



THE

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IOWA LAWYER

Communicating & Collaborating with the Court



ALSO IN THIS ISSUE

- Dwight James expresses his passion for life as a mediator and portrait artist
- FAQ on Expedited Civil Action Rule 1.281
- How to give more to your favorite charity and pay less in taxes
- Two NEW ethics opinions
- Disciplinary actions



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ISBA President Joe Feller (center) sits with the seven justices of the Iowa Supreme Court in the law library at the Iowa Judicial Branch Building. Seated with him (from left) are Chief Justice Mark Cady and justices David Wiggins, Thomas Waterman, Edward Mansfield, Bruce Zager, Daryl Hecht and Brent Appel. In his president's letter, President Feller writes about the importance of maintaining communication and collaboration with the court to assist it with its goal of making the Iowa court system the best in the country. Read his comments beginning on page 4.

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Communicating and Collaborating with the Iowa Supreme Court

One of my most important duties as your president is to represent you in our relationship with the Iowa Supreme Court. I am sure you have noticed that the court has been busy with

their core work of deciding cases on appeal and very engaged with the bar and the public with their administrative mission.

For several recent years, our best-made plans to meet the needs of our members were hijacked when we needed to respond to unwarranted attacks leveled against the court and different justices up for retention. We also devoted significant energy toward increasing funding for the courts. Remember when meager budgets forced clerks' offices to cut back on the hours of service?

While we still support full funding for the courts, pay raises for our judges and issue public statements supporting our courts, much of our time and effort these days is spent in communication and collaboration with the courts in an effort to assist Chief Justice Mark Cady in the courts's quest to make our Iowa court system the best court operation in the country.

After difficult retention elections and a budget crisis, our chief and the court recognized that they needed to work to make our Iowa judicial system more relevant and efficient in meeting the legal needs of the public. For example, by adopting the new judicial term system, waiting times from submission to decision have been more than cut in half from eight months to less than four months. In addition to continuing to handle their core work, deciding the most difficult cases on appeal, the court's administrative workload has increased significantly.

In collaboration with bar leadership and the efforts of our members, the court has recently implemented the electronic data management system, business courts, family treatment courts and the dual litigation track. Current task forces aimed at improving the rules of evidence, family law and guardianship and conservatorship law are now underway.

Considerable time and energy have been devoted to each of these administrative projects by members of the court. While it may be too early to judge the success of each project, I do know that EDMS is already providing great dividends in creating efficiencies and cutting costs in operation for the courts and our members.

Do you realize that Iowa will be the only state in the union that will have electronic filing of all documents from traffic tickets and small claims matters to regular pleadings and appeals to our highest court when EDMS is fully implemented statewide this year? The court deserves the highest of accolades for their vision and determination to take us all into the 21st century with electronic filing as a tool of our profession.

Most of us do not welcome changes in technology because we have to stop and take time to learn new skills. In the last several years, we have seen several changes to the way we communicate with the court and our clients. Once we do learn to scan documents, email our clients and video conference with our clients and colleagues, our offices become much more efficient and we save money and time. Not to mention our clients tend to expect that level of service.

The court has also made a strong effort to conduct their court proceedings in a more transparent manner, opening their sessions to cameras, video recordings and live streaming. The court also archives these video proceedings on their website and YouTube. You can even tweet with the court.

They also go on the road four times a year hearing oral arguments in all parts of the state. The road show gives members



Chief Justice Mark Cady and ISBA President Joe Feller pose for a photo in front of the doors to the Iowa Supreme Court courtroom.

of the court the opportunity to work with our members on a local basis along with the high schools, colleges, local communities and business groups.

After presiding over their "Night Court," much of their time is spent visiting with the local members of the public and school students explaining the role of the courts. The court has been well received in all these communities, and their efforts are creating goodwill and trust between the public and the courts.

We also see more transparency in major policymaking. The court has requested public comment before deciding issues concerning bar admission, the basic skills course and the mandatory assessment proposal. All of these efforts by the court are very positive developments and are sure to bear fruit in the future. In the end, all of these efforts will make our role supporting the court easier and give us more time to focus on the needs of our members and the public.

Finally, being lawyers, some are bound to think we lost one and won one this year with the court, but I don't look at it that way at all. We did become fully engaged in the bar admission discussion and the proposed mandatory assessment, both very difficult issues for the court.

First, with the bar admission issues, during the hearing Aug. 27, 2014, all the justices of the court treated each and every one of the 25 speakers with sincerity and respect as we debated in open court the proposed changes to our current licensing requirements. This type of discussion concerning these issues had never happened before in such an open and transparent manner.

Even though the court was not ready to adopt our proposal, we started a public discussion that needs to continue. We need to review the legal education and licensing requirements of our prospective members, now saddled with more debt than ever and questionable job prospects. We remain committed to working with the court, the law schools, the Board of Law Examiners and all our members as we all examine critical issues that must be addressed and cannot be ignored.

Clearly the current system of bar admission needs a major overhaul to make it more meaningful for new lawyers, the profession and the public. The court recently acknowledged this by eliminating the basic skill course requirements as of



Chief Justice Mark Cady explains details of an historic print hung on his office wall while ISBA President Joe Feller visited the Supreme Court Feb. 24. During Feller's time as president, he has made communicating and collaborating with the courts a priority.

January 2015. Together we will develop a bar admission process that will truly lead the nation.

Second, with the proposed mandatory assessment, the court asked for public comments and gave us ample time to survey our members and submit the results we received with the participation of over 700 members in the survey, including 300 written comments.

In the end, the court did not adopt a mandatory assessment. However, even with no mandatory assessment, we still recognize

that there is a great need to find funding to provide civil legal services to those people not able to afford their own attorneys. We also remain committed to working with Iowa Legal Aid, the court and others to increase services and public funding for the underserved based on their financial means.

It is encouraging to hear and we support the action that the Iowa Attorney General has taken to include a request to increase funds in the amount of \$500,000 over the next two years for civil legal services for indigent Iowans, all as a part of his budget request recently submitted to the Iowa legislature.

Finally as you can tell, your president has great respect and admiration for our Supreme Court. We all know that Chief Justice Mark Cady along with each member of the court, Justices David Wiggins, Daryl Hecht, Brent Apple, Tom Waterman, Ed Mansfield and Bruce Zager all deserve our highest regard for performing their duties in their never-ending, professional and courteous manner.

It remains my honor to serve as your president and my distinct honor to be your representative to the Iowa Supreme Court.

As always contact me anytime with your comments.

Joe Feller



2014 - 2015:
Back to Basics

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Q & A Regarding Expedited Civil Action Rule 1.281

From the Iowa Supreme Court Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations

Two years ago, the Iowa Supreme Court Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations, chaired by Justice Edward Mansfield, began to study reforms to discovery procedures in civil litigation and the feasibility of a special docket to process civil claims in less time and at less expense to all parties. Both were recommendations from the 2012 Report of the Iowa Supreme Court Civil Justice Reform Task Force.

Effective Jan. 2, 2015, Iowa has a new expedited track for civil lawsuits with claims of \$75,000 or less featuring a structure that encourages those cases to be completed, from start to finish, within one year. The Iowa Judicial Branch reports that in the first two months of the new rules, 53 cases were docketed on the expedited track. For more information about expedited civil actions visit the Iowa Judicial Branch website at <http://www.iowacourts.gov/>.

Also effective Jan. 2, 2015, Iowa has new court rules aimed to help reduce the time and expense associated with discovery in all civil cases. More information about the discovery amendments is also available on the Iowa courts website.

The committee has prepared a list of frequently asked questions regarding the new expedited civil action rule:

FAQ

Eligibility

Q. Who decides whether a case goes into the expedited civil action (ECA) track?

A. Plaintiff. If the plaintiff designates the case as an eligible case, it will go into the track and be subject to the \$75,000 limit. To elect ECA status, the plaintiff must file rule 1.1901-Form 16 or 17 (Form 16 is for natural party plaintiffs, Form 17 for other entities).

Q. How does the \$75,000 limit work?

A. All claims by or against a party may total no more than \$75,000. The jury is not told of the limit, so if a verdict exceeds that amount it will be reduced to \$75,000. The committee expected that attorneys who opt into the expedited civil action track would want to have written informed consent from their clients.

Q. Do attorney fees count against the \$75,000 limit?

A. Everything counts against the \$75,000 limit except interest after the date of filing and costs.



Q. Can the parties stipulate into the expedited civil action track and not be bound by the \$75,000 limit?

A. Yes. Rule 1.1901-Form 18 may be used for this purpose.

Q. Is it possible to get a case out of the expedited civil action track?

A. The district court can remove a case from the track on a timely motion if a party shows that circumstances have changed substantially, making it unfair to keep the case in the track (e.g., plaintiff has additional damages that could not have been foreseen), or a compulsory counterclaim is filed that exceeds \$75,000 or includes equitable relief. (If the counterclaim is not compulsory, the district court presumably can sever it.) In addition, the existing rule 1.943 right to dismiss without prejudice (subject to the statute of limitations) remains in effect.

Q. Can equity actions go through the expedited civil case track?

A. Only upon agreement of all parties.

Q. Can ECA actions be tried to the court?

A. Yes, if no side makes a timely jury demand or the parties jointly waive the jury.

Discovery

Q. What is different about expedited civil action discovery?

A. There are more stringent limits. No more than 10 interrogatories, 10 requests for production, and 10 requests for admission are permitted without leave of court (except for requests to admit the genuineness of exhibits). One deposition of each party and two other depositions are allowed per side. Each side is entitled to one retained expert in its case-in-chief unless otherwise stipulated or permitted by court order for good cause shown.

Q. What's a "side"?

A. Litigants with common interests are considered one "side."

Motions

Q. What is different about motions in the expedited civil track?

A. Motions to dismiss do not change. Motions for summary judgment, however, are limited under the rule. A party can only

file one motion for summary judgment and only the following grounds may be included in the motion: (1) collection of an open account or liquidated debt; (2) establishment of an obligation to indemnify; (3) assertion of an immunity defense; (4) failure to comply with a disclosure deadline, such as Iowa Code section 668.11; (5) failure to provide required notice or exhaust remedies; and (6) other affirmative defenses.

Q. What is the deadline for summary judgment motions in ECA cases?

A. In ECA cases, the standard deadline is 90 days before trial.

Trial setting

Q. When would an expedited civil action be tried?

A. Unless otherwise ordered for good cause, expedited civil actions will be tried within one year of filing. The trial setting will be certain for a given date, but subject to change during that week. Generally, ECA cases have priority over other civil cases seeking recovery of damages. Of course, trials of cases with even greater priority (e.g., criminal, juvenile) take precedence over trials of ECA actions, and in unusual circumstances, an ECA trial could be affected.

Q. What if one of the attorneys is not available to try the case within one year?

A. If the parties stipulate, the court may extend the trial date a reasonable time (say, one or two months) beyond the one-year window. The court, however, has authority to set the trial within one year even without consent of the parties.

Q. How is the judicial branch going to meet the commitment to get ECA cases tried within a year?

A. State court administration has been engaged in planning and allocation of resources, working with the district court administrators of each judicial district to prepare for processing of expedited civil actions.

Q. Is there a designated group of judges assigned to expedited civil action cases, like with the business court?

A. No. Expedited civil actions are intended to be tried like other cases in the normal course, with some streamlined procedures and a shortened window from filing to verdict.

Trial procedure

Q. What do juries look like in an expedited civil action?

A. There are six-person juries with three strikes per side during voir dire. After three hours of deliberation, the verdict may be rendered by a five-to-one vote.

Q. What are the time limits for trial?

A. Each side is limited to six hours of trial time. This includes time spent on voir dire, opening statement, presentation of direct testimony, cross-examination of the other side's witnesses, and closing argument. The goal is to get the case tried in two or three days.

Q. Why overall time limits?

A. The limits on time give attorneys the freedom to allocate their time in the manner they think would be most effective for their cases.

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Q. What is excluded from counting toward the time limits?

A. Generally, time spent on court matters do not count. For example, arguing objections, the jury instruction conference, motions for directed verdict, instructing the jury.

Q. Are the time limits absolute?

A. No. The court has the ability to extend the limits for good cause shown.

Q. How will the time limits be tracked and enforced?

A. The court will enforce the time limits. As a practical matter, however, the committee expects the court to delegate to the parties the task of tracking each side's time usage. The sides may mutually agree on how best to track time and propose that to the court.

Pretrial submissions

Q. Are there any special pretrial submissions required in an expedited civil action?

A. Yes. The parties are required to submit one joint set of jury instructions and verdict forms to which they have agreed. When the parties cannot reach agreement on an instruction or verdict form, each party must include in the joint set its proposed alternative for that instruction or verdict form only, with supporting authority. The joint set of jury instructions and verdict forms must be submitted in electronic word processing format.

Trial to the court

Q. Are there any special procedures to be followed if the expedited civil action is tried to the court?

A. Yes. If the court chooses, it may render a verdict as in a jury trial instead of issuing findings of fact and conclusions of law. In that event, the court would make a record of the jury instructions it is following, which would correspond to the instructions it would have given to a jury, and the court would also render a verdict on the verdict form it would have used with a jury.

Evidence

Q. Are there any special evidentiary rules?

A. There are two. First, records that appear on their face to be valid business, public, or medical records may be admitted without testimony or a sworn statement from a custodian laying

foundation. There are several qualifications and prerequisites for this rule. Notice must be given of intent to rely on this rule at least 90 days before trial. (A copy of any records would be served with the notice.) Also, the rule does not address relevance. That is, the proponent of the record still must establish its relevance. Additionally, if there are layers of hearsay in the record, the rule requirements must be met as to each layer before the record can be admitted. Further, a party might avoid the effect of the rule by raising a substantial question as to the authenticity or the trustworthiness of the document.

Q. What is the point of this rule?

A. The aim is to reduce the costs of trial by streamlining the presentation of some kinds of records that are normally admitted anyway.

Q. What is the second major evidentiary rule change?

A. The health care provider statement rule.

Q. How does the health care provider statement work?

A. It applies only to health providers who have actually treated the plaintiff (or other injured party). In lieu of presenting deposition or trial testimony of that provider, a party may present the provider's sworn answers to a standard questionnaire. See rule 1.1901-Form 19. The questionnaire covers topics such as injuries plaintiff sustained in the incident, treatment provided, and the plaintiff's future limitations.

Q. Can the injured party's counsel communicate with the health care provider about the questionnaire?

A. Yes, but all such communications (oral, written, or electronic) must be disclosed by the attorney as part of the questionnaire.

Q. Can the health care provider be deposed or subpoenaed for trial?

A. Yes, at the expense of the party who arranges for the testimony.

Q. What is the genesis for this rule?

A. The high cost of obtaining medical testimony is a serious barrier to bringing civil actions in the \$75,000 or less range. To make the expedited civil action rule work, the committee felt this problem had to be addressed.

