



THE IOWA LAWYER

October 2020 V80 N9

JURY TRIALS

IN THE TIME OF COVID

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

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HELP IOWANS NAVIGATE THE LEGAL RAMIFICATIONS OF THE DERECHO DISASTER

A toll-free disaster legal advice hotline is available to residents in Linn County impacted by the Aug. 10 derecho storm. This hotline is a partnership between Iowa Legal Aid, The Iowa State Bar Association, the ISBA Young Lawyers Division, the American Bar Association Young Lawyers Division, the Linn County Bar Association and the Polk County Bar Association Volunteer Lawyers Project.

The Derecho Legal Hotline is currently focused on storm victims with legal issues related to securing FEMA and other government benefits, insurance claims, home repair contracts, replacement of important legal documents destroyed in the disaster, consumer protection matters, landlord-tenant problems, business issues and more. The hotline phone number is **1-877-469-2259**. Additional counties may be served by the hotline based on eligibility for FEMA individual assistance.

Volunteer lawyers from a broad range of practice areas are needed to provide limited scope pro bono legal services. If you are interested in volunteering for this project, please contact ISBA Director of Innovation and Outreach Virginia Sipes at vsipes@iowabar.org, and indicate your practice areas in the email.



JUDICIAL PERFORMANCE REVIEW RESULTS RELEASED AHEAD OF NOVEMBER RETENTION VOTE

The Iowa State Bar Association has released the results of its performance evaluation of the 95 judges standing for retention in this year's November general election. The ISBA biennially conducts a survey of its attorney members and compiles the results to give voters information on which to base their decisions about keeping a judge on the bench.

Full results of the 2020 Judicial Performance Review are now available on the ISBA website: iowabar.org, or judicialfacts.org.

Attorneys evaluated the 87 district court judges, four court of appeals judges and four supreme court justices on the ballot based on a number of performance characteristics, including knowledge and application of the law and demeanor. Nearly 1,500 attorneys responded, and the Fair and Impartial Courts Committee would like to thank all ISBA members who participated.

"The results of the Judicial Performance Review demonstrate the confidence that attorneys across the state of Iowa have in our judges," said Chair of the ISBA Fair and Impartial Courts Committee Guy Cook.

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Jury trials resume

LETTER BY ISBA PRESIDENT JERRY SCHNURR III,
MEMBER OF THE JUMPSTART JURY TRIALS TASK FORCE

Jury trials began again Sept. 14 after three pilot jury trials in August implementing the court's guidelines based on recommendations of the Jumpstart Jury Trials Task Force. The taskforce, working with representatives of the court, the legal profession, court reporters, court administration and counties, developed recommendations for safe jury trials with an eye to preserving the constitutionally-protected rights of the parties to a trial by a jury of a cross-section of the community.

The judicial branch distributed surveys to all the participants in the pilot trials – jurors, attorneys, court staff and presiding judges. The feedback received is very encouraging. The participants felt safe and appreciated the precautions taken to protect everyone. The flood of requests for COVID-19-related deferrals by potential jurors did not happen. Judges reported about the same number of juror deferral requests for health reasons as they would have expected previously. Jurors summoned to pilot trials seemed as willing to serve as they did before the pandemic.

Face masks and shields, social distancing and frequent sanitizing were employed. Folks from the clerk's office met potential jurors at the door and directed them to the waiting areas. Voir dire took place away from the courthouse in some cases so that all potential jurors could be together while remaining socially distant. In other courts, voir dire took place in the courthouse, though the jury panel was physically separated and joined through technology and closed-circuit

video. The courtroom became the jury deliberation room in a Calhoun County trial. The jury stayed in the courtroom for sidebars and deliberations.

Jurors reported that, overall, they were satisfied with their ability to see the judge and attorneys, though displaying exhibits via video screens sometimes presented challenges to the jurors and attorneys. Placement of the screens and social distancing requirements had an impact on the ability to see exhibits. These challenges can be overcome with better placement of video screens.

Overall, the participants were pleased with the way the pilot trials went. There are certainly some challenges and, "it is not the way we have always done it." For example, some report that face shields make it harder to hear, whereas masks make it more difficult to see and read facial expressions. Microphones help the court and jurors hear the attorneys and witnesses. We will need to remember to use the microphones.

But that precious right of trial by jury that is so fundamental to our character is preserved. Every trial requires the ability to adapt to the circumstances. We are only limited by our imagination, ingenuity and ability to implement changes. Iowa attorneys are some of the best in the country.

We can adapt to almost any circumstance to effectively advocate for our clients. We will adapt to this new way of trying cases. The jury trial is preserved. COVID-19 did not eliminate it.

I have said it before and will say it again: Jury service is critical to our democratic form of government. Jurors,

litigants, witnesses, lawyers, judges and court staff must feel safe so that they can focus on the evidence and arguments in the case. The court has implemented guidelines so that people are as safe as possible and the due process rights encompassed in the right to a jury trial are preserved. The guidelines will provide as much protection as possible to participants in jury trials while allowing full presentation of evidence and arguments. You can read more about how pilot trials were conducted around the state, from the perspective of the judges, on the following pages.

The ISBA is working with the court to make sure the public is aware of the importance of jury service and that extensive steps have been taken for the safe return to our courtrooms. We are working with the court to develop a public service announcement that will initially go out on social media and the court's website. We will also engage in a public education effort to ensure that juries are made up of a cross-section of the community. There is no doubt that you will be called on in this effort. We look forward to working together to ensure that jury trials continue safely.

