



THE

Volume 76 Number 9 October 2016

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The IPOST is a medical order for Iowans of all ages who have a chronic, critical medical condition or are terminally ill. It is a portable form, designed to go with an individual across care settings, and may be honored by health care providers including emergency responders. Learn what you and your clients need to know in this article.

By Mercedes Bern-Klug, Elizabeth A. Byram, Jane Dohrmann and Greg Kenyon

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ABOUT THE COVER

Justin Gross and Christopher Rottler, both founding partners of Community Lawyers of Iowa, PLC, work to enhance access to justice in Iowa and lead a growing, successful practice. They were photographed near their firm's office in Des Moines' "6th Ave. Cultural Corridor" on Sept. 14. On page 6, they tell the story of their firm. Their mission and passion for their practice provides the perfect framework for this issue of The Iowa Lawyer.

Photo credit: Jason Ickowitz Photography.

Technology improves access to justice

By Dennis Groenenboom, Iowa Legal Aid Executive Director

Providing access to justice for Iowans is an on-going challenge in our state. Iowa Legal Aid uses innovative technologies to help more Iowans with their legal issues.

All Iowans can use the statewide website, www.iowalegalaid.org, to get information about the law and their rights and responsibilities. Materials are available on a wide-range of issues, such as domestic relations, housing, foreclosure, powers of attorney and public benefits. There are links to the Equal Justice Journal, a quarterly publication that provides timely information about new or reoccurring issues facing Iowans. Several Iowa Legal Aid booklets are also available on line, including “Domestic Abuse and the Law” and “Small Claims Court.” The Iowa Legal Aid website also contains a chat feature, LiveHelp, for assistance in finding information on the website.

Iowa Legal Aid’s website also has a link to an online interactive intake interview. Those in need of help are able to apply online 24 hours a day, seven days a week. The online interview takes about 10 minutes to complete. Some applicants use the online intake when they need to apply without being overheard. Advocates or social workers often use the online intake interview to help people apply. There is a place in the application for the person helping someone apply to enter his or her name.

The newest technology used by Iowa Legal Aid to make information available to Iowans are apps for phones and tablets. Iowa Legal Aid developed a “buying a used car” app to help Iowans, particularly first-time used car buyers, determine how to be an informed consumer and be aware of potential legal problems when buying a car. The latest app is the Iowa Legal Aid Disaster Relief app. It will help Iowans prepare before a disaster strikes or find the help they need, both legal and otherwise, during or after the disaster. The apps are available for free for both Android and Apple products, by searching for Iowa Legal Aid in the app stores.

Much of Iowa Legal Aid’s technology has been developed with the aid of grants from the national Legal Services Corporation. Through a network of national technology partners, Iowa Legal Aid learns about ways technology can improve access to justice for all Iowans, but particularly for low-income Iowans.

If you would like to know more about how Iowa Legal Aid uses technology, email Iowa Legal Aid at info@iowalaw.org. If you want to volunteer and help expand access to justice, go to www.probono.net/iowa and click on Volunteer.

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Retention Election

For the last several months campaign messages have dominated news media outlets and commercial advertising space, emphasizing the importance of the presidential election in November. For most Americans, the concept of representative democracy is easy to grasp—the executive and legislative branches exist to exercise the will of the majority. Therefore, it is important to cast votes for president, U.S. House and Senate, governor and state legislature. Unfortunately, more frequently we are seeing voters confuse political elections with judicial retention votes.

Based on a principle nearly 200 years old, Iowa’s complex Merit

Selection process, which has been in place since 1962, protects citizen rights and follows the advice of our country’s founders. Instead of requiring judicial officers to run against one another through the political process, Iowa’s system requires those who wish to sit on the bench to wait for a vacancy in their districts. Applicants then submit information to a local, non-partisan commission. The commission consists of five local attorneys and five laypersons, and is chaired by the senior judge of the district. The commission, in turn, selects two or three finalists to send to the governor. After an intensive interview process, the governor makes the final selection.

This system utilizes the concept of balance between the three branches of government to ensure independent courts. The only applicants eligible for consideration are judges and attorneys whose peers recognize their competence, character and commitment to impartiality.

After a judge or justice has served at least one year, (and again every six years thereafter; eight years for supreme court justices), Iowans are invited to examine their records. These retention votes act as a final check on incompetence and corruption.

The fluid nature of public opinion is precisely why we must protect the courts from political headwinds, regardless of our personal beliefs on individual rulings. Examination of each judicial officer’s contribution as a whole is necessary to retain exceptional leadership and commitment to justice. As an example, consider a few of Iowa Supreme Court Chief Justice Mark Cady’s accomplishments as head of the Judicial Branch:

- Instituted and expanded drug, mental health and veteran courts to divert low-level offenders, offer effective treatment and reduce recidivism.
- Established special business courts to streamline litigation.
- Transitioned Iowa to an electronic filing system (EDMS), which speeds up the legal process and assists clerk of court offices.
- Fostered a culture of openness by holding supreme court cases in rural and urban venues across the state.
- Advocated strongly for full judicial branch funding at the statehouse.
- Committed to provide access to justice for all Iowa citizens.

Whenever the majority asserts its will through the legislative process there will always be a smaller core of people who will be negatively affected. It is the responsibility of the courts to ensure that these impacts are neither illegal nor unconstitutional. Unlike a political race, retention votes are not intended to serve as a referendum on the popularity of a judicial officer’s decisions. Rather, the retention vote serves as shorthand for one, all-important question:

Has this judge or justice been impartial in his or her rulings, regardless of politics or popularity?

Your vote in the retention election is imperative to maintain independent and virtuous courts in Iowa.

Thank you for allowing me to serve.

Arnold O. Kenyon, III
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All rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous judiciary.*

**Letter from Andrew Jackson to Andrew Jackson Donelson (July 5, 1822) (On file with the Donelson Papers, Library of Congress)*

How community law firms can increase access to civil legal services

By Christopher Rottler and Justin Gross

On Sept. 22, Chief Justice Mark Cady signed an order appointing commissioners to the Access to Justice Commission to help “find solutions that will best serve Iowans who may encounter barriers to or difficulties with fully accessing the Iowa justice system.” The creation of the commission was a recognition by our supreme court that there is a gap in affordable civil legal services between those who qualify for free legal assistance and those who can afford private representation.

Community Lawyers of Iowa, PLC, (CLI) is a for-profit law firm that strives to achieve many of the goals of the new commission. Launched in 2014, CLI has a mission to increase access to affordable civil legal services. We are now two years into our experiment and are excited to share some of our experiences with *The Iowa Lawyer*.

Origins

In the spring of 2013, we were both working as staff attorneys in the Des Moines office of Iowa Legal Aid where we had spent several years gaining valuable experience in the broad areas of civil poverty law. We had also learned that there were not enough resources to serve all those in need.



The Community Lawyers of Iowa, PLC, team at the conference table in their office in Des Moines’ “6th Ave. Cultural Corridor”. Pictured from left to right: Justin Gross, Martha Sandoval Magallanes and Christopher Rottler. *Photo credit: Jason Ickowitz Photography.*

In 2010, federal funding cuts necessitated the enactment of a freeze on the hiring of new staff members. In December 2011, 24 staff positions remained vacant. In 2015, Iowa Legal Aid had a 39 percent decrease in the number of closed cases compared with 2010, which was directly attributable to reduced funding and staff. Each year 11,500 families are turned away or underserved due to lack of staff resources.

Affordability from the private bar did not appear to be getting any better either. According to the ISBA 2011 Economic Survey, less than 30 percent of Iowa attorneys had hourly rates of less than \$150/hour. According to the ISBA 2015 Economic Survey the median hourly rate in Iowa was \$199/hour. It was under these pressures that the idea of Community Lawyers of Iowa was hatched.

Our business model

CLI is a general practice law firm with a focus on family, mediation, immigration and probate law. We are increasing access to civil legal services through the use of several strategies including sliding-scale fees adjusted to household income, limited scope retainers, unbundled services, flat-

rate fees, pro-se assistance, installment agreements and cooperation and coordination with non-profit service providers. Our sliding-scale hourly rates are based on the federal poverty guidelines and can be calculated on our website prior to scheduling a consultation.

Some have referred to CLI as a “low-bono law firm”, but that is not a term that we feel provides an accurate description of our mission because we also represent clients at market rates. As a community law firm we want to serve clients across the spectrum of incomes representative in our community, and having a sliding-scale allows us to do this. Indeed, for the business model to thrive we must have

clients with diverse incomes.

After being in operation for two years we are happy to report that business is thriving. In our first fiscal year, we had 421 consultations with 226 ending in retainers and some form of representation. All of those cases were referrals from nonprofit agencies, other law firms or current clients. We have not spent any money on marketing. By using our sliding scale, and when compared to the median hourly rate of \$199/hour for Iowa attorneys, CLI was able to provide the equivalent of \$250,000 in free legal services in our first 18 months of operation. This is the equivalent of 25 attorneys providing 50 hours of pro-bono services at the median hourly rate. We believe that this is a business model that can be replicated by other law firms to help meet the gap in affordable civil legal services.

Looking forward – law office incubator

The legal incubator movement is rapidly spreading across the country and we believe central Iowa is ripe for such a project. Lawyer incubators have emerged as models that enable newly-admitted lawyers to acquire the range of skills necessary to launch successful practices that also expand access to legal services for those of low and moderate incomes. The first incubator was established at the City University of New York in 2007. Today, there are over 60 incubators nationwide.

Participants in law incubators are often required to contribute a certain number of pro-bono hours or to use reduced fees in exchange for the mentorship and subsidized overhead offered by the incubator. While CLI is neither a non-profit law firm nor an incubator, our business model provides a proven format for launching a small law business while also increasing access to legal services.

