



THE IOWA LAWYER

October 2019 V 79 N 9

*Pro Bono
from
Anywhere*

PAGE 6

ALSO IN THIS ISSUE

DON'T FEAR THE CLOUD!
Data security is critical, and doable
p. 12

**TRIAL PREP PRIMER ON
YOUR MAMA'S LAP**
p. 16

HELPING ATTORNEYS IN NEED
A checklist for law firms
p. 19

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SUBMISSIONS

The Iowa State Bar Association seeks to publish original articles that advance the education, competence, ethical practice and public responsibility of Iowa lawyers. Members are encouraged to submit articles and manuscripts to the editor for possible publication. Submissions should be no longer than 1,500 words, although exceptions can be made. Footnotes should be kept to a minimum. Include a short bio of the author(s) and professional photo(s) when submitting. **NOTE:** Not all submissions are guaranteed publication. The editors and bar leaders review all submissions to make a determination of suitability for publication. Email all submissions to communications@iowabar.org in Microsoft Word format.

STATEMENTS OR OPINIONS

The statements and opinions in this publication are those of the authors and not necessarily those of The Iowa State Bar Association. Readers should consult original sources of authority to verify exactness. Advertising in this publication does not constitute endorsement of a product or service unless specifically stated.

CONTENTS

Volume 79

Number 9

October 2019



HOPE WOOD, IA FREE LEGAL ANSWERS VOLUNTEER ATTORNEY



ABOUT THE COVER

Attorney Hope Wood is pictured at St. Kilda Café & Bakery in downtown Des Moines, a place where she can order an espresso, open her laptop and conveniently help Iowans in need of pro bono legal assistance. She is one of the top volunteer attorneys using the IA Free Legal Answers program to respond to questions online. The IA Free Legal Answers service is just one way the bar association shows its commitment to serving Iowans in need. **Read more about how you can get involved on page 6.**

The ISBA celebrates attorneys statewide who do pro bono work with its annual Pro Bono Honor Roll beginning on page 8.

FEATURES

- 12 Don't fear the cloud!**
"Computer geek" attorney insists data security is critical, and doable.
- 16 Trial prep primer on your mama's lap**
Trying a lawsuit is merely another way to tell a story. A senior judge explains how successful trial attorneys do it.
- 19 Helping attorneys in need**
This checklist for law firms offers advice for dealing with mental health and substance abuse disorders.
- 20 The elephant in the room**
Why no one is talking about miscarriage and infant loss in the legal profession.
- 25 Board of Governors Fall Quarterly Meeting**
The ISBA BOG takes action to approve policies and legislation at fall meeting.

COLUMNS

- 5 President's Letter:**
Our role in reducing barriers to justice
- 22 Disciplinary Opinions**
- 23 In Memoriam**
- 23 CLE info: Tax School**
- 24 Kudos**
- 24 Letter to the Editor**
- 27 CLE info: Labor and Employment Law**
- 28 Classifieds**
- 28 CLE Calendar**
- 29 Transitions**
- 30 Spotlight on Service**

IN BRIEF

- 4 Latest bar exam results**
- 4 Middle School Mock Trial Tournament needs attorney judges**
- 4 Here's how to get your ISBA membership card**

IN BRIEF

LATEST BAR EXAM RESULTS

The results have been released for the July 2019 bar exam. Overall, 80 percent of test-takers passed, 87 percent when adjusted for first-time takers. Ninety-six percent of first-time takers from the University of Iowa College of Law passed and 89 percent of first-time takers from Drake University Law School passed.

The July 2019 admission ceremony was held Friday, Sept. 20, with a reception afterwards at the bar association headquarters.



Nearly 200 people stopped by the bar association building for the reception welcoming Iowa's newest attorneys into the profession.

MIDDLE SCHOOL MOCK TRIAL TOURNAMENT NEEDS ATTORNEY JUDGES

The Iowa Middle School Mock Trial Tournament is fast approaching and there is a great need for attorneys to serve as judges.

This year's middle school regional tournaments will be held across the state Oct. 31 through Nov. 13, with the middle school state tournament scheduled for Nov. 19 through 21 in Des Moines.

You can sign up to volunteer as a judge by visiting iowabar.org/MSMockTrial or by contacting ISBA Center for Law & Civic Education Director John Wheeler at **515-697-7882** or jwheeler@iowabar.org.

HERE'S HOW TO GET YOUR ISBA MEMBERSHIP CARD

The Iowa State Bar Association is now able to provide an attractive and durable ISBA membership card for member attorneys. These new cards will list your name, business address, bar membership number, years of membership and a color photo (or ISBA logo) if you have provided one.

To request one of these free cards, please contact Mary Hill, ISBA membership director, at mhill@iowabar.org.

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OUR ROLE IN REDUCING BARRIERS TO JUSTICE

At this year's bar admission ceremony, 151 new Iowa lawyers were sworn in by Justice Susan Christensen. At the ceremony, Iowa Legal Aid attorney Alex Kornya made a plea to Iowa's newest lawyers to be engaged in helping address the barriers Iowans have in handling legal challenges. This issue is not new and has been the focus of the Supreme Court's Access to Justice Commission chaired by Iowa Supreme Court Justice Brent Appel. The commission, which is in its fourth year, meets on a regular basis to address obstacles facing individuals in accessing justice. The obstacles are significant and impact many Iowans.

In a 2016 study, Legal Services Corporation estimated that 86 percent of the civil legal needs of low-income people receive no or inadequate legal help. The Iowa State Bar Association has estimated that more than one million Iowans have difficulty affording legal representation to handle basic legal needs.

We are fortunate in this state to have Iowa Legal Aid, which assists Iowa's most vulnerable residents and provides hope and dignity while making justice available to thousands of Iowa families. As part of its services, Iowa Legal Aid helps victims of domestic violence escape abusive relationships, assists individuals and families who are facing the loss of their home due to foreclosure or eviction and works to give elderly Iowans peace of mind by preparing wills and advance directives. Iowa Legal Aid's work also produces economic benefits to Iowa. One dollar invested in Iowa Legal Aid produces \$4.30 in economic gains – gains realized by Iowans. Because of

the importance of Iowa Legal Aid, The ISBA has steadfastly advocated for state and federal funding for the organization.

Access to Justice Commission reports make clear that all lawyers can play a significant role in solving access to justice issues. We take an oath when we become licensed to support the cause of the defenseless or oppressed, pro bono publico, and our ethical rules encourage pro bono legal services. Volunteer lawyer projects provide essential support to many lawyers in the state who engage in pro bono services. In Polk County, for example, lawyers donate more than 5,000 hours of their time annually to ensure that every client with legal needs can access the justice system. This month we celebrate the pro bono work of Iowa lawyers statewide with our "Pro Bono Honor Roll" on page 8.

The Access to Justice Commission has identified unbundling or limited scope representation as a possible way to make legal services more affordable. In this type of representation, the lawyer handles only part of the matter and the client remains responsible for the other aspects of the case. The ISBA now has on its website a link for members of the public to obtain more information on limited scope services and attorneys who provide such services. (iowafindalawyer.com/limited-scope) The ISBA recently added to IowaDocs a tool kit for limited scope engagements, which provides helpful information and forms. Providing limited scope representation on a pro bono basis should also be appealing to lawyers because of the reduced time commitment.

A few years ago, the ISBA introduced IA Free Legal Answers, which makes available online opportunities to provide short-term, pro bono legal service (learn more on page 6). The ISBA also hosts a monthly People's Law School at the ISBA headquarters. Here, the public can learn about the basics on various legal topics including living wills, power of attorney, health care directives, Medicaid eligibility, consumer protection and child custody laws. The ISBA has partnered with libraries to webcast the presentations across the state.

This fall, the ISBA is working with the State Law Library, Iowa Legal Aid and the Polk County Bar Association on a statewide "Lawyers in Libraries" program. Public libraries are natural venues for providing information to members of the public on important legal issues. Our initial effort has been focused on recruiting lawyers around the state to give one-hour presentations on topics of interest identified by the libraries during Pro Bono Week (Oct. 20-26). Volunteer lawyers will be able to create their own presentation on a topic or use materials developed by the ISBA People's Law School, which includes video presentations. Please let us know if you are interested in participating in this effort.

The ISBA's Legal Access Committee is working on various access issues, including those related to undocumented persons, veterans and human trafficking. Additionally, the ISBA Board of Governors is reviewing the recommendations of the Access to Justice Commission and considering additional ways the ISBA might facilitate solutions. Please reach out to me if you have any ideas.



Approximately 150 new Iowa attorneys were sworn in on Sept. 20, taking an oath that promises to support the defenseless or oppressed, pro bono publico.



ISBA Vice President Anjie Shutts presents on custody issues at the last ISBA People's Law School on Sept. 17.



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IN CELEBRATION OF OCTOBER

NATIONAL PRO BONO MONTH

By Hope Wood

THREE WORDS I CAN GET BEHIND

Free legal answers. These three words put together may make you cringe. I get it. I don't like giving away my time. And everyone asks for it. Each week I get a Facebook message that starts with "I have a quick question" and it proceeds with a description of a legal issue. Or I get tagged in a Facebook thread as someone who could help solve a legal problem that isn't in my practice area. I didn't sign up for this when I became a lawyer.