It is important to remember that, in the midst of a pandemic, our court proactively brought together a task force made up of attorneys, judges, court reporters, court administration and county representatives to make sure that our justice system would continue to function in a manner consistent with those principles embodied in the constitutional right to trial by jury. By utilizing the guidelines set out by the court for resuming jury trials, it is feasible that they can be conducted in a safe and effective manner.

"Our liberties we prize and our rights we will maintain."



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Jury trials in the time of COVID

UPDATE ON THE JUMPSTART JURY TRIALS TASK FORCE

The Iowa Supreme Court postponed jury trials in March to protect public safety by reducing the risk of contracting or spreading COVID-19. Soon afterwards, the Jumpstart Jury Task Force was formed to develop policies and procedures to ensure everyone's fundamental right to a jury trial while protecting the health and safety of jurors, court staff, parties, attorneys, judges and all Iowans who access the courthouse.

The task force met several times, spoke with court officials from around the country and consulted with public health experts and county officials before making recommendations to the supreme court. The supreme court adopted many of its recommendations.

As the world continues to adapt to the COVID-19 pandemic, the judicial branch resumed face-to-face hearings July 13 and criminal jury trials Sept. 14 with new safeguards in place. The backlog and new scheduling process implemented to allow for social distancing will make the year difficult for everyone using courts services, and parties will need to be patient as their disputes work through the courts.

"The COVID-19 pandemic has changed nearly everything in our daily lives, and that includes jury trials. Even with these changes, the courts remain committed to their communities and will adapt to meet the community's needs. We can keep citizen court participants safe while continuing to administer justice fairly and impartially to all Iowans," said Iowa Supreme Court Justice Matthew McDermott, co-chair of the Jumpstart Jury Trials Task Force.

"Jury trials are guaranteed by the Constitution and are essential to providing justice for Iowans. We believe that we now have the safeguards in place to provide people with their right to a jury trial — a right enshrined in both the United States and the Iowa Constitution — while also ensuring that jurors can safely perform their vital role in the American system of justice," said Guy Cook, co-chair of the Jumpstart Jury Trials Task Force.

The following comments were written by three Iowa judges who presided over pilot trials held in September in advance of jury trials resuming statewide Sept. 14.



**Judge Gina Badding,
District 2B**
State v. Randa Sue Pedersen

On Aug. 25, I presided over a pilot jury trial in Calhoun County. Considering the extra precautions necessitated by the coronavirus/COVID-19 pandemic, I think the trial itself went extremely well.

Because we did not have an alternate site available, we conducted jury selection at the courthouse. Our clerk of court, Donna Geery, sent out 110 summonses. In normal circumstances, she would have sent out only 80. We were happy with the number of responses—56 in all. We were also pleasantly surprised that none of the people who responded requested to be excused prior to the trial due to virus-related reasons. This held true during the jury selection itself.

Our court attendant asked the first three advance screening questions set out in the July 22, 2020 Iowa Supreme Court order on resuming jury trials as the jurors checked in. Once the jurors were seated, I repeated those questions and asked the remaining questions set out in the July 22 order. No potential juror reported being nervous or scared because of the coronavirus.

We placed the initial panel of 23 potential jury members in the courtroom with everyone spaced out six feet apart. Another 17 individuals were placed in a basement conference room that was large enough to accommodate them with the required social distancing. All of the potential jury members in the courtroom wore face shields and name tags with their juror number, while those who were in the basement wore face masks. The Judicial Branch IT department set up a live-stream of the proceedings in the courtroom so that those in the basement could hear the questions being asked in the courtroom. Some potential jury members in the basement did have trouble hearing at first, but after adjustments were made, the audio quality improved.

That being said, the most difficult aspect of the jury selection process was the audio quality. The Calhoun County Courthouse is a large, historic courthouse with high ceilings and poor acoustics. Even with microphones placed at the bench and counsel table, the potential jurors had difficulty hearing me and the attorneys. We likewise had a hard time hearing the jurors. The face shields seemed to make this worse for some. There was also a glare on the face shields from the overhead lights, which

made it difficult to see the jurors' faces.

The second most difficult aspect of the jury selection process was the level of technology and staff needed to make the split panel work. We were fortunate to have someone from the Judicial Branch IT department on site to help the day of the trial. I understand this will not be possible as jury trials ramp up across the state, which will require some technical training for judges and their staffs on the use of cameras and live-streaming. We were also fortunate to have three court attendants available to us during the jury selection (one in the courtroom, one at the door of the courtroom and one in the basement), although this will not always be possible in some of the smaller counties.

Our jury was selected by about 11:15 a.m. on the first day of the trial. This was just a bit longer than it would have taken normally to select a jury for the type of case that was being tried. Once the jury was selected, the trial itself proceeded much as it would have pre-COVID-19, aside from the face masks and social distancing. We had to abandon the regular jury room for breaks and deliberations, as it was too small to accommodate everyone safely. The courtroom was used instead, which worked well. Sidebars, objections and motions outside the presence of the jury were conducted in court chambers.

When I visited with the jury after the trial concluded, each one reported having a positive experience and feeling safe during the trial. The main area that the jury noted we needed to improve upon was audio quality. Overall, however, everyone seemed happy to be a part of our judicial branch's reopening process, as was I. The procedures put in place by the Iowa Supreme Court and its Jury Task Force were a key part of our successful pilot, along with the hard work and planning prior to trial by the Calhoun County Clerk of Court and her staff, the attorneys involved in the case and the Judicial Branch IT Department. I am confident that with this continued support, we'll be able to recreate our positive pilot jury trial experience for the jury trials yet to come.