CLI is committed to helping establish a law office incubator in central Iowa. We have no doubt that a law incubator would further increase access to justice for the underserved while better preparing new attorneys to handle the stresses of run-

ning a solo or small practice. It would be a win/win for the legal community and the general community.

Editor's note: Look for an interview with Fred Rooney, designated "Father of Incubators" by the ABA Journal (Sept 2013) and creator of the first legal incubator in 2007, in the next issue of The Iowa Lawyer.



Christopher Rottler is a founding partner of Community Lawyers of Iowa, PLC. Prior to that he was a staff attorney at Iowa Legal Aid from 2007-2014.



Justin Gross is a founding partner of Community Lawyers of Iowa, PLC. Prior to that he was a staff attorney at Iowa Legal Aid from 2008-2014.

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It's still Cady's Court: A statistical review of the Iowa Supreme Court's 2015-16 term

By Ryan Koopmans

Here's a look at the Iowa Supreme Court's 2015-16 term, by the numbers. If there's a theme this year, it's what is in the title: It's still Cady's Court.

In addition to being the chief — which, by itself, is enough to give the court its name — Chief Justice Cady was in the majority in all but three cases and in every case but one in which the justices split 4-3. So where Cady goes, the court goes.

Basic case stats: The Iowa Supreme Court issued opinions in 96 cases this term; three additional cases were dismissed, and one case (*State v. Pettijohn*) was held over for the 2016-17 term. Of those 96 cases, 13 were disciplinary orders (10 of them related to attorneys and three related to judges), so that leaves 83 appeals, the type of cases that we normally think of when discussing Iowa Supreme Court decisions. That's consistent with the caseload for past terms: 83 appeals in the 2012-13 term, 87 in 2013-14, and 86 in 2014-15.

As far as subject matter goes, the 83 appeals break down into these (sometimes rough) categories: 45 civil; 35 criminal; and three juvenile.

Direct appeal vs. further review: Iowa has a defective appellate system, which means that even though we have an intermediate appellate court — the Iowa Court of Appeals — all trial-court appeals go to the supreme court, which then decides whether to keep the case or transfer it to the court of appeals. Most cases (over 95 percent) are transferred, but the losing party at the court of appeals can ask the supreme court to grant “further review” of the court of appeals’ decision.

This term, 58 percent of the supreme court's cases (48 of the 83) took that path: they were transferred to the court of appeals and then reviewed by the supreme court. That's a slight change from past terms. Since the Iowa Supreme Court started the term system, and until this year, the supreme court's further-review docket has represented less than half of its appeals: 43 percent in 2012-13; 43.6 percent in 2013-14; and 46.5 percent in 2014-15.

The supreme court's criminal docket this term was almost entirely a further review docket. Of this term's 35 criminal cases, seven were screened for direct supreme court review, but two of those cases were certiorari proceedings (meaning that they weren't the typical criminal appeal) and one was an interlocutory ruling (again, not typical). Of the four standard appeals, one (*State v. Walden*) was a review of a district court's order dismissing a criminal charge as time barred (another usual order), and another case (*State v. Querrey*) was just a tag-along to the supreme court's decision last term in *State v. Louisell*.

So that leaves just two criminal cases that were heard directly by the supreme court — *State v. Seats* and *State v. Senn*. Both were decided on 4-3 votes, and both involved constitutional issues. The takeaway, it seems, is that if the supreme court doesn't transfer a criminal case to the court of appeals, it's either an unusual ruling or a hotly contested issue. (In *Senn*, the justices split 4-3 on the outcome, but 3-1-3 on the legal reason for the outcome.)

Dissent: The Cady Court continues to disagree more than its predecessors. This term, a third of the court's decisions (28 of 83) were non-unanimous. That's in line with the three previous terms but comparatively high if we look back before Chief Justice Cady took the helm and Justices Waterman, Mansfield, and Zager joined the Court in 2011. From 2006-2010, the justices disagreed in just seven percent of their cases (excluding disciplinary cases). That equates to about eight non-unanimous decisions per year. Since the 2012 term, the court has been issuing an average of 30 non-unanimous decisions per year.

Because the Iowa Supreme Court generally hears the most important — and often most difficult appeals — it's not surprising that the justices are disagreeing as much as they are. It's perhaps more surprising that they used to agree as much as they did. So the fact that the justices continue to disagree more often isn't a bad thing. In fact, the opposite is probably true — dissenting opinions keep the justices on their toes and keep the majority opinions tighter.

(On that subject, here's what Justice Ginsburg said after Justice Scalia's passing: “We disagreed now and then, but when I wrote for the court and received a Scalia dissent, the opinion ultimately released was notably better than my initial circulation.”)

Justice agreement: The justices continue to break down into fairly consistent voting blocs, with Justices Wiggins, Hecht and Appel agreeing with each other most of the time; Justices Waterman and Mansfield agreeing with each other most of the time; and Chief Justice Cady and Justice Zager usually going back and forth between the two groups — and thus usually deciding which group is in the majority. The chart below shows how often each justice agreed with his colleagues in the non-unanimous cases.

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William 'Bill' Bartine, 64, of Des Moines, Iowa, died Aug. 26. Bartine was born in Marshalltown, Iowa, in 1952. He received his JD from the University of Iowa College of Law, after graduating with a BA in Political Science from Iowa State University. He worked as an attorney for the Belin McCormick law firm in Des Moines for the past 23 years.

Marion Beatty, 63, of Decorah, Iowa, died Aug. 29. Beatty was born on a farm in Vinton, Iowa, in 1953. He received his J.D. from the University of Iowa College of Law in 1977, after graduating from Luther College in Decorah, Iowa, with degrees in English and History. He joined what is today the Miller, Pearson, Gloe, Burns, Beatty & Parrish Law Firm in Decorah after law school. During his 39-year career, he served as president of The Iowa State Bar Association from 2006 to 2007, and on various ISBA committees. In 2012, he received the ISBA's Award of Merit, the highest honor the association awards annually to one of its members. He received the award for his service as the ISBA president, his presidency of two other statewide professional organizations – the Iowa Defense Council Association and the Iowa Academy of Trial Lawyers – along with his overall professionalism and success as a lawyer.

Lawrence Carstensen, 86, of Clinton, Iowa, died Aug. 21. Carstensen was born in 1930 in Clinton. After serving in the U.S. Navy, he graduated from the University of Iowa College of Law in 1955. In 1976 he attended the National College of the State Judiciary in Reno, Nevada. During his 20-year career, Carstensen also served in the Iowa House of Representatives for six years, as the Clinton County Attorney for six years, as a member of the Iowa Board of Parole, and was appointed in 1975 as a judge in the Seventh Judicial District of Iowa.

Gerald M. Kraai, 74, of Kansas City, Missouri, died Apr. 1. Kraai was born in 1942 in Orange City, Iowa. He received his J.D. from the University of Iowa College of Law. He began his practice in Sioux City, Iowa, until joining a firm in Kansas City in 1981. As a trial and appellate lawyer, he tried over 60 jury cases and was involved in state or federal court litigation in 19 states.

Jay Phillip Stovall, 83, of Altoona, Iowa, died Aug. 24. Stovall was born in 1933 in Des Moines, Iowa. He served as a medic in the U.S. Army in Korea. Stovall retired, several times, from being a teacher and a lawyer and had it not been for a stroke, would have found a way to teach law as a missionary.

John R. Jack' Ward, 81, of Beaverdale, Iowa, died Aug. 7. Ward was born in 1935 in Des Moines, Iowa. He received his J.D. from Drake University Law School in 1959. He practiced law in Des Moines for 41 years until his retirement.

Members who know of a colleague passing should email the membership department at membership@iowabar.org and include a link to the obituary and/or funeral information. To sign up for the ISBA obituary notification service, log into your iowabar.org account, click on "Manage Profile" and choose the "Edit Bio" option. Scroll down to the option "Obituary Notification," select "yes," then save the changes. Once the option is elected, you will receive an email notification anytime a member passes away, the same day the ISBA receives the notification.

2015-2016 Term: Justice Agreement – Non-Unanimous Cases

| | Wiggins | Appel | Hecht | Waterman | Mansfield | Zager |
|------|---------|-------|-------|----------|-----------|-------|
| Cady | 50% | 61% | 61% | 46% | 46% | 54% |
| | Wiggins | 89% | 82% | 18% | 18% | 32% |
| | | Appel | 93% | 21% | 14% | 36% |
| | | | Hecht | 21% | 14% | 29% |
| | | | | Waterman | 86% | 64% |
| | | | | | Mansfield | 64% |
| | | | | | | Zager |

Chief Justice Cady's numbers, in particular, are the mark of a swing justice. All of them fall around the 50 percent mark -- meaning that he agreed with each one of his colleagues about half the time when the vote was split. And when he did agree with his colleagues, they almost always found themselves in the majority. As noted in the opening, Chief Justice Cady was in the dissent just three times this term. And in the 19 cases that were decided on a 4-3 vote, the chief was in the majority every time but one -- an 18-1 record. (The Cady Court, indeed.)

Here's how often the other justices found themselves in the majority this term when the vote was split:

2015-2016 Term: Percentage in the Majority – Non-Unanimous Cases

| 2015-2016 Term: Percentage in the Majority – Non-Unanimous Cases | | | | | | |
|--|---------|-------|-------|----------|-----------|-------|
| Cady | Wiggins | Appel | Hecht | Waterman | Mansfield | Zager |
| 89% | 61% | 71% | 71% | 50% | 43% | 57% |

Opinion authorship: As he often is, Justice Mansfield was the most frequent opinion writer this term, authoring a total of 26 opinions. Justice Wiggins (who was the most prolific writer last year) wrote 25 opinions, while Justice Appel garnered the most majority opinions (16) and Chief Justice Cady wrote the most concurring opinions (5). The full list for opinions authored by each justice is below. Combined -- and including three per curiam opinions -- the justices authored 147 opinions in 96 cases. Taking out the disciplinary decisions, the justices wrote 135 opinions in 83 cases, for an average of 1.6 opinions per case.