General

Q. Do the Iowa Rules of Civil Procedure apply to expedited civil actions?

A. Yes, unless otherwise stated.

Q. Are appeal rights affected in expedited civil actions?

A. No.

Q. What is the goal behind the expedited civil action rule?

A. The rule has several goals: To enhance access to justice, to assure that litigants are not priced out of Iowa's justice system, to preserve the essential features of an Iowa jury trial, and to reverse the decline in civil jury trials in this state.

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Iowa Ethics Opinion 15-01

A lawyer sending or receiving substantive communications with a client via e-mail or other electronic means ordinarily must warn the client about the risk of interception including the use of a computer or other device, or e-mail account, to which a third party may gain access.

Preface

Eighteen years have passed since the Committee last addressed the use of e-mail communication by lawyers. With passing time, electronic communication has become ubiquitous in all sectors of modern society. With advancement in technology electronic communication has expanded to include modes of transmission, like texting, and other forms of instantaneous messaging that were beyond comprehension then as future modes will be 18 years hence. The time has come to revisit our prior opinions and provide guidance for the present and foreseeable future.

Introduction

In 1996 the Committee determined that electronic communication was an acceptable form of attorney-client communication provided that it met certain security standards. Iowa Ethics Op. 96-01 provided that:

III. Pure inter-exchange of information or legal communication with clients is an exception to Division I of this opinion, but with sensitive material to be transmitted on E-mail counsel must have written acknowledgment by client of the risk of violation of DR 4-101 which acknowledgment includes consent for communication thereof on the Internet or non-secure Intranet or other forms of proprietary networks, or it must be encrypted or protected by password/firewall or other generally accepted equivalent security system.

A year later that requirement was modified by Iowa Ethics Op. 97-1 by eliminating the phrase “or it must be encrypted or protected by password/firewall or other generally accepted equivalent security system.” The rule, as it stands, is that before using electronic communication a lawyer must obtain a written acknowledgment by the client of the risks inherent in Internet communication and an agreement or consent to its use.

Present Iowa position

Reading the two rules in tandem reveals that the 1996 opinion required written acknowledgement and consent OR encryption or password protection whereas the 1997 opinion eliminated the safe harbor provision of encryption or password protection and relied solely on acknowledgement and consent.

In 2011 this Committee addressed a similar situation in “Software as a Service — Cloud Computing” in Iowa Ethics Op. 11-01. We adopted a due diligence approach to the use of technology, such as storing confidential client matters on computer servers maintained off site by third parties. We based our opinion on Comment [17] to Iowa R. Prof'l. C. 32: 1.6:

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule.

We adopted a:

“... reasonable and flexible approach to guide a lawyer's use of ever-changing technology. It recognizes that the degree of protection to be afforded client information varies with the client, matter and information involved. But it places on the

lawyer the obligation to perform due diligence to assess the degree of protection that will be needed and to act accordingly.”

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ABA position

The ABA issued ABA Formal Opinion 11-459 Aug. 4, 2011 defining a lawyer's duty in sending or receiving substantive communications with a client via e-mail or other electronic means. Because electronic communication has become ubiquitous, clients are often not sensitive to security concerning attorney-client communication. Frequently, they will communicate using employer-furnished, multi-user or public computers without thought about security of the communication.

ABA Formal Op. 11-459 opined:

Given these risks, a lawyer should ordinarily advise the employee-client about the importance of communicating with the lawyer in a manner that protects the confidentiality of e-mail communications, just as a lawyer should avoid speaking face-to-face with a client about sensitive matters if the conversation might be overheard and should warn the client against discussing their communications with others. In particular, as soon as practical after a client-lawyer relationship is established, a lawyer typically should instruct the employee-client to avoid using a workplace device or system for sensitive or substantive communications, and perhaps for any attorney-client communications, because even seemingly ministerial communications involving matters such as scheduling can have substantive ramifications.

The ABA opinion concluded by requiring a lawyer to warn of the risks of interception inherent in electronic communication:

A lawyer sending or receiving substantive communications with a client via e-mail or other electronic means ordinarily must warn the client about the risk of sending or receiving electronic communications using a computer or other device, or e-mail account, to which a third party may gain access. The risk may vary. Whenever a lawyer communicates with a client by e-mail, the lawyer must first consider whether, given the client's situation, there is a significant risk that third parties will have access to the communications. If so, the lawyer must take reasonable care to protect the confidentiality of the communications by giving appropriately tailored advice to the client.

Conclusion

ABA Formal Opinion 11-459 requires a lawyer to "warn the client about the risk of sending or receiving electronic communications using a computer" but stops short of requiring a written acknowledgement and consent as required by Iowa Ethics Ops. 96-01 (written acknowledgement and consent OR encryption) and 97-01 (written acknowledgement and consent). By requiring written client acknowledgement and consent the lawyer is provided with much safety if inadvertent or intentional disclosure occurs by hackers. We recognize that most lawyers embody the written acknowledgement and consent in their engagement agreements. Likewise we recognize that Iowa Ethics Op. 11-01 places a duty of due diligence on the lawyer regarding encryption for sensitive information. See also Iowa Ethics Op. 14-01 concerning computer security. These are all best practices

and a lawyer would be wise to adopt them as a matter of practice. However the ABA position is more attuned to the present reality of practice. Consequently Iowa Ethics Ops. 96-01 and 97-01 are withdrawn and instead we adopt ABA Formal Opinion 11-495. However in doing so we warn that lawyers should constantly be mindful of the inherent risks involved with any type of communication, be it digital or analogue or even oral. The lawyer must engage in an analysis involving time, place and manner. To borrow a slogan from WWII, "loose lips sinks ships."

Opinion

A lawyer sending or receiving substantive communications with a client via e-mail or other electronic means ordinarily must warn the client about the risk of sending or receiving electronic communications using a computer or other device, or e-mail account, to which a third party may gain access. The risk may vary. Whenever a lawyer communicates with a client by e-mail, the lawyer must first consider whether, given the client's situation, there is a significant risk that third parties will have access to the communications. If so, the lawyer must take reasonable care to protect the confidentiality of the communications by giving appropriately tailored advice to the client.

The ISBA Ethics and Practice Guidelines Committee includes Nick Critelli as chair, David Phipps, Maureen Heffernan, J.C. Salvo, Matthew Hartman McKinney, David Beckman, Sam Langholz, Stan Thompson, Andrew Heiting-Doane, Paula L. Roby, Andrew C. Abbott, Art Cady, Sara Laughlin and ex officio members, Joe Feller, ISBA president, and Dwight Dinkla, ISBA executive director. The committee on Ethics and Practice Guidelines was established in response to an April 21, 2005 resolution by the Iowa Supreme Court. Its opinions are advisory only.

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Iowa Ethics Opinion 15-02

Interception of confidential or attorney-client communication: the duty to stop, notify, return and, in the case of wrongful interception, to withdraw representation.

Preface

In Iowa Ethics Op. 15-01 we addressed a lawyer's duty when communicating with the client via electronic means such as e-mail and the obligation to warn the client about the possibility that confidential communication could be intercepted. In this opinion we discuss what happens when an interception has occurred. As explained below, we depart from the position of the American Bar Association in ABA Formal Op. 11-460 and instead adopt a requirement of stop, notify, return and, in the case of wrongful interception to withdraw regarding the situation where a lawyer has received another lawyer's confidential attorney client communication.

Introduction

The Committee has been asked to advise regarding a lawyer's duty when the lawyer receives, without consent, another lawyer's confidential attorney-client communication with a client. Electronic communication has given rise to greater opportunities for third parties to intercept or otherwise come in possession of a lawyer's communication with their client.

We start with the basic assumption that the receiving lawyer was not directly or indirectly complicit in the surreptitious interception of the communication, for to do so would clearly violate Iowa Rule of Professional Conduct 32:1.2 (d) "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent..." Instead, this opinion is based upon the assumption that the receiving lawyer is the honest recipient of forbidden fruit gathered by the client either (a) unintentionally and serendipitously, (b) intentionally by claim of right or (c) wrongfully without claim of right.

A. Unintentional, Serendipitous Acquisition.

Clients sometimes obtain confidential or attorney-client protected communication unintentionally or by accident. Rule 32:4.4(b) provides that:

"Rule 32: 4.4 Respect for Rights of Third Persons

"(b) A lawyer who receives a document relating to the representation

of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender."

However the rule is silent whether the recipient should stop reading or otherwise using the document or information and return the document to the sender. The ABA, in its Annotated Model Rules of Professional Conduct at pg. 433 notes that, unless required by rule of court or statute,

"Under Rule 4.4(b) the lawyer need not stop reading, return the document, nor comply with the sender's instructions."

This significantly departs from the previous positions taken by the ABA which would require a recipient to stop reading or otherwise using the document, notify the sender of its receipt, and return the same to the sender. The concept of stop, notify and return was central to ABA Formal Ethics Op. 92-368 (1992) (superseded) and 94-382 (1994) (superseded). Both opinions were withdrawn after the adoption of ABA Model Rule 4.4(b) by ABA Formal Ethics Op. 06-440 (2006) and ABA Formal Ethics Op. 05-437 (2005) (holding that a lawyer's only ethical obligation under Rule 4.4(b) is to promptly notify sender. This remains the ABA's position, see, ABA Formal Op. No. 11-640) (2011).

This Committee gives due respect to the ABA Standing Committee on Ethics and Professional Responsibility in matters involving the interpretation and implementation of the Model Rules which support the Iowa Rules of Professional Conduct. However the Iowa legal profession is regulated by the Iowa Supreme Court and we must accordingly look to all of the Iowa Supreme Court's rules and orders as well as Iowa statutes when giving our guidance. In doing so we find we must respectfully decline to follow or otherwise adopt the ABA's position. Instead, we find the ABA's prior position of "stop, notify and return" to be consistent with other rules of the Iowa Supreme Court.

Iowa Rules of Professional Conduct, Preamble [14] advises that "The Iowa

Rules of Professional Conduct are rules of reason." In interpreting the rules we must take care to not view a rule clinically and in isolation of all other rules related to the subject. We believe our position to be consistent with the matrix of Iowa rules relating to unauthorized disclosure of confidential or privileged information.

I.R.Civ. P. 1.503(5)(b) defines the clawback procedure to be used when a lawyer discovers that protected material has inadvertently been disclosed to an opponent. I.R.E 1.5.502 ensures that the confidential or privileged nature of the disclosed information is not lost by operation of the evidentiary doctrine of waiver. It is significant that knowledge of disclosure is essential for both rules to operate. Significantly, Iowa Rule Prof'l C. 32:4.4(b) requires the recipient to give notification of the disclosure to the sending lawyer. But I.R.Civ. P. 1.503(5)(b) adds an additional requirement. It requires that:

"... After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved."

When the rules are read together it becomes apparent that Iowa R. Prof'l C. 32:4.4(b) requires notice of disclosure to opposing counsel and I.R. Civ. P. 1.503(5)(b) requires the receiving party to stop using the information and return the same to the sender. The concept of stop, notify and return is embodied in both rules.

Conclusion:

Inadvertent disclosure: Stop, notify and return

Once it has become apparent that one has received privileged attorney-client communication or documents, the lawyer

should immediately stop reading or using the same, notify opposing counsel of the receipt and disclosure and return the document to or otherwise comply with instruction of counsel. In those situations where a legitimate claim to possession and use could be made, receiving counsel should comply with the requirements of I.R. Civ. P. 503(5)(b) if litigation is pending or institute an action for declaratory judgment to adjudicate the right of possession.

B. Interception by Claim of Right.

In some situations one may claim a right to possess and use a third party's communication with their counsel. It frequently occurs that an employee will communicate with counsel using an employer's computer in violation of rules prohibiting non-business use. An employer could claim that because the communication was conducted via employer-provided communication systems, in violation of work rules, there was no expectation of privacy and the digital communication belongs to the employer. In another situation, law enforcement may provide telephonic communication for prisoners with or without notification that the communications are recorded. When this occurs the lawyer who receives the communication must determine whether the requirement of stop, notify and return applies.

Iowa R. Prof'l C. 4.4(b) and I.R.Civ. P. 1.503(5)(b) refer to the disclosure as inadvertent. The ABA has taken the position that in these situations Rule 4.4(b) does not apply. ABA Formal Op.11-460 (2011), applying ABA formal Op. 06-440 (2006) has taken the position that:

"Rule 4.4(b) does not obligate a lawyer to notify opposing counsel that the lawyer has received privileged or otherwise confidential materials of the adverse party from someone who was not authorized to provide the materials, if the materials were not provided as "the result of the sender's inadvertence."

The ABA over-stresses the term "inadvertence". Iowa Supreme Court Rule 33.1(1) recognizes:

"A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a

truth-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner."

Keeping and using opposing counsel's confidential attorney-client communication with their client is the very antithesis of fairness, justice and professional integrity. The rules are "rules of reason". It defies reason to believe that one has a duty to stop, notify and return documents, which were accidentally or inadvertently disclosed but not when the same information has been intentionally purloined, even under some color of right.

Conclusion:

Interception under color of right: Stop, notify and return

We reject ABA Formal Op. 11-460 (2011) and ABA Formal Op. 06-440 (2006) and instead adopt the position of "stop, notify and return" as described above for those situations where attorney-client or otherwise confidential communication or documents to or from opposing counsel have been received by color of right. By doing so all parties know of the disclosure and have an opportunity to adjudicate the claim of right.

C. Wrongful interception

By far the most complicated situation occurs when a client intentionally, with no claim of right, intercepts confidential communication between a party and their lawyer. The analysis becomes complicated by the fact that in obtaining the information the client may have committed a criminal offense. Consequently disclosing the existence of information and details concerning its possession may expose one's client to criminal jeopardy. In this situation, the receiving lawyer is now on the horns of a dilemma: does one comply with the 'stop, notify and reply' protocol and expose the client to potential criminal liability, or does the lawyer simply remain silent and possibly be exposed to criminal liability as an accomplice or accessory after the fact, or withdraw from representation without full or partial disclosure?

While this situation is recognized in Iowa R. Prof'l C. 32:4.4 (b), it gives no guidance. Comment [2] simply states:

"Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know

may have been wrongfully obtained by the sending person."

In this situation, receiving counsel's decision-making algorithm comprises two parts. First, the lawyer must determine if a duty is imposed by statute, rule or court order requiring counsel to disclose the possession of the document. Secondly, counsel must determine if the duty is overridden by Iowa R. Prof'l C. 32: 1.6 protecting client confidentiality.

As discussed previously, Iowa law imposes a duty on counsel to stop, notify and return privileged documents obtained inadvertently or intentionally by a color of right. We see no reason why the duty should not extend to privileged documents wrongfully obtained. The issue is not how the documents were obtained but whether the duty to disclose them is somehow overridden by the receiving lawyer's fiduciary duty of loyalty and confidentiality to the client.

A lawyer's fiduciary duty to a client is not without limits. Iowa R. Prof'l C. 32:1.2(d) requires that:

"A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."

Comment [10] gives further guidance:

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See rule 32:1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any

opinion, document, affirmation or the like. See rule 32:4.1.

Iowa R. Prof'l C. 32:4.1 gives further guidance:

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 32:1.6.