**Judge Henry Latham,
District 7**
State v. Destiny Milton

Scott County was selected and conducted a pilot jury trial on Aug. 17, observing the necessary precautions as a result of the

Views from the bench



The Iowa State Bar Association has partnered with the Iowa Judicial Branch to launch the "Serving Safely" public service campaign to provide information to potential jurors about the safeguards in place to protect them during their jury service. Information will be shared through the Judicial Branch website and social media.

COVID-19 pandemic. The City of Davenport donated the use of the RiverCenter convention center to Scott County. The jurors were summoned to appear for jury selection at the RiverCenter, which is located approximately five blocks from the Scott County Courthouse. The RiverCenter has capacity for 70 people in the grand hall entrance while maintaining social distancing and close to 300 individuals in the convention center. As a result, conducting jury selection was very similar to the process at the courthouse. The only difference was enforcing social distancing and face coverings. Face coverings were required and the prospective jurors that were questioned by the attorneys were provided disposable face shields. It was determined it was easier to hear and understand those that utilized the face shields.

The Scott County Sheriff's Office provided security screening of those entering the RiverCenter and generally throughout the selection of the jury. The chairs within the "courtroom" were spaced six feet apart. The RiverCenter provided black draping in the front of the room to provide separation from the courtroom and the area provided for proceedings to be conducted outside the presence of the jury. In this area, the RiverCenter provided an office which could be utilized as a judge's chambers. Additionally, the RiverCenter provided black skirting to the tables to make the bench and the well of the courtroom look professional. Microphones were placed at the bench, both counsel tables and one for the prospective jurors.

Questioning of the prospective jurors was conducted very similar to the row by row questioning in the courtroom. Eight prospective jurors were asked to come forward to be questioned as a smaller group, as a row in the courtroom. At the conclusion of the questioning of each group, a break was had which allowed for sanitization of the seats occupied by those prospective jurors questioned and to allow a break for the group as well.

After the jury was selected, the trial was moved to the Scott County Courthouse. The courtroom had been marked to provide social distancing, and again face coverings were required to be worn by everyone involved in the trial. As the normal jury room would not allow appropriate social distancing, the jurors remained in the courtroom during breaks and for deliberations. Although this is just the reverse of how the court and jurors use the courtroom, with minimal modifications of procedures, the process went very well.

All individuals involved in this trial completed surveys. All responded positively that they felt adequate safety measures were taken in response to COVID-19 concerns. I believe the hard work in preparing for trials has paid off. Procedures were put in place to address these concerns without significantly impacting the process of a trial and allowing the parties to proceed to trial. The overall experience was very positive.



Judge Thomas Reidel,
District 7
State vs. Gustavo Cifuentes

On Aug. 17, the Muscatine County District Court commenced the first jury trial in Iowa since early March of this year. The jury trial piloted the July 22, 2020, Iowa Supreme Court order on Resuming Jury Trials. In order to ensure proper social distancing, the court held jury selection at Muscatine Central Middle School Auditorium. The Muscatine County Clerk of Court summoned 125 percent of the normal jury pool due to concerns that jurors may not readily appear. However, juror turnout was excellent. Two jurors expressed concerns about COVID-19 issues. The service time for both jurors was deferred until next spring.

At the outset, the court explained to the jurors the safety precautions put in place by the court and the safety procedures that were to be followed at all times, along with the constitutional reasons that necessitated a return to jury trials during the COVID-19 pandemic. The jurors had an incredibly positive attitude throughout the process. Any juror that was questioned during jury selection was required to wear a face shield so that facial expressions and body language could be read by the attorneys. All other

participants were required to wear masks at all times.

Before any break, the court reminded the jurors to maintain social distancing and to either wash their hands or use hand sanitizer before returning to court. After jury selection, the 13 jurors selected (12 plus an alternate) returned to the Muscatine County Courthouse for the trial. The courtroom is large enough to accommodate 13 socially-distanced seats for the jurors with the jurors spread out throughout the courtroom. Blue painter's tape signaled an allowable seat and green painter's tape signaled an off-limits seat. Masks or face shields were required at all times.

After the case was submitted, the jury used the courtroom as the jury room for deliberations as no other room in the courthouse had sufficient size to allow social distancing. The courtroom seating for deliberations was reconfigured, while maintaining social distancing, so that the jury was in a large circle. This was done to assist the jurors with deliberations. Masks or face shields were required during deliberations.

No problems were reported with deliberations and a verdict was returned. Afterwards, the jurors were questioned and reported that they felt very comfortable with the social distancing and the requirements for masks and face shields.



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REFLECTIONS ON *Justice Ruth Bader Ginsburg*

By Judge Donna L. Paulsen, Iowa District Court Senior Judge



I had the honor of meeting Justice Ruth Bader Ginsburg on two occasions – once in Washington D. C. and once in Chicago – at functions sponsored by the National Association of Women Judges (NAWJ). We were both members of NAWJ, which is an organization promoting gender equality in the courts, and at one time I was a board member. At a small reception in Chicago, I was able to speak with Justice Ginsburg, who was there with her granddaughter who is now a lawyer. When you see this diminutive woman, it is such a visual contrast with the knowledge of her powerful intellect and immense contribution to the law. Justice Ginsburg wore gloves as she was shaking hands with attendees. Her voice was very soft, but she was always smiling. She expressed an interest in our courts and how the young women lawyers were faring. She had a dry wit and was the consummate gentle lady.