2015-2016 Term: Opinion Authorship – All Cases

| 2015-2016 Term: Opinion Authorship – All Cases | | | | |
|--|----------|------------|---------|-------|
| | Majority | Concurring | Dissent | Total |
| Cady | 10 | 5 | 1 | 16 |
| Wiggins | 14 | 2 | 9 | 25 |
| Hecht | 13 | 1 | 4 | 18 |
| Appel | 16 | 2 | 4 | 21 |
| Waterman | 15 | 2 | 6 | 23 |
| Mansfield | 14 | 2 | 10 | 26 |
| Zager | 10 | 2 | 3 | 15 |



Ryan Koopmans, an attorney at the Nyemaster-Goode law firm in Des Moines, Iowa, founded the Iowa Appellate blog called "On Brief." The blog is devoted to appellate litigation, with a focus on the Iowa Supreme Court, the Iowa Court of Appeals, and the United States Court of Appeals for the Eighth Circuit.

Iowa's Pro Bono Honor Roll 2015/2016

On behalf of The Iowa State Bar Association, the ISBA Public Service Project is pleased to again present the Pro Bono Honor Roll recognizing those Iowa attorneys who helped to make access to the civil judicial system available to hundreds of low-income Iowans in 2015/2016.

The honor roll is compiled from data provided by the Iowa Legal Aid Volunteer Lawyers Project, the Legal Aid Society of Story County, the Polk County Bar Association Volunteer Lawyers Project and the Pro Bono Project of Scott County, and is based on information attorneys reported to these organizations from July 2015 through June 2016.

Included in the honor roll are the names of those attorneys in each county who reported in 2015/2016 that they had closed one or more pro bono referral cases. A case is closed when all work on the case is completed and the final disposition of the case is reported to the volunteer lawyers project. The names that are highlighted in bold face type are attorneys who provided 50 or more pro bono hours. This is the aspirational standard established in Rule 6.1 of the Iowa Rules of Professional Conduct.

We thank all Iowa attorneys for their generous commitment and support of pro bono services to the public.

Adair: David L. Jungmann, Melissa S. Larson.

Allamakee: Charles R. Kelley Jr.

Benton: Mary Adams, **Ray Lough**, Mark Mossman, Deborah M. Skelton.

Black Hawk: Andrew Abbott, Kevin D. Ahrenholz, Timothy D. Ament, Samuel C. Anderson, Larry L. Anfinson, Kirsten N. Arnold, Charles Augustine, Judith R.

Benson, Tim C. Boller, Peter W. Burk, Jen Chase, Steven K. Daniels, Paul Demro, Kevin D. Engels, Hugh Field, Nina Forcier, Mark W. Fransdal, Linda A. Hall, John W. Harris, John J. Hines, Russell J. Hinze, Theresa E. Hoffman, **James Kalkhoff**, Rick R. Lubben, Timothy J. Luce, Erin P. Lyons, David J. Mason, John T. McCoy, Joshua M. Moon, Richard R. Morris, John S. Pieters Jr, Benjamin Roth, Paul T. Shinkle, Thomas Verhulst, Cheryl L. Weber, Steven Weidner, Natalie Williams Burris.

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Cherokee: Richard Cook, George W. Wittgraf.

Clarke: James W. Brown, Elisabeth R. Reynoldson.

Clay: Donald J. Hemphill, Scott A. Johnson.

Clayton: Gary Mick.

Clinton: Drew J. Chambers; Daniel Condon; **Blake Parker**.

Crawford: Maura Sailer.

Dallas: **Brenna Bird**, Scott Finneseth, Matthew J. Hemphill, Nadia Igram, Jonathan M. Kimple, Kara L. McClure, **Amy Skogerson**.

Davis: John R. Silko.

Decatur: Patrick W. Greenwood, James G. Rowe.

Delaware: **Daniel H. Swift**.

Des Moines: William J. Cahill, James W. Miller, William Monroe, Tim Roberts, Brent R. Ruther, Mitchell L. Taylor.

Dickinson: Edward W. Bjornstad, John Bjornstad, Bethany Brands Verhoef, John A. Flaten.

Dubuque: John R. Becker, Natalia Blaskovich, Dave Clemens, Steven J. Drahozal, Arthur F. Gilloon, Bridget L. Goldbeck, James Goodman, Jr., Danita L. Grant, Susan M. Hess, Stuart Hoover, Stephen Juergens, Brian J. Kane, Dean J. Konrardy, D. Logan Kutcher, Robert J. Murphy, Thad J. Murphy, John T. Nemmers, **Brian W. Peters**, Jamie Splinter, Sandra Trevino, Brenton M. Tunis, **Mark Willging**.

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These attorneys and law students volunteered to mediate cases but did not represent the clients:

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The IPOST and Advance Care Planning

By Mercedes Bern-Klug, Elizabeth A. Byram, Jane Dohrmann and Greg Kenyon

Many persons turn to attorneys to discuss their health care and end-of-life preferences and to request assistance in helping to ensure their wishes are honored. The Iowa Physician Orders for Scope of Treatment, Iowa Code Chapter 144D, became effective in July 2012. Although a medical order, lawyers—especially elder law and estate planning attorneys—need to be aware of IPOST. Lawyers often advocate for healthcare planning and can help educate clients about the availability of IPOST for those for whom it is appropriate.

The IPOST is a medical order for Iowans of all ages who have a chronic, critical medical condition or are terminally ill. It is a portable form, designed to go with an individual across care settings, and may be honored by health care providers including emergency responders. Specifically, for purposes of Iowa Code Chapter 144D, a “patient” is an individual who is frail and elderly or who has a chronic, critical medical condition or a terminal illness and for which a physician’s orders for scope of treatment is consistent with the individual’s goals of care.

The IPOST is part of the Physicians Orders for Life Sustaining Treatment paradigm which began in Oregon about 20 years ago and is now present or being developed in 47 states. (For more information, visit the POLST website, www.polst.org.) The motivation for the first POLST paradigm was the realization that people who had frequent medical emergencies were not getting the care they desired. In Iowa, the IPOST is available for persons of all ages, including children, who meet medical guidelines.

The POLST paradigm should include conversations about goals of care between the person and the health care provider, followed by the completion of the document. It is an opportunity for cooperation among healthcare practitioners across settings. Ambulance crews, emergency department staff, nursing homes, home health, hospice and other healthcare providers can all honor the healthcare choices of the individual if she or he is transferred across settings of care. The IPOST form should be reviewed whenever the person is transferred from one care setting or care level to another, when there is a serious change in health status or when the person’s treatment preferences change. For example, if the person is hospitalized, his or her goals of care should be reviewed before discharge, and the IPOST should be revised as needed.

A physician or other licensed independent provider and an individual (or surrogate) should engage in a goals-of-care discussion before completing the IPOST form. In order to be valid, the IPOST form must be signed by both a licensed independent provider and the individual (or surrogate).

The IPOST form offers medical choices in three sections:

- 1) whether cardiopulmonary resuscitation (CPR) is desired in the event that a person is found with no pulse and is not breathing,
- 2) if the person has a pulse and/or is breathing, the type of care desired (comfort measures, limited additional interventions, full treatment), and
- 3) if the person wants artificially administered nutrition (“no”, “for a defined trial period” or “on a long-term basis” food by mouth is to always be offered, if feasible).

The Iowa Department of Public Health oversees IPOST and has the form available on its website, <http://idph.iowa.gov/ipost>.

The IPOST is more comprehensive than an out-of-hospital do-not resuscitate order and is intended for individuals whose health professionals think they might die within a year or sooner. The form is to accompany the person across settings. For example, if emergency responders are contacted, they should be trained to ask if the person has an IPOST and to look for the form in the residence of the patient. They may comply with the medical orders expressed in the IPOST form in accordance with reasonable medical standards. The IPOST form should then accompany the person in the ambulance and to the emergency department.

The University of Iowa School of Social Work IPOST study

In the spring of 2016, a link to an on-line survey was emailed to 1,235 STAR volunteers (people who had enrolled in a University of Iowa registry of older adults

“During an IPOST discussion with a care center resident and her family, the resident indicated she wanted comfort care and did not want to return to the hospital for care. Her children were surprised to hear this, as they had not discussed goals of care. A daughter said, “But mom, you recently went to the hospital and you got better.” The resident then explained how she came to this decision. The family found the conversation helpful to understand what their mother wanted, and stated that they would honor her wishes.”

— A community member

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indicating their willingness to be contacted to participate in research projects). Seventy percent were women, almost half (46 percent) had more than a four-year college degree, and 68 percent were from Johnson County. Over half reported having a living will, or a durable power of attorney for healthcare. When asked if they had a conversation in the past five years with anyone about their healthcare preferences in the event they would be unable to communicate in the future, a higher percentage had discussed their health care preferences with their attorney (38 percent) than with their physician (22 percent).

The ages of the 294 respondents ranged from 50 to over age 85. The majority of respondents were between the ages of 65 and 74. The vast majority (85 percent) had not heard of the IPOST.

These results underscore the importance of attorneys helping to educate their clients about the availability of this medical order, and to encourage clients who are frail and closing in on the end of life to discuss this option with a physician or other licensed independent health practitioner. Attorneys should also be aware of and mention the IPOST statute to clients who are the surrogate decision-makers for frail elders and frail children, as the IPOST form can help communicate treatment choices even when the surrogate is not present to serve as an advocate.

Mercedes Bern-Klug is an associate professor at the University of Iowa School of Social Work.

Elizabeth A. Byram is a doctoral student at the University of Iowa School of Social Work.

Jane Dohrmann is the director of Honoring Your Wishes, Iowa City Hospice.