I graduated from law school in 2012 – in the middle of the recession. There were no longer summer clerkships that led to employment. The summer clerkships available were for students with the top grades. There are more jobs now than when I graduated but still far fewer than before 2008.

When I was sworn in to the Iowa bar in May 2013, I was encouraged to render at least 50 hours of pro bono publico legal services per year. That is 10 hours more than a statutory 40 hours a week job–50 hours a year to use my legal education and license with no pay. I started out as a solo

practitioner and it is still my path. I realized I could spread pro bono service hours out over the year, but it

TO DATE, WOOD
HAS ANSWERED

150?

QUESTIONS

THROUGH

IA FREE
LEGAL ANSWERS

WHAT IS IA FREE LEGAL ANSWERS?

IA Free Legal Answers, launched in 2017, is part of a nationwide ABA pro bono initiative called ABA Free Legal Answers. It is designed like an online walk-in legal clinic. There are 5,700 volunteer attorneys registered nationally, but more are needed in Iowa.

ABA Free Legal Answers values and appreciates the contribution of volunteer attorneys like Hope Wood in the provision of pro bono legal services to Iowa residents seeking access to justice.

– David Bienvenu, Chair of the ABA Standing Committee on Pro Bono and Public Service.

was still a lot. At the time, I didn't even have paying clients.

I didn't shut down the idea because I had mentors in family law practice that handled pro bono cases. They were solo practitioners and didn't have a salary that covered time for pro bono work. Even though it is hard to make a living as a lawyer, every lawyer has a professional responsibility to provide legal services to those who are unable to pay. My family law attorney mentors inspired me to give pro bono service a try.

A few things I learned from working in private practice: You work hard for your money (cue music by Donna Summer) and you work hard to get every client that has retained you. And it is hard for them to pay. Wages and salaries have been stagnant for decades. I have been creative with my services by offering unbundled services and flat fees. There is still and will always be people who at some point in their lives cannot afford to hire an attorney.

I learned about online legal forums in my law school Ethics class. I learned how to participate in a question and answer platform without creating an attorney-client relationship. Early in my practice I discovered a platform just like what I learned about in Ethics. I created an account and could publicly answer questions. It was a nice way, early in my practice, to apply my knowledge without taking a case. Over time, I became good at drafting a response that provided legal information but didn't give legal advice. I often referred people to the Iowa Code or the forms available at www.iowacourts.gov; depending on the question,

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IA Free Legal Answers volunteer attorneys Hope Wood (right) and Debra Hockett-Clark (left) work in conjunction with the University of Iowa College of Law Citizen Lawyer Program (appearing via video conference: Zach Grewe, Julian Plaza, Meddie Demmings [not pictured], Ty Lassen and volunteer attorney Miriam Timmer-Hackert) during a virtual legal lunch clinic on Sept. 12.

sometimes I could provide information about the common law if it was in my practice area.

Iowa Free Legal Answers (IA Free Legal Answers), part of a project of the American Bar Association's Standing Committee on Pro Bono and Public Service, is a virtual legal clinic that uses a serial question and answer format. Qualifying Iowa residents post their civil legal questions on the IA Free Legal Answers secure website. I was on board right away when I read about it. Unlike a public question and answer forum, IA Free Legal Answers is private and you can answer the questions you choose to – whether you decide to provide brief legal advice or information. Malpractice insurance is provided by the ABA and the ISBA for the pro bono services that volunteer attorneys provide through the IA Free Legal Answers website.

WHY IA FREE LEGAL ANSWERS IS IMPORTANT

- Free legal answers reaches every corner of Iowa.
- The need for pro bono services is here to stay.
- It is a unique opportunity for attorneys to participate in limited scope pro bono service.
- It provides an easy opportunity to do pro bono service when and where you can.

WHY IA FREE LEGAL ANSWERS WORKS FOR ME

- I answer the questions I chose to answer.
- I do not feel obligated to answer questions that are outside my areas of expertise.
- If I login to the platform and feel overwhelmed with the questions, I close it and go back on a different day.

- I answer questions at the time of day that I chose when I can, wherever I am.
- It is low time commitment – I do not have to accept an entire pro bono case to make a difference.

WHAT SURPRISED ME ABOUT IA FREE LEGAL ANSWERS

- I am able to help dozens of people each year.
- The person who posts a question rarely, if ever, sends a follow-up question.
- I have never felt an ongoing obligation to answer questions.
- I am not tempted to save the person from his or her situation.
- It helps me establish boundaries – I provide legal information and the person decides what to do with the information.

IA Free Legal Answers may not be for you. It isn't for everyone. If you do not like technology, don't force it. You don't have to participate, but please encourage others to learn about it and consider opportunities to participate as a mentor for attorneys who do volunteer

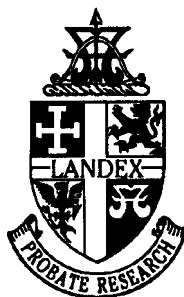
to take questions. New attorneys are a great group to encourage. They often want experience with the law, have the time, are comfortable with technology and can establish an early pattern of participation in pro bono services.

You are invited to join me and other volunteer attorneys at IA Free Legal Answers Virtual Legal Lunch Clinics. There will be virtual legal lunch clinics at the ISBA headquarters in Des Moines on Oct. 10, Nov. 14 and Dec. 12. Volunteer attorneys and law students from across the state participate via video conference. By participating in virtual legal lunch clinics, you can answer legal questions and provide legal information to qualified clients while you share ideas and good food with other attorneys. You can learn more on the IA Free Legal Answers page on the ISBA website: iowabar.org/IAFreeLegalAnswers.

I welcome questions about IA Free Legal Answers any time and would be happy to mentor you as you get started. Email me at hope@hopewoodjd.com.



Hope Wood has been an attorney and problem solver for over six years. She operates her law practice in downtown Des Moines and is the founder of Will in a Day®. Wood embraces change to fulfill her passion for solving problems. Her website is www.hopewoodjd.com.



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CELEBRATE PRO BONO

www.celebrateprobono.org

National Pro Bono Celebration October 20-26, 2019

The Iowa Judicial Branch encourages all Iowa attorneys to devote at least 50 hours of pro bono legal services each year. This pro bono service is vital not only for the people represented; it is vital to society as a whole. Pro bono service turns the promise of equal access to justice into reality.

THE 2019 PRO BONO HONOR ROLL

Iowa's attorneys donate thousands upon thousands of hours of pro bono legal services annually and make financial contributions to legal service organizations that assist low-income Iowans. The ISBA commends all member attorneys who perform pro bono work for clients who would otherwise be unable to afford the assistance of an attorney.

This month we recognize the following Iowa attorneys who did so: (Names are sorted by county and were provided by Iowa Legal Aid unless otherwise indicated. **Bolded Orange** names indicate 50+ hours of pro bono work.)

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MARKETS MOVE. SO SHOULD YOU.

RYAN LAMOUREUX, *Investment Analyst*

From October 2018, through mid-June of 2019, trends have reminded investors that capital markets can very quickly move up and down in value. During this recent time period, US equity markets saw a drawdown of -20% before subsequently recovering and moving higher, as measured by the Russell 3000 Index. At the same time, the US bond market saw an increase of almost 8.5%, measured by the Bloomberg Barclays US Aggregate Bond Index. These kinds of price movements often lead to portfolio's becoming "out of balance," relative to their original asset allocation targets.

The primary reason for portfolio rebalancing is to maintain the risk profile of the policy portfolio that the client has chosen. However, periodic rebalancing has the added benefit of "buying low" and "selling high". For example, during a period when stocks are up and bonds are down, the portfolio likely would become overweight stocks and underweight bonds. To rebalance back to the policy portfolio, stocks would need to be sold "at a high", and bonds would need to be bought "at a low".

At Foster Group, we systematically review client portfolios every 6 to 8 weeks and rebalance as necessary. When will Foster Group rebalance a portfolio? In general, if a portfolio's stock to bond mix is +/-1% of the target allocation, we rebalance the portfolio. We also rebalance the individual investments (e.g. asset class mutual funds) that make up the portfolio using that same criteria.

Other important considerations taken into account when deciding to rebalance a portfolio include:

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By Jonathan D. Schmidt

DON'T FEAR THE CLOUD!

"COMPUTER GEEK" ATTORNEY INSISTS DATA SECURITY IS CRITICAL, AND DOABLE

I have been a computer geek for as long as I can remember. First, my grandfather got me hooked when he showed me his Radio Shack TRS-80. Almost 38 years ago, I got my first computer, a Timex Sinclair 1000. Over the years, I personally moved up to the Commodore 64, the Commodore Amiga, Windows and Mac machines. (I'm currently using Macs.)

In short, I have been working with computers, programming them, learning how they work, tearing them apart and putting them back together again, and generally striving to get them to do my bidding.

While still in undergrad, I found myself working at the now-defunct online information service called CompuServe in a suburb of Columbus, Ohio. I worked at CompuServe for five years and then began my career as a consultant. I have worked on projects at, and for, Fortune 100 companies over the years including AT&T, Nationwide Insurance, Merrill Lynch and Chase Manhattan Corp. I have worked on projects for companies big and small. I have also worked on projects for the United States Army and the Arizona Superior Court.

Why am I telling you this? Since I am now an attorney, I thought a little introduction of myself is in order in the hopes of establishing some measure of credibility. It is really easy for someone to make broad, sweeping generalizations. That is not my goal. I'm here to advocate for the use of

Cloud technology, but I freely admit that the Cloud isn't suitable for every scenario.