**MARINE OFFICERS FIGHT
TO WIN. EVEN HERE.**



I was a generation behind Justice Ginsburg as I entered the University of Iowa College of Law in 1972 when women were just starting to enter law schools in larger numbers. My class was about 20 percent female, whereas Justice Ginsburg's class in 1956 was only two percent female. At the law school, they did not know what to do with us. They had hastily converted a male restroom for the females but left the urinals. We insisted that we were there to stay, and the urinals needed to go. Law school was conducted using the Socratic Method where professors ask questions of students regarding the case studies. In our class, the women were singled out for embarrassment and particularly called on when a case dealt with sexual assault. I can only imagine the issues faced by Justice Ginsburg.

Throughout the 1970s and 1980s, Justice Ginsburg was already a rock star to women lawyers. She was arguing cases before the U.S. Supreme Court, which was rare for women. She was pursuing a strategy of carefully-selected cases to promote gender equality. The strategy was working! In cases such as *Frontiero v. Richardson*, she prevailed in her argument that it was an unconstitutional denial of equal protection to deny a housing allowance to a female in the Air Force because of her sex. In *Weinberger v. Weisenfeld*, she carefully selected a male plaintiff who was denied social security benefits after the death of his wife. Case by case, she educated the all-male Supreme Court about gender discrimination.

Justice Ginsburg had difficulty finding a job after she graduated from law school despite her stellar resume. I too had that same experience in 1975. Only two women were in private practice in Cedar Rapids when I was looking for work. Reasons for not hiring me included: "Our partner's daughter will be graduating from law school in a few years and we will need to hire her" and "Our attorneys need to travel and their wives would not like them traveling with a female lawyer."

Justice Ginsburg was a role model for our personal lives as well. She managed a happy marriage and children. She cared for her young daughter while in law school in addition to caring for her husband during his cancer treatments.

When Justice Sandra Day O'Connor was appointed in 1981 as the first woman to serve on the United States Supreme Court, we were thrilled. Women were encouraged by her appointment to apply to be judges. I was inspired to give it a try. In 1992, I was appointed to serve as the first woman district court judge in Polk County and in the 15 counties of the Fifth Judicial District. This position was very tough at times as some members of the judiciary, lawyers and litigants did not want women in the judiciary.

When Justice Ginsburg was appointed to the U.S. Supreme Court in 1993, it was such a victory as we knew she would be another strong voice for gender equity. We were no longer a token of just one, but we had two women on the highest court. Over the years, Justice Ginsburg's majority opinions and her dissents were infused with integrity and hope for what our laws and our country should be for all. Her decisions on DACA, health insurance, racial discrimination, same-sex marriage, women's reproductive rights, equal pay and more have impacted every facet of our lives. She embraced her well-deserved rock star status as "The Notorious R.B.G."

It is hard to put into words how grateful I am for Justice Ginsburg. She remained focused and worked tirelessly for her belief in justice for all. Along the way there were many personal sacrifices she made to excel in her legal work. During her career she was collegial and able to communicate with justices who did not share her views on the law, as evidenced by her friendship with Justice Antonin Scalia.

We have come a long way over the last 50-some years, but we have much more work to do. Thank you, Justice Ginsburg. You have inspired many other lawyers and judges who will continue to champion your work to tirelessly promote not only gender equity but equal justice for all.



Judge Donna Paulsen has served on the Iowa District Court bench for 29 years and is currently serving as a Senior Judge. She graduated with distinction from the University of Iowa College of Law in 1975. She practiced law in

Cedar Rapids and Des Moines for 17 years before her appointment to the bench. She served as President of the Iowa Judge's Association and was on the Board of the NAWJ and the ISBA.

ARTIFICIAL INTELLIGENCE IN THE WORKPLACE: COMING TO A COURTHOUSE NEAR YOU

By Helen Adams, United States Chief Magistrate
Judge, Southern District of Iowa

“Artificial intelligence is about replacing human decision making with more sophisticated technologies.”¹

Whether you agree or disagree with this quote, artificial intelligence applications can be found throughout the business world. Artificial intelligence or “AI” is often referred to as predictive analytics, machine learning, deep learning, intelligent retrieval or image recognition. AI is the use of algorithms that mimic human intelligence to perform cognitive functions and solve problems through interaction, visual perception, learning, reasoning, natural language processing and planning.

The purpose of this article is to highlight ways that employers are using AI to assist in making employment decisions. The article also raises possible legal issues that lawyers and judges may face in litigation involving the use of AI by employers.

As employers grapple with rising costs and a potential labor shortage, they are looking for innovative ways to incorporate AI into the hiring, evaluation and retention processes. Let’s look at several ways that AI is being used by employers.

In the hiring process, employers are using AI to scan resumes and propose the best candidates for further review. According to a 2016 article in the Harvard Business Review, AI is being used by businesses to screen out up to 70 percent of job applicants without any human interaction.² Employers also use AI to scrape online job boards or social media applications to unilaterally identify and target possible candidates for open job positions within the company. AI can conduct online interviews and evaluate the applicants on a variety of factors including word choice and facial expression before recommending the “best candidates.”

AI advocates tout the benefits such as reduced costs, the ability to reach more candidates, potentially increasing diversity of the applicant pool, the removal of human bias (both conscious and subconscious) in the interview process and the ability to track large amounts of data to analyze how the company’s interview questions and processes are working in finding quality candidates.

Employers also are implementing AI to improve employee training both during the onboarding process and throughout an employee’s tenure.⁴ AI applications allow for “lessons” to be created that capture the work experience and knowledge to be

passed down from the previous employee to the new hire.⁴ New hires use the AI-created lessons to learn their new role without disrupting the workflow of other employees.