Greg Kenyon is co-chair of the ISBA Elder Law Section. He is a shareholder with Bradshaw Fowler Proctor and Fairgrave P.C. in Des Moines.

IN BRIEF

2016 Judicial Performance Review results published

The Iowa State Bar Association released the results of its biennial survey of judges standing for retention in this year's general election at a news conference in Des Moines, Iowa, on Sept. 12. The conference was led by members of the ISBA Fair and Impartial Courts Committee chaired by ISBA Past President Guy Cook, and was held at the ISBA headquarters.

In the survey, attorneys evaluated the 59 district court judges, four court of appeals judges and three supreme court justices based on 12 performance characteristics (10 for members of the appellate courts). A total of 1,495 attorneys responded to this year's survey.

The full results of the judicial performance review, including biographies of each judge or justice, are available now on the ISBA website: www.judicialfacts.org.



4th Annual Iowa Civil Rights Symposium And 1st "Build It Right Iowa" Conference



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Location: World Food Prize Hall
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-Mahatma Gandhi

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AIA Continuing Education

By attending the 1st "Build It Right Iowa" Conference, AIA members will earn 3 AIA CES HSW LUs. AIA Iowa is an AIA CES Approved Provider (#A023) with The American Institute of Architects Continuing Education System. Credit earned on completion of this program will be reported to AIA CES for AIA members. Certificates of Completion are available upon request.

Topics Include:

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- Compliance with Anti-Discrimination Laws
- Housing Design and Construction
- Employment
- Public Accommodation
- Education



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Iowa's Access to Justice Commission

On June 27, 2016, the Iowa Supreme Court, upon the recommendation of The Iowa State Bar Association, established the Access to Justice Commission.

In the order establishing the commission, Chief Justice Mark Cady noted that "the bedrock principle of our court system is that justice should be accessible to all persons." Yet in Iowa, as in other states, many persons of limited means do not have meaningful access to the legal system.

The purpose of the Access to Justice Commission is to study barriers to access to the legal system and develop meaningful solutions to limit or remove them. The Iowa Supreme Court expanded on the mission of the Access to Justices Commission in an order on Sept. 22, 2016. In the order, the Supreme Court directed the commission to:

- identify and assess the current and future needs of low-income Iowans for access to justice in civil matters by conducting a study of unmet legal needs;
- foster mutual collaboration among private lawyers, the legal services community, Iowa's law schools, not-for-profit organizations and other community service providers;
- explore initiatives designed to expand civil access to justice, such as increasing community education, enhancing technology and developing additional self-represented litigant assistance programs;
- propose recommendations on innovative ways of promoting

access to justice for individuals who cannot afford legal counsel or who chose to represent themselves in civil cases;

- identify changes in court rules, procedures and policies that may reduce barriers to Iowa's justice system.

The commission will build on the work of current legal aid providers, Iowa attorneys and the Iowa Judicial Branch. While Iowa legal aid organizations provide excellent services, the need far exceeds the ability of these organizations to meet it. In recommending the formation of an Access to Justice Commission, The Iowa State Bar Association recognized the dedicated and heroic efforts of existing legal service organizations and the voluntary contributions of thousands of Iowa lawyers, but noted that up to a million Iowans live at or below 125 percent of poverty level and are in need of assistance when legal problems arise. In addition, persons with moderate incomes often lack the necessary means to access the legal justice system. The commission will seek to build upon the outstanding work of current Iowa legal aid providers and attorneys in addressing unmet needs of Iowans.

The Iowa Judicial Branch has also addressed access to justice issues through its Pro Se Forms Committee, its expedited civil trial rules and the work of its Family Law Task Force. The commission will seek to assist the judicial branch in its ongoing access to justice efforts.

The Sept. 22 order named 27 members of the Commission. Members of the commission include Iowa lawyers, providers working for legal aid organizations, members of the business and academic communities, judges and court administrators, and community leaders.

I have been appointed by the supreme court to serve as chair of the commission. Des Moines attorney Anjie Shutts has been named vice chair. Chief Counsel to the Chief Justice Molly Kottmeyer will serve as secretary to the commission. The Iowa State Bar Association Public Service Project, in accordance with its 2016-2017 Interest on Lawyer Trust Account (IOLTA) grant, will provide administrative support to the commission through June 30, 2017.

The first meeting of the Access to Justice Commission will be Nov. 18, at the offices of The Iowa State Bar Association in Des Moines. The meeting will be open to the public.

On behalf of the supreme court, I wish to thank members of The Iowa State Bar Association who have spent countless hours on the work that led to the ISBA recommendation to establish the Access to Justice Commission.



Justice Brent R. Appel was appointed to the Iowa Supreme Court in 2006. Prior to his appointment, he practiced law in Central Iowa for 19 years.

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Al Ryerson
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Greg Weber
CPA/ABV, ASA



Jim Nalley
CPA/ABV, CFF, CVA



Jennifer Julander
ASA

Board of Governors Fall Quarterly Meeting – ISBA BOG acts on legislative agenda items, support for judicial retention election at quarterly meeting

During the fall ISBA Board of Governors quarterly meeting in Creston, the BOG acted on numerous section recommendations for the 2017 ISBA Affirmative Legislative Program and continued to monitor and further efforts related to the Nov. 8 judicial retention election.

Actions

Actions taken by the Board of Governors included, by section:

Business law

- Supported legislation that would amend the Model Business Corporation Act, Iowa Code Chapter 490, to authorize the creation of “Public Benefits Corporations.”

Family and juvenile law

Discussed a number of pieces of legislation, including some items carried over from the 2016 legislative session. It is anticipated the following pieces of legislation will be discussed and acted upon at the next board meeting:

- Legislation that amends Iowa Code Chapters 598.10 and 598.12 and creates new Iowa Code Sections 598.12A and 598.12B to define the roles of guardian ad litem and attorney for the child.
- Legislation that amends Iowa Code Section 598.19 to allow for waiver of the 90-day waiting period if the parties reached settlement using a collaborative law procedure.
- Legislation that amends Iowa Code Chapters 600, 600A, 714 and related references in other code sections for conformity to prohibit fraud in voluntary termination of parental rights and adoption.

Probate, trust & estate planning

- Approved support for legislation that adopts the Revised Uniform Fiduciary Access to Digital Assets Act.
- Approved legislation that amends Iowa Code Section 635.2 to require that the petition information requirements for small estates be consistent with the requirements required for regular estates.
- Approved support for legislation to amend the Iowa Uniform Power of Attorney Act to add a new subsection (10) to Iowa Code Section 633B.204 to clarify that an agent under a power of attorney may waive or relinquish a spousal right if the principal granted the agent general powers under the real property section 633B.204. This legislation would be retroactive to apply to the effective date of the IUPAA.
- Supported legislation that amends Iowa Code Section 235B.19(3)(a) to provide clarification regarding priority of notice required where an emergency order has issued for protective services.

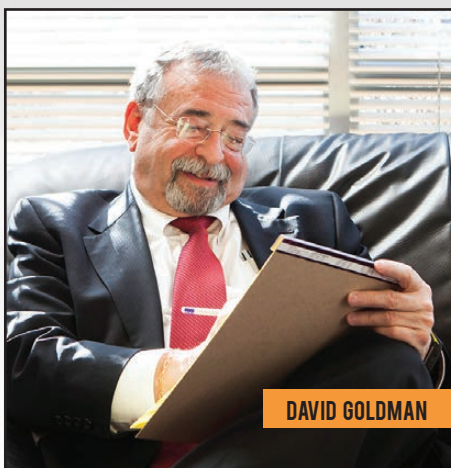
- Approved support for an amendment to Iowa Code Section 633.42 to change the request for notice section to allow for electronic notice to be given to those parties filing a request for notice in a probate
- Reauthorized placement on the affirmative legislative agenda the probate court cost bill (HF 2447) from the 2016 legislative session.

Real estate and title law

- Supported legislation that includes a drafting update to Iowa Code Section 649.5 regarding demands for quit claim deeds.
- Approved legislation that amends Iowa Code Section 447.7 to add a complete set of procedures to govern the redemption of tax sale parcels by minors and persons of unsound mind.
- Approved support for legislation that deletes Iowa Code Sections 535B.11 subsection 5, and amends Iowa Code Sections 655.1, 655.3 and 655.5 to provide for timely filing of releases or satisfactions of mortgages as well as penalties for failure to do so.

Additional actions taken by the Board of Governors included:

- Approved recommendation to submit two ISBA legal forms to the ISBA Family Law Section for comment prior to reconsidering whether to make the forms available to the public. The forms to be submitted are number 369, Power of Attorney RE: Temporary Delegation of Custody and ISBA legal form number 370, Power of Attorney for Medical Services: Delegation of Authority.
- Declined to authorize a member request to make the statutory Iowa Short Form Power of Attorney form available to the public via the ISBA website.
- Approved Elizabeth Reynoldson’s nomination to serve as a member of the board of directors for LawPAC.
- Approved additional support up to \$20,000 to fund judicial retention election efforts in the event that funds are needed.



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References Available On Request

- Approved that the name of the ISBA General Practice Section be changed to the Solo/Small Practice Section, and that additional funding and staff time be expended to develop a practice manual in furtherance of the development of a practice manual.
- Approved a resolution in support of state funding for civil legal services.

- Iowa Rules of Evidence—Chapter 5 of the Iowa Court Rules;
- Iowa Rule 22.12 relating to senior judges;
- Iowa Rule 39.18 on attorneys' succession planning.

Comments on the rules regarding electronic procedure may be submitted no later than October 14. All other comments may be submitted no later than October 31.

Cady stressed the importance of comments for attorneys' succession planning and the need for a process that works. To highlight the importance of input from attorneys and other members of the public, he noted the court's willingness to go back to the drawing board and delay the effective date of the current rule in order to find a solution to this serious need; currently, court rule 39.18 on attorneys' death and disability planning is scheduled to take effect Jan. 1, 2018.

