, motor vehicle enforcement officers have authority to enforce the FMCSRs.²

My client is from out of state. While driving a truck on an Iowa highway, he made a routine stop at a weigh station, where he received a citation for operating a commercial motor vehicle within four hours of consuming alcohol—a DWI for commercial drivers.³ During the stop, a motor vehicle enforcement officer asked him to take a breathalyzer. He complied. The breathalyzer indicated that his blood alcohol concentration was .05—over the legal limit for CMV drivers.⁴ My client does not have a commercial driver’s license, so I was puzzled that the officer cited him for a CMV-related violation. The fine for violation of § 392.5(a) is not large—\$127.50—but he asked me to fight the ticket. Paying it meant pleading guilty to an alcohol-related violation, which would have made it impossible for him to move forward in his career.

This was my first case involving the FMCSRs. I figured that, if the regulations applied only to drivers of CMVs—*i.e.*, drivers holding CDLs—getting the charge dismissed would be simple and straightforward. I have had plenty of experience with other federal regulations, so I have no idea why I believed this; no other federal regulation is simple or straightforward.

My client holds a Class E Missouri driver’s license, also known as a “chauffeur’s license.” This license is not a CDL and does not allow my client to drive CMVs. It does allow him to drive for-hire certain vehicles for which a CDL is not required. When he received the citation, my client was driving a 26-foot Penske truck. The truck’s Missouri plates indicated that it weighed no more than 26,000 pounds. I thus intuited that 26,000 pounds was a cut-off related to the definition of CMV. Whether I was right, it turned out, depended on how the regulations were read.

The FMCSRs are set forth in Title 49 of the Code of Federal Regulations. The purpose of the federal statute pursuant to which they were promulgated is “to reduce traffic accidents and deaths and injuries resulting from traffic accidents ... [and therefore] to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce[.]”⁵ As relevant here, this means the safe operation of CMVs in interstate commerce. When the federal statute was adopted, one of the primary concerns about interstate motor vehicle safety was the use of alcohol and drugs by drivers of CMVs. Consequently, the FMCSRs prohibit the “driver” of a CMV from using or being under the influence of alcohol “within four hours of going on duty or operating, or having physical control of, a commercial motor vehicle” or while on duty⁶—what my client was charged with. As violation of § 392.5 seemed to hinge on whether the driver was operating a CMV, and it appeared that my client had not been operating a CMV,

I was baffled that my client had been cited for violating it. So I set out to find the definition of CMV.

Notably, Part 392 of the FMCSRs does not contain a definition of CMV. Nor does it say, like many other regulations do, that the applicable definition can be found in another section of the law. It does, however, state that the definition of “alcohol” can be found in § 382.107.⁷ I thus looked to Part 382 for a definition of CMV. I found one: “Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property” and “having a gross combination weight rating or gross combination weight[,] ... [or] a gross vehicle weight rating or gross vehicle weight of” 26,001 pounds or more.⁸ I also found this same definition in Part 383.⁹ Unfortunately, I found a different definition in Part 390: “Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property” and having “a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of” 10,001 pounds or more.¹⁰

At trial, I argued that the controlling definition of CMV was to be found in either § 383.5 or § 382.107. Part 383, I argued, is a statute of specific applicability, whereas Part 390 is a statute of general applicability. Part 383 applies “to *every person* who operates a commercial motor vehicle in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States.”¹¹ On the other hand, Part 390 applies to “all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.”¹² Part 390 does not specifically apply to “persons who operate[.]” CMVs; Part 383 does. Further supporting my argument, Part 390.3 specifically directs that, when applying the FMCSRs to individuals, the definitions in Part 383 apply: “The rules in part 383 ... are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter ...”¹³

My argument was strong, but it did not explicitly exclude the possibility that my client was driving a CMV that did not require a CDL to operate. (I do not believe there is such a possibility, but unless read in the context of the other parts of the FMCSRs, § 390.3 leaves it open.) So I also argued that, because § 392.5(a) incorporates the definition of “alcohol” contained in § 382.107, and because Part 392 does have its own definition of CMV, the definition CMV in § 382.107 rather than the one in § 390 applies when determining whether a driver has violated § 392.5.

I won; a week after trial, the judge issued a written decision reasoning that the reference to “driver” in § 392.5 requires that we look to the sections of the FMCSRs that are applicable to drivers, which are those sections requiring a CDL—Parts 382 and 383, as relevant. The judge reasoned further that, where a CDL is not required, the prohibitions in § 392.5 do not apply.

Before trial, I had tried to get the county attorney to dismiss the charge. I made the same argument to him as I made to the court, and I said, “Having to travel back to Iowa and continue to pay me to defend him is a burden on my client.” The county attorney asked, “Then why doesn’t he just plead and pay the ticket?” I know this question is not crazy; the ticket would have cost my client \$127.50, which is a whole lot less than he ended up paying me. But I was taken aback. I blurted, “Why should he plead guilty to violating a law that doesn’t even apply to him?”

Because I had to decipher the FMCSRs, and because I spent more time than I should have trying to convince the county attorney to dismiss, I didn’t bill my client for all of my time. But I came out ahead: I now understood at least part of the FMCSRs, I gained more confidence in my abilities as a lawyer, and I achieved a great result for my client. And I had fun.

When I started writing about this case, I wanted to talk about some larger picture. I wanted there to be clear-cut take-aways I could offer—the importance of justice, standing up for the little guy—but they all sounded trite, even forced. This is because, for the most part, practicing law is not about the big picture; it’s about the minutiae of our client’s day-to-day lives, the interruptions to what would otherwise be an unremarkable day. Only a tiny percentage of cases make the news; fewer still make headlines. Of course, when I went to law school, I thought those headliners were the cases I

wanted. As a practitioner, though, the cases I most enjoy, and remember most vividly, are not the big-ticket ones reported in the news (I’ve had a few) but the ones where the client needs me to solve an every-day problem. It always turns out to be harder than I think it will be.

¹ See 49 C.F.R. § 350.101 et seq.

² See Iowa Code § 321.449.

³ See Iowa Code § 392.5(a).

⁴ The legal limit for CMV drivers is .04. See 49 C.F.R. § 382.201.

⁵ 49 U.S.C. § 30101.

⁶ 49 C.F.R. § 392.5(a).

⁷ “No driver shall [] [u]se alcohol, as defined in § 382.107 of this subchapter,” *Id.*

⁸ 49 C.F.R. § 382.107.

⁹ See 49 C.F.R. § 383.5.

¹⁰ 49 C.F.R. § 390.5.

¹¹ *Id.* (emphasis added).

¹² 49 C.F.R. § 390.3(a).

¹³ 49 C.F.R. § 390.3(b).



Siobhan Briley recently relocated to Iowa from New York City, where, as far as she knows, no one has ever been cited for violating the Federal Motor Carrier Safety Act. She is an attorney at Whitfield & Eddy in Mt. Pleasant.

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TOM L. DREW

535 40th Street, Des Moines, IA 50312

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