AI also delivers electronic training during an employee’s tenure, which can be personalized for the job and the employee. As the employee performs in the training module, AI can identify the areas in which the employee is excelling or struggling so that further training can be focused on the weaker areas.⁵

Companies have implemented AI in the form of chatbots to enhance human resources departments. A chatbot is an AI program that simulates interactive human conversation by using key pre-calculated user phrases and auditory or text-based signals.⁶ A chatbot is also known as an artificial conversation entity (ACE), chat robot, talk bot, chatterbot or chatterbox.⁷ For example, employers have utilized chatbots to handle pre-interview screening, provide employees with information about company policies or other training topics, assist employees in applying for benefits, and obtain initial information from an employee about a complaint or grievance.

Employers are using AI to help them evaluate employees for promotion opportunities as well as termination selection. AI can be used to monitor employees’ work habits, productivity, efficiency and errors on a real-time basis. For example, certain AI systems can track employees and identify those who are unproductive. The algorithm can generate warnings and even suggest possible termination based on an employee’s productivity levels.⁸ The algorithm can highlight those employees with the highest productivity and suggest them for raises or promotions, allowing employers to make more data-driven employment decisions.

While AI advocates have identified benefits that AI can provide employers, there are potential negative consequences that raise serious legal issues with which courts will grapple. AI technologies may create algorithmic bias or “indirect human bias.” In many cases, the employer must train the AI to look for certain attributes or skills in applicants or employees. One way to do this is to train the AI on the skills or attributes of successful incumbents.

Consider the following example. Company A is looking for sales people so they train the AI system to look for applicants who have the

skills and attributes of the most successful sales people at the company. Company A has never had a female sale person in its history. The AI system may not select female candidates as they may not fit the profile that has been generated for a successful sales person.⁹

Another example would be an AI system that has been taught to favor certain zip codes due to their proximity to the office and that people who live closer to the office may have a lower absenteeism rate. Use of that system could constitute disparate impact racial discrimination if the selected zip codes are predominately white neighborhoods.¹⁰

In 2017, Amazon identified an algorithm bias issue. Amazon was using an algorithm to compare resumes of applicants to those of successful employees over the past 10-year period. Most of those successful employees were white males.¹¹ The algorithm unintentionally was taught to favor men over women. The algorithm learned to prioritize words most commonly used for, or by, males

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and began penalizing the word “women” in resumes and candidates who graduated from all-female colleges.¹² Amazon caught the issue fairly quickly, but it is a real-life example of an algorithm that appears to be neutrally coded but can still exhibit bias.

A final example is described in this paragraph. Certain AI technologies claim to analyze an applicant’s facial expressions, tone, gestures and word choice to evaluate the applicant’s honesty, attitude, positivity, overall sentiment and language competence. Based on these aspects of their responses, the technology produces an “employability score,” which is used by employers to decide who can advance in the application process.¹³ This could cause a serious issue for those interviewing with disabilities and those of different races.

Characteristics such as typical enunciation and speaking at a specific pace are qualities that might correlate with effective [employees].¹⁴ Therefore, if the facial attributes or the mannerisms of those with disabilities are different from the norm, even if their credentials could be beneficial for the job, AI is unlikely to highlight those features and therefore provides that applicant with a low score.¹⁵ Although AI could try to remove that bias by altering certain variables, people with disabilities are not a “homogeneous group.” And with that, every individual may have unique characteristics – therefore, inequalities could still exist.¹⁶

This type of software may have a discriminatory impact against African Americans, as the facial recognition software can analyze emotions differently based on race. In fact, according to some analyses, “black faces are read as angrier than white faces, even after controlling for the degree of smile.”¹⁷ Even when a black applicant has an ambiguous facial expression, some software programs read their facial expression as annoyed or disapproving, which ultimately will lower their employability score.¹⁸

States are considering regulations governing the use of artificial intelligence in employment. A few states, such as New Jersey and Washington, have introduced legislation; however only Illinois has passed a statute.¹⁹ Illinois enacted the Artificial Intelligence Video Interview Act to regulate AI used to evaluate video interviews.²⁰ The Illinois statute requires employers to notify applicants in advance that AI will be used in the interview.²¹ Employers must be transparent and explain how the AI works and must receive the interviewee’s consent in advance of the video interview.²² The video and data gathered from the interview is only distributed to those “whose expertise or technology” is necessary to evaluate the candidate.²³ Additionally, at the applicant’s request, the video and any copies must be destroyed within 30 days.²⁴

There are questions left by the statute that lawmakers or judges may need to answer

in the future.²⁵ An important aspect of the statute is the transparency requirement; however, it is not outlined how transparent the employer must be with the applicant.²⁶ Do the employers only need to explain the AI’s use in analyzing the applicant’s expressions, or will they need to explain how the employer uses the data to determine an applicant’s attitude, honesty and language competence?²⁷ The transparency is only regarding how the AI works, so the employers will likely not be required to explain how they use the data to make hiring decisions.²⁸

The consent provision of the bill does ensure candidates are aware and consent to the use of AI, but the statute does not specify what happens if an applicant refuses to consent.²⁹ At that point, can employers refuse to consider the applicant?³⁰ Another key question is what is the employer and AI company’s responsibility for any data extracted from the video interviews.³¹ The applicant can have the video destroyed, but the law does not mention the employer’s responsibility regarding any data extracted from the video. Is an employer required to destroy the extracted data at an applicant’s request or are they free to keep it in their records?³² Does this destruction provision run afoul of any EEOC requirements to maintain applicant data? Finally, there is the question of whether the vendors are liable for any issues in the software and whether that is the employer’s responsibility to ensure compliance or indemnification.³³