In addition, Cady updated the governors on the work of the Iowa Family Law Case Processing Reform Task Force led by Justice Tom Waterman. The report is available on the judicial branch website.

Cady answered questions from governors regarding the fiscal year 2017 judicial branch budget and the Nov. 8 judicial retention election.

President's Report – *President Skip Kenyon*

President Kenyon remarked on the need to stress the court system's core function in state government prior to the Nov. 8 election. He emphasized the importance of bar members taking action to support funding for the courts. Kenyon went on to state that now is the time for members to contact their legislators to encourage adequate funding for Iowa courts because much of the budget for the court system will be set as early as December.

Kenyon's report included updates about and discussion on the ISBA Ad Hoc Strategic Planning Committee's work presented by governor and committee chair Bill Boyd.

ISBA Executive Director's Report – *ISBA Executive Director Dwight Dinkla and Assistant Executive Director Harry Shipley*

ISBA Executive Director Dinkla introduced the new ISBA Communications Director, Melissa

Reports

Dialogue with Iowa Supreme Court Chief Justice Mark Cady

Chief Justice Cady provided an overview of the supreme court's 2016 administrative term and encouraged public comment on proposed court rules and forms including:

- Iowa Rule of Civil Procedure 1.904 and Iowa Rule of Appellate Procedure 6.101;
- Iowa Rules of Electronic Procedure—Chapter 16 of the Iowa Court Rules;
- Iowa Rules of Appellate Procedure—Chapter 6 of the Iowa Court Rules;



ISBA President Skip Kenyon and Mary Ann Kenyon welcomed members of the ISBA Board of Governors and guests for dinner at the Three Mile Lake Lodge in Afton, Iowa, on September 25.



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Pictured from left to right: ISBA Vice President Tom Levis, ISBA Meetings and Events Director Lisa Hanson, Kari Ouder Kirk, ISBA President Skip Kenyon and ISBA Governor Mason Ouder Kirk.

Higgins. She provided the governors with information about her background and plans to further the ISBA's work.

Dinka and Assistant Director Shipley reported that they anticipate a demonstration of the new ISBA Find-A-Lawyer public website at the December BOG meeting.

Fair and Impartial Courts Report – ISBA Past President Cindy Moser

ISBA Past President Cindy Moser updated members of the ISBA BOG on the ISBA Fair and Impartial Courts Committee's work in lieu of chair Guy Cook. Moser stated that, to date, the focus of the committee has been primarily on education to make sure that Iowans understand Iowa's merit selection system. She went on to state that the judicial performance survey is an important educational tool. Moser noted that the committee hosted a successful press conference at ISBA headquarters on September 12 where members of the media were present and participated via live web feed. Moser advised that judicialfacts.org is up and running with over 4,000 hits as of Sept. 23; the goal is to get up to 10,000 hits.

Moser stressed to governors that commitment is instrumental in educating the public about the judicial retention election and that the influence of ISBA members cannot be overemphasized. She urged governors and members to utilize the education and training materials available via a toolkit to

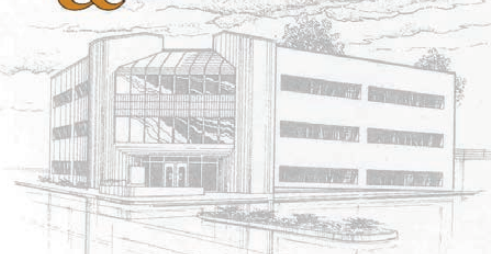
help carry the message including brochures, district specific election guides, retention talking points, a template for letters to editors and the judicialfacts.org website.

YLD President's Report – YLD President Reed McManigal

YLD President Reed McManigal reported that the YLD created an anonymous survey where members can submit questions. Also, the YLD's student debt survey response was robust. More information will be forthcoming regarding the YLD's efforts related to student debt.

McManigal noted that YLD leaders called 400 members in the past several weeks to learn more about their experiences as ISBA member and new attorneys. He informed the governors of plans to contact every YLD member to express thanks for their membership and learn more about their interests and needs. McManigal closed by stating that there will be an upcoming new mentorship program enrollment opportunity

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and that the YLD is continuing to make additional program improvements.

ABA Delegate Report – ABA Delegate David L. Brown

ABA Delegate David L. Brown provided governors with highlights from the 2017 ABA Annual Meeting in San Francisco, California. Brown reported that former U.S. Senator Tom Harkin and his accomplishments to further civil rights were celebrated at the meeting. Brown stated that the ABA created a report on the future delivery of legal services that opposes nonlawyers practicing law. He noted that nonlawyers are not authorized to practice law in Iowa. In closing, Brown encouraged governors to participate in the YLD mentoring program and he commended the young lawyers who initiated the program.

Dialogue with Incoming Office of Professional Regulation Director – N. Tré Critelli

Incoming Office of Professional Regulation Director Tré Critelli will replace Paul H. Wieck II when he retires on Dec. 22 after nearly 15 years of service. Critelli has been serving as assistant director of the Office of Professional Regulation and as the staff attorney for the Iowa Judicial Branch's Education Division since 2014. Critelli provided members of the board of governors with an overview of his plans for the OPR and answered questions.

LawPAC Update – ISBA Legislative Counsel Jim Carney

ISBA Legislative Counsel Jim Carney reported that Iowa LawPAC distributed approximately \$60,000 throughout the summer and fall. There are 14 incumbents lawyers running for election to the Iowa legislature and six other lawyers running for other elected offices. Carney noted that LawPAC is willing to support other people willing to listen to the ISBA's legislative priorities.

Reports from law school deans

Drake Law School – Dean Jerry Anderson

Dean Jerry Anderson remarked on several items related to this year's incoming class and noted that the incoming class includes 106 students. He went on to report that the National Jurist Magazine ranked Drake Law School second in the United States for practical legal programs and he recognized Drake Law School's outstanding clinical law program. Anderson updated the governors on recent activities and faculty accomplishments. He closed by expressing his commitment to finding solutions to student debt issues and supporting rural practice incentives.

University of Iowa Law School –

Dean Gail Agrawal

Dean Gail Agrawal reported that the University of Iowa College of Law's incoming class is made up of 141 students, along with additional student demographic information. She updated governors on the employment rate for 2016 graduates. She went on to state that the Boyd Law Building will have a new student commons on the first floor and thanked those who provided funding for the improvement. Agrawal updated the governors on recent activities and faculty accomplishments. She closed by providing an estimate of the average indebtedness for Iowa law school graduates and noted that it is between nine to ten thousand less than graduates of public law schools nationally and about \$35,000 less than graduates of private law schools nationally.

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September Thanks to speakers

September 7

Iowa and China: Business at the Crossroads (In-person or Live Webinar)

Sponsored by The Iowa State Bar Association International Law Section

Steven Dickinson

James Sheets, Sheets Law Firm P.C.

Jinying Zhan, Foreign Legal Consultant

September 8-9

Bridge the Gap Seminar

Sponsored by the YLD Bridge the Gap Committee

Hon. Helen Adams, United States Magistrate Judge for Southern District of Iowa

Hon. Paul Ahlers, District Associate Judge, District 2B

Benjamin Chatman, SUMO Group Inc.

Nick Critelli, Critelli Law PC

August "Dutch" Geisinger, Safeguard Iowa Partnership

Fred Greder, Benchmark Agribusiness

David Grooters, Pappajohn Shriver Eide & Nielsen PC

Christine Halbrook, Bradshaw Fowler Proctor & Fairgrave, PC

Brett Hoben, Des Moines Flight Standards District Office

Senator Rob Hogg

Nicholas Klinefeldt, Faegre Baker Daniels LLP

Michael C. Kuehner, Grefe & Sidney PLC

Bridget R. Penick, Fredrikson & Byron, P.A.

Dan Moore, Moore Heffernan Moeller Johnson & Meis

Robert Rehkemper, Gourley Rehkemper & Lindholm PLC

Tim Semelroth, RSH Legal

Chantelle Smith, Iowa Attorney General's Office

Sara Strain Linder, Bray & Klockau PLC

Michael Streit, Ahlers & Cooney PC

Tara Van Brederode, Attorney Disciplinary Board

Ivan Webber, Ahlers & Cooney PC

James Weston, Tom Riley Law Firm PLC

Mary Zambreno, Dickinson Mackaman Tyler & Hagen PC

September 8

Ag Law Seminar

Co-sponsored by Iowa State University Center for Agricultural Law and Taxation, the Agricultural Section of The Iowa State Bar Association and Iowa Farm Bureau

John Baker, ISU's Beginning Farmer Center

Pat Dillon, Dillon Law P.C.

Keith Duffy, Nyemaster Goode, P.C.

Shannon Ferrell, Oklahoma State University

Neil Hamilton, Drake University Law School

Erin Herbold-Swalwell, Erin Herbold-Swalwell

Eldon McAfee, Brick Gentry P.C.

Kristine Tidgren, ISU's Center for Agricultural Law & Taxation

Julia Vyskocil, Brick Gentry P.C.

Jennifer Zwagerman, Drake University Law School

September 13

Ethics in Intellectual Property Law (Live Webinar)

Sponsored by The Iowa State Bar Association Intellectual Property Law Section

Michael E. McCabe Jr., Funk & Bolton, P.A.