Comment [3] applies the rule to the following situation:

[3] Under rule 32:1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in rule 32:1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by rule 32:1.6.

While client confidentiality is the hallmark of the attorney-client relationship, it too is not without limits. Iowa R. Prof'l C. 32: 1.6(a) mandates:

"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c)."

However there are certain situations where the client has forfeited the protection by its wrongful acts. The rule recognizes seven exceptions. Important to our analysis is the following:

- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services.

This is the so-called "crime-fraud exception" to the obligation of confidentiality. If, after performing a due diligence analysis, the lawyer determines that the crime-fraud exception applies, counsel must now address two additional issues: How to best comply with the duty to stop, notify and return while minimizing the adverse impact to the client and whether the lawyer can continue representing the client. The client must be made aware of the seriousness and consequences of its conduct. If the client authorizes the disclosure and return of the documents and agrees to refrain from further wrongful conduct, the matter of withdrawal can be avoided. If not, counsel must proceed to determine whether withdrawal is required under the

above rules and how best to accomplish the return of the wrongfully obtained documents. In making the determination, counsel should be mindful that Iowa R. Prof'l C. 1.16 (a) (1) requires counsel to withdraw when continued representation will result in a violation of the rules of professional conduct or other law. Iowa R. Prof'l C. 1.16(b) (3) requires withdrawal when the client has used the lawyer's services to perpetrate a crime or fraud. Likewise Iowa R. Prof'l C. 1.16(b) (4) requires withdrawal when the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement. In certain situations, failing to withdraw could subject counsel to a claim of aiding and abetting or otherwise being complicit in the client's wrongful act. Iowa R. Prof'l C. 1.6(b) Comment [7] gives guidance:

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in rule 32:1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the



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Jack F. Broderick, 88, died Jan. 9 at Genesis Medical Center in Davenport, Iowa.

Broderick was born in Rock Island, Ill. He served in the U.S. Military in Germany working in War Crimes and Judge Advocate General's Office. Upon his return he completed his undergraduate degree at the University of Iowa and his law degree from University of Iowa College of Law. He practiced law in Davenport, Iowa, until he was appointed magistrate judge for the City of Davenport. He then served as an associate judicial court judge until his retirement in 1993.

Brent "Chris" B. Green, 73, died Jan. 19 in Phoenix, Ariz., after a long battle with lung cancer.

Green was born in Spencer, Iowa. He earned his undergraduate degree from the University of Iowa and his law degree from the University of Iowa College of Law. After graduation he moved to New York to work at the Nixon Law Firm. He then served in the U.S. Army from 1966-69, including a year-long tour in Vietnam where he earned a Bronze Star Medal. Upon his return from the service he moved to Des Moines, Iowa, and continued his career as a trial lawyer and partner at Gamble and Davis Law Firm. In 1993 he was a founder of Duncan, Green, Brown and Langeness law Firm.

Leonard L. Grimes, 89, died Jan. 4 at Glenwood Place in Marshalltown, Iowa.

Grimes was born in Green Mountain, Iowa. He served in the U.S. Marine Corps where he served during World War II. Upon his return from service he earned his undergraduate degree from Dartmouth College in Hanover, N.H., and his law degree from Harvard Law School. After some bouncing around, Grimes returned to Marshalltown where he opened a private practice law practice in partnership with his cousin Max Milo Mills.

Dale B. Hagen, 73, died Jan. 26 from complications from cancer.

Hagen was born in Webster, S.D. He served in the U.S. Navy from 1964-1966. He earned his undergraduate degree from Northern State College in Aberdeen, S.D., and his law degree from Drake University Law School in 1973. Hagen practiced law in Indianola, Iowa, before becoming chief juvenile probation officer for the Fifth Judicial District in 1977. In 1998 he was appointed as District Court Judge for the Fifth Judicial District and retired in 2009 after which he continued to act as a mediator and arbitrator for the court.

Edwin W. Skinner, 78, died Jan. 12.

Skinner was born in Des Moines, Iowa. He earned his undergraduate degree from Drake University and his law degree from Drake University Law School. He practiced law in Altoona, Iowa, until his death. Skinner was a long-time attorney, Democratic Party insider, philanthropist and strong supporter of Iowa LawPAC. In addition to his dedication to the ISBA and its PAC, the patriarch of Skinner Law Office in Altoona served as city attorney for Altoona for 20 years and was the current city attorney for Pleasant Hill and Runnells, the latter for 50 years. He also was heavily involved in the development of Prairie Meadows Racetrack and Casino in Altoona, and was instrumental in developing a scholarship fund for Southeast Polk High School students and a scholarship for Southeast Polk graduates who attend Drake University Law School.

client forfeits the protection of this rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See rule 32:1.2(d). See also rule 32:1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and rule 32:1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

Conclusion:

Wrongful interception: Stop, confer, notify, return and withdraw

We adopt the position of "stop, notify, return and withdraw" as described above for those situations where attorney-client or otherwise confidential communication or documents to or from opposing counsel have been wrongfully obtained by or on behalf of the client. What to disclose, and how to disclose it, is best left to the discretion of the lawyer to be exercised after conducting due diligence regarding the so-called "crime-fraud" exception to the attorney-client confidentiality, after warning and notification and warning to the client.

Opinion

Where counsel obtains confidential or attorney-client privileged communication between a client and lawyer inadvertently disclosed, or obtained under some cover of right, counsel should stop reading or otherwise using the documents or information, immediately notify the lawyer whose communications have been intercepted and either return the documents to the lawyer or follow the lawyer's directions regarding the same, or apply to the court for directions on the continued possession and use of the documents and information.

Where counsel obtains confidential or attorney-client privileged communication between a client and lawyer which were wrongfully obtained by the lawyer's client or someone acting on the client's behalf, receiving counsel should advise the client of the consequences of their conduct and counsel's duty to stop reading or otherwise using the documents or information, to notify the lawyer whose communications have been intercepted, and to return the documents to the lawyer. If the client refuses to allow counsel to rectify the wrongful disclosure, counsel should proceed to conduct due diligence to determine if the crime-fraud exception to attorney-client confidentiality mandates disclosure and if so return the documents to the lawyer involved or file the same under seal with the court without explanation, and withdraw from further representation of the client.

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How to give more to your favorite charity and pay less in taxes:

Three tax tools every Iowa lawyer should know

By Gordon Fischer, JD, CAP®



The November 2014 issue of The Iowa Lawyer was inspiring. Several attorneys were featured for giving to the nonprofit organizations they care about most, donating vast amounts of time, talent and treasure. ISBA President Joe Feller wrote eloquently about Iowa's "culture of service and giving." Iowa lawyers — and their clients — are generous to charities. One way to increase charitable giving is to recognize there are significant tax savings for outright gifts made during a lifetime.

Give now, rather than later

It's been said, "You should be giving while you are living, so you're knowing where it's going." Many clients intend to donate to charity eventually, usually at death through their will and estate plan. But why not give now? Clients can have more say about gifts while alive, and also feel the joy that comes with helping worthy causes. There are also positive tax benefits for giving now rather than later.

Double federal tax benefit

Gifts of long-term capital assets, such as stock, real estate and farmland, may receive a double federal tax benefit. First, donors can receive an immediate charitable deduction off federal income tax, equal to the fair market value of the stock, real estate, or farmland. Second, assuming the donor owned the asset for more than one year, when the asset is donated, the donor can avoid long-term capital gain taxes which would have been owed if the asset was sold.

Let's look at a concrete example to make this clearer. Pat owns farmland with a fair market value of \$100,000. She wants to use the farmland to help her favorite causes. Which would be better for Pat — to sell the farmland and donate the cash, or give the farmland directly to her favorite charities? Assume the farmland was originally purchased at \$20,000 (basis), Pat's income tax rate is 39.6 percent, and her capital gains tax rate is 20 percent.

Donating cash versus donating long-term capital gain assets, such as farmland	Donating cash proceeds after sale of farmland	Donating farmland
Value of Gift	\$100,000	\$100,000
Federal income tax deduction	(\$39,600)	(\$39,600)
Federal capital gains tax savings	\$0	(\$16,000)
Out of Pocket Cost of Gift	\$60,400	\$44,400

Note: above table is for illustrative purposes only. Only your own financial or tax advisor can advise in these matters.

Again, a gift of long-term capital assets, such as stocks, real estate, or farmland, made during lifetime, can be doubly beneficial. The donor can receive a federal income tax charitable deduction equal to the fair market value of the asset. The donor can also avoid capital gains tax. In Iowa, however, there is even more potential tax benefit. Donors can receive a 25 percent state tax credit for gifts made during lifetime, lowering the after-tax cost of charitable gifts even further.

Endow Iowa Tax Credit - 25 percent Iowa tax credit

Under the Endow Iowa Tax Credit program, gifts made during lifetime can be eligible for a 25 percent tax credit. There are three requirements to qualify. First, the gift must be given to, or receipted by, a qualified Iowa community foundation (there's a local community foundation near you). Second, the gift must be made to an Iowa charity. Third, the gift must be endowed — that is, a permanent gift. Under Endow Iowa, no more than five percent of the gift can be granted each year — the rest is held by, and invested by, your local community foundation. Clearly, this final requirement is a major restriction. Still, in exchange for a 25 percent state tax credit, it must be seriously considered by Iowa lawyers and donors.

Let's look again at the case of Pat, who is donating farmland per the table above. If Pat makes an Endow Iowa qualifying gift, the tax savings are very dramatic:

Tax benefits of donating long-term capital gain asset with Endow Iowa Tax Credit	
Value of Gift	\$100,000
Federal income tax charitable deduction	(\$39,600)
Federal capital gains tax savings	(\$16, 00)
Endow Iowa Tax Credit	(\$25,000)
Out of Pocket Cost of Gift	\$19,400

Note: above table is for illustrative purposes only. Only your own financial or tax advisor can advise in these matters.

Note well Pat's significant tax savings. In this scenario, by giving farmland during lifetime, Pat receives \$39,600 as a federal charitable deduction, avoids \$16,000 of capital gains taxes, and gains a state tax credit for \$25,000, for a *total tax savings of \$80,600*. Put another way, Pat made a gift of \$100,000 to her favorite charity, but the out of pocket cost of the gift to her was less than \$20,000.

This is a great deal for Pat and a great deal for Pat's favorite causes. But could anything be wrong with this scenario? There are four areas of caution.

Cautionary notes

The federal income tax charitable deduction is capped. Generally, the federal charitable deduction for gifts of stock, real estate and farmland is limited to 30 percent of adjusted gross income. A taxpayer may, however, carry forward any unused deduction amount for an addi-

tional five years.

Additionally, records are required to obtain a federal income tax charitable deduction. The more the charitable deduction, the more detailed the recording requirements. For example, to receive a charitable deduction for gifts of more than \$5,000, you need a "qualified appraisal" by a "qualified appraiser," two terms with very specific meanings to the IRS. You need to engage the right professionals to be sure all requirements are met.

Endow Iowa Tax Credits are also capped — both statewide and per individual. Iowa sets aside a pool of money for Endow Iowa Tax Credits, and it's available on a first-come, first-served basis. In 2014, approximately \$6 million in tax credits was available annually through Endow Iowa. So encourage clients to submit applications now, as tax credits often run out towards year end. Endow Iowa also has a cap per individual. Tax credits of 25 percent of the gifted amount are limited to \$300,000 in tax credits per individual for a gift of \$1.2 million, or \$600,000 in tax credits per couple for a gift of \$2.4 million.

Finally, all individuals, families, businesses and farms are unique and have unique tax issues. This article is presented for informational purposes only, not as tax advice or legal advice. Consult a tax professional for personal advice.

Gordon Fischer Law Firm, P.C. is dedicated to promoting and maximizing charitable giving in Iowa. Gordon can be reached by phone at 515-371-6077; by email at gordon@gordonfischerlawfirm.com; and through his website at www.gordonfischerlawfirm.com.



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He Said, She Said ...

Many Facts, Many Numbers.

During a divorce, determining the value of a spouse's business can be problematic at best. Initially, each side may have thoughts on what the company is worth — and usually, the values are not close.

When you need to know the real value of a business in a divorce case, TD&T CPAs and Advisors has the expertise you require. With our investigative accounting services, we can analyze a company's financial data and provide the hard number your case needs.

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ATJ SPOTLIGHT

By Chief Justice Mark Cady

In the State of the Judiciary, I said, “The judicial branch is accountable to do its work so that Iowans can see the value of its fair and impartial courts. It is accountable every day for the resources it is given and the important responsibilities with which it has been entrusted. We best meet these obligations by becoming the best court system we can be.”

In order to be the best court system in the nation, the Iowa Judicial Branch must work with attorneys to ensure that access to justice is available to all Iowans. Access to justice should be important to all attorneys, and Iowans, because legal representation is tied to deeply held values that lie at the core of our democratic society—equality, fairness and justice.

If we are to improve access to justice in Iowa, our first and most important professional obligation is to give voice to it in a way that invokes the broadest concept of public good. This voice must give understanding to the public in a way that will lead it to respond with that fundamental concept of public good in mind. When more than just attorneys are talking about crucial legal system issues, such issues are much more likely to be addressed. I know this to be true because I have seen the power of our professional voice before when it engages the broader public.

Last month the Iowa Supreme Court decided not to impose a mandatory fee on attorneys to help fund legal services for low-income Iowans in civil cases. It was a controversial, difficult call. Yet, the decision did not signal an end, but a beginning. We simply decided not to begin with a mandatory fee.

Each year, tens of thousands of low-income Iowans do not have access to legal assistance to address civil legal problems in their lives. This is a denial of access to justice in our state. It is a condition of our society contrary to our values of fairness and equality for all; it is a condition that should not exist in our communities. A solution must be found.

So, as we go forward, let us do so with the underlying public virtue in mind; let us broaden our message to draw on the best interests of all. We must leave behind special or individual interests that often militate against broad solutions and weaken our capacity and our resolve to solve big problems. The comments we received against the \$100 assessment ranged from “you have no legal right to impose an assessment” to “it’s not a responsibility just for lawyers but also the public as a whole.” Both are thoughtful comments, but we need to go forward with a different conversation, a different mindset.

American philosopher and educator, John Dewey, maintained a profound belief in democracy throughout his long life. He expounded an observation very relevant for us today. He said a real democracy could only be achieved with a fully informed public that understands and acts in its own best interests, not special interests. He viewed civic leadership as bringing that understanding into existence so that the public could act in society’s broader best interests. Attorneys can provide this civic leadership.

We must raise our voices consistent with the values represented by our profession and our branch of government. Justice for all is a belief in all. Justice for all can only be achieved when there is access to justice



for all and we can be the leaders who give the greater public the understanding it needs to assure justice for all.