On a national level there have been some proposals governing the use of artificial intelligence in employment decisions. The White House sent out an executive order in May 2018 prioritizing funding for artificial intelligence and developing more uses for the technology.³⁴ An artificial intelligence bill, the Algorithmic Accountability Act, was introduced to Congress in April of 2019.³⁵ The bill proposed granting the Federal Trade Commission (FTC) authority to create regulations to have AI algorithms checked for “accuracy, fairness, bias, discrimination, privacy and security.”³⁶ The bill was referred to the Committee on Energy and Commerce and passed to the Subcommittee on Consumer Protection and Commerce.³⁷

AI in the employment context has garnered the attention of the Equal Employment Opportunity Commission as it is looking into two cases of bias with artificial intelligence.³⁸ As well, the Electronic Privacy Information Center (EPIC), a non-profit focused on civil liberties and First Amendment issues with technology, filed a complaint with the FTC against HireVue, an online video interviewing software company.³⁹ In the complaint, EPIC accused HireVue of producing biased results as it uses data from people who have previously performed well. The technology “could discriminate against candidates with

neurological differences” such as Autism.⁴⁰

As you can see, AI is a complex technology that has the potential to revolutionize the employment arena. It also has the potential to form the basis for significant legal issues that will need to be resolved through legislation, regulation and litigation. I hope that this article has piqued your interest in this fascinating area of the law.

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Helen Adams has served as a U.S. Magistrate Judge for the Southern District of Iowa since Feb. 13, 2014. She became Chief U.S. Magistrate Judge in 2017.

After graduating from the University of Iowa College of Law in 1988, Judge Adams began her legal career as a law clerk to U.S. District Judge Harold D. Vietor in the Southern District of Iowa. She practiced with the firm of Dickinson, Mackaman, Tyler & Hagen, and in the corporate legal department of Pioneer Hi-Bred International (now DuPont Pioneer), before becoming a judge.

Troubled rural health care: Considerations for **IOWA** Communities

By Jeanne M. Goche, MA, JD

Many rural health care organizations were struggling long before this year's coronavirus pandemic. Nationally, 168 rural hospitals have closed since 2005, 126 of these closing since 2010.¹ In 2020, eight hospitals have closed already.²

Iowa communities have generally seen their health care organizations maintained the last several years, although many are in precarious financial condition. Of the 118 Iowa hospitals, 44 were shown to have ended the last fiscal year with negative balances.³ According to the Guidehouse Rural Hospital Sustainability Index, 12 to 17 percent of Iowa's rural hospitals are at high risk of closing without improvement in their financial situations.⁴

The role hospitals play in Iowa is immense, providing more than 78,000 jobs and, last year, creating nearly \$8 billion in overall economic impact.⁵ Losing several Iowa hospitals would have a devastating impact on Iowa communities still consumed with a pandemic, wind storms and drought.

SUPPORT FOR RURAL HEALTH CARE

Through the years, rural health care influence has been recognized and supported in a number of ways. Arguably the most significant support was provided by the United States Congress with the passage of the Balanced Budget Act of 1997 (Public Law 105-33) which included the new designation "Critical Access Hospital" (CAH).⁶

By far the greatest advantage critical access hospitals receive is cost-based reimbursement for services provided to Medicare beneficiaries. Basically, a critical access hospital reports its costs for providing care to Medicare beneficiaries and Medicare pays it.

The CAH designation comes with its limitations, such as requiring a limit of 25 or fewer beds, a reimbursement process that typically is finalized six-to-nine months after conclusion of the fiscal year and some reduction in the cost reimbursement over the years.

For many Iowa communities, the CAH program has saved health care services, with 82 Iowa hospitals gaining designation as critical access hospitals.⁷

A major indicator of rural health care provider performance is the management of state Medicaid programs. Medicaid covers health care services for poor and disabled Iowans.

While there are many perspectives on how the \$5 billion Iowa Medicaid program has been performing, it seems health care providers are receiving lower, confusing and less timely payment from Medicaid. Iowa

followed other states in expanding coverage to more people and moving Medicaid from state administration to management by multiple companies. Medicaid already had a history of relatively low reimbursement.

Given the situation, the Iowa Hospital Association (IHA) is proposing a way to address Medicaid performance which remains to see legislative action.⁸

The pandemic has given health care providers some temporary reprieve. The CARES Act and the Paycheck Protection Program and Health Care Enhancement Act enacted by Congress included pandemic relief monies for them.⁹

While this emergency relief has been helpful, the CARES Act relief covered only about half of the losses health care organizations faced in managing through the first months of the pandemic.¹⁰

Another support early in the pandemic was expansion by the Centers for Medicare & Medicaid Services (CMS) of existing rules to allow advance Medicare claims payments to health care providers. Now, if there is no congressional action, these accelerated payments are beginning to be recouped by Medicare.¹¹

The long-term implications of the pandemic on health care organizations in Iowa will be negative. The only unknown is the extent of the damage, with a mid-range estimate of \$1.41 billion in revenue losses for Iowa hospitals.¹²

In any case, rural health care will remain in financial jeopardy, whatever the details, and even though additional commitments and proposals at the state and federal levels have been made to address rural health care needs.¹³

PARALYSIS BECOMES ABRUPT CLOSURE

Unfortunately, often the culture and leadership surrounding troubled rural health care organizations become paralyzed or have little influence. It is difficult to move toward any restructuring process that might save services for the community.