Jason Sytsma, Shuttleworth & Ingersoll

September 16

To Contest or Not Contest: An Overview of IOSHA Legal Proceedings (Live Webinar)

Gail Sheridan-Lucht, Iowa Workforce Development Department, Iowa Division of Labor Services

September 23

2016 Corporate Counsel and Trade Regulation Seminar (In-person or Live Webinar)

Sponsored by The Iowa State Bar Association Corporate Counsel and Trade Regulation Sections

Emily Alward, Attorney at Law

Lori Chesser, Davis Brown Law Firm

Elizabeth Coonan, Brown Winick PLC

Sarah Crane, Trade Regulation Chair, Davis Brown Law Firm

Mark Hamer, Hamer Law Office PLLC

Ann Holden Kendall, Brown Winick

Ryan Koopmans, Nyemaster Goode PC

Samuel Langholz, Administrator, Administrative Hearings Division at Iowa Department of Inspections and Appeals

Prof. Cathy Mansfield, Drake Law School

Justice Edward Mansfield, Iowa Supreme Court

Charlie Nichols, Corporate Counsel CLE Chair, Principal

David Repp, Dickinson Mackaman Tyler & Hagen PC

Prof. Maura Strassberg, Drake University

Tara van Brederode, Office of Professional Regulation

September 27

Take the Uncertainty Out of Transitioning to In-house Counsel (In-person or Live Webinar)

Sponsored by The Iowa State Bar Association Young Lawyers Professional Development Committee

Lila Akrad, SHAZAM

Craig Long, Community Choice Credit Union

Anna Mundy, Principal Financial Group

Michele Ramsey, Meredith

September 28

Necessary Policies for Government Employment Handbooks (Live Webinar)

Sponsored by The Iowa State Bar Association Government Practice Section

Hugh Cain, Hopkins & Huebner PC

September 30

Fundamentals of Federal Practice Seminar Sponsored by the Iowa State Bar Association Federal Practice Committee

Hon. Helen Adams, United States Magistrate Judge for the Southern District of Iowa

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Lucas Draisey, Ryan Haaland and Patty Scallon have joined Davis Brown Law Firm in Des Moines, Iowa.



Draisey

Draisey earned his J.D. from Drake University Law School and joins the firm as an associate in the Litigation division. He will practice primarily in antitrust law, business litigation, commercial litigation, construction contracts, employment law, family law, insurance defense and professional liability defense.



Haaland

Haaland joined the firm's Ames office as special counsel. He received his J.D. from the University of Iowa College of Law. His practice will focus primarily on real estate, estate planning, probate administration and business formation and counseling. He also is currently serving as a judicial magistrate in Story County.



Scallon

Scallon joined the firm's public finance and real estate departments as special counsel. She received her J.D. from the University of Iowa College of Law and practiced privately for nine years in Des Moines, most recently with Principal Financial Group.



Ferree

David Ferree joined the Law Office of Kelsey Patrick-Ferree in Iowa City, Iowa, as of counsel. He received his J.D. from the University of Iowa College of Law. Prior to joining the firm, Ferree worked at the Des Moines City Attorney's office representing the Des Moines Airport and at the Transportation Division of the Iowa Attorney General's office. His practice will focus primarily on transportation law, airport law, municipal law, eminent domain, real estate law and construction law.



Foley

Thomas W. Foley has joined Whitfield & Eddy, P.L.C., in Des Moines, Iowa, as a member attorney in the firm's Labor and Employment and Litigation practice groups. His practice will focus primarily on employment disputes including discrimination, harassment, wrongful discharge and civil rights litigation.



Franklin

Kylie Franklin joined Hopkins & Huebner, P.C. in Davenport, Iowa, as an associate. Franklin received her J.D. from the University of Iowa College of Law in 2014. Her practice will focus primarily on personal injury and liability defense.



Ivers

Brian C. Ivers joined RSH Legal in Cedar Rapids, Iowa, as an associate attorney. Ivers received his J.D. from the University of Iowa College of Law. He will practice primarily in workers' compensation and personal injury matters and will be based mainly out of the Quad Cities.



Rogers

Stacey C. Rogers has joined Pasley & Singer Law Firm L.L.P. in Ames, Iowa, as an associate attorney. Rogers graduated with distinction from the University of Iowa College of Law in 2010. Admitted to practice in both Iowa and Colorado, she maintains a general practice with a focus on real estate transactions and development, business and corporate law, and estate planning and probate.



Underwood

Brandon Underwood joined the Des Moines, Iowa, office of Fredrikson & Byron, P.A., as an associate. He received his J.D. from the University of Iowa College of Law in 2013. Prior to joining the firm he spent time as a law clerk for the Iowa Supreme Court and the U.S. District Court for the Southern District of Iowa.



Wilson

Correction: **Regan E. Wilson** joined Dickinson, Mackaman, Tyler & Hagen, P.C., in Des Moines, Iowa. Wilson received her J.D. from Drake University Law School in 2014. She will maintain a family law practice including divorce, termination of parental rights, adoption and paternity and custody actions.

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."

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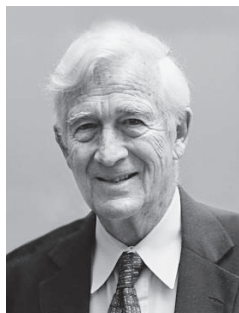
Disciplinary OPINIONS

Michael G. Reilly
Supreme Court Decision
September 2, 2016
Revocation of License – Application
for Reinstatement

Michael G. Reilly was admitted to practice law in Iowa in 1981 and Nebraska in 1982. In 2006, the Iowa Supreme Court revoked his license to practice law in Iowa because he misappropriated client funds. (The Nebraska Supreme Court disbarred him in a reciprocal disciplinary proceeding.)

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In November of 2000, Reilly obtained a settlement of \$137,500 on behalf of his clients in a personal injury case which required a conservatorship to be opened. Upon receiving the settlement funds, Reilly deposited some of them in his personal bank account. At the time, he had an active gambling addiction wherein he was constantly in need of funds. Reilly wrote a series of kited checks between his personal accounts attempting to float a check to the conservatorship account to replace the misappropriated funds. As a result of Reilly's unethical actions, the Iowa Supreme Court revoked his license to practice law in 2006.

In 2009, Reilly filed an application for reinstatement based on the progress he made in addressing his gambling addiction. Following a hearing, the court rejected the application for reinstatement. In 2015, the court amended Iowa Court Rule 35.14 in order to set forth a procedure by which an individual whose license to practice law has been revoked may apply for reinstatement. The purpose of the

amendment was to allow an attorney, who has been rehabilitated, to have the opportunity to ask the court for reinstatement because the attorney is worthy of readmission. The former attorney that applies for reinstatement has the burden to demonstrate—by a convincing preponderance of evidence—that he or she is of good moral character, is fit to practice law, and has complied with the term of the order for revocation. The court analyzed seven factors to evaluate if this standard had been satisfied. The court emphasized that the protection of the public is of paramount importance but also that fallen lawyers can redeem themselves.

In 2015, Reilly filed his second application for reinstatement. Some of the information that was submitted with the application included, among other things: 1) an affirmation that the Client Security Trust Fund expended no funds due to his misconduct, 2) a personal affidavit detailing his personal, work and educational history following his license revocation and the treatment he received for his gambling addiction, and 3) letters from six attorneys practicing in Iowa wherein they expressed that Reilly is of good moral character and fit to practice law. The Iowa Supreme Court Disciplinary Board filed a resistance to Reilly's application for reinstatement urging the court to deny it. Following a hearing, the court ordered Reilly to provide copies of his complete credit report and a report evaluating his gambling addiction that was prepared by a qualified professional. The court also ordered the board of law examiners to interview Reilly and required the Iowa Supreme Court Disciplinary Board to provide a supplemental report.

Deborah Lynn Johnson
Supreme Court Decision
September 2, 2016
30-day Suspension

Deborah Lynn Johnson was admitted to the Iowa bar in 2004. Prior to that, Johnson practiced law for several years in Massachusetts. Upon her return to Iowa, she worked first with a law firm in Newton, then opened her own solo practice. This disciplinary action stems from an intimate relationship she engaged in with a client during her representation of him in several criminal and civil matters.

Beginning in May 2011, Johnson began representing John Doe in various legal proceedings, including a child-in-need-of-assistance matter and several criminal matters. During

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the course of her representation, Johnson and Doe began an intimate relationship. During the course of the relationship, Doe was arrested on federal charges on March 4, 2014. The charges involved a confidential informant (CI), of whom Doe was aware. Following a hearing in which an FBI agent testified that Doe was a member of a prison gang, Doe asked Johnson to contact a friend of his to give him the CI's name. While Johnson did speak to the friend, she did not pass along the CI's name. During the course of recorded phone calls between Doe and Johnson, jail officials became concerned the two were having a personal relationship and passed this information on to the FBI. When confronted about the relationship by the FBI, Johnson admitted that her relationship with Doe was "more than attorney/client/friend."

Shortly after her conversation with the FBI, the Jasper County Attorney's office requested that Johnson withdraw from criminal matters she was handling for Doe due to a "personal conflict." Johnson complied and withdrew from all civil and criminal matters she was handling for Doe. Johnson arranged for a different attorney to take over Doe's civil cases. The court appointed new counsel on Doe's criminal matters. Thereafter, on March 13 or 14, Johnson self-reported that she had been involved in an intimate relationship with Doe to the disciplinary board. On July 9, Johnson sent a letter to the disciplinary board outlining her relationship with Doe in more specific detail. The disciplinary board filed a complaint against Johnson alleging violations of Iowa Rule of Professional Conduct 32:1.8(j) (sexual relations with a client) and 32:8.4(d) (conduct prejudicial to the administration of justice).

In its analysis, the court found that Johnson's actions, which she admitted, violated rule 32:1.8(j)'s prohibition against a sexual relationship with a client. The court further found that Johnson's actions did not fall into one of the two exceptions listed in rule 32:1.8(j) – the relationship did not predate the initiation of the attorney-client relationship, and she was not the spouse of Doe.

The court then turned to whether Johnson's withdrawal from Doe's pending cases violated rule 32:8.4(d). The court analyzed prior cases in which an attorney's misconduct resulted in additional court proceedings or caused court proceedings to be delayed or dismissed. The court found that the record did not disclose that any hearings had to be redone as a result of Johnson's withdrawal in March 2014. Thus, the court found that Johnson had not violated rule 32:8.4(d).