Working together, I am confident that Iowa’s system of justice can be the very best in the nation. Our success will come from how we enhance the virtues of our democracy, the same virtues that drove us to be a part of this profession—fairness, equality and justice. Full access to justice can be achieved, but it takes more than your time and your money. It requires a strong and consistent voice—your voice—a persistent voice that will strengthen the call of civic leadership and help the highest ideals of democracy prevail. We know the public wants its courts to operate fairly and impartially for all. Our voices must come together with this value in mind for a solution to be found. Let’s do this together. Talk to your clients, your neighbors, the members of your legal associations, your representatives. Be creative and thoughtful. Use your voice on behalf of others. Use your voice for a true solution.

The ATJ Spotlight is a reoccurring column hosted by the ISBA Public Service Project. It highlights access to justice issues and topics of interest to the legal profession and the citizens of Iowa.



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IOWA STATE BAR ASSOCIATION — 2015 Affirmative Legislative Program

Bill No.	Bill Subject	Bill Description	Bill Status
HF 172	Revised Iowa Nonprofit Corporation Act Update Amendments (Code Chapter 504)	Based upon the ABA Model Nonprofit Corporation Act, Third Edition, amends sections in Code Chapter 504 pertaining to: Filing requirements; Definitions of “electronic” and “signature to permit electronic signatures”; nonprofit corporations serving as trustee of a trust where the corporation is the beneficiary of a charitable trust; Directors quorum and voting; Annual meetings of delegates; Simplification of the rules for member voting; Clarification of the rules re: terms of directors; Duties of directors to disclose information; Loans to directors and officers; and Articles of merger.	Approved by House Judiciary Committee and placed on House Calendar.
HF 367	Probate & Trust Law Updates	Amends Iowa Probate Code Section 633.238 to provide that a surviving spouse’s elective share includes 1/3 of the value of property held in deceased spouse’s revocable trust unless the trust was created during the spouses’ marriage and transfer of the property into the trust included a statutory waiver signed by the surviving spouse. Amends Probate Code Section 633D.8 and Code Section 524.805 to allow personal representatives, surviving spouses, children, or creditors to assert liability for debts, taxes, and estate-administration expenses against pay-on-death or transfer-on-death beneficiaries. Amends Probate Code Section 633.78 to give conservators and personal representatives authority to gather information and property for the estates they are administering. Amends Code Section 422.7 to permit full deduction of administrative expenses on the IA fiduciary income tax return. Amends Code Section 450.9 to exempt descendants of stepchildren from liability for IA inheritance tax.	Approved by House Judiciary Committee and referred to House Ways & Means Committee.
HSB 168	Amendments to Garnishment Statute	Amends Code Chapter 642 to provide for the following: <ol style="list-style-type: none"> 1. Requires garnishors (in lieu of sheriff’s office) to serve due process notice. 2. Allows creditors to serve notices as an alternative for due process purposes. 3. Requires sheriff’s office to provide timely filings of answers from garnishees. 4. Changes references in statute to distinguish between employers and non-employers vs. earnings and non-earnings. 5. Removes redundancy of serving the same notices at the time of condemnation. 6. Provides a mechanism for claiming exemptions to the sheriff’s office in addition to the judicial process. 7. Removes requirement of service on “attorney of record.” 	Approved by House Judiciary Committee. Will be placed on House Calendar for consideration.
SF 376	Calculation of Probate 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.	Approved by Senate Judiciary Committee. Placed on Senate Calendar.
HF 157/ SF 223	Code Chapter 252 (“Support of the Poor”) Update	Updates Chapter 252 to clarify that after enactment of Medicaid and Medicare, counties can no longer seek support for a poor person from family members.	HF 157- Approved by House Judiciary Committee and placed on House Calendar. SF 223- Approved by Senate Judiciary Committee and placed on Senate Calendar.
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 tax 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.	Approved by Senate Judiciary Committee and placed on Senate Calendar.
HSB 192	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.	Introduced, but not advancing this session.
HSB 192	Requirements for Timely Filing & Effective Releases or Satisfaction of Mortgages	Remedies ambiguities and inconsistencies in existing statutes & provides remedies for failure of mortgagees to issue releases of mortgages.	Introduced, but not advancing this session.
SSB 1238	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.	Introduced, but not advancing this session.
HSB 163/ SSB 1230	Chapter 232 “Bridge Orders” Amendment	Amends Code Chapter 232, “Juvenile Justice” to allow for Bridge Orders, which would facilitate the closure of certain cases under Code Chapter 232 by transferring jurisdiction to the district court upon the occurrence of certain criteria.	Both bills approved by their respective Judiciary Committees.
SSB 1229	Post-Secondary Education Subsidy	Amends Code Section 598.21F(5) to provide for the termination of a post-secondary education subsidy upon the completion of the first calendar year of course instruction if the child fails to maintain a cumulative GPA in the median range or above during that first calendar year.	Introduced, but not advancing this session to allow for further drafting work.
HSB 154	Appointment of Guardian Ad Litem in Adoption Proceedings	Amends Code Section 600.5 to require the Court, at the time of the filing of an adoption petition, to make a determination as to whether a guardian ad litem will be appointed.	Approved by House Judiciary Committee. Will be placed on House Calendar for consideration.
	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.	In drafting.
	Proceedings to Establish Paternity	Amends Code Section 600B.8 to allow fathers to initiate actions to establish paternity consistent with the Iowa Supreme Court’s decision in <i>Callender v. Skiles</i> , 591 N.W.2d 182 (Iowa 1999).	In drafting.

Updated 3/10/2015

The ISBA congratulates the following individuals and organizations for the awards and recognition they have received:



Barber

Nate Barber for being selected as a member of the American College of Mortgage Attorneys. The ACMA invites a maximum of 18 attorneys into its group each year.

"The purpose of the American College of Mortgage Attorneys is to maintain a collegial group

of lawyers from each state and province who are highly skilled and experienced in lending transactions secured by real estate and related practice areas," ACMA President Robert A. Holmes wrote in his letter of welcome. "The College seeks to improve and reform laws and procedures affecting real estate-secured transactions and to provide the means to enhance the level of professional responsibility of lawyers practicing in this area...Welcome aboard."

Barber is a shareholder at Belin McCormick, in Des Moines, Iowa, practicing in the firm's real estate and commercial and secured lending groups.



Chesser

Lori Chesser for being appointed Chair of the American Immigration Council Board of Trustees. Chesser served as vice chair for two years and has been active in the council since 2006.

Chesser, a senior shareholder at The Davis Brown Law Firm in Des Moines, Iowa, has practiced

immigration law for more than 20 years and serves as the chair of the firm's Immigration Department.

The American Immigration Council, based in Washington, DC, is a non-profit, non-partisan organization providing policy research and advocacy, legal education and public interest litigation, educational outreach and international exchanges. Through the work of immigration lawyers, scholars, advocates, teachers, students, and exchange visitors the council seeks to help shape the 21st century vision of American Immigration

Faegre Baker Daniels for receiving a perfect score of 100 percent and designation as a Best Place to Work for LGBT Equality on the 2015 Corporate Equality Index administered by the Human Rights Campaign Foundation.

FaegreBD, an international law firm with offices in Des Moines, Iowa, joins the ranks of 366 major U.S. businesses that earned top marks on this national

benchmarking survey and report on corporate policies and practices related to LGBT equality.

The 2015 CEI rated 971 companies on their LGBT-related policies and practices, including non-discrimination workplace protections, domestic partner benefits, transgender-inclusive health care benefits, competency programs and public engagement with the LGBT community.



Gartelos

Peter Gartelos for being selected as a member of the National Academy of Distinguished Neutrals in January 2015.

The National Academy of Distinguished Neutrals is an association whose membership consists of ADR professionals distinguished by their hands-on

experience in the field of civil and commercial conflict resolution, and by their commitment to the practice of ADR. Membership is by invitation only and limited to attorney mediators and arbitrators who have proven experience in the field. All Academy members are thoroughly reviewed and found to meet stringent practice criteria. Members are amongst the most in-demand neutrals in their respective states, as selected by both peers and litigation firms.

Gartelos, of Peter J. Gartelos, P.L.C., in Waterloo, Iowa, is one of seven attorneys in membership from the State of Iowa.



Allissa Johnston, Daniel Johnston and Iowa District Court Judge Dale Ruigh

Daniel Johnston, Drake University law student, for being selected to receive the 7th annual Kathrine Finn Milleman Memorial Scholarship.

The Story County Bar Association presented the scholarship during a January luncheon at the Gateway Conference Center in Ames.

Johnston is a second-year law student at Drake University. He holds a Bachelor's degree from Iowa State University and serves in the United States Army Reserve as a member of the 348th Military Police Company, based in Ames. In addition to his ongoing service in the Army Reserve, Johnston has maintained Dean's List placement while in law school and is active in various student organizations. Johnston has supported his undergraduate and

legal studies by working at Danfoss, CyRide, and Mid-America Manufacturing, along with his military responsibilities, and is married to an Ames native, with whom he shares two young children.

The scholarship is jointly funded by the members of the Story County Bar and the Honorable Timothy Finn and his wife, Marilyn Finn, of Ames. The scholarship is awarded in memory of the Finns' daughter, Katherine ("Katie") Finn Milleman. A committee of Story County Bar Association members selects the recipient of each year's scholarship. Applicants must demonstrate academic strength and a connection with Story County.



Konchar

Robert Konchar for sustaining a 50-year membership with the Linn County Bar Association. Konchar was recognized at the LCBA's 2015 Bench-Bar event held at the Cedar Rapids, Iowa, Museum of Art in January.

Konchar began his career as a summer clerk for Clinton Moyer and William Bergman, then

known as Moyer & Bergman, following his first two years in law school. He then joined the firm following graduation in 1965, now known as Simmons Perrine Moyer Bergman in Cedar Rapids, Iowa. Konchar is engaged in an extensive litigation practice including employment, labor, transportation, products liability, commercial litigation and insurance.



Kramer

Jonathan Kramer for being certified by the American Board of Certification (ABC) as a Creditors' Rights Law Specialist. Kramer complied with all applicable requirements for certification in creditors' rights law and met all standards as set forth in the ABC program.

To be certified, Kramer passed an extensive, day-long written examination covering creditors' rights issues, went through a peer review process, and devoted a minimum of 400 hours to the practice of creditors' rights law during each of the last three years.

Kramer, an attorney with Whitfield & Eddy, P.L.C., in Des Moines, Iowa, represents creditors in state, federal or bankruptcy court litigation (including hearings, trials and appeals) relating to debt collection. He speaks regularly on issues relating to collecting judgments, obtaining judgments, debt collection practice and good financial decision-making in the judgment collection process.

In addition to the legislative proposals on the previous page, The Iowa State Bar Association supports the following positions as a part of its 2015 Affirmative Legislative Program:

- Full funding of indigent defense and adoption of legislation providing for an automatic, periodic increase in indigent defense fees.
- Full funding of the Judicial Branch.
- Full funding for Legal Services.
- 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.
- Child abuse prevention and treatment efforts and funding for child abuse prevention and treatment.
- Opposition to the legalization of title insurance.
- Opposition to any proposal to restrict lawyer abstracting under Iowa Title Guaranty.
- Opposition to absolute immunity legislation.



Krug

Ellen Krug for having her essay entitled "We Hear You Knocking: An Essay on Welcoming 'Trans' Lawyers" appear in the William Mitchell Law Review published by William Mitchell College of Law.

Krug, a lawyer with more than 100 trials to her credit, was born male. A graduate of Coe College and Boston College Law School, Krug founded a trial law firm in Cedar Rapids, Iowa. In 2009, at age 52, Krug transitioned from male to female. Two months after transitioning genders, Krug won a Cedar Rapids jury case, making her the first transgender attorney to try a jury case in

Iowa. Krug later argued a case at the Iowa Supreme Court as a woman. Eventually, Krug closed her law practice and moved to Minneapolis where she founded and now heads Call for Justice, L.L.C., an ABA award-winning nonprofit that helps people connect with legal resources.



VonKampen

Chad VonKampen for being selected as a fellow of the Iowa Academy of Trial Lawyers. Membership in the academy is by invitation only and is considered one of the highest honors in the legal profession.

VonKampen, an attorney at Simmons Perrine Moyer Bergman P.L.C., of Cedar Rapids,

Iowa, has a general practice including appellate practice, employment law, family law, insurance, legal malpractice, litigation, medical malpractice, personal injury, product liability, professional liability, trial law and workers' compensation.

The Iowa Academy of Trial Lawyers was established in 1962 to provide a forum for Iowa's top trial lawyers to exchange information and viewpoints concerning professionalism and the practice of law. Membership is limited to 250 attorneys.



Vernon

John Vernon for his retirement after 39 years of practice. Vernon retired from Dickinson, Mackaman, Tyler & Hagen, P.C., in Des Moines, Iowa, Dec. 31, 2014.

Vernon worked as an attorney for a total of 39 years, the past 22 of which he spent

at Dickinson, primarily practicing family law. Over the years, John contributed to the Family Law section of The Iowa State Bar Association and chaired the Family Law Committee for the Polk County Bar Association. Since 2001, he has been listed in every edition of the Best Lawyers in America in the area of Family Law, and was named Lawyer of the Year by the publication numerous times. Before starting his law career, John served as a captain in the United States Marine Corps in Vietnam, from 1968-1971. In retirement, he looks forward to more fishing, golfing and tennis.



Zumbach

Steven Zumbach for being honored with the Bravo Award at the 10th Annual Bravo Awards Gala in Des Moines, Iowa, Feb. 7.

The Bravo Award recognizes a company, individual or family that has made a significant contribution to arts and culture in central Iowa. The Bravo Awards Gala celebrates the honorees as well as the community's arts and cultural organizations and programs. As Bravo's founder, and an instrumental leader in central Iowa advocating on behalf of the arts and culture sector, the 2015 Bravo Award was presented to Steven Zumbach.

Zumbach, an attorney at Belin McCormick, in Des Moines, Iowa, was an early supporter and advocate for the impact quality of life has on economic development. Seeing the need for continued investments in the arts and culture offerings in central Iowa, Zumbach convened government, business and community leaders to form a sustainable funding stream for central Iowa organizations. Zumbach's visionary leadership led to the founding of Bravo Greater Des Moines in 2004. As a unique collaborative organization of local government partners, Bravo has invested nearly \$25 million over the last 10 years and continues to provide critical funding and support to the local arts community.



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What's going on in Elder Law?

By Greg Kenyon *

The Iowa State Bar Association Elder Law Section held its first meeting in June of 2012 following its creation by the ISBA board of governors in 2011. The legal issues which confront an elder law attorney are numerous.