GOOD SECURITY IS HARD

According to Business Insider, in 2018 alone, there were breaches at T-Mobile, Quora, Google, Orbitz and Facebook, just to name a few. These are large companies with presumably huge technology security budgets. These companies and many others like them get hacked every single day.

In the past, I've been accused of being too concerned about security. My response is that most people are not concerned enough about it. As the high-profile security breaches have repeatedly shown, even big companies have problems maintaining their security. You simply can't do security better than big players such as Microsoft, Google and Apple. Unless you are a multi-million-or-billion-dollar company who can afford good talent in-house, you simply can't compete with the security provided by the bigger players.

According to a study published in 2017 by the Clark School at the University of Maryland, there is a security breach every 39 seconds on average. That's an average of 2,244 attacks per day. One of the most interesting things that I found with this study is that the computers that they attacked were essentially dummy computers. The computers had no value in terms of the information to be obtained.

Yet, the hackers were attacking them anyway.

According to the September/October 2019 issue of the ABA Journal, 23 percent of all law firms reported a security breach in 2018. That's reported. Therefore, the figure doesn't include firms that either didn't report or didn't know that they had a cybersecurity breach. The "it won't happen to me," mindset is not only false, but constitutes dangerous complacency. Likewise, the "I'm just a solo or small firm," or the "no hacker would want my client's data," mentality is equally problematic.

The reason for the attacks on what some people try to convince themselves are low-value targets is that most attacks are automated. You can't get into the mindset that you aren't a target because you are too small, or that your information wouldn't be attractive to a hacker. If any of your computers are connected to the Internet, they are a target. And, if any one of the computers on your network is attached to the Internet, all of the computers on your network are at risk. The hackers only need to find one vulnerability to be successful.

Don't believe me? Read the article in Wired Magazine from August 2018 about the NotPetya virus and its effect on the global economy. That was started by one piece of software on one computer. It took down almost the entirety of Maersk's computer network worldwide. It went on to infect

computer systems all over the world including at companies like FedEx and Merck. The total cost is estimated at over a billion dollars in lost revenue.

If that weren't enough, here's the real kicker of the story. The exploits that allowed NotPetya to cause such destruction came, at least in part, from the National Security Agency. Our presumably-most-brilliant minds in cyber warfare and defense had a security breach and those tools are being used against all of us. It has been widely

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publicized that computer hacking tools used by the NSA were leaked or stolen.

Your job is to practice law. You can't do security better, or even as good, as the big companies, and it is foolish to think that you can. It is equally foolish to think you aren't a target. If your device has Internet connectivity, you are a target.

So, what are we to do about it? First, acknowledge your strengths and your weaknesses. You are in the business of practicing law, not cyber security. You need to acknowledge that you aren't going to be able to secure your systems properly by yourself. You will need help.

If you have in-house IT staff, you need to make sure that they have the resources they need to be successful, including training, education and even outside help when necessary. Make sure that your IT staff includes personnel who are trained in cybersecurity defense. It is not as simple as making sure you have the latest version of your favorite anti-virus program running on your machine.

MOST IMPORTANT TO DO

The most important thing you can do is not to bury your head in the sand and think that it won't happen to you. That's because it probably already has, and you don't even know it. It's hard enough to try to keep your computers secure, but it can be even harder to detect when something bad has happened. Some attacks, like the one involving NotPetya, involve pure destruction—it was intended to destroy computer data. But, if destruction isn't the game, ransomware is popular, as is other malware.

Whether you have an in-house IT department or not, you may decide to employ outside consultants. But I'll tell you a secret: Anyone can claim to be a computer consultant/expert, but that doesn't mean that the person knows what he or she is doing.

The problem with hiring an IT consultant is that there is no way for most people to understand and verify the credentials of an IT professional. And to further complicate matters, most people don't even know

what questions to ask a would-be consultant before hiring them. Unless you know about IT yourself, how could you possibly know how to tell if the consultant knows what he or she claims to know?

References from other companies who have worked with the consultants could be helpful. But, unless you trust that the people making the recommendation have done their own due diligence, it is still a crap shoot. Sure, they can tell you what nice people they are, that they are great to work with, and that they solved X, Y, Z problems. But, can the recommender really evaluate the results of something that he or she knows nothing about?

My advice here is to ask questions and be skeptical. Remember that the IT folks (in-house or outside consultants) want to keep their jobs. They want to sell you something.

Here are a couple questions that I suggest you ask:

"WHAT DO YOU RECOMMEND IN TERMS OF A TIMEFRAME FOR REPLACEMENT OF AGING COMPUTER HARDWARE?"

This seems straight forward enough, right? Most people I have talked to over the years have plans to replace computers every three years or every five years or such. They do this not for financial planning reasons, but because that's what their computer consultants have told them.

In my opinion, the correct answer from a technology standpoint is that it depends. Does the computer you have now do what you need it to do? If you are using the computer for e-mail and Word, a 10-year-old computer can do that. You don't need to buy a new one

because the old one is three years old.

Do you hear complaints from people that their computers are slow? That still doesn't mean that a new computer is in order. Often, there are software problems that can be fixed without buying new hardware. But, if the hardware is indeed dated, most of the time the hardware inside the computer can be updated to provide new life. Look at adding more memory (RAM). Look at replacing a spinning hard drive with a solid-state drive (SSD). These updates often cost less than \$100.

Another thing to keep in mind here is that buying a new computer doesn't automatically mean that it will be faster. It depends on what you have and what you want to buy to replace it. While it's true that the latest greatest hardware will outperform hardware from three years ago, you don't need the latest and greatest to run Word.

"WHAT ARE YOUR THOUGHTS ON INSTALLING REGULAR FIRMWARE, SOFTWARE AND OPERATING SYSTEM UPDATES?"

If the IT person is hesitant about installing the latest software and firmware updates in any way, my advice is to run away. The correct answer is that the updates should be set up to be installed automatically. Not having the latest software and firmware patches installed is a huge reason there are successful attacks. Right now, on the Internet, there are millions of computers looking for outdated computer software to exploit.

If there are concerns about legacy hardware or software support, I also approve of testing the rollout of such updates before they go to the entire

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company. But that requires a dedicated IT lab and staff that many smaller companies lack. If you don't have a dedicated IT lab environment (most firms I know don't), you need to install the updates automatically.

The use of Cloud-based services is something that many people are aware of. But, to some it is a scary proposition. We as lawyers are possessive about our clients' data. No one wants to have client data compromised. However, if you care about security and you acknowledge that you can't do security any better than (insert your favorite vendor here), your choices are to 1) remove your clients' data from all devices that are connected to the Internet, 2) accept that your data is not secure and know that there may be consequences, or 3) embrace the Cloud and feel more secure, not less.

STORE DATA IN THE CLOUD

I advocate for the third option in many cases. Think of Cloud-based services provided by companies like Microsoft, Google and Apple as a

security system not unlike one you might have at home. Their job is to give you access to your data (or your home) through the use of a password (or a numeric keypad), while at the same time keeping others out (the security part), and notifying you (aka an alarm) if something bad does happen. If you agree that you can't do security better than they can, you should consider moving your client data/systems to the Cloud.

As an added bonus, those companies are responsible for maintaining all of the hardware and software needed to run those services and backups of the data.

According to the Clark School study, a great number of attacks come in the form of attempts to guess usernames and passwords. The study suggests that you do not use any of the following as your username: "test," "guest," "info," "adm," "mysql," "user," "administrator" or "oracle." But the username is only part of the equation.

BAD PASSWORDS

The bigger problem for most people is the use of bad passwords. In my opinion, the best way to overcome the use of bad passwords is to use something called a password manager. I have been using them for years and they are a huge saver of time while at the same time providing a greater level of security for you. My favorite password manager is called 1Password (1password.com). It increases your security by allowing you to quickly generate long, randomly generated passwords. It saves time by storing your passwords and auto-filling information into web sites. I currently have close to 2,000 pieces of information stored in 1Password. It synchronizes between phones and desktop computers via the Cloud. I can't imagine keeping track of the hundreds of passwords individually. It just isn't manageable.

Standard e-mail is not a secure form of communication. Believe it or not, ordinary e-mail travels through the Internet with its contents visible. We are trusting the companies that

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Security of data is crucial to the success of any firm. We also happen to have an ethical obligation to maintain our clients' data in a secure fashion. In my view, the issues discussed here are also part of our ethical obligation to be proficient in the use of technology.

When I started my new law firm last year, I decided that I was not going to store any of our data on our local network. I admit it. I can't do security as well as Microsoft or Google or Apple and I certainly can't do it better than they can. As a result, we don't save data to our computers and we don't have a single server. The computers are there to run Word but access all the data through various Cloud services. In my view, that is the safest place for my clients' data to be.



Jonathan D. Schmidt is a lifelong technologist and the founder and principal attorney at 303 Legal, P.C. in Cedar Rapids (<https://303.legal>).

Schmidt is also the Chair of the ISBA Law Practice Management Committee and can be reached at 319-423-3031 or jonathan@303.legal.