As a result of engaging in a sexual relationship with a client in violation of rule 32:1.8(j), and after considering the mitigating factors, the court suspended Johnson from the practice of law with no possibility of reinstatement for 30 days.

**Sheree L. Smith
Cedar Rapids, IA
September 9, 2016
60-day Suspension**

This action arose out of a client complaint but ultimately involved trust account violations resulting in Ms. Smith's suspension.

Sheree L. Smith has been a sole practitioner for the majority of her career. Smith stipulated to much of the evidence presented by the

board. After a review of the evidence the commission recommended a 60-day license suspension. The supreme court agreed with this suspension.

The court found the following violations were proven through the stipulated evidence. 1) A violation of Rule 32:1.15(a) related to document retention where Smith failed to produce records of her trust account thus preventing an effective audit. 2) A violation of Rule 32:1.15(b) related to comingling of funds where Smith essentially operated her practice out of one bank account that being her trust account. 3) A violation of other trust account rules such as withdrawing cash from her trust account and failing to notify her client when she was withdrawing client funds. 4) A violation of Rule 32:8.1(b) where Smith failed to respond to a board inquiry.

The court found the board failed to prove violations of 32:1.15(c) related to withdrawing fees before they were earned and Rule 32:1.15(d) related to the prompt delivery of client property. Although there were issues related to these rules the court found the board failed to prove these violations by a convincing preponderance of the evidence.

The court suspended Smith's license for a period of 60 days before reinstatement. The court considered Smith's disciplinary history as an aggravating factor because Smith had been privately admonished on three occasions for conduct similar to her current issues. Another aggravating factor for the court was Smith's inability to keep accurate records which prevented a fair audit. The court did consider Smith's work for clients of modest means was a mitigating factor.

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December 12 – 13, 2016
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Atlantic, IA

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ISBA CLE Calendar

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October 25

Managing Law School Debt Presentation
(Live Webinar)

October 27-28

Family Law Seminar
West Des Moines Marriott
West Des Moines

November 3

Trademark Law Update
(Live Webinar)

November 17

Corporate Counsel Institute
(In-person or Live Webinar)

December 2

Intellectual Property Law Seminar
(In-person or Live Webinar)

December 7-9

Bloethe Tax School
Des Moines Marriott Downtown
Des Moines

December 16

Federal Practice Seminar
Embassy Suites
Des Moines

Nuts & Bolts Seminars

Central Iowa Seminar

October 20

Hilton Garden Inn | 8600 Northpark Dr.
Johnston, IA 50131

Eastern Iowa Seminar

October 21

Holiday Inn | 1220 1st Ave.
Coralville, IA 52241

Do you need to learn the “nuts and bolts” of one or more areas of law? The mission of the Nuts & Bolts Seminars is to assist attorneys in the understanding of a variety of legal issues which results in that event participant better serving their clients. The seminar is also a fantastic opportunity for newer members of the bar to meet and socialize with their peers and become acquainted with the Iowa legal community.

SCHEDULE

8:00 – 8:30 – Registration

8:30 – 9:30 – Ethics and Trust Accounts

9:30 – 10:30 – Hanging Out Your Own Shingle

10:30 – 10:45 – Break

10:45 – 11:30 – Employment Law 101

11:30 – 12:30 – Lunch (not provided with registration)

Litigation Track (select track option below)

12:30 – 1:30 – Summary Judgement and Trial Management Tips

1:30 – 2:45 – Family Law 101

2:45 – 4:00 – The Guilty Ones are Easy

4:00 – 4:15 – Break

4:15 – 5:00 – General Personal Injury Law and You

Transactional Track (select track option below)

12:30 – 1:30 – Business Formation: A Basic Understanding

1:30 – 2:45 – Real Estate 101

2:45 – 3:45 – Estate Planning 101

3:45 – 4:00 – Break

4:00 – 5:00 – Run Your Practice Like A Business and Soar

CLE CREDIT (pending)

7 state hours which includes 1 ethics hour

MATERIALS

Electronic materials only. A link to the materials will be e-mailed to attendees prior to the event.

REGISTRATION

www.iowabar.org/calendar

eCommerce & Intellectual Property Law Seminar (In-person or Live Webinar)

www.iowabar.org/event/2016eCommerceIP

December 2
8:30 a.m. - 4:15 p.m.

This seminar, presented by the ISBA eCommerce and Intellectual Property sections, touches on many current headline-making technology news topics such as ADA Website Compliance, Trade Secret Law Update, FTC and eCommerce Issues and a Patent Law Update will offer attendees the insight they need as legal professionals to practice ethically at a time when technology is changing at a rapid pace.

CLE CREDIT (pending)

6.5 state hours which includes 1 ethics hour and 5.5 federal hours

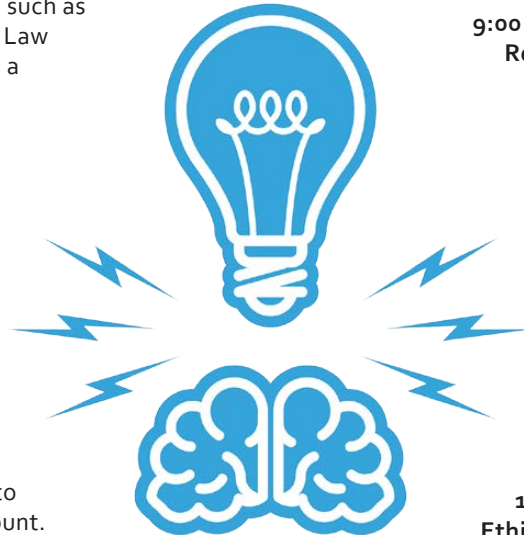
REGISTRATION FEES

Prices below reflect the early-bird registration fees. Registering after December 10th will result in a \$50 late fee being added on to your registration fee amount.

ISBA eCommerce and Intellectual Property Law Section Members - \$160
ISBA Members - \$175
Non-ISBA Members - \$225

ATTENDANCE

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



8:00 - 8:30
Registration and Welcome

8:30 - 9:00
ADA Website Compliance
David Nelmark, Belin McCormick

9:00 - 10:00
Real-Time Payments and the Gig Economy
Srikant Mikkilineni, Brick Gentry Law Firm

10:00 - 10:15
Break

10:15 - 11:15
Trade Secret Law Update
Jonathan Kennedy, McKee, Voorhees & Sease

11:15 - 12:15
Information Security and Third-Party Service Provider Agreements
Amy McHugh, CliftonLarsonAllen

12:15 - 1:00
Lunch (provided with registration)

1:00 - 2:00

Ethics
Michael McCabe, Funk & Bolton

2:00 - 3:00

FTC and eCommerce Issues
John C. Hallerud, Senior Staff Attorney, FTC

3:00 - 3:15

Break

3:15 - 4:15
Patent Law Update
John Goodhue, Goodhue, Coleman & Owens

CLE Credit (pending): 6.5 state hours which includes 1 ethics hour and 5.5 federal hours

Federal Practice Seminar

December 16

Embassy Suites Hotel, 101 E. Locust St., Des Moines, IA 50309

Article III Judges Panel

Prof. Laurie Dore, Drake Law School

Magistrate Judges Panel

Prof. Emily Hughes, University of Iowa College of Law

Keynote Speaker

Hon. Robert Sack, United States Court of Appeals for the Second Circuit

Civil Breakout: Active Case Management

Hon. Helen Adams, United State Magistrate Judge for the Southern District of Iowa;
Hon. Abbie Crites-Leoni, United State Magistrate Judge for the Eastern District of Missouri;
Hon. Teresa James, United State Magistrate Judge for the District of Kansas; Tim Hill, Bradley & Riley

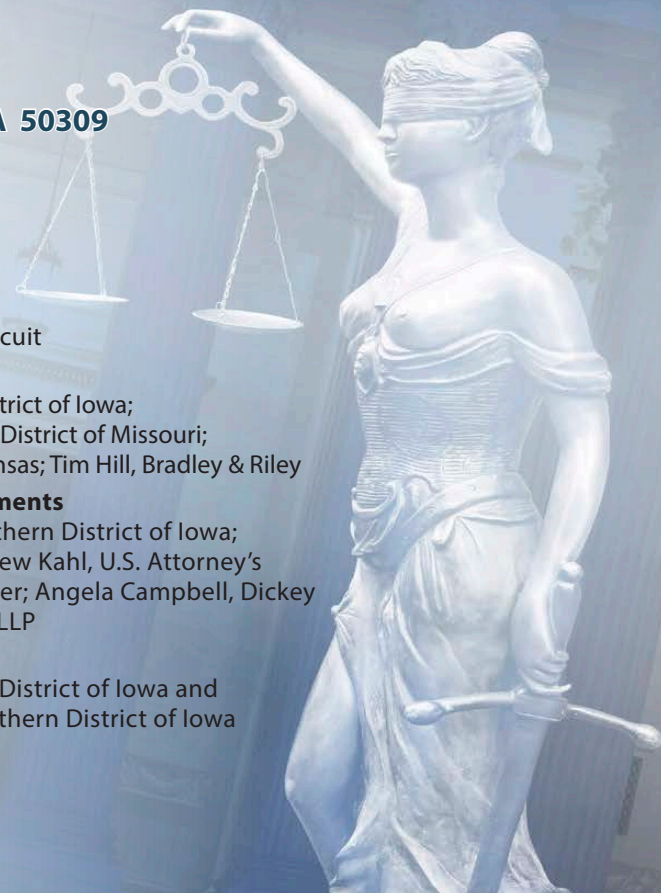
Criminal Breakout: Updates on Sentencing Guidelines Developments