The National Elder Law Foundation provides the following as a list of the competencies required for an elder law attorney:

- Health and Personal Care Planning, including giving advice regarding and preparing advance medical directives (medical powers of attorney, living wills, and health care declarations) and counseling older persons, individuals with supplemental/special needs, attorneys-in-fact, and families about life care, medical and life-sustaining choices, and related personal life choices.
- Pre-Mortem Legal Planning, including giving advice and preparing documents regarding wills, trusts, durable general or financial powers of attorney, real estate, gifting, and the financial and income, estate and gift tax implications of any proposed action.
- Fiduciary Representation, including seeking the appointment of, giving advice to, representing, or serving as executor, personal representative, attorney-in-fact, trustee, guardian, conservator, representative payee, or other formal or informal fiduciary.
- Legal Capacity Counseling, including advising how capacity is determined and the level of capacity required for various legal activities, and representing those who are or may be the subject of guardianship/conservatorship proceedings or other protective arrangements.
- Public Benefits Advice, including planning for and assisting in obtaining Medicaid, Medicare, Social Security benefits, Supplemental Security Income, Veterans benefits and housing and food programs.
- Special Needs Counseling, including the planning, drafting and administration of special/supplemental needs trusts, housing, employment, education and related issues.
- Advice on Insurance Matters, including analyzing and explaining the types of insurance available, such as health, life, long term care, home care, COBRA, medigap, long term disability, dread disease, prescription coverage, and burial/funeral policies.
- Resident Rights Advocacy, including advising patients and residents of

hospitals, nursing facilities, continuing care retirement communities, assisted living facilities, adult care facilities, and those cared for in their homes of their rights and appropriate remedies in matters such as admission, transfer and discharge policies, quality of care, and related issues.

- Housing Counseling, including reviewing the alternatives available and their financing such as: renovation loan programs, life care contracts, home equity conversion, reverse and other mortgage options.
- Employment and Retirement Advice, including pensions, retiree health benefits, unemployment benefits, and other benefits.
- Counseling with regard to age and/or disability discrimination in employment, housing and related areas.
- Litigation and Administrative Advocacy in connection with any of the above matters, including will contests, contested capacity issues, elder abuse (including financial or consumer fraud), fiduciary administration, public benefits, nursing home torts, and discrimination.

The ISBA Elder Law Section discusses some of these issues at its quarterly meetings. To date, the focus of the section has been on education of section members and ISBA members. For every other meeting, the section schedules a CLE on a substantive topic of interest to the section members. These CLE sessions have included segments on Veteran's Administration (VA) benefits and eligibility, Medicaid eligibility and planning, and Estate Recovery claims.

As with other sections of the ISBA, in addition to providing education, the section has taken an active role in monitoring and commenting on legislation which affects elderly and disabled persons. This has included legislation pertaining to eligibility for medical assistance in Iowa under the Medicaid program and supporting reinstatement of the office of a substitute decision maker. In the most recent legislative session, the elder law section actively supported the new power of attorney act (which originated in the ISBA probate section) and commented on the elder abuse statute, both of which went into effect on July 1, 2014.

At section meetings in the fall of 2014, it was decided that the section would continue its emphasis on education and plans to create short videos to introduce the various

issues of elder law to ISBA members who may only occasionally, if ever, practice in this area of

law. The intended audience for the videos will be practicing attorneys. The purpose of the videos will be to provide a brief overview of a topical area along with some suggested reading to provide the practitioner a basic understanding of the issues he or she may face and sources of law which may be helpful. It is expected that the videos would be available to all members of the ISBA.

If you are interested in participating in the ISBA Elder Law section please contact Mary Hill at the ISBA at 515-697-7870 or mhill@iowabar.org, or Greg Kenyon at 515-243-4191 or kenyon@bradshawlaw.com.

**Greg Kenyon is the Elder Law Section Chair and a regular speaker and presenter for continuing legal education on estates, trusts, elder law, Medicaid and long term planning. He is a shareholder at Bradshaw Law Offices in Des Moines, Iowa.*



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Bathrobe Justice: The secret law of search warrants

By Hon. Robert J. Blink*

Here's a robe, a gavel and a pen. Now get out there and do right by the public. And remember, Blackstone said that "the first and primary end of human laws is to maintain and regulate these absolute rights of individuals."

There you have the sum total of practical training a neophyte judge is given about search warrants. Now with the benefit of robe-years I find that the management of such documents is easily accomplished by merely asking oneself a few simple questions.

Do you find sleeping at 2:30 a.m. in the morning good for your health and mental acuity?

Do you launch from the covers when a ridiculously loud telephone rings at 2:30 in the morning?

Do you bumble around, your flailing hand reaching for the telephone on the nightstand, knocking the alarm clock to the floor and hoping you don't knock your glasses onto the floor too lest you step on them when you tumble out of bed?

Do you talk with some person, whose name you forget as soon as he states it, because you are still in a mental fog, and vaguely understand he is inviting himself and some of his friends to your house?

Do you answer his questions in a hushed voice so you don't wake your Beloved, who is already awake because of the ridiculously loud telephone ringing, and is making grunting sounds that can be roughly translated as, "Are you kidding me? Get a real job!"

Do you roll out of bed, put on your bathrobe and slippers and stumble to the kitchen in the dark hoping not to stub your toe on the hall table or kick the dog?

Do you understand that the spectral phone-voice said they would be there in a couple of minutes and this really means they will show up on your doorstep in about 45 minutes to an hour?

Do you hastily shuffle to the front door when you hear the old, muffler-deprived, dented undercover police car pull into the driveway so as to prevent its occupants from knocking on the door which will light up the dog, and the kids and the neighborhood?

Do you invite them in with their unkempt hair, scruffy beards, goofy cheap earrings and nasty clothes — guys you would throw out if they came to date your daughter, and if your daughter actually dated them, you'd throw her out?

Do they say they're sorry for disturbing you at this hour when you know doggone well they aren't sorry at all because the middle of the night is the best time to roust the people they want to roust — and before they do that they've got to roust you?

Do you sit at the kitchen table in your slippers and bathrobe with hair that looks like something that has been fashionably coiffed with an egg beater?

Do you try and wake enough to read the eleven pages of single spaced typing that looks at that point very much like the eleven pages of single spaced typing they brought you the last time they were there?

Do you struggle to discern the gist of the story the papers tell in your first four readings of the first paragraph in the affidavit — a story that they have been writing for the past four hours with the assistance of a prosecutor who was wide awake?

Do they stand over you with facial expressions that form the unspoken interrogatories, "Are you really a judge? How did you ever get through law school? Are you literate?"

Do you sign the attestation of the oath on the affidavit, the endorsement of evidence and warrant knowing that sleep may or may not return because it's now nearly 4:00 in the morning and you have three more days of an enthralling tax assessment appeal waiting for you once you get to

the courthouse in a couple of hours?

And when they leave and you close the door behind them and lurch back to the bedroom, dropping your robe on the floor because you missed the end of the bed, do you realize what you have done?

You have unleashed the hounds of the government's police power; that guns may be drawn, people may be shot, killed, beaten or handcuffed — some who are innocent, some who are not; that doors will be broken and lives will be shattered; that in these fleeting moments before dawn you have wielded the powers of Jefferson, Franklin, Washington, Adams and Mason; that your pen flashed the majesty of law promised in Magna Carta, borne of eight years of bloody revolution, and preserved and shared at the cost of six hundred thousand souls in a civil war.

Do you understand that your brief reflection and decision-making will be reviewed and scrutinized six weeks later in the daylight of a courtroom by a judge who has had ample sleep, the luxury of hours of research and briefing by at least two lawyers?

Do you realize that years later your decision will again be examined, dissected, analyzed, second and third guessed, measured and weighed against centuries of precedent by nine more jurists — nay, perhaps 16 — all of whom have the benefit of time, multiple clerks, the gift of the case's history, the trial record and the legal perspective of many more lawyers who have churned out even more research? And all you had were your slippers, the dog at your feet under the kitchen table and common sense.

If you have done all this, then my friends, you have exercised bathrobe justice — actual justice in a real world — a humane decision made significant by its gravity, temporal constraints and the lives affected.

A judge, regardless of the hour, is neither book nor tome nor computer, but breathing being. And as you drift off to sleep, you appreciate why the Founding Fathers asked not for certainty in issuing search warrants, but were content with probabilities. For absolute rights are protected by discrete hope — that ill-defined distinction between "can" and "should" — so elusive in the sleepless hours before the breaking of day. And what is more human than that?



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** Judge Blink is a district court judge in the Fifth Judicial District. In addition to his prowess on the bench, he is an accomplished photographer and writer who contributes occasionally to the Iowa Lawyer.*

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The credits are available on a statewide first-come, first-served basis, so talk to your clients today about how they can take advantage of this unique opportunity. Or visit **www.IowaCommunityFoundations.org** for more information on Endow Iowa and how community foundations across Iowa are helping donors do good works within their communities, forever.



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To learn more, please contact www.IowaCommunityFoundations.org.

*Based on 35% marginal federal tax rate

What's in a name?

Performing proper due diligence before naming a company

By Michael Dayton

You're sitting in your office Monday morning, enjoying a breakfast bar and some coffee, and reviewing the latest law blog posts (i.e., looking at Facebook) when the phone rings. It's Bob, a long-time friend and perpetual entrepreneur, and Bob would like you to form an Iowa limited liability company for him. He has a great idea for a hardwood flooring services company (everything from removal to installation and finishing) and he wants to get it rolling.

Awesome, you think. First, I have great taste in friends because Bob actually knows to organize an LLC out of which to run his business. Second, I can pull out my forms, fill in a few blanks, charge Bobby the flat fee I charge for organizing a single-member LLC and be on my merry way — on the whole, not a bad start to the week.

So you take down some basic information. First things first, "what do you want to call the company?"

"Imperial Flooring Company," says Bob, because it sounds important and I plan on taking over the hardwood flooring services world. "We will start in Iowa, but I plan to expand nationally and even globally if at all possible," Bob continues.

"Sounds great," you say. "Just let me check the Iowa Secretary of State's website to see if the name is available."

You pull up the website, check the name, and there are no results. "Bob, looks like you can use it, though, we will need to add an 'LLC' at the end of the name." (Good catch by you — pat yourself on the back).

You draft up the governing documents, Bob signs them and you part as friends.

Bob starts operating his company and

makes great strides for a few years, expanding his market from Iowa out into other states in accordance with his stated plan. He is good at what he does, hires the right people and builds quite a bit of goodwill for the Imperial Flooring name. Then Bob calls you one day: "Hey, I got this cease-and-desist letter from some other company named Imperial Flooring saying I need to stop using their name. How can this be? You told me I was ok to use the Imperial Flooring name."

"Sorry, Bob," you say, "what I meant was that your name 'Imperial Flooring' was distinguishable upon the records of the Iowa Secretary of State from all other reserved or registered names so that it could be registered as the name of an LLC with the Iowa Secretary of State." (Obviously.)

"Ok? So I don't have to change the name of my company?"

"No," you say, "you probably do have to change the name. See, there is this whole other world of name protection rights out there, and we didn't discuss any of that. If you had concerns about those names, you should have told me."

That answer is slightly insufficient for Bob. After a few choice words about how you aren't distinguishable from a mule's backside, Bob decides to take his business elsewhere.

Questions go through your head: Was it my responsibility to make Bob aware of these issues? Bob must have done some searching with respect to the name on his own when deciding what name to use, right? Regardless of whether it was your responsibility or not, what you certainly did was to turn a friend into a belligerent and

lose a client.

So what should you have done to avoid this situation and protect your client from the beginning? It depends on how the name of the company will be used. There are a few minimally invasive procedures you could have performed that would have given Bob some comfort and protection so that Bob's hard work in building the goodwill for his company name wouldn't be for naught. These procedures range from simple, on-line Google and United States Patent and Trademark Office (USPTO) searches to having a vendor such as Thomson Reuters perform a broad search with respect to the company's name. And it takes even less time to simply ask the client what due diligence he or she has previously performed with respect to the name.

For some company names, just performing an Iowa Secretary of State "entity name search" is sufficient. If you are forming a family farm holding company or any other company where the company name will not be the trade name collecting goodwill, further searches are not necessary. Of course businesses evolve, so it is important to be absolutely certain that the name will not be used for commercial purposes.

For companies like Bob's, operating commercially under the company name, additional searches can be crucial. The "other world of name protection rights" you mentioned to Bob, the protection of trademarks at common law and by registration at the federal and state level, is often overlooked in forming a company. As illustrated above, this can be a costly mistake for your client.



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Alan D. Ryerson
CPA/ABV, CFF, ASA



Gregory L. Weber
CPA/ABV, ASA



James D. Nalley
CPA/ABV, CFF, CVA

Clearing a mark involves determining whether the new mark will cause a "likelihood of consumer confusion" with any existing marks in terms of sight, sound, or meaning. In a relatively short amount of time you can perform an Internet search with respect to the proposed company name to determine if the name (or a similar name which might cause confusion) is being used and where and how it is being used. For example, if you search for "Imperial Flooring," the first result is a website with the name of "imperialflooring.com." If your client hadn't already performed this search, he will certainly thank you for doing so. The fact that a website is already registered in that name may be sufficient reason for your client to rethink the company's name, especially if he is eyeing a national market.

Absent further circumstances, though, the mere fact that a website exists with the same name isn't a reason to not use the name. It is important to determine how the name is being used and where it is being used, since the scope of the common law protections for trademarks follows that analysis. In general, common law trademarks rights provide protection for goods and services which are sold under the mark in the geographical area where the mark's reputation extends. If the website company Imperial Flooring is only performing services in the Northeast, and your client is unlikely to have market penetration there, then your client may be willing to use the name. If the website company Imperial Flooring is a carpet manufacturing company then there is a risk that you may be served a cease-and-desist letter, but it might be a small enough risk for your client to accept.

You should also perform, or direct your client to perform, a search of the USPTO's website. If "Imperial Flooring" is a registered mark with the USPTO, the registrant

of the mark is given nationwide protection to use that name with respect to the goods and/or services for which the mark is registered and related goods and/or services sold in similar channels of trade. In some cases the registrant is entitled to additional damages if you violate the registrant's rights. If you perform a USPTO search of "Imperial Flooring" you will see that there are no registrations of that mark.

Finally, although these quick searches can avoid obvious peril, a more in-depth search performed by a third-party vendor such as Thomson Reuters can be worthwhile if your client is planning on registering its name with the USPTO or will otherwise be using the name in a number of jurisdictions. The results of the vendor's search still should be reviewed by an attorney, but the vendor can perform a thorough search more cost effectively than if the attorney had attempted to perform such a search. These vendors typically search for identical trademarks, plus variant spellings, phonetic equivalents, and similar marks from USPTO and state records, as well as common law, websites and domain name sources.

So the next time a friend calls you (which won't be Bob) to form an entity, pull your mind away from Facebook and your impending bathroom break and ask your friend how the name might be used and with respect to what goods and services, where it might be used and what due diligence your friend has already performed. Taking those simple steps may be enough to save you a friend and a client.