Failing to act in a timely way can become a downward spiral that leaves an abrupt, unstructured closure as the only option. For example, the owner of a chain of 21 Nebraska nursing homes suddenly failed to make payroll. Of course, this one event negatively and unexpectedly impacted 21 Nebraska communities.¹⁴

STRATEGIES FOR TROUBLED HEALTHCARE ORGANIZATIONS

Many troubled health care organizations assume they must sell or otherwise join a larger organization to avoid closure. While these strategies have been pursued with some success, it's often at a price to the local community.

In a contract management arrangement, the small organization can become a minor distraction for the larger urban organization that is likely facing its own stresses. Alternatively, services may be terminated in the small organization.¹⁵

Sometimes a management arrangement has found community hospitals unintentionally trapped in major fraud cases. In Missouri, a critical access hospital was operated under a management contract with a company where an owner charged with billing fraud involving more than \$100 million embroiled the hospital in the scheme.¹⁶



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In another situation involving contract management, the United States Department of Justice reported in 2018 that Health Management Associates, LLC, would pay over \$260 million to resolve fraud allegations, including false billing. The company had been involved in management of rural health care organizations across the country.¹⁷

Regarding the sale or merger of a rural health care organization, serious consideration will likely be stymied by any large debt and/or pension burden. Ironically, while a small health care organization is expensive to build and equip, it has limited value — its greatest value is as a going concern.

Another consideration is restructuring health care organizations financially. This can be accomplished either outside or within the bankruptcy process.

NON-BANKRUPTCY WORKOUT

The workout is used outside bankruptcy and is a negotiated modification of debt. It typically takes the form of an out-of-court agreement between a debtor and its creditors on repayment of debts. While a workout avoids legal procedural complications, it also lacks protections found in bankruptcy processes.

The primary goals of a workout are to stabilize financial performance and, as needed, negotiate improved debt terms with major creditors. Lawyers experienced in bankruptcy and debtor-creditor law can advise the rural health care organizations and involved government entities on whether a non-bankruptcy workout is appropriate.

Assuming concerned creditors and/or local government overseers are involved, a detailed operational and financial plan will be needed to assure the situation will improve.

While conventional wisdom suggests smaller rural health care organizations cannot survive financially, federal government attention on rural health care does allow opportunity for many of these providers to fare reasonably well. At the same time, improving the financial situation will likely require major change, and advancing potential opportunities may be difficult and complicated.

Health care organizations, even the small ones, are complex enterprises with innumerable regulatory, accreditation and legal requirements for every department and function. Simply think of a laboratory technologist, a

nurse, a hospital facilities manager, a physician — each implementing the ever-changing COVID-19 requirements this year — to get a small sense for the myriad of patient care requirements these organizations face.

It's easy to see how the smaller organizations can miss some financial opportunities while focusing on their most important priority — patient care.

Further, acquiring revenue for services, or billing, has become nearly as complicated as patient care. Gone are the simple days of trading health care services for a chicken. Also gone are the days when health care billing was a rote, mundane process. Today, changes in billing occur constantly, challenging the industry to keep pace.

Some of the revenue opportunities for the workout plan are found in areas such as medical coding and documentation, pharmacy management, IT support for billing, insurer/payer contracts, data analytics for billing, new service implementation, patient service growth, pre-authorization for expensive services and collections.

Many times, there are also opportunities to reduce costs. The following areas can be examined and adjusted fairly quickly as part of a workout plan: vendor contracts, lease agreements, accounts payable processes and payroll processes, to name a few.

Other financial opportunities can also be assessed as part of the workout plan that take more time to implement. These opportunities might include items such as staff restructuring, elimination of services, refiling Medicare cost reports and employee benefit changes.

BANKRUPTCY

Bankruptcy, for health care organizations particularly, is complicated. First, important people without representation are involved, i.e., patients. Especially in rural situations, the organization's patients are likely to include vulnerable populations with few options for other care, and/or limited ability to acquire care elsewhere.

Thus, various state and federal entities may become involved. In addition, the bankruptcy court typically considers the need to appoint a patient care ombudsman for the protection of patients.

While the health care organizations — cheered on and pressed by their communities — set sights on continuing to provide

services, those that file for bankruptcy often do not achieve this goal.¹⁸ On the other hand, filing for bankruptcy can provide some short-term relief from creditors and provide time to develop business plans.

Prior to filing, a number of factors should be considered such as current state operating licenses, government registrations and other regulatory matters. Review of contracts with payers, physicians, other clinical providers and vendors is also advisable. This information can be used for business plan development.

In addition, health care organizations also typically have obligations to notify local, state and federal agencies regarding the situation. Approval of plans may be required from government agencies. Of course, attention is needed on communications with employees and the community at large.

Finally, there is thought that the needs of health care organizations are not adequately addressed in bankruptcy law. The “misfit” issues have raised a call to create separate bankruptcy code subchapters for health care business bankruptcies that would provide clarity on current issues, as well as allow the development of procedures and organizing principles for health care organizations.¹⁹

WORKOUT, BANKRUPTCY, ABRUPT CLOSURE? TIMING IS EVERYTHING

No rural community wishes to lose the economic energy its health care organizations provide. Losing a hospital or nursing home is similar to losing a school. Nor do rural leaders want the damaging public relations that accompany a bankruptcy.

The counties and cities overseeing rural health care organizations need these providers to continue as going concerns. Closing potentially leaves local taxpayers, vendors and lenders carrying any remaining debt.

Meanwhile, rural lenders may be strapped with health care organizations failing to meet debt requirements. While lenders are often unwilling to push hospitals into bankruptcy or closure, the drastically strained agricultural sector in Iowa may lead to different decisions about the health sector.

If the financial situation is simply ignored, it can become too late to save anything. While going through bankruptcy is an understandable fear, failure to act resulting in abrupt closure is much worse for the community. In the latter scenario, barriers to entry and regional competition will assure the community will never have much for health care services again.