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TRIAL PREP PRIMER

on your mama's lap

By Hon. Robert J. Blink, Senior Judge

You heard your first story as an infant, whispered by your mother. You heard about her day when you awoke from a nap, what your father did, about your brother's or sister's day at school. You looked at a bedtime book with bright colors and

listened to your dad's silly voices. The dinner table was filled with family lore from Grandpa or Grandma. There were stories at church or synagogue, cartoons on Saturday morning, movies and tales among your friends.

Stories make us who we are, teach us, give us reason for our feelings, for caring. We are, by nature, creatures of stories. Storytelling is part of our DNA.

Trial lawyers understand this. They understand that trying a lawsuit is merely another way to tell a story – a client's story. Storytelling connects us with the jury, binds us together. All of us are invested in how the story will end.

Your client's story is your "theory of the case." It begins with the first consultation – grows, morphs and evolves until finally there is a verdict. If you understand this concept and can tell a story, you can be a trial lawyer.

Trial lawyers are natural storytellers – yarn spinners. This differentiates them from litigators, who are primarily fact gatherers. While a trial lawyer is skilled in gathering the facts of a case, the ability to collect and organize facts does not make you a trial lawyer.

The moment a trial lawyer meets a potential client, he or she begins to envision what story the jury will be told. The focus is always on the story and how it will play out in the courtroom. Litigators tend to focus on pretrial fact gathering as an end in itself – as a means of provoking a settlement. Both types of lawyers are working toward a resolution, but from the inception, the

trial lawyer is thinking of trial while the other is thinking of how to avoid it. Once a trial lawyer senses that the opponent is seeking to avoid trial, the case is half won. Those who are willing to and relish a trial will always have leverage in driving a better settlement.

THREE COMPONENTS

Trials have three components: the applicable law, from statute or precedent; the case specific facts; and the dictates of human nature. Only the third is immutable. The other two change with each case and the paradigm shifts of social norms. The successful storyteller uses all three but persuades with the third. The first two components are culled from books, texts or written words; the latter is learned from life and only by those astute enough to really observe mankind. This is because neither law nor facts alone have emotion, and stories require emotion.

The first thing a trial lawyer does to prepare for trial is develop a theory of the case. The story a trial lawyer tells a jury is the theory of the case. Each fact in that story, disputed and undisputed, must be accounted for and relevant to the claim or defense. The story must be logical and believable. Facts unrelated to the story are surplusage and should be discarded. By the time the client leaves the first meeting, you should have a sense of what the story will be – there must be a preliminary theory of the case.

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Theory development is an evolutionary process. As the discovery progresses, the theory changes or becomes more focused. As legal research is completed and motions heard, the theory is refined. But always the context is: “How will the story sound to a jury?”

The framework for the initial theory begins with jury instructions. What are the elements of the marshalling instruction? What evidentiary instructions will be used? What are the elements of the defense?

The facts of the story become the flesh on the bones of the instructions. Always develop the case based upon what the closing argument will be. Summation is the completed story comprised of the pertinent facts bound together by the law.

Once the marshalling instructions are identified, the evidence, testimonial and documentary, is coordinated with the respective elements of the cause or defense. Potential objections to each piece of evidence must be anticipated and an evidentiary response formulated.

DEVELOP OPPONENT'S THEORY

The second phase of pretrial preparation is developing your opponent's theory of the case. After using all the facts and basic substantive legal instructions to craft your client's closing argument, take those same facts and skeletal law and prepare a closing argument for your opponent.

“Oppositional theory development” will highlight the strengths and weaknesses of your case – it will show you where to reinforce your theory and where to attack your opponent's. Modify your theory accordingly. The hallmark of jurisprudence is the ability to see an issue or problem from a variety of perspectives. For the trial lawyer, that means perceiving a story from the viewpoint of all the characters, especially the parties.

This theory metamorphosis continues throughout the discovery and pretrial process. The essence of successful trial work is the anticipation of your opponent's actions and the refinement of your theory and evidentiary responses. It is the ability to see the case through the eyes of everyone else involved and to constantly redesign

your advocacy to accommodate. This includes the perspective of your client, opposing counsel, his or her client, the witnesses, the judge and, most important, the “everyman” who sits in the jury box. Skilled trial lawyers end every day of trial adjusting the course of the morrow's evidence to address minor changes in their theory of the case necessitated by that day's evidence. Most reassess their story after each witness and, sometimes, after each examination.

The skill set for the trial lawyer relies first and foremost on an understanding of people in general and the trial participants in particular.

Courtroom storytelling does not mean “wingin’ it.” The best storytellers are not lazy. Great novels, short stories, theater scripts and screenplays are not the result of “working on the fly” or “off the cuff.” Great stories are the result of tireless imagining, crafting of characters and exploration of every nuance of the human condition. It is paradoxical but true that great courtroom storytelling looks easy, natural and spontaneous precisely because of the time and effort expended in developing the story.

The evolution of theory development is driven by industry. You must read everything about the case, gather every document, report, witness statement, record, photograph, digital exhibit. Every physical exhibit, especially the primary instrumentality, must be handled and examined. Every location of significance must be visited. No other person in the case should know the facts better than you. Your collection, organization and prioritization of those facts must lead to “a good story.”

Once the theories are formulated, the legal elements identified and the facts of the case coordinated with those elements, you develop your “order of proof.” This is the order in which you present your evidence to the jury.

Certain recognized rules apply to development of an effective order of proof. Rule one is primacy and recency: Start your case strong and end your case strong. Begin with a compelling witness who captures the jury's attention or provides the introduction to your storyline.

WITNESS PLACEMENT

This rule requires that weak, adverse, mundane or foundational witnesses are placed between strong or important witnesses. Tedious evidence, chain-of-custody testimony, or depositions read into the record should be interrupted by captivating witnesses. Presenting lay and expert witnesses alternatively helps to maintain a jury's interest.

The most effective format of order of proof is chronological—presenting the evidence in a form that follows the timeline of the factual story. The best story starts at the beginning, moves through time and ends at the ending. Other options include putting the order of proof in “chapters” based on nonchronological temporal sets (points in time), groups of certain witnesses, pertinent geographical areas (points in space), differing areas of science and so forth.

Witness coordination is the greatest inhibitor of a flowing order of proof. This is usually driven by the time constraints of experts. Whenever possible, end your order of proof with an expert. In the foundational run-up to their opinion, they can reiterate all the important facts in your story upon which they relied in reaching that opinion. This provides persuasion by repetition combined with recency.

People learn and remember best that which they learn through multiple senses. This is the power of physical exhibits. The order of proof must contemplate not only the weaving of strong and weak testimony, but of strong and weak exhibits as well. Absent stipulation, every exhibit requires a testimonial sponsor. You may have to balance the placement of a witness's substantive testimony in light of his or her foundational testimony.

Once the theories are developed, the evidence determined and the order of proof formulated, counsel should prepare the voir dire, outlines for opening and closing and begin witness preparation. Create a rough sketch of your opponent's anticipated trial components as well.

The overriding goal should be to offer just enough evidence, and no more, to tell the story and meet your elements and evidentiary burden.

Redundancy in testimonial and physical evidence dulls the jurors' senses, makes the advocate appear inefficient and increases the potential for error in the record.

As trial approaches, focus on your witnesses. Witness preparation requires discussion of the main topics of the testimony and the exhibits the witness will discuss and/or handle. It should include a directive to be truthful, to answer just the question asked and to pause in the event of an objection. Proper preparation also includes discussing anticipated cross-examination, especially difficult topics like impeachment and testimony harmful to the party who called the witness. The lawyer who will interrogate the witness at trial should conduct the pretrial witness preparation.

If the witness is unfamiliar with courtroom procedure, or the courtroom where the case will be tried, he or she should be given an opportunity

to view it, sit in the witness chair and learn where counsel, the jury, the court staff and the judge will be seated.

Organization of information for trial has been simplified by computers. But the electronic "trial file" should have several basic components: a "legal" section and a "factual" section. The legal section contains all the pleadings, motions, briefs, proposed jury instructions and evidentiary memos for anticipated objections at trial. Motions for directed verdict or judgment of acquittal, prepared before trial, will allow for a better record.

The factual section of the trial file should include a portion concerning jury selection, opening statement, closing argument and any stipulations. There should be a separate section for each witness, an outline of their direct, or cross, a list of the exhibits they will address, and any case law needed to counter anticipated objections during the testimony. The factual section

should also include transcripts of any depositions taken or pertinent pretrial transcripts that might be needed during trial. The exhibits should be marked before trial and electronically stored or uploaded as may be required by the court.

Seasoned trial lawyers make their courtroom work appear effortless. Like all illusions, it rests on the effort expended before the presentation.



Robert J. Blink is a Senior Judge for Judicial District 5C. He served as a trial judge for 22 years after a 20-year career as a criminal and civil trial lawyer. He has been a professor of Trial Advocacy at Drake University Law School since 1981.



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THE PROBLEM

In the late 1970s and early 80s, lawyers were becoming aware of issues of alcohol dependence and alcohol abuse in the profession. A number of recovering alcoholic lawyers around the country began to establish programs and committees to help those lawyers. In Iowa, the ISBA formed the Lawyers Helping Lawyers Committee. The emphasis at that time was on lawyers with alcohol dependency. Eventually it was determined that Iowa needed a full-time person to help those lawyers. The Iowa Lawyers Assistance Program (ILAP) was started with Marty Dunn as the first director.