** Michael Dayton is a shareholder in the Business, Finance, and Real Estate Department at Nyemaster Goode, P.C., in Des Moines, Iowa. Michael assists entrepreneurs from start up to eventual sale and everything in between. He is also a part of the ISBA YLD and Business Law Sections. He can be reached at mjd Dayton@nyemaster.com or 515-283-3111.*

ADMISSION ON MOTION

APPLIED

The following individuals applied for admission on motion to the Iowa Bar:

Bradley M. Bakker, Armstrong Teasdale, L.L.P., St. Louis, Mo.;
Beth Ann Lori, Life Care Services, Des Moines, Iowa;
Paul Socrates Mazzola, McKee Voorhees & Sease, Des Moines, Iowa;
Elizabeth Spellman Pudenz, Des Moines, Iowa;
Joanne Reed, Noyes Law Office, Fairfield, Iowa;
Courtney Elizabeth Rowley, Decorah, Iowa;
Jill Suzanne Schryver, Green Products Company, Conrad, Iowa;
Patrick David Whiting, Fredrikson & Byron, Minneapolis, Minn.;

Anyone with questions or comments on the above applicants should contact: Dave Ewert at the Office of Professional Regulation, 1111 East Court Avenue, Des Moines, IA 50319; Phone: 515-725-8029.

ADMITTED

The following individuals have recently been admitted to the Iowa Bar:

Elizabeth Christine Ashton, Polk City, Iowa;
Michael Thomas Auer, St. Peters, Mo.;
Jerrold Robert Black, Bellevue, Neb.;
Erin Elizabeth Del Val, Ames, Iowa;
Erin Rivka Eldridge, Marion, Iowa;
Ashley L. Faier, Office of Professional Regulation, Des Moines, Iowa;
Nike Lee Fleming, Iowa City, Iowa;
Jennifer Granchi, Bellaire, Texas;
Andrew F. Hettinga, Quarles & Brady, L.L.P., Chicago;
Todd Richard Korb, Hupy & Abraham, S.C., Milwaukee, Wis.;
Katherine Marie Krickbaum, Des Moines, Iowa;
Douglas Edwin Lee, Dixon, Ill.;
Britta Schnoor Loftus, Iowa City, Iowa;
P. Shawn McCann, Omaha, Neb.;
Michael G. Monday, Omaha, Neb.;
Eduardo Alfonso Navarro, Ankeny, Iowa;
Matthew Blanton Robinson, Hesse Martone, P.C., St. Louis, Mo.;
James Lee Varley, Alexandria, Va.;
Robert Ellsworth Wright, Alliant Energy, Cedar Rapids, Iowa;

Newly admitted attorneys can become Iowa State Bar Association members and receive their first year free of charge by going to <http://www.iowabar.org/newadmittee>.

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The Judge Fortrum game

By Russ Ipsa*

I became fascinated with “The Kevin Bacon Game.” You know, it’s the game where you go to a website designed for the purpose, and type in the name of an actor to receive a number for the movie connectivity with Kevin Bacon. For instance, William Shatner is a “Bacon number 2” because he was in the movie *Loaded Weapon* (step 1) with J.T. Walsh who was in the movie *A Few Good Men* (step 2) with Kevin Bacon.

I thought it would be nice to begin a similar game centering around our favorite judge: Judge Robin Fortrum, using cases instead of movies. Of course, I was a “Fortrum number 1” because I had tried a case before his honor. So, I called my new friend, Bob Connors, from across the state and told him my idea.

“So, what’s my ‘Fortrum Number’?” Bob asked.

“Well, let’s see,” I said thinking. “You tried that will contest case I sent you before Judge Clossum, which is step one. Then, you handled the appeal before the

Supreme Court – step two. Finally, Judge Fortrum cited the Smith case in a similar case down here, so you are a ‘Fortrum Number 3.’”

“Nice,” said Connors.

Next, I called my old classmate Sam (whom I knew never did any work in Judge Fortrum’s judicial district and was almost never in a courtroom anyway) and told him that he had a “Fortrum Number 4.”

“How do you figure that?” he asked.

“Well, you wrote the Smith will (step one), which resulted in a will contest action before Judge Clossum. That’s step two,” I said. “The will contest was appealed to the Iowa Supreme Court. That’s step three,” I said. “And then, Judge Fortrum cited the Smith case in the Applington case – step 4. So, that makes you a “Fortrum Number 4.”

“Cool,” said Sam. “Can you do this for other people? Can I have them call you?”

“Sure,” I replied without knowing what I was getting into.

In no time, I was getting calls, emails and letters from lawyers across the state every day inquiring about their particular “Fortrum number.” I was giving out “Fortrum Numbers” right and left. Other members of the bar were referring to me as the “Oracle of Fortrum.” In just six months, attorneys began putting their “Fortrum Numbers” in parenthesis after their AT number on all of their pleadings, and some were even inserting it by the signature lines of their letters and emails.

It all seemed like harmless fun, until I got an email from Judge Fortrum, reading: “The Honorable Judge Robin Fortrum requests the presence of Russ Ipsa (the ‘Oracle of Fortrum’) in the court’s private chambers at 8:00 a.m. next Monday for a private conversation.”

Of course, I panicked. I confided in many of my closest colleagues about the “private conversation” to which I had been invited, and no one had much encouragement for me. Judge Fortrum’s reputation as a hard-nosed, no-nonsense judge led to ominous predictions. Some even offered to represent me if the judge started talking about contempt. The week dragged on, with Monday morning looming in the background.

I sheepishly knocked on the door to Judge Fortrum’s private chambers at precisely 8:00 on Monday morning. “Come

in, Mr. Ipsa,” I heard Judge Fortrum say.

As I came in, he waved me to a seat, saying “Have a chair.” He leaned way back in his own chair as soon as I sat down.

“I’m here to talk to you about this ‘Judge Fortrum Game’ you have apparently created,” he said.

“I figured,” I mumbled.

“Obviously, I was aware of the game,” he began, “especially when lawyers are putting their “Fortrum number” next to their PK number.”

“I’m sorry,” I replied.

“Let me finish,” continued the Judge. “I went to the National Council of Judges’ Annual Conference in Phoenix last month, and all of the judges were talking about the ‘Fortrum Game’ in Iowa.”

I slipped a little lower in my chair.

“Everyone there was so jealous,” he said. “They said that I obviously had a great relationship with my lawyers that they would create a game around their contacts with me. So, the reason I called you in here is because some of them want to know if you could be willing to consult with lawyers in their jurisdictions about how to create a game like mine.”

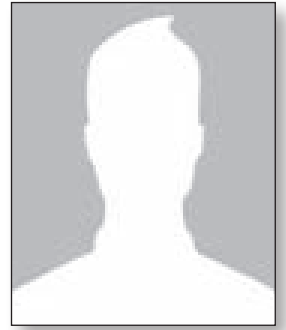
I sat upright. “You mean you want to refer me to other judges for consultation?” I asked.

“Well, you would be consulting with other lawyers in their jurisdiction who will be the ‘Oracle’ there. They are willing to pay you your usual hourly rate, of course.”

Well, now about ten percent of my income comes from consultation fees for judges’ games around the country. I still continue the “Fortrum Game” in Iowa, and, of course, I do that without remuneration.

My only question now is whether or not I can treat the time devoted to hosting the “Fortrum Game” as pro bono hours on the Iowa Supreme Court Annual Questionnaire.

**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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New Rules: Expedited Trail and Discovery changes (Live Webinar)

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Kelsey Knutson, *Davis Brown Law Firm*

Margaret Hanson, *Davis Brown Law Firm*

January 16, 2015

Expedited Civil Actions and General Rule Amendments—a Review (Live Webinar)

Sponsored by the Litigation Section

Gregory Lederer, *Lederer Weston Graig, P.L.C.*

January 27, 2015

Consumer Data & Privacy: Contractual Risk Management Strategies (Live Webinar)

Sponsored by the Corporate Counsel Section

John Pietila, *Davis Brown Law Firm*

January 30, 2015

Avoiding Ethics Problems with Pro Se Parties (Telephone)

Sponsored by the Government Practice Section

Hon. Artis Reis, *Senior Judge, District 5C*

February 13, 2015

FEMA: From Disaster Declaration to De-obligation (Telephone)

Sponsored by the Government Practice Section

Mark Landa, *Sullivan & Ward, P.C.*

February 27, 2015

Hot Topics Under the Fair Labor Standards Act (Telephone)

Sponsored by the Government Practice Section

Michael Staebell, *District Director for the U.S. Department of Labor, Wage and Hour Division in Des Moines*

Letters to the Editor

Dear Editor:

Yesterday I received my Iowa Lawyer and looked through it as I always do. I stopped to read the articles, *My Experience with Depression*, *Lawyers helping lawyers*, and *Impact of a Brain Storm*. I've never been so proud to be a member of the Iowa Bar Association. The articles were insightful, thought provoking, and most importantly, will help to end the stigma of mental illness. I'm grateful to both Gary Bakke and Bruce Graves for sharing their stories and to the Iowa Lawyer for giving them a forum.

Thank you.

Sincerely,

**Barbara Franklin
Houston, Texas**

From the Editor:

Thank you so much for your kind note and your membership with the Iowa State Bar Association from all the way down in Houston. I'm sure our contributors would love to hear that their articles have touched other members.

Remembering their legacy

One of the best ways to remember a deceased lawyer is through a memorial gift to the profession to which he or she devoted an entire life. Surviving family members can point with pride to the accomplishments memorialized in a tangible form.

The Iowa State Bar Foundation is a fitting place for contributions made in the honor of a deceased member. There the gift will be used to support the Foundation's charitable purposes for the advancement of the law and justice.

To memorialize a respected colleague, a spouse, a parent, a grandparent, or just a friend, send contributions to: The Iowa State Bar Foundation, 625 East Court, Des Moines, IA 50309. A representative of the Foundation will contact the family, acknowledge the gift, and a permanent record will be made.

For more information, contact The Iowa State Bar Foundation at the address above, or via phone at 515-697-7870, or e-mail at mhill@iowabar.org.





Townley

Deena Townley is a partner of the Klass Law Firm, L.L.P., in Sioux City, Iowa. Townley received her undergraduate degree from Appalachian State University and her law degree from the University of South Dakota. Her practice focuses on workers' compensation defense, appeals and civil litigation.



Smisek

Smisek joins Ahlers & Cooney as a member of the firm's employment and labor law and K-12 education practice areas, and will work with public bodies, and school districts. Smisek graduated from the University of Iowa in 1999 with a B.A. in English. She then attended the University of Iowa College of Law and received her J.D. in 2007. Prior to Ahlers & Cooney, she served as an Administrative Law Judge for the Iowa Public Employment Relations Board (IPERB).



Wasson

Wasson joined the law firm as an associate in the firm's corporate, business and tax practice area. He received his B.S. from

Northern Illinois University in business administration and his J.D. in 2014 from Drake University Law School. Wasson's practice focuses on environmental law, employee benefits, contract negotiation and real estate transactions.



Brotherson

Kodi A. Brotherson

became a partner in the Sac City, Iowa, law firm of Becker and Brotherson Law Offices. Her practice primarily focuses on estate planning, probate, income taxes, real estate transactions, family law, employment law, personal injury litigation, and

appeals. Brotherson received her B.A. from Simpson College in 2001 and her J.D. from Drake University in 2005.



Osborn

Ellen D. Osborn joined the Daniels Law Firm in Sioux City, Iowa, causing the firm name to be changed to Daniels Osborn Law Firm, P.L.C. Ellen is a 2002 graduate of the University of Iowa College of Law. Her practice focuses primarily on estate planning, special needs law, and education law.

Elizabeth R. Meyer, Sean D. Solberg, and **Michele L. Warnock** have all been elected shareholders of the Davis Brown Law Firm in Des Moines, Iowa.



Meyer

Meyer is a member of the litigation division and maintains a varied practice representing individuals and companies in business litigation matters including contract, real estate, employment, probate and personal injury disputes. She is also an active member of the firm's employment law and labor relations practice group, working with clients on all aspects of the employment relationship.



Solberg

Solberg is a member of the firm's intellectual property department and serves as patent counsel to clients ranging from startups to Fortune 500 companies. He drafts and prosecutes patent applications, drafts and negotiates technology agreements, performs patentability and freedom-to-operate analyses, and manages client patent portfolios. Solberg has clients nationwide and practices mainly in the firm's Emmetsburg, Iowa, office.



Warnock

Warnock is a member of the litigation division and maintains a practice with an emphasis in labor and employment and business litigation. She represents employers across the spectrum, from small, local businesses to large multistate employers, including startups, franchises, and large corporations to mitigate liability.



Samuelson

Benjamin J. Samuelson joined the law firm of Betty, Neuman & McMahon, P.L.C., in Davenport, Iowa, as a partner. Benjamin is a 1997 graduate of University of Iowa and secured his law degree from Loyola University Chicago in 2000. He practices primarily in the areas of civil litigation, business litigation, personal injury defense, medical malpractice and products liability.



Bittner

Julie T. Bittner was promoted to partner at the law firm of Gonzalez, Saggio & Harlan in West Des Moines, Iowa. Bittner received her B.A. from the University of San Diego and her J.D. from Saint Louis University School of Law.

South & Associates, P.C. has officially changed its name to SouthLaw, P.C. The firm has expanded geographically to enhance its footprint in the Midwest – now covering all counties in Missouri, Kansas, Nebraska, and Iowa. The main telephone number will remain the same: (913) 663-7600. The email address protocol and the public website also

Travis J. Schroeder, Lisa A. Stephenson, and **Carrie L. Thompson** have become members of Simmons Perrine Moyer Bergman, P.L.C., in Cedar Rapids, Iowa.



Schroeder

Schroeder is a 2006 graduate of the University of Iowa College of Business with a B.B.A. in accounting. He then went to the University of Iowa College of Law where he earned his J.D. in 2009. Schroeder is engaged primarily in estate and wealth transfer planning, wills, trusts, probate law, taxation, general business and corporate law, business and farm succession planning and agricultural law.



Stephenson

Stephenson earned her B.A. from Mount Mercy College in 1995. She attended the University of Iowa College of Law, where she earned her J.D. in 1998. Upon graduating from law school, Stephenson clerked for the Honorable John A. Jarvey and the Honorable Michael J. Melloy in the United States District Court for the Northern District of Iowa. Stephenson practices primarily in employment law, labor, and commercial litigation.



Thompson

Thompson practices primarily in medical malpractice defense,

healthcare law and commercial litigation. She is a 2004 graduate of Mount Mercy College with a B.S. in biology. She earned her J.D. from the University of Iowa College of Law in 2008.

Ann Smisek and **Conner Wasson** have joined the Des Moines, Iowa, law firm of Ahlers & Cooney.



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remain unchanged: firstname.lastname@southlaw.com and www.southlaw.com, respectively.



Blackford

Brian J. Blackford has opened Blackford Law, L.L.C., an immigration law practice working primarily in removal/deportation defense and family-based immigration, in Omaha, Neb. Brian received his J.D. from Creighton University School of Law in 2008, where he earned certificates of concentration in international and comparative law, litigation, and criminal law.



Bright

David J. Bright joined the Cedar Rapids, Iowa, firm of Simmons Perrine Moyer Bergman, P.L.C., as an associate attorney. Bright attended the University of Iowa College of Law, and maintains his law practice in the firm's Coralville and Cedar Rapids, Iowa, locations. He is engaged in a general practice

primarily including business law, corporate law, real estate law, wills, trusts, estate planning, nonprofits, franchise and distribution law, anti-trust and trade regulation, as well as mergers, acquisitions and divestiture law.