Hon. C. J. William, United States Magistrate Judge for the Court Northern District of Iowa;
Peter Deegan, U.S. Attorney's Office, Northern District of Iowa; Andrew Kahl, U.S. Attorney's Office, Southern District of Iowa; Jim Whalen, Federal Public Defender; Angela Campbell, Dickey & Campbell Law Firm PLC and Nick Klinefeldt, Faegre Baker Daniels LLP

New Local Rules

Hon. Helen Adams, United State Magistrate Judge for the Southern District of Iowa and
Hon. C.J. Williams, United States Magistrate Judge for the Court Northern District of Iowa

www.iowabar.org/event/2016FederalPractice



Bloethe Tax School

December 7-9

Des Moines Marriott Downtown, 700 Grand Ave., Des Moines, IA 50309

Wednesday, December 7

| | |
|---------------|---|
| 8:00 – 12:45 | Registration and Exhibit Hall Opens |
| 12:30 – 12:45 | Opening Remarks and Welcome – Speakers: Skip Kenyon, ISBA President and Tamara Borland, Bloethe Tax School Chair |
| 12:45 – 1:00 | ACA Special Provisions: Exemptions and Special Enrollments – Speaker: Tamara Borland, Iowa Legal Aid |
| 1:00 – 2:00 | Iowa Department of Revenue (IDOR) Updates and Revisions to Form 100 – Speakers: Patty Fulton and Matt Bishop, Iowa Department of Revenue |
| 2:00 – 3:30 | Forms and Examples – Speakers: James Goodman, Moore McKibben Goodman & Lorenz LLP and Maureen Kenney, Bradley & Riley |
| 3:30 – 3:45 | Break |
| 3:45 – 4:45 | Like Kind Exchanges – Speaker: David Brown, IPE 1031 |
| 4:45 – 5:30 | New Farmer Credits – Speaker: Steve Ferguson, Iowa Agricultural Development Authority |
| 5:30 – 7:00 | Complimentary Reception Sponsored by Dickinson Law Firm |

Thursday, December 8

| | |
|---------------|---|
| 7:00 – 8:00 | Registration and Exhibit Hall Opens |
| 8:00 – 10:00 | Tax Manual – Speakers: David Bibler, Buchanan Bibler Gabor & Meis; Lee Wilmarth, Anderson Wilmarth Van Der Maaten Belay & Fretheim and Dan Fretheim, Anderson Wilmarth Van Der Maaten Belay & Fretheim |
| 10:00 – 10:15 | Break |
| 10:15 – 11:00 | Succession Planning-Ethics – Speaker: Jenna Lain, The Law Office of Jenna Lain, PLLC |
| 11:00 – 11:45 | Retirement Planning – Speaker: TBA |
| 11:45 – 12:15 | Avoiding Pitfalls - Employee v. Independent Contractor, Choice of Entity – Speakers: Daniel Fischer, Hall and Hudson P.C. and James Hinchliff, Finneseth Dalen & Powell, PLC |
| 12:15 – 1:30 | Lunch (not provided with registration) |
| 1:30 – 2:15 | Iowa Department of Revenue and Audits – Speakers: Alana Stamas and Theresa Dvorak, Iowa Department of Revenue Policy Division |
| 2:15 – 3:00 | Healthcare Reform Implications for Small Businesses – Speaker: Kristine Tidgren, Center for Agricultural Law and Taxation (CALT) |
| 3:00 – 3:15 | Break |
| 3:15 – 4:15 | Employee Benefits- Flexible Spending, High Deductible Insurance Plans and Health Savings Accounts – Speaker: Dustin Petty, Base |
| 4:15 – 5:00 | Ethics: Cybersecurity and Cloud-based Databases – Speaker: Todd Scott, Minnesota Lawyers Mutual Insurance Co. |
| 5:00 – 6:30 | Drake University Law School Happy Hour Hosted by Drake University Law School |

Friday, December 9

Track One

| | |
|---------------|---|
| 7:00 – 8:00 | Registration and Exhibit Hall Opens |
| 8:00 – 9:00 | Probate and Tax-Deceased Farmer Owner/Operator Issues – Speaker: Alyssa Stewart |
| 9:00 – 9:45 | Charitable Trusts and Foundations - Endow Iowa – Speaker: Sheila Kinman, Community Foundation of Greater Des Moines |
| 9:45 – 10:00 | Break |
| 10:00 – 11:00 | 2704 Discount Regulation Developments – Speaker: Gary Streit, Shuttleworth & Ingersoll PLC |
| 11:00 – 12:15 | Blue Ribbon Panel – Panelists: Kenton Vriezelaar, Vriezelaar Tigges Edgington Bottaro Boden & Ross LLP; Thomas Houser, Davis Brown Law Firm; and James Lohman, Reimer Lohman & Reitz and Darrel Morf |

Track Two

| | |
|---------------|--|
| 7:00 – 8:00 | Registration and Exhibit Hall Opens |
| 8:00 – 8:45 | S Corporation Set Ups and Pitfalls – Speaker: TBA |
| 8:45 – 9:45 | C to S Corporations – Speaker: David Bibler, Buchanan Bibler Gabor & Meis |
| 9:45 – 10:00 | Break |
| 10:00 – 10:50 | Profit Interest in Partnerships – Speaker: David Repp, Dickinson Mackaman Tyler & Hagen PC |
| 10:50 – 11:40 | Sales or Redemptions of Partnership Transactions – Speaker: David Repp, Dickinson Mackaman Tyler & Hagen PC |
| 11:40 – 12:30 | New Audit Rules for Partnerships Post Tax Equity and Fiscal Responsibility Act - Speaker: TBA |

Visit www.iowabar.org/event/2016TaxSchool for more information or to register

YLD-sponsored program helps high schoolers learn about the U.S. Constitution

“We the People of the United States....” can you recite the rest? Over the years, surveys have been taken to test the knowledge of Americans about the U.S. Constitution and the results have been somewhat unimpressive. Bothered, the Iowa State Bar Association decided to do something to encourage better education and understanding of the rights as stated in the constitution. So the Young Lawyers Division of the ISBA started challenging high school students each year to do just that: learn and test their knowledge of the constitution.

The Know Your Constitution Program, founded by the ISBA, has been around for more than 15 years. Thanks to grants provided by the ISBF each year, around 900 students from up to 50 schools participate. That number is then narrowed down to 100. Students have to complete an annual

examination made up of a 50-question, multiple choice and essay answer quiz. The essay question is changed each year to be related to a timely legal issue. Individuals are selected through a combination of their scores and location in Iowa’s 100 House of Representative districts to help ensure balanced participation.



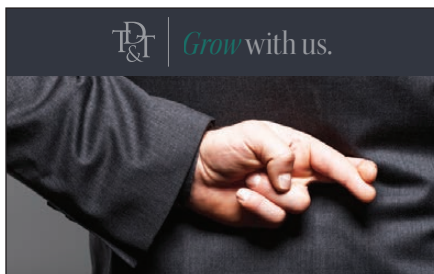
The selected individuals and their teachers are then invited to attend an awards luncheon and educational seminar in Des Moines. The attendees hear from prominent figures such as Iowa Supreme Court Justices, U.S. District Court Representatives, and Chief U.S. Magistrate Judges. For instance, the keynote speaker was Iowa

Supreme Court Justice David Wiggins in 2016. A new component was added in 2013, letting students and teachers join a discussion session on the essay question the morning before the luncheon. Professor Anthony Gaughan of Drake University Law School gave a presentation on the relevant constitutional law as well. At the end of the luncheon, five students and their teachers are chosen at random as finalists for an all-expenses-paid trip to Washington D.C.

Sam Langholz, a YLD committee member since 2011, learned about the program as a high school senior. It was his government teacher offering extra credit that sparked his interest. “I was selected as a finalist and won the trip to D.C. It was a great experience,” said Langholz.

This experience with the ISBA is part of what inspired him to not only become a lawyer, but be involved with the ISBA as well. “When I joined the ISBA, I knew I wanted to be involved with this program. It’s a great way to give back as someone who benefitted from it,” added Langholz.

The goal of the program is to stimulate interest in the law and promote the



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ISBA President-elect Skip Kenyon presents a medal and congratulates one of the high school students who won the Know Your Constitution contest at his school in 2016. Each year, winning students and their teachers from high schools around the state are honored at a special luncheon in January.

education of high school students about the United States Constitution. Some of the skills learned in the process are critical thinking, especially about a citizen's constitutional rights, and good citizenship and values. The program also helps spotlight the legal profession, community, and the importance of the constitution to the students as well as the general public.

"This program has an important role for students because it gives them a civic education in a very real way," said Langholz. "It makes such an impact on them; I've seen [the impact] when I hear them as they talk at the luncheon."

During the weeklong trip in Washington D.C., finalists get to participate in activities like seminars and workshops, and to observe the supreme court and Congress in action. Students and teachers also get the opportunity to meet with legislators, judges and diplomats as well as a tour of the sites and attractions in the city.

The program's success over the years has even gained national attention. In 2009, it was profiled in the national ABA Young Lawyers Division newsletter to encourage other associations to hopefully do the same with the students in their states.



Four of the five students selected at random from the 100 winners of the 2016 Know Your Constitution program to attend a special program in Washington, D.C., pose with their teachers for a photo after the awards luncheon. Joining them are (on the left) Sam Langholz, co-chair of the YLD Know Your Constitution Committee; Iowa Supreme Court Justice David Wiggins, who was the keynote speaker at the luncheon; and Bob Gainer (far right), co-chair of the Know Your Constitution Committee.

Langholz hopes to see the program continue to grow. He knows that although the YLD does its best to reach all schools, sometimes information isn't always properly relayed. He encourages ISBA members who think their local schools aren't aware of the program to find out who the government, social studies or proper

teachers are and pass this information along. Educators can reach him through his email, samlangholz@gmail.com or find out more on the ISBA website, <http://www.iowabar.org/?page=KnowConstitution>.

This article was written by Kristi Kenyon, freelance writer for the Iowa State Bar Foundation.

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