The ABA formed an organization called the Commission on lawyers assistance programs as an umbrella for all lawyers assistance programs around the country. Some small informal studies were done which began to show that there were mental health issues negatively impacting the profession, so many of these programs expanded their services. The first comprehensive survey of lawyers was done which included substance disorders and mental health problems. The survey was a joint effort of the ABA Commission on Lawyer Assistance Programs and the Hazelden/Betty Ford Foundation.

The study, released in 2016, surveyed nearly 13,000 practicing lawyers and found 21 percent qualify as problem drinkers, 28 percent struggle with depression and 19 percent reported anxiety. Attorneys with 10 years of practice or less, in private firms, experienced the highest rates of alcohol abuse and depression.

THE SOLUTION

In recognition of the problems uncovered in the survey, the Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers

created the National Task Force on Lawyer Well-Being. Their first report was released in 2017.

This task force developed a Well-Being Template for Legal Employers, which serves as a starting point for law firms to develop their own well-being policy. The template can be found online here: https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/well-being-template-for-legal-employers-final-3-19.pdf

Lawyer assistance programs were first designed to be reactive. That is, we were looking for lawyers who were already in trouble through self-reporting or referral by other attorneys or agencies. As knowledge of the issues facing lawyers developed, it became apparent that becoming proactive was of crucial importance. And law firms are in a unique position to see problems developing. Attorneys in private practice are more isolated and able to hide developing mental health or substance problems. In my case, I was a solo practitioner and could hide my growing addiction and depression from others. Lawyers as a profession also have the unique ability, from training in law school and the nature of the work, to look good even if they don't necessarily feel that way. Again, this was true in my case. It was not until clients began complaining that the Oregon Attorneys Assistance Program began to try and find what was wrong and ultimately intervene.

There is a tendency to overlook what may be a growing problem. It can be very difficult to address the

person suspected of having a problem. Denial can be an issue for someone who believes he or she must confront a partner, colleague, associate or friend. This is why a proactive policy within the firm benefits everyone.

What follows is a short checklist to help law firms evaluate their own plan to address such issues.

CHECKLIST FOR MENTAL HEALTH & SUBSTANCE ABUSE DISORDERS

- ☐ Is there a policy regarding substance use, mental health and impairment?
- ☐ Does the policy explain lawyers' ethical obligations relating to their own or their colleagues' impairment?
- ☐ Is there a policy to support time off for treatment?
- ☐ Are there regular communications about the importance of well-being?
- ☐ Do health plans offered to employees include coverage for mental health and substance use disorder treatment?

In the November issue of The Iowa Lawyer, I will talk about the concepts of well-being for all attorneys.



Hugh Grady
 Director, Iowa Lawyers Assistance Program



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THE ELEPHANT IN THE ROOM

Why no one is talking about miscarriage and infant loss in the legal profession **By Leah Patton**

October is pregnancy and infant loss awareness month. Many people, including those in the legal profession, are unaware of this, unless this has directly impacted them.

What many attorneys do not know is that pregnancy and infant loss is common and those in the legal profession are not immune. According to the CDC, over one million pregnancies end in miscarriages, stillbirths and infant losses each year.

I am one of those statistics. I have experienced both a miscarriage and an infant loss. But no one wants to talk about it, almost as if it is taboo. I have been hesitant to talk about it but am here to break the silence. We as attorneys need to start talking about it and helping each other in terms of understanding, educating, sympathizing, empathizing and healing.

At the time of my miscarriage, I worked at the Public Defender's Office in Des Moines as an assistant public defender representing clients in rocket docket, which is a high-volume, high-stress job. For those who do not know, rocket docket in my world consisted of representing clients charged with driving offenses—operating while intoxicated, driving while

barred, driving while revoked and companion offenses. I also handled several jury trials. I was married and had a daughter who was a healthy and happy three-year-old at the time.

I got pregnant and had a miscarriage about eight to 10 weeks

into the pregnancy. I was devastated. I had announced the pregnancy to family members but not to anyone else. I felt I had no one to talk to and no one who could relate, especially since I had not made the announcement to non-family members that I was pregnant. However, at the time, I did not think anything was wrong. Pregnancy loss happens every day for a myriad of reasons we cannot control. What was the chance of it happening again?

I got pregnant shortly after that and was excited but guarded. I eagerly but nervously awaited my 20-week ultrasound at the midwife's office. During the ultrasound, something was not right. Whispered voices, non-verbal gestures and medical lingo. All I remember are words like "there is fluid around the brain," "the baby is smaller than should be" and "something was wrong with the baby's heart." We left in a daze. This is not supposed to happen like this and not to us.

We were referred to a specialist in Des Moines—a perinatologist who specializes in high-risk pregnancies. At the first appointment, another ultrasound was done, an amniocentesis was conducted and genetic testing was done. After waiting, genetic testing finally came back—the baby, who was a boy, had birth defects. One word described what I felt; shock. Why was this happening and to me? Did I do something wrong to deserve this? I must have done something to deserve this.

At the time, we discussed our options and decided the right thing for our family was to continue with the pregnancy, understanding we would be raising a child with special needs that would not fully be known until he was born. We researched, prepared and spoke with as many people as we could.

During the pregnancy, we continued to see a perinatologist and had regular ultrasounds to see how our son was doing. Things took a turn for the worse when at the 30-week ultrasound,

we discovered there was little amniotic fluid, which was due to his kidneys failing. Then, the worst news came—our son would not likely survive beyond 40 weeks and most likely would be stillborn. Words cannot describe what we felt. After going through all five stages of grief, our only request was that he would survive long enough for us to see and hold him.

Normally, as a baby gets closer to being born, the baby will turn. Our son did not turn and was still breach. Because he was breach, my doctor did not believe I would go into labor on my own. Therefore, we scheduled an induction for Sept. 21, 2012. However, life has a funny way of working out. On Sept. 17, 2012, I started to go into labor on my own and gave birth to my son breach on Sept. 18, 2012, after almost thirty-six hours of labor. He was born alive.

It was bittersweet—sweet because we finally got to see and hold him but bitter knowing he was going to pass away and there was nothing that could be done medically to save him, considering the multiple medical conditions and diagnoses he had. He was small but beautiful. He had a nose like his grandfather's. We named him Parker Stanley after Stan Lee, the famous comic book writer, and Peter Parker, the alter ego of Spiderman. During his ultrasounds, Parker looked like Spiderman, and Parker really was our hero—our own version of Spiderman. For those who knew him, he taught us so much—how delicate, fleeting, fragile and beautiful life is. He passed away in my arms about an hour after he was born.

No one should have to plan funeral arrangements for a child—let alone an infant son. No one teaches you how to do this, and law school does not prepare you for this. Fortunately for us, we had a hospice team to provide support during and after the pregnancy, as well as a caring and professional funeral home who assisted with the arrangements. I was fortunate to

Leah Patton pictured with her son Parker right after he was born.



have co-workers, friends and acquaintances who stood by us and helped us through. It was difficult because sometimes people do not know what to say. To this day, this is still the case.

On Sept. 18, my son would have turned seven and would have started first grade. Each year on his birthday, we remember and celebrate Parker and his short but inspiring time with us. We buy a bouquet

of flowers and a balloon bouquet. We write loving notes to him and attach them to the balloons, releasing the balloons at sunset. We also light a candle in remembrance.



On this day each year, I wish I could say that I hold it all together. Each year leading up to and during that day, I am on an emotional rollercoaster. If you noticed but did not know why, now you know. And, yes, it is better to say something than nothing at all even if the words are not perfect or if you don't know exactly what to say.

If you are an attorney reading this and you have experienced pregnancy or infant loss, tell someone. If you are reading this and you know an attorney who has experienced pregnancy or infant loss, talk to that person about it. We must share our stories. It is through the sharing that we heal and find hope, comfort and peace. There is nothing to be ashamed of, and I am here to tell you that you did not do anything wrong. You are not alone, and other people are going through something similar. No one should suffer alone.

Remember that October is pregnancy and infant loss awareness month. There are many ways to remember.

One of them is the International Wave of Light, which consists of lighting a candle on October 15 at 7 p.m. Keep your candle lit for one hour to create a wave of light over all time zones across the entire globe. Many cities also organize remembrance walks during the month of October. Or, do whatever brings you comfort and peace—whether you do so alone or with others who have experienced a similar loss.



ABOVE: Parker's ultrasound photo.

LEFT: Ian (Patton's son born after Parker), Josh (Patton's husband) and Zoe (Patton's daughter) are pictured at the most recent balloon release.



Leah Patton is the Managing Attorney for the HELP Regional Office of Iowa Legal Aid in Davenport. Leah is licensed to practice law in Iowa and Illinois. She has a breadth of legal experience, including two judicial law clerkships, the public defender office, non-profits and private practice. This article reflects the opinion of the author only.

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DISCIPLINARY OPINIONS

These summaries were adapted from Iowa Supreme Court opinions that can be read in full on iowacourts.gov.

CASE NO. 19-0712: IOWA SUPREME CT. ATTORNEY DISCIPLINARY BD. V. JOHNATHAN LEE SEARS (FILED SEPT. 6)

The Iowa Supreme Court Attorney Disciplinary Board charged Iowa attorney Johnathan Sears (partner at Clark & Sears Law, admitted to the bar in September 2017) with violations of Iowa Rule of Professional Conduct 32:8.4(b) (commission of a criminal act) in connection with convictions for operating while intoxicated (OWI), domestic abuse assault causing bodily injury and several instances of violating a no-contact order. After a hearing, the Iowa Supreme Court Grievance Commission found the alleged violations had occurred and recommended the attorney be suspended for one year without the possibility of early reinstatement. Upon the Iowa Supreme Court's review, the court concluded the attorney violated rule 32:8.4(b) and ordered that his license be suspended indefinitely with no possibility of reinstatement for two years.