Prahm

Ryan Prahm is now a member of Pugh Hagan, P.L.C., in Iowa City, Iowa. The firm is now Pugh Hagan Prahm, P.L.C. Prahm studied at the University of Iowa where he received his undergraduate degree in 2002 and his J.D. in 2009. Ryan practices primarily in the areas of business law, estate planning, real estate and healthcare law.



Costello

Amy M. Costello joined the Davenport, Iowa, law firm of Lane & Waterman, L.L.P., as an associate. Costello received her B.A. from Arizona State University in 2010, majoring in sociology. She then went on to earn her J.D. in 2013 from Drake University Law School. Prior to joining Lane & Waterman, Costello served as a judicial law clerk for the Honorable Justice Edward M. Mansfield of the Iowa Supreme Court.



Weston

Ben Weston became a member of Lederer Weston Craig, P.L.C., Attorneys at Law, Des Moines and Cedar Rapids, Iowa. Ben is 2008 graduate of the Creighton School of Law and has a trial practice in the firm's West Des Moines office.



Baxter

Jeff Baxter and Ted Craig were recently named shareholders at Dickinson, Mackaman, Tyler & Hagen, P.C., in Des Moines, Iowa.

Baxter graduated from Arizona State University College of Law in 2003 and practiced in Tucson prior to joining Dickinson Law in 2013. His practice focuses on real estate, business and commercial transactions.

Craig graduated from the University of Iowa College of Law in 2009 and focuses his practice on general litigation matters ranging from contract disputes to environmental matters to construction litigation.



Craig

Alex Christian and Nick Roby recently joined the Davis Brown Law Firm in Des Moines, Iowa, in the firm's business division.



Christian

Christian joins the business division as an associate. Christian earned her J.D. at the University of Iowa College of Law. Her undergraduate degree is from DePaul University in Chicago. Her practice is in the intellectual property department focusing on trademarks. She has extensive experience in trademark prosecution having prepared numerous trademark applications, trademark auditing services, negotiating co-existence agreements as well as arguing before the Trademark Trial and Appeal Board.



Roby

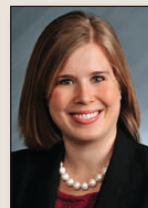
Roby will act as special counsel in the business division.

He focuses primarily on business organizations and transactions including real estate syndications, commercial financings and tax planning. Roby earned his J.D. at the University of Iowa College of Law and graduated from Iowa State University with a bachelor's degree in accounting and economics.



Dalton

Bryce Dalton recently joined Pugh Hagan Prahm, P.L.C., as an associate. Dalton studied at Brigham Young University where he received his bachelor's degree in 2007, and in 2013, he earned his J.D. from the University of Iowa College of Law. Dalton practices primarily in the areas of real estate and land use, corporate and business law, construction law, estate planning, probate, commercial litigation and taxation.



Van Heukelem

Miriam Van Heukelem was recently elected shareholder at Ahlers & Cooney, P.C., in Des Moines, Iowa. She is a member of the firm's K-12 education practice area where she provides public schools in Iowa with comprehensive legal representation. Van Heukelem received her J.D. from Drake University Law School.



Letsch

Cynthia Letsch at the Letsch Law Firm in Grimes, Iowa, has recently become Veteran Affairs certified in order to expand her practice into the area of veterans aid and attendance benefits.

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 plain 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 515-697-7896.

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*Member of American Academy of ADR Attorneys, AV Rated, over 17 years of civil litigation and workers' compensation experience
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Harry Perkins III

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ISBA CLE ► Spring 2015

Visit www.iowabar.org/calendar to register for any of our upcoming CLE opportunities.

March 27

Government Practice Seminar

9:00 a.m. - 4:15 p.m.

ISBA Headquarters • Des Moines

The annual Government Practice Seminar is targeted towards lawyers representing municipal, county, state or federal governments, or agencies thereof, in civil or criminal matters.

Topics to be covered at this year's seminar include Examining Expert Witnesses, Privileges and Ethical Considerations, Public Employment Law, Iowa Rule Making Basics, and more!

March 30

Reviewing the New Expedited Trial Rule and the New Discovery Rules (Live Webinar)

12:00 - 1:00 p.m.

The Iowa Supreme Court has established rules for an expedited trial track for cases involving less than \$75,000.00. The court also has made significant changes in the general discovery rules for all civil cases. All attorneys with a pending civil case, or who potentially may handle, consult, or advise regarding a civil case, must read these rules and become familiar with them. The goal of this live webinar is to help familiarize attorneys with the rules and answer any questions they may have.

April 2

Financial Services – What's Going On in the Regulatory Horizon (In-person or Live Webinar)

3:00 - 5:00 p.m.

In-person portion will take place at the ISBA Headquarters in Des Moines

The title pretty much says it all! Patrick Madigan from the State of Iowa Attorney General's Office will update attendees on the latest news concerning financial regulations.

April 24

Workplace Violence and Crime Prevention Through Environmental Design (Live Webinar)

12:00 - 1:00 p.m.

This course covers what is workplace violence and how to design your workplace environment to be safer. It includes information on the effects of violence in the workplace, caution indicators, preventative steps, safety tips, things to remember if a violent act occurs, and what to report.

May 18

Other Agency Action: Tips for Practitioners (Telephone CLE)

12:00 - 1:00 p.m.

During this CLE, the panel of presenters will discuss "other agency action" and the various aspects of handling an agency action that fall into such category. Specific areas to be discussed include the types of other agency actions, discovery issues, the development of a certified record, and other procedural aspects.

June 15 - 18

Annual Meeting

Community Choice Credit Union Convention Center • Des Moines

Held in conjunction with the Iowa Judges Association's and Iowa Court Reporters Association's annual meetings, the 2015 ISBA Annual Meeting is shaping up to be the largest single gathering of legal professionals in the ISBA's 141-year history. Mark your calendars and make plans today to attend this essential four-day event in June!

Criminal Law Seminar

Friday, April 17

ISBA Headquarters, 625 E. Court Ave., Des Moines, IA 50309 or Live Webinar

8:00	Registration
8:30 - 9:30	2015 Legislative Update Speaker: Joseph McEniry, Legislative Service Agency
9:30 - 10:30	Depression and Substance Abuse (Ethics) Speaker: Hugh Grady, Director, Iowa Lawyers Assistance Program
10:30 - 10:45	Break
10:45 - 11:45	DNA 101 – Know the Code Speaker: Norah Rudin Ph.D., Forensic DNA
11:45 - 12:15	Lunch (provided with registration)
12:15 - 1:15	Drug Courts - Purpose and Functionality Speakers: Justin Allen, Assistant Polk County Attorney/Drug Court Representative; Dean Olson, Black Hawk County Drug Court Representative; and Pamela Summers, Drug Court Attorney
1:15 - 2:15	Criminal Case Law Update Speaker: Hon. Mary Tabor, Iowa Court of Appeals
2:15 - 3:15	Evidence Update Speaker: Prof. Laurie Doré, Drake University Law School
3:15 - 3:30	Break
3:30 - 4:30	Using Expert Witnesses in a Criminal Trial Moderator: Pamela Summers, Drug Court Attorney

CLE Credit (pending): 7 state hours which includes 1 ethics hour

Registration Form: Criminal Law Seminar

Name: _____ Member #: _____

Phone #: _____ Address: _____

City, State, Zip: _____

E-mail: _____

Registration Fees:

Prices below reflect the early-bird registration fees. Registering after April 16th will result in a \$50 late fee being added on to your registration fee amount.

____ ISBA Criminal Law Section Members - \$160

____ ISBA Members - \$180

____ Non-ISBA Members - \$240

Attendance Preference: ____ In-person ____ Live Webinar

Attending Lunch: ____ Yes ____ No

Materials: Only electronic materials will be available for this event. A link to the materials will be sent to attendees a few days prior to the event.

Method of Payment: ____ Check enclosed Check Number: _____
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Special Considerations (vision, hearing, etc.): _____

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For questions: phone (515) 697-7874 or e-mail cle@iowabar.org

Cancellation policy/Late registration fee: Registration refunds will be issued only if written notification is received by the Bar Office by April 10, 2015. Written notification can be mailed, faxed, or e-mailed to the Bar Office. Walk-in registration fee will be an additional \$50 (fee will begin after April 16, 2015).



Juvenile Law Seminar

Friday, May 1

ISBA Headquarters • 625 E. Court Ave. • Des Moines, IA 50309



CLE Credit
(pending)
6.75 state hours
which includes 1
ethics hour

8:00

8:30 - 9:30

9:30 - 10:15

10:15 - 10:30

10:30 - 11:15

11:15 - 12:00

12:00 - 12:30

12:30 - 1:30

1:30 - 2:00

2:00 - 2:15

2:15 - 3:15

3:15 - 3:30

3:30 - 4:30

Registration

Case Law Update

Speaker: Prof. Jerry Foxhoven, Drake Legal Clinic

Addressing Competency and Other Mental Health Concerns in Delinquency Cases

Moderator: Prof. Brent Pattison, Drake Legal Clinic

Panel: Dr. David Beamon, Innovative Learning Professionals; Kim Carson, Juvenile Court Officer; and Patricia Weir, Johnson County Attorney's Office

Break

Practice Pointers Regarding Competency

Moderator: Prof. Brent Pattison, Drake Legal Clinic

Panel: Patricia Weir, Johnson County Attorney's Office

Children with Special Needs and Children in Need of Assistance (CINA):

Improving Outcomes for Children and Families

Moderator: Prof. Brent Pattison, Drake Legal Clinic

Panel: Michael Bandstra, Bandstra Law Office and Patricia Weir, Johnson County Attorney's Office

Lunch (provided with registration)

Challenging Drug Testing Results

Speaker: Cynthia Finley, Magistrate Judge

Differential Response - Lessons Learned & How to Divert a Case

Speaker: Julie Allison, Department of Human Services (DHS)

Break

Break Out Session #1

- Relative Care/Fostering Connections - Speaker: Julie Allison, DHS
- Dream Team/Family Team Meeting Advocacy
- Juvenile Ethics (*Ethics*)

Break

Break Out Session #2

- Foster Parent Representation and Intervention
- Challenging Cases - Difficult Attorney/Client Relationships - Speakers: Ellen Ramsey-Kacena and Prof. Jean Lawrence, University of Iowa Legal Clinic
- Juvenile Ethics (*Ethics*) (repeat of the 2:15 presentation)

Registration Form: Juvenile Law Seminar

Name: _____ **Member #:** _____ **Phone #:** _____

Address: _____ **City, State, Zip:** _____

E-mail: _____

Registration Fees:

Prices below reflect the early-bird registration fees. Registering after April 30th will result in a \$50 late fee being added on to your registration fee amount.

____ ISBA Family and Juvenile Law Section Members - \$160 ____ ISBA Members - \$180 ____ Non-ISBA Members - \$235

Attending Lunch: ____ Yes ____ No

Break Out Sessions (please select one topic for each break out session)

Break Out Session #1: ____ Relative Care ____ Dream Team ____ Juvenile Ethics

Break Out Session #2: ____ Foster Parent Representation ____ Working with Difficult Clients ____ Juvenile Ethics

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Bridge the Gap Seminar

May 14 - 15

West Des Moines Marriott, 1250 Jordan Creek Pkwy., West Des Moines, IA 50266

SCHEDULE - THURSDAY, MAY 14

7:30	Registration
8:00 - 8:30	Prenups and Postnups - Speaker: Lori Klockau, Bray & Klockau PLC
8:30 - 9:30	Human Resources Issues - Speaker: Bridget Penick, Fredrikson & Byron, P.A.
9:30 - 10:00	Great Iowa Treasure Hunt - Speaker: Christine Halbrook, Bradshaw Fowler Proctor & Fairgrave, PC
10:00 - 10:15	Break
10:15 - 11:00	Social Security/Medicaid Planning - Speaker: Matt Bollman, Pearson Bollman Law
11:00 - 11:30	Jury Selection - Speaker: James Weston, Tom Riley Law Firm PLC
11:30 - 12:00	Taxation of Judgements and Settlements - Speaker: David Repp, Dickinson Mackaman Tyler & Hagen PC
12:00 - 1:00	Lunch (not provided with registration)
1:00 - 2:00	Federal Case Law Update - Speaker: Hon. Ross Walters, U.S. Magistrate Judge
2:00 - 2:45	Bankruptcy Law: What to Know for a General Iowa Practice - Speaker: Robert Gainer, Cutler Law Firm PC
2:45 - 3:00	Break
3:00 - 3:30	Non-profit Formation - Speaker: David Grooters, Pappajohn Shriver Eide & Nielsen PC
3:30 - 4:00	Civil Procedure - Speaker: Samuel Jones, Shuttleworth & Ingersoll PLC
4:00 - 5:00	Ethics of Fee Agreements (Ethics) - Speaker: Nick Critelli, Critelli Law PC

SCHEDULE - FRIDAY, MAY 15

7:30	Registration
8:00 - 9:00	Depression/Substance Abuse (Ethics) - Speaker: Hugh Grady, Director, Iowa Lawyers Assistance Program
9:00 - 10:00	Termination of Parental Rights and Other Permanent Placements - Speaker: Sara Strain Linder, Tindal Law Office PLC
10:00 - 10:15	Break
10:15 - 10:45	Workers' Compensation - Speaker: Stephen Brown, Cutler Law Firm PC
10:45 - 11:45	OWI/Marijuana Issues - Speaker: Robert Rehkemper, Gourley Rehkemper & Lindholm PLC
11:45 - 12:45	Lunch (not provided with registration)
12:45 - 1:45	Case Law Update - Speaker: Hon. Paul Ahlers, District Associate Judge
1:45 - 2:15	Legislative Update - Speaker: Sen. Robert Hogg, District 19, Elderkin & Pirnie PLC
2:15 - 2:30	Break
2:30 - 3:00	New Power of Attorney Act - Speaker: Margaret Van Houten, Davis Brown Law Firm
3:00 - 4:00	EDMS Panel - Moderator: Nicole Rognes Olson, Heiny McManigal Duffy Stambaugh & Anderson PLC
4:00 - 5:00	Ethics Panel (Ethics) - Moderator: Michael Streit, Ahlers & Cooney PC

CLE Credit (approved): 15 state hours which includes 3 ethics (federal pending)

Registration Form: Bridge the Gap Seminar

Name: _____ Member #: _____ Phone #: _____

Address: _____ City, State, Zip: _____

E-mail: _____

Materials: Only electronic materials will be available for this event. A link to the materials will be sent to attendees a few days prior to the event.

Registration Fees:

Prices below reflect the early-bird registration fees. Registering after May 13th will result in a \$50 late fee being added on to your registration fee amount.