CASE NO. 19-0662: IOWA SUPREME CT. ATTORNEY DISCIPLINARY BD V. KYLE L. EARLEY (FILED SEPT. 6)

Kyle Earley graduated from law school in 2017 and was admitted

to the Iowa bar that same year. He maintained a solo private practice in Grinnell. This disciplinary proceeding concerns Earley's representation of two different clients in which he received retainers to handle family law matters, did essentially no work on those matters and used the funds instead for personal purposes.

On Sept. 11, 2018, Earley's license was suspended for failing to comply with client security and continuing legal education requirements. Approximately two months later, on Dec. 7, the Disciplinary Board filed a complaint against Earley alleging ethical violations arising out of Earley's representation of the two clients. Earley violated numerous rules of professional conduct, including violating proper trust account practices and misappropriating client funds. His license was revoked by the Supreme Court, but he can reapply after five years.

CASE NO. 19-0661: IOWA SUPREME CT. ATTORNEY DISCIPLINARY BD. V. MATTHEW L. NOEL (FILED SEPT. 6)

The Iowa Supreme Court Attorney Disciplinary Board filed a complaint against Matthew L. Noel (admitted to the practice of law in 2008 and practicing at the Noel Law Firm) alleging

multiple violations of the Iowa Rules of Professional Conduct. A division of the Iowa Supreme Court Grievance Commission found the board proved some of the alleged violations and recommended a 30-day suspension. The Supreme Court agreed that the board proved some of the alleged violations related to communication, responsiveness and reasonable diligence in representing a client, failing to abide by client's objectives of the representation, violations of fairness requirements to opposing party and counsel, and engaging in conduct prejudicial to the administration of justice, but instead ruled to publicly reprimand Noel. In February 2019, his law license was suspended for at least one year because of unethical billing practices with the state public defender between 2008 and 2014, but this ruling was not considered an aggravating factor in this present case.

CASE NO. 19-0360: IOWA SUPREME COURT ATTORNEY DISCIPLINARY BD. V. CURTIS W. DEN BESTE (FILED SEPT. 13)

This case came to the Supreme Court on review from a report and recommendation of a division of the Iowa Supreme Court Grievance Commission. The report found Curtis Den Beste (an Iowa attorney who received his license in 2000 and was working at Howes Law Firm, P.C. in Linn County) committed ethical violations and recommended a four-month suspension of his license to practice law. The Supreme Court found that Den Beste violated the Iowa Rules of Professional Conduct by engaging in criminal conduct involving theft from his employer (a total of \$9,200) and suspended his license to practice law in Iowa indefinitely with no possibility of reinstatement for four months.



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IN MEMORIAM

Neva M. Rettig Baker, 58, of Muscatine, died August 7. Baker was born in 1961 in Des Moines, and received her J.D. from the University of Iowa College of Law in 1987. She served as the director of Muscatine Legal Services which led to the start of her private law practice, Baker Law Office. She also had served as county magistrate since 1997.

Dale P. Repass, 70, of Dubuque, died July 11. Repass was born in Waterloo in 1948. He received his J.D. from Drake University Law School in 1974. Repass devoted over 40 years to the financial services industry, having been involved in all phases of banking and trust services. He served in many positions, including senior lender, trust department manager and president/CEO/chairman of two mercantile banks (now US Bank) located in Clinton and Dubuque. In 2001, Repass co-founded First Community Trust, N.A. where he served as chairman and CEO for 14 years.

John A. Tacker, 66, of Andalusia, Illinois, died July 1. Tacker was born in Moline, Illinois, in 1953, and received his M.L. from St. Thomas University School of Law. He retired from the Rock Island Arsenal after a long career as a command

ombudsman and labor relations specialist. After retirement, Tacker followed his dream and became an attorney, working as vice president and corporate general counsel for Charles F. Day and Associates LLC in Davenport.

Dick N. Winders, 73, of Ormond Beach, Florida, died April 5. Winders was born in Milwaukee in 1945. He served in the Iowa Army National Guard and received his J.D. from Drake University Law School in 1970. Winders began his law career in the Office of the Attorney General for the State of Iowa in 1970, during which time he rose to the rank of assistant attorney general. In 1977 he joined a firm in Jefferson, before joining the Des Moines firm of Herrick, Langdon and Langdon in 1980 where he worked for over 25 years.

Larry Stoller, 63, of Spirit Lake, died July 24. Stoller was born in Spirit Lake in 1956. He received his J.D. from Creighton University School of Law in 1980. Stoller was a partner in the firms of Stoller and Larson, Stoller and Johnson and a sole practitioner later in his career. In addition, he was an adjunct professor of legal studies at Buena Vista University in Storm Lake.

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FORMER IOWA JUDGE INDUCTED INTO IOWA WOMEN'S HALL OF FAME

Former 5th Judicial District Associate Probate Judge Ruth Klotz, who retired in 2013 at the age of 90, is among four Iowa women who were inducted into the Iowa Women's Hall of Fame.

Judge Klotz graduated from Drake Law School in 1955 as the only female graduate that year. Just prior to graduation, she was suddenly widowed while eight months pregnant, but she still managed to graduate on time and at the top of her class. While in law school, she was elected to the Order of the Coif and was the assistant editor for the Drake Law Review.

Klotz served as special counsel to the Iowa Department of Revenue, worked in private practice and as a trust officer and

assistant vice president to a large local bank. In 1978, she was appointed as probate referee for the 5th Judicial District, and eventually became associate judge for probate. Throughout her 34 years on the bench, she sponsored judicial interns and was an instructor at Drake Law School.

"In a time when men dominated the legal field, (Ruth) became the first probate judge in the state of Iowa in 1978," said nominator Celene Gogerty. "To have such a role model and mentor opened many women to the possibility of law and the judiciary as an intended profession. However, it was more than just her unique status as a female judge which made her stand out among her peers. It

was her dedication, her mental acuity and warm disposition which was admired. Further, she actively mentored interns and law clerks to encourage the next generation of lawyers and judges."

The Iowa Commission on the Status of Women established the Iowa Women's Hall of Fame in 1975. As of 2019, 180 women will have been inducted. The latest induction ceremony was held on Saturday, Aug. 24.



DRAKE DEAN ELECTED TO ACOEL

Drake University Law School Dean Jerry Anderson has been elected to the American College of Environmental Lawyers (ACOEL), a professional association of distinguished lawyers who practice in the field of environmental law. Membership is by invitation and members are

recognized by their peers as preeminent in their field.

ACOEL members are dedicated to: maintaining and improving the ethical practice of environmental law; the administration of justice; and the development of environmental law at both the state and federal level.

NEW COURT OF APPEALS JUDGE APPOINTED

Gov. Kim Reynolds announced her appointment of Julie Schumacher as a judge of the Iowa Court of Appeals. Schumacher, of Schleswig, previously served as a district court judge in District 3B. Before that, she served as a district associate judge, an assistant county

attorney for Crawford County and an assistant city attorney for Denison. She also engaged in the private practice of law in Denison for nearly 20 years.

Schumacher fills the vacancy created by the retirement of Iowa Court of Appeals Chief Judge Gayle Nelson Vogel of Spirit Lake.

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LETTER TO THE EDITOR

Dear Editor,

Though I am long retired, I much appreciated and enjoyed the lead article in the August Iowa Lawyer – "Advice from the Bench." I thought the judge's comments were smart and on-point, and every thinking lawyer ought to pay close attention!

I would like to add one other piece of advice, however. And, not from the bench, but from the jury room! During my career in Washington D.C., lawyers were not exempt from jury duty, and I was called several times. The last time I served was for a criminal trial - possession of crack cocaine. There were three lawyers on the jury, and I was elected foreman.

There were racial overtones to the trial – African American defendant and defense counsel, and white prosecutor and principal witness (the arresting officer). The jury included a majority of older African American women, and they were NOT sympathetic to the defendant. It was a straight-forward possession case and should have been simple to decide, but we had one hold-out juror who insisted there was no probable cause for the search, even though the judge had instructed us that there was. And the police officer angered most of the jurors with his attitude on the witness stand. It took three days of deliberation, and an increasingly stern and impatient judge, before we reached a unanimous verdict.

At the close of the trial, after the verdict was read, the judge spoke to me and said, "You are under no obligation to do so, but both the defense counsel and the Assistant U.S. Attorney would very much like to speak to you and find out what happened in the jury room." I agreed and met with them both. This is what I told them:

"When you prep your witnesses, caution them to be courteous, attentive and responsive – to BOTH counsels! The white policeman was curt, rude and disrespectful – especially to the African American defense attorney, and his attitude came across as arrogant and racist. It offended even the jurors who were certain the defendant was guilty and prompted lots of discussion as to whether there were racist motivations in the prosecution. Had not the physical evidence been so obvious and clear, I'm not sure I could have secured a unanimous verdict."

Both thanked me and said that was advice that should always be followed when prepping witnesses for trial. I hope this will be of use to your readers.

Sincerely, Darrell L. Netherton

ISBA BOARD OF GOVERNORS FALL QUARTERLY MEETING

BOG TAKES ACTION TO APPROVE POLICIES AND LEGISLATION AT MEETING ON SEPT. 23

Special thanks to Maura Sailer and Jim Daane, District 3B, for their contributions to this summary

ACTIONS

Resolution approved by the ISBA Board of Governors:

- Support of state funding for Civil Legal Services recommended by the Legal Access Committee.

ISBA Section recommendations for the 2020 ISBA Affirmative Legislative Program were approved as follows:

Business Law

- Proposal to amend the Iowa Uniform Protective Series Act to add section 489.14801 to correct an inadvertent omission by the Legislative Services Agency when SF569 was drafted; this language was approved as a part of the ISBA's 2019 Affirmative Legislative Agenda.
- Proposal to harmonize Iowa Code sections related to the effective date of resignation by a registered agent of a corporation and other business entities with the Model Business Corporation Act (4th Edition 2016).

Probate, Trust & Estate Planning

- Proposal to amend HF610 and HF591 subject to receipt of no objection by either the Elder Law Section or the Family Law Section; the Elder Law Section and Family Law Section are requested to provide comments to the Probate, Trust, and Estate Planning Section no later than Oct. 7.

Construction Law

- Legislation regarding the enforceability of mechanic's liens against homesteads that supports the intent of SF458 and the current House Judiciary Committee amendment to SF458, subject to no objection by either the Commercial and Bankruptcy Law Section or the Real Estate and Title Law Section.

Additional actions approved:

- Appointment of Karen Shaff to the Iowa Legal Aid Board of Directors.
- Appointments of Eric Turner and Arnold "Skip" Kenyon III to The Iowa State Bar Foundation Board of Directors.
- Appointments of Jane Lorentzen and Loretta Harvey to the LawPAC Board of Directors.

- Amendment to the ISBA's Bylaws to address the procedure to be followed for officer and American Bar Association delegate nominations and to include descriptions for the newly created Well-Being Committee and Innovations Committee recommended by the Scope and Correlations Committee.
- Submitting a request to the Iowa Supreme Court for a 90-day extension of the comment period on the proposed amendments to Iowa Rules of Professional Conduct.
- Establishment of a committee to consider the proposed amendments to the Iowa Rules of Professional Conduct and to report back to the Board of Governors at its December 2019 meeting.
- Adoption of the following policies: (1) Policy on the Process for Determining Compensation; (2) Policy on Evaluation of the Executive Director; and (3) Senior Leadership Succession Policy.
- Distribution of the Client File Retention Guide submitted by the Record Retention Small Group to the ISBA membership, and authorization for the officers and staff to make any necessary revisions for the finalization of the guide.

REPORTS

President's Report

ISBA President Bill Boyd highlighted items from Administrative Committee discussions including Board Governance, the ISBA Grassroots Advocacy Network and

the reconstitution of the Fair and Impartial Courts Committee in preparation for the 2020 retention election. Boyd gave a presentation on the national trend to license new types of legal professionals, stating that the ISBA will need to determine its role in this trend.

Legislative Counsel's Report

ISBA Legislative Counsel Jim Carney highlighted opportunities/priorities/potential legislation for the upcoming session including: caps on damages, civil justice reform, funding for legal services, indigent defense, the Judicial Branch budget, jury nullification, opposition to legalization of title insurance, full funding for the Office of the Public Guardian, support and funding for child abuse prevention and treatment efforts, and opposition to absolute immunity legislation. The ISBA BOG will review position papers for legislative priorities at the December meeting.

Other potential issues that were identified for the upcoming legislative session include judicial branch security issues, the judicial nominating process, supermajority, judicial statewide and/or district residency requirements, and litigation centers. Additional potential issues identified include tort reform and title insurance/title guarantee.

The ISBA's legislative team reported on the FY2020 budget and upcoming October and December Revenue Estimating Conference meetings. ISBA Assistant Legislative Counsel Doug



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Struyk stated that it is currently anticipated there will be an estimated \$250-200 million in cash reserve funds.

YLD President's Report

YLD President Abhay Nadipuram provided the BOG with an update on accomplishments including the kickoff of the ISBA YLD and Law School Transparency's Blue Sky Initiative on Aug. 8 at the ABA Annual Meeting in San Francisco. He also highlighted resources developed by the YLD Parental Leave Task Force that will be shared with all ISBA members this fall. In addition, he reported on the YLD's Diversity Committee, the mentoring program, and the YLD's Health and Wellness Taskforce.

Executive Director's Report

ISBA Executive Director Dwight Dinkla and Assistant Executive Director Harry Shipley provided governors with highlights from a "SWOT" Analysis. The ISBA executive staff also provided an update on membership counts for the past fiscal year and upcoming travel planned throughout the state to meet with county bar associations.

ISBA Ethics Committee Chair Nick Critelli gives his report.



ISBA BOG SMALL GROUP REPORTS

Strategic Planning

Hon. Henry Hamilton III and Kate Kohorst

The Strategic Planning group engaged the BOG in a discussion of the strengths, weaknesses, opportunities and threats identified in the SWOT Analysis and offered preliminary priorities based on the analysis.

Legislative

Joe Happe and Adam Zenor

The Legislative group plans to review possible ways that the ISBA Grassroots Advocacy Network and LawPAC may be strengthened.

Access to Justice

Heather Prendergast and Maura Sailer

The Access to Justice group is identifying opportunities for the ISBA to have a positive impact based in part on the information contained in the Iowa Access to Justice Commission's 2019 report.

Rural Practice

Matt Berry and Robert Fischer

The Rural Practice group discussed their review of the benefits and challenges to practicing in rural Iowa and the upcoming issue of The Iowa Lawyer magazine that will have a series of articles on rural practice.

Member Services/Benefits

Dawn Boucher and Nathan Overberg

The Member Services/Benefits group is evaluating the recent ISBA membership survey and identifying opportunities for its work this year.

Dialogue with Iowa Supreme Court Chief Justice Mark Cady

Iowa Supreme Court Chief Justice Mark Cady highlighted the proposed amendments to the Iowa Rules of Professional Conduct that the Iowa Supreme Court is currently considering (and seeking public comment on) including:

- **32:3.8** (Special Responsibilities of a Prosecutor)
- **32:5.5** (Unauthorized Practice of Law; Multi-jurisdictional Practice of Law)
- **32:7.1** (Communications Concerning a Lawyer's Services)
- **32:7.2** (formerly, Advertising)
- **32:7.3** (Solicitation of Clients)
- **32:7.4** (formerly, Communication of Fields of Practice and specialization)
- **32:7.5** (formerly, Firm Names and Letterheads)
- **32:8.4** (Misconduct)
- **32:8.5** (Disciplinary Authority; Choice of Law)

Chief Justice Cady is current president of the Conference of Chief Justices and chair of the National Center for State Courts Board of Directors. He commented on efforts to promote trust and confidence in the court system.

Ethics Committee Report

ISBA Ethics and Practice Guidelines Committee Chair Nick Critelli recently hosted a webinar on the nine proposed amendments to the Iowa Rules of Professional Conduct that the Iowa Supreme Court is currently considering. Over 1,000 attorneys participated.

ABA Delegate Report

ABA Delegate David L. Brown provided highlights from the ABA Annual Meeting including the presentation of the association's highest honor, the ABA Medal, to San Francisco attorney Dale Minami, a lifelong champion of the civil rights of Asian Pacific Americans and other minorities. New YLD ABA Delegate Kay Oskvig also reported on resolutions brought forth by the House of Delegates of importance to younger attorneys.

Attention Iowa Litigators
Need to schedule mediations?

APRIL 2019						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2 AM	3	4	5 PM	6
7	8 PM	9	10	11	12	13
14	15	16	17 AM	18 AM	19 AM	20
21	22	23 AM	24 AM	25	26	27
28	29	30				

www.IowaMediators.org

Labor & Employment Law Seminar

Nov. 22

8:30 AM - 4:30 PM

In-person (ISBA Building) or Live Webinar

Highlights

Employment Law Case Update

Rick Autry, Employment Appeal Board

Artificial Intelligence: Coming to an Employment Setting Near You

Judge Helen Adams, U.S. District Court, Southern District of Iowa

Employment Jury Instructions Update

Paige Fiedler, Fiedler Law Firm PLC

Update on Marijuana Laws and the ADA

Terri Davis, Shuttleworth & Ingersoll PLC

Labor Law Update

Charlie Gribble, Parrish Kruidenier

Employment Practices Liability Insurance and Ethics

Kim Geisler, Scott Dukes & Geisler PC and Stephanie Gironda, Wilentz, Goldman & Spitzer, P.A.

False Claims Act and qui tam Whistleblower Issues

Jacob Schunk, Civil Chief of the U.S. Attorney's Office, Northern District of Iowa

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now available**

iowabar.org/laborseminar



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POSITIONS AVAILABLE

Employment/Labor Law Attorney – Germaine Law Firm PLLC, Cedar Rapids – We are looking for a top quality attorney with 4+ years of Employment/Labor Law experience who believes in excellence, innovation, teamwork and doing law differently. We are accepting applicants from across the Midwest. Please send your resume and cover letter to careers@germainelawfirm.com. The subject line of your email must be: Employment/Labor Law Attorney Application. In your cover letter, please describe your multi-employer benefit fund and/or employment/labor law experience, your salary history and salary requirements.