<input type="checkbox"/> ISBA Members - \$295	<input type="checkbox"/> ISBA YLD Lawyers Division Years Members (1-5 years) - \$235
<input type="checkbox"/> Non-ISBA Members - \$405	<input type="checkbox"/> Para-Professionals - \$180
<input type="checkbox"/> Judges - \$70	<input type="checkbox"/> Law Students - \$40

Method of Payment: ☐ Check enclosed ☐ Check Number: _____
☐ Master Card ☐ Visa ☐ American Express ☐ CLE Season Pass

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Special Considerations (vision, hearing, etc.): _____

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LAW BOOKS — Drake Law Review (1:1 to 52:1); Iowa Law Review (1:1 to 86:1); Northwestern Reporter (Full set); Northwestern Reporter 2d Series (Vols. 1 to 538); Iowa Code Annotated (with pocket

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Disciplinary ACTIONS

**Cami N. Eslick,
Indianola, Iowa
Supreme Court Decision,
Jan. 30, 2015
Thirty-day License Suspension**

The respondent, Cami N. Eslick, was admitted to the bar in 2005. She has operated a solo practice in Warren County since 2008.

In 2011, an auditor from the Client Security Commission instructed Eslick to rectify several deficiencies in her trust accounting practices. Following up on those instructions, the Client Security Commission audited Eslick again in January 2013 after she received several trust account overdraft notices. The auditor requested numerous documents from Eslick, including trust account bank statements, receipt and disbursement journals, ledger records, reconciliations and a check register. However, Eslick failed to provide them promptly.

The Client Security Commission issued a notice of delinquency March 22, 2013, and April 8, Eslick produced some of the requested documents. The auditor examined the documents and found the funds in Eslick's trust account were nearly \$8,000 short. In several instances, Eslick's records showed clients were credited for funds received, but no corresponding deposits were made to the trust account. Exacerbating the problem, Eslick failed to maintain records mandated by court rules and neglected her obligation to perform monthly trust account reconciliations. Further, the auditor determined Eslick had commingled personal funds—derived from an operating loan from her father—with client funds in the trust account. Eslick explained that she considered the clients' funds she didn't deposit in the trust account "as funds being removed from" that operating loan. However, she completely depleted the loaned funds and withdrew client funds before earning them. In April 2013, Eslick deposited funds to bring the trust account into balance.

On May 6, 2014, the board filed a complaint with the grievance commission alleging Eslick violated Iowa

Rule of Professional Conduct 32:1.15 and Iowa Court Rules 45.1, 45.2, and 45.7. The complaint alleged the audit revealed several instances of misconduct on Eslick's part: failing to deposit all unearned fees and prepaid expenses into her trust account, commingling personal funds with those of her clients, failing to maintain a receipt and disbursement journal and check ledger for the trust account, failing to perform trust account reconciliations, withdrawing fees from the account without notifying clients, failing to maintain copies of accountings to clients, and operating with a deficiency of nearly \$8,000 in her trust account. On June 27, 2014, Eslick filed an answer admitting each of the violations alleged in the complaint.

On Aug. 27, 2014, the matter came on for hearing before the grievance commission. Eslick expressed remorse, stating, "There are no excuses for not keeping my books. I knew better." She explained she had neglected her trust accounting obligations because she took on more clients than she could handle and became overwhelmed. She noted despite her record-keeping and accounting missteps, no clients were financially harmed; and since the 2013 audit, she has reformed her trust accounting procedures such that her accounts balance "to the penny" every month. Eslick emphasized her violations of the applicable rules were committed without intent to defraud or steal from her clients.

The court found that Eslick's failure to deposit all client funds in a trust account, as required by Rule 32:1.15(c), also constituted a violation of Rule 45.1.

Eslick admitted she did not maintain the journals or ledger records and did not perform monthly reconciliations, which violated rule 45.2(3).

Two provisions of Rule 45.7 are applicable here. First, "[a] lawyer must deposit advance fee and expense payments from a client into the trust account and may withdraw such payments only as the fee is earned or the expense is incurred." Iowa Ct. R. 45.7(3) (emphasis added). Second, "[a] lawyer accepting advance fee or expense payments must notify the client in writing of the time, amount, and purpose of any withdrawal of the fee or expense, together with a

complete accounting." Id. r. 45.7(4). The court found that Eslick had violated both of these provisions.

Eslick's license was suspended for 30 days. The court noted in its decision that the sanction imposed considered that Eslick did not intend to defraud her clients, but relied on the following: her failure to make trust account deposits or account for withdrawals, and her wholesale neglect of the obligation to maintain records created a pattern of rule violations, [being in line with previous and similar decisions on this issue]; and finally her previous public reprimand made a suspension appropriate in this case.

**Seth Eugene Baldwin,
Shenandoah, Iowa
Supreme Court Decision,
December 12, 2014
Three-Month License Suspension**

This action arose from Mr. Baldwin's representation of a single client, Candace Johnson. Candace retained Mr. Baldwin to modify her divorce decree after her ex-husband Randy acted threateningly towards their minor children. Baldwin filed an emergency temporary order for sole custody, without a required affidavit. The application was denied, and Randy filed a modification petition. Baldwin cross-petitioned.

During the pendency of the modification, two CINA actions were filed which alleged Candace was engaged in drug use and dealing. Baldwin briefly attended the hearing and informed the court he was not representing Candace (which "surprise[d]" her).

As part of the modification proceeding, Baldwin insufficiently served two subpoena duces tecum and failed to provide copies of the subpoenas or subsequent motions to compel to Randy. The court quashed the subpoenas and granted attorney fees of \$1,260.40 against Candace. Baldwin failed to timely prepare and file exhibit and witness lists, resulting in a continuance of trial and an order of \$1,874.90 in attorney fees against Candace. She terminated Baldwin's representation and he claimed a retention lien under Iowa Code section 602.10116 for unpaid services.

The Iowa Supreme Court disagreed with the board that Baldwin's filing of an emergency temporary order and multiple procedural violations showed incompetence under Rule 32:1.1. However, the court found Baldwin violated Rule 32:1.3 requiring "diligence and promptness in representing a client," Rule 32:3.4(c) for knowingly disobeying obligations to a tribunal, and Rule 32:8.4(d) for conduct prejudicial to the administration of justice. In addition, the court agreed with the board that Baldwin had no claim to unpaid fees and improperly asserted a retaining lien in violation of Rules 32:1.15(d) and 32:1.16(d). The court found violations of the same rules for withdrawing funds from the trust account before earned, and not providing notices, accountings, or itemizations of fees.

The court suspended Baldwin's license for three months, and required all client property and unearned fees to be returned to Candace and attorney fee judgments to be paid as conditions of reinstatement.

Disciplinary opinions are summarized by members of the Young Lawyers Division's Ad Hoc Disciplinary Committee.



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At age 80, Dwight James expresses his passion for life as a mediator and portrait artist

'I'm not going to die on the vine waiting for life to take me under,' he says

By Steve Boeckman, Assistant Communications Director

Dwight James has crammed a lot into his 80 years of life. Professionally, the octogenarian was president of the ISBA's Young Lawyers Division back in the 1960s, founded the association's Independence of the Judiciary Committee which he still serves as chair, developed a successful trial practice, and was one of the founders of the Iowa Supreme Court's Commission on Planning for the 21st Century and the C. Edwin Moore Inn of Court.

At the same time, he raised five children with his wife, Lois, — all born within seven years —, and developed an interest in painting.

Today, the painting, specifically painting portraits, and presiding over mediation cases one or two days a week take up his time. And, he's enjoying himself immensely, just as he did when he was practicing law as a litigator.

"I determined early on that I was going to develop something that I could do when I hung things up that would carry me on," he says. "My father (a lawyer in Des Moines) retired early with no outside interests. I could see he was bored and somewhat depressed. He sat in front of the television all day watching financial news.

"I thought maybe I would retire early — 65, maybe 70, maybe 75," he continues. "I enjoyed the practice of law just about every day, but trials are exhausting and, at 75, it takes longer to recover after the trial is over. You can't carry on for day after day."

James finally quit trying cases about five years ago after a career as a trial lawyer that began when he joined the Polk County Attorney's office out of Drake University Law School in 1961. He remains active in the ISBA, however, primarily as the founder and long-time chair of the association's Independence of the Judiciary Committee.

The idea for an organization that could swoop in and defend judges who were being unfairly attacked actually began with the American Board of Trial Advocates (ABOTA), he recalls. He convinced ABOTA leaders that it would be better if the committee was under the auspices of the ISBA.

Because of the rapid response required, the committee was deliberately kept lean

— consisting mostly of the chair and the ISBA's executive committee. The chair (James) would formulate a response for the media and pass it through the executive committee, and either the president or James would send it to the media.

"It is a very quiet committee," he says. "The judges are aware we are there, and they appreciate the bar association for being there for them when needed."

He recalls many cases where he prepared responses in anticipation of an attack on a judge and had the responses in the can, then never had to use them. In those cases, "usually the judges and I agreed to let the attack go because a response would give the attack more publicity," he says.

While James' realization that he loved trial work began in the county attorney's office, he also knew that he had to get out of that office or he would become a career employee. So he joined the Dickinson Law Firm in 1963 to do trial work. There he litigated divorces, business disputes and plaintiff's personal injury cases. He decided he liked the idea of representing the underdog and injured people.

When the firm's senior litigator went on the bench, James was left as the person with the most litigation experience. He started taking on hospital negligence cases, which created perceived conflicts with the firm's representation of numerous doctor organizations.

In 1980 he and Mike Galligan started their own firm. A few years later Roxanne Conlin joined them and the firm was known as the James, Galligan, and Conlin law firm.

In 1988, he left that firm and joined with his son Fred to form The James Law Firm, PC. Dwight and Fred had many years of representing clients and preparing and trying lawsuits together. Today Fred does trial



The two Dwights (James on left) and Dinkla hold a portrait James painted of Dinkla a couple of months ago. James is thinking about offering his services as a portraitist to attorneys.

work and workers' compensation — "essentially what I used to do," he says.

These days, he rarely goes into the office, and doesn't participate in the ongoing representation of clients. He doesn't want to get tied into representing someone because that usually means a two- to three-year commitment "and I'm just not into that at this time in my life," he says.

Not that he regrets all those years of trial work. Not in the least. He feels fortunate that he got to try about every kind of case known to man — from anti-trust cases to product liability cases to personal injury and slander/defamation cases, business disputes and employment issues. He's proud of the fact that in the late 1960's he got the largest verdict ever in the state for a personal injury case.

Looking back on his career as a trial lawyer, he says the trial process is the same whether it's a dog bite case or an anti-trust case. He never tired of it. "I just didn't know you couldn't do it," he said of some of the cases.

Plus, he says he is "cursed" with a love

for people. “And, if I could be a knight in shining armor or a fire horse running to the fire, I wanted to be there for them. If we lost, that was a heavy, heavy burden.”

His current work as a mediator offers much the same fulfillment as his trial work. He says he gets to interact with people at their most vulnerable times. They’re so afraid they’re going to be taken advantage of. Or they want to take advantage of someone else. The mediator’s job is to lead them in a caring way to a resolution.

“I always tell people that I’m a little schizophrenic because I have to like both parties,” he laughed. “And, I do. I’m also lucky I get to work generally with experienced attorneys.”

James says he has had the opportunity to mediate a number of serious situations — wrongful death, severe burns, paralysis. Those things take a huge toll on people’s lives. He helps them walk through the process of finding something that’ll be acceptable to them, while at the same time helping the defendants lift heavy burdens from their shoulders.

“It’s just such an honor to be asked to do that,” he says. “This is God’s work. I’m so lucky to be able to do that with good lawyers and good people.”

James is applying some of the same principles he learned as a trial lawyer, and now a mediator, to his painting. As with his time as a trial lawyer, he’s always trying to be better.

“I don’t think you ever arrive as an artist,” he says. “You’re always trying to be better.

You are always learning, and the more you do, the more you learn.”

As with many things in his life, he developed an interest in painting early on. He had always done “some funny drawing,” as he describes it — “cartoon sort of stuff.” He started drawing sketches of people in depositions and hearings, and in trials when the proceedings didn’t concern anything he was doing.

Those early sketches were almost like stick figures. Then he began to add shading to make them look more real, more three-dimensional.

In 1968, Hedo M. Zacherle, general counsel for the Register & Tribune who later worked as Ethics Counsel for the ISBA, got him involved in a sketch club that met every Saturday afternoon in Des Moines’ Greenwood Park. He left the club from 1972-1986 while his children were growing up, then rejoined. The club members, all men in those days, created primarily pen and ink and watercolor images which they exchanged freely among each other — “except for Hedo,” James laughs. “He always wanted to be paid for his art; he was tighter than bark on a tree.”

At age 28, James had started taking some beginning design and painting classes at the Des Moines Art Center, but had never painted in watercolor. Nonetheless, he loved the experience of hanging out with the people in the sketch club.

“I loved it because I got to hang out with these older men — editorial writers, columnists, contractors, business people,” he says.

“They were all quite a bit older than me. Now I’m the older guy and we have young people coming in — men and women.”

James belongs to another club of sorts, today, one that involves portraiture, which is his current love in the art world. Every Wednesday from 1-4 p.m., he and four-to-eight other artists — men and women — gather in his studio to paint live models.

“Drawing the human form is one of the best things you can do,” he says. To get everything in the proper perspective requires knowing the relationships of different features to one another. For example, he says, the width between a person’s eyes is one eye. The width of the head is five eyes. The corners of the mouth fall under the irises of the eyes. The length of the arm from shoulder to elbow is one head.

James has been painting portraits only about four years. To date, he has painted slightly more than 100. The idea behind doing so many is to get better at it, he says. “Every time I do one, I think I can do a little better job.”

His goal as a portraitist is to move from painting a likeness to painting a good piece of art. The difference in the eye of the beholder is that a good piece of art will have a greater appeal and a better sense of design, layout and coloration.

“The ordinary person senses a good piece of art differently than a likeness,” he says. “It’s pleasing to them in some way. They may not be able to explain why, but it’s pleasing to them.”

The differences might be in the turning of the eyelid, or the shading under the nose, he adds. Those are things he is beginning to see now that he didn’t see earlier.

As a result, the time it takes him to paint a portrait has increased. When he first started, he could get a likeness of a person in a couple of hours. Now it takes five or six hours or more to capture the nuances of the person’s visage.

“It’s like life,” he explains. “As you go through life, you see changes you need to make that you didn’t see when you were younger. But now they make sense because we can see better than we could when we were younger. So we don’t make some of the same mistakes again, hopefully.”

Despite believing that he is doing the “best kind of work a human being can do,” James feels like he’s not as driven as he thinks he should be with his art. He knows of one artist in Maquoketa, Iowa, who goes to her studio about 10 in the morning and paints until 2 a.m., the next day. He typically has coffee with a friend in the morning, then goes down to his studio and paints or reads a book until about 5 p.m.



James gazes at a portrait of his daughter, Elizabeth (Libby) on one of his easels. Libby, a former lawyer now third-grade teacher in Meadville, Penn., graduated from Drake University Law School as did her father. The fourth of his five children was student bar president in the early 1990s, following her father who was student bar president in 1960.

Based on all he has done in his 80 years of life, no one would expect anything different.

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