Director of the Entrepreneurial/Transactional Law Clinic and Clinician in Residence – Drake University Law School, Des Moines – Drake University Law School invites applications for the position of Director of the Entrepreneurial/Transactional Law Clinic. The position may begin as early as January 2020 and continue until June 2021. Term renewal is possible, depending on continued financial support. Duties will include supervising and assessing clinic students representing nonprofit organizations and emerging entrepreneurs. They also include teaching a weekly seminar for clinic students. The clinic primarily focuses on assisting startup

businesses and nonprofits in underserved communities in Polk County that are not able to afford retained counsel. Applications (including a letter of interest, a complete CV, teaching evaluations [if available] and the names and addresses of at least three references) should be sent to Professor Ellen Yee, chair, Faculty Appointments Committee, Drake University Law School, 2507 University Ave., Des Moines, 50311 or e-mail: ellen.yee@drake.edu.

Litigation Attorney – Pugh Hagan Prahm PLC, Coralville – Pugh Hagan Prahm PLC, a boutique AV-rated law firm located in Iowa City/Coralville, seeks a highly-qualified litigator with at least three years' of experience and a portable book of business to join its litigation practice. Our growing law firm offers a highly professional, vibrant and family-oriented work environment. All inquiries are strictly confidential. Qualified applicants should submit a cover letter and resume to our office manager, DeLisa Baker (dbaker@pughhagan.com).

Staff Attorney – Iowa Legal Aid, Des Moines, – Iowa Legal Aid has staff attorney openings in its regional offices located in Cedar Rapids, Davenport, Des Moines, Dubuque, Mason City, Ottumwa, Sioux City and Waterloo.

Staff attorney positions in other Iowa Legal Aid regional offices may open as the year progresses. To apply, visit <https://careers.iowabar.org/jobs/12793462/staff-attorney>.

Health Associate – Dorsey & Whitney, LLP, Des Moines – Dorsey & Whitney LLP is seeking a highly-motivated healthcare associate with one to four years of experience to join a very busy practice in the Health Care group in our Des Moines office. The position will focus on transactions and regulatory compliance healthcare work (e.g., drafting and negotiating contracts, Medicare and Medicaid compliance advice and HIPAA advice). Dorsey & Whitney LLP accepts online applications at <http://www.dorsey.com/attorneyjobs>. We do not accept application materials by mail or email except as a reasonable accommodation for qualified disabled applicants. Individuals who are unable to use our online process due to a disability should call 612-492-5186.

Associate Attorney – Schnell & Hancock, P.C., Davenport – Schnell & Hancock, P.C. is seeking an associate attorney to practice in the areas of estate planning, probate and trust administration, real estate, tax, business formation and business transactions. Strong tax or accounting

ISBA CLE CALENDAR

iowabar.org/calendar

OCT. 18

Welcome to the Bar
In-person or Live Webinar

OCT. 22

**Ethical IP Considerations
when Working with
Foreign Counsel**
Live Webinar

OCT. 24-25

Family Law Seminar
West Des Moines
Marriott

OCT. 29

The Pillars of OWIs
Live Webinar

NOV. 4

**What's New with the
Indian Child Welfare Act?**
In-person or Live Webinar

NOV. 13

**The Future of
Child Welfare Law**
Live Webinar

NOV. 14

Schools in Session
Live Webinar

NOV. 18

**Dealing with Digital
Assets: What Estate
Planners Need to Know**
Live Webinar

NOV. 19

**Mediation Ethics:
Stories From the Trenches**
Live Webinar

NOV. 20

Trademark Law Update
Live Webinar

NOV. 21

**Shifting Landscapes:
Adapting Your Firm to
Emerging Threats**
Live Webinar



Family Law Seminar

Oct. 24-25 | West Des Moines Marriott
15 state, 3 ethics and 4.25 juvenile CLE hours

background is beneficial; experience preferred but not required. Please submit a cover letter, resume, unofficial transcript and writing sample to QCEPLaw@gmail.com. Please upload all required documents as PDF attachments.

Staff Attorney – Waterloo Community Schools Project – Iowa Legal Aid, Waterloo – Iowa Legal Aid is seeking an energetic and creative attorney to join our new Waterloo Community Schools Project. Iowa Legal Aid has a staff attorney opening in its Waterloo Regional Office. The attorney will have principal responsibility for working in conjunction with the executive director and other staff to establish a new program with the Waterloo Public Schools, including the establishment of a new legal aid clinic on site in an elementary school in the Waterloo School District. To apply, visit <https://careers.iowabar.org/jobs/12822318/staff-attorney-waterloo-community-schools-project>.

Director, Center for Writing and Academic Excellence – University of Iowa College of Law, Iowa City – This full-time 10-month permanent position provides one-on-one help to law students so they can develop the skills and strategies they need to be successful in both professional and academic settings. The position will be filled no earlier than April 1, 2020. To apply, candidates should submit a cover-letter and resume through Jobs@UIOWA, <https://jobs.uiowa.edu>, refer to Requisition #19004026.

Health Attorney – Dorsey & Whitney, LLP, Des Moines – Dorsey & Whitney LLP is seeking a highly-motivated healthcare attorney with five or more years of experience to join a very busy practice in the Health Care group in our Des Moines office. The position will focus on transactions and regulatory compliance healthcare work (e.g., managing all or aspects of health care transactions, advising health care providers and companies on fraud and abuse and privacy matters, and supervising large research projects on state and federal laws impacting the health care industry). Dorsey & Whitney LLP accepts online applications at <http://www.dorsey.com/attorneyjobs>. We do not accept application materials by mail or email except as a reasonable accommodation for qualified disabled applicants. Individuals who are unable to use our online process due to a disability should call 612-492-5186.

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SPIEKER



POWELL



CHRISTENSEN



LYNCH



RASTELLI



GOERTZ

Julie L. Spieker has joined McKee, Voorhees & Sease PLC in Des Moines as an intellectual property attorney in the biotechnology & chemical and mechanical & electrical practice areas. She received her J.D. from Drake University Law School in 2019.

Drew Powell has joined Simmons Perrine Moyer Bergman PLC in Cedar Rapids as an associate. He received his J.D. from the University of Iowa College of Law in 2018. Powell is a litigation attorney with a general practice including business and commercial litigation and bankruptcy law.

Jordan Christensen was promoted to associate attorney at Hupy and Abraham in West Des Moines. She first joined the firm as a law clerk in May 2019. She received her J.D. from the University of Iowa College of Law. Christensen's primary focus will be helping injured clients through workers' compensation cases.

Benjamin K. Lynch has joined Home Services of Iowa in West Des Moines as in-house counsel. He graduated with honors from Drake University Law School.

Andrea Rastelli has joined the Dickinson Law Firm as an associate. Rastelli is a recent graduate of the University of Iowa College of Law and holds a B.A. in International Relations and Latin American Studies from Lafayette College in Easton, Pennsylvania. She will be focused on providing banking solutions, including cybersecurity, intellectual property, and a variety of employment and labor issues.

Allison M. Goertz has joined Honohan, Epley, Braddock and Brenneman, LLP in Iowa City as an associate. She received her J.D. from the University of Iowa College of Law. Her practice will focus on estate planning and probate, real estate, elder law, and tax.

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Mike Mesch
CPA/ABV, ASA, CFF
Partner

SPOTLIGHT ON SERVICE

The ISBA Public Relations Committee honors an Iowa attorney or group of attorneys each month in this special feature in *The Iowa Lawyer*. If you would like to nominate someone to be recognized for his or her work in the community, please contact: **Melissa Higgins**, mhiggins@iowabar.org

**PHIL BURIAN
AND SIMMONS
PERRINE MOYER
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▲ The "Simmons Sweepers" (left to right): Joe Porter, Abe Carls, Phil Burian, Rebekah Jalilian-Nosraty and Madison Schroeder.

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You usually see attorneys pushing stacks of files around on their desks, not sliding stones across sheets of ice. But a good cause brought some Cedar Rapids area attorneys out of their comfort zone and onto the ice rink to do just that.

On Friday, Aug. 9, the United Way of East Central Iowa and Cedar Rapids Curling hosted "Sweeping for Change" at the Cedar Rapids Ice Arena. Teams from area businesses spent the day learning about the sport of curling, competing for a traveling trophy and raising thousands of dollars for the United Way.

Simmons Perrine Moyer Bergman PLC (SPMB) sponsors the annual event. The firm's team, the "Simmons Sweepers," finished in 4th place. Team members included attorneys Abe Carls and Crystal Pound and summer associates Joe Porter, Madison Schroeder

and Rebekah Jalilian-Nosraty.

Phil Burian is a litigator at SPMB and the president of Cedar Rapids Curling. He teamed up with the United Way of East Central Iowa to start the event three years ago. Burian noted that "Curling is a perfect match for the United Way because it insists on teamwork and civility, and it allows people with dramatically different physical capabilities to compete in the same game while building relationships with each other."

The United Way of East Central Iowa focuses on the education, financial stability and health of Iowans in the communities it serves by focusing on breaking the cycle of poverty and creating stronger communities through innovative solutions. The "Sweeping for Change" tournament is a unique annual fundraiser that serves to keep its mission going.

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