While it is difficult to know if these bankruptcy and non-bankruptcy options will be used more frequently in health care in the near future, at least 29 hospitals have filed for bankruptcy in 2020.²⁰ Further, organizations have been saved with only a few days of cash on hand and inadequate cash to make the next payroll.

But with the business planning provided by the workout and bankruptcy options described in this article, health care organizations have come from the edge of closure to seize unrealized potential, becoming sustainable for the long-term and patient care leaders in their regions.



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BRIAN GRIMES NAMED PRESIDENT OF IOWA COLLECTORS ASSOCIATION

Brian Grimes, president of Credit Bureau Services of Iowa, Inc. (CBSI), was recently named president of the Iowa Association of Credit & Collection Professionals (IACCP). The IACCP is the Iowa chapter of the international trade association ACA International. Prior to this position, Grimes represented Iowa as Counsel Delegate for three years.

VESTAL NAMED DWIGHT D. OPPERMAN DISTINGUISHED PROFESSOR OF LAW

Allan Vestal has been selected by Drake University Law School as a Dwight D. Opperman Distinguished Professor of Law. The Opperman Distinguished Professorship recognizes faculty who have demonstrated the highest level of teaching, scholarship and service to the law school, the university and the profession. Vestal joined Drake Law School in 2009 as dean and professor of law. He served as dean until 2014 when he returned to full-time teaching on the law school faculty.

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Safe at Home program gives anonymity to victims of assault and violence

By Iowa Secretary of State Paul Pate

Survivors of assault and violence often live in constant fear. Their days are filled with anxiety, knowing their offender could locate them. Many of us know someone who is a victim or survivor of domestic violence. In recognition of Domestic Violence Awareness Month this October, we would like to share a vital resource available in Iowa called Safe at Home (SAH).

The public records law, Iowa Code Chapter 22, creates a safety concern for survivors of violent crimes. It creates easily accessible public records which can be used by their offenders to find their physical locations. Registering a vehicle, court hearings, registering to vote and other activities create a public record which may include a physical address.

In 2015, Iowa House Representative Dean Fisher sponsored the SAH legislation after being contacted by a constituent. This constituent preferred to live in Iowa near family and friends, but felt she had no choice but to move to another state that had an address confidentiality program. She had been forced to use her physical address during court proceedings against her abuser. Once he knew her physical location, she no longer felt safe. She fled to California in order to join an address confidentiality program to ensure her abuser would not be able to obtain her address again.

In May of 2015, Chapter 9E, Address Confidentiality Program, passed unanimously in both the House and Senate and was signed into law by Gov. Terry Branstad. The program was officially launched on Jan. 1, 2016. Today Iowa is one of over 40 states with an address confidentiality program.

Safe at Home is an address confidentiality program which provides survivors of domestic violence, sexual assault, trafficking and stalking with a substitute address, mail-forwarding, confidential voter registration and absentee voting. The program, administered by the Iowa Secretary of State's office, currently has more than 600 participants in 62 counties.

Records maintained by SAH are confidential and are an exception to Iowa Code Chapter 22. Addresses are only shared with emergency personnel in situations where the participant's physical location is required. Organizations and agencies may confirm whether an individual is a participant in the program, but no other information will be given. Iowa Code 9E.5 does not apply to documents or records related to real estate property.

Program eligibility

Iowa Code 9E lists the following requirements for eligibility in Safe at Home:

- Resident of the state of Iowa
- An adult, a minor, or an incapacitated person as defined in section 633.701
- A victim of domestic abuse, domestic abuse assault, sexual abuse, stalking or human trafficking as evidenced by the filing of a petition pursuant to section 236.3 or a criminal complaint or information pursuant to section 708.2A, 708.11 or 710A.2 or any violation contained in chapter 709



Secretary of State Paul D. Pate and Iowa State Representative Dean Fischer during a press conference regarding Safe at Home in 2015.

Substitute address

Each participant is assigned a substitute address. It includes a street address, a PO Box and a unique apartment number. Apart from the unique apartment number, the address is the same for all SAH participants. It is important for all parts of the address to be included when sending a participant mail.

Mail forwarding

The confidential address will direct all participant mail to the Safe at Home office. Program staff will repackage and forward the mail to the participant. First-class mail, prescriptions and government packages are forwarded. Other packages, magazines and standard mail are not forwarded to the participant and are returned to the sender.

Mail cannot be picked up from the Secretary of State's Office, and participants should expect a mail delay of up to five to seven days.

According to administrative rules, participants may be cancelled from the program due to failure to notify SAH staff of a change of address. When mail is returned to staff, an effort will be made to contact the participant, but if a change of address is not made within seven days participation from the program may be terminated.

The Office of the Secretary of State serves as the agent of the program participant for purposes of service of process as designated by §9E.5(4). Safe at Home staff will forward service of process via certified mail to the program participant, who will either accept or reject the service of process. The date of service of process is the date of the participant's acceptance or rejection. Upon acceptance or rejection, SAH staff will notify

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the person initiating service. Rejection of service by a participant may lead to the termination of their program participation as indicated in §9E.4.

Confidential voter and absentee voting

Information for Iowa's registered voters is maintained in a statewide voter registration database. This information is public record and includes a physical and mailing address. In addition to being public record, the database is accessible by hundreds of election workers across Iowa. Therefore, it is imperative that the information is maintained outside of the database.

Safe at Home participants do not register to vote through their county auditor but register instead through the SAH program. This ensures that the participant is registered in the correct precinct without giving personal information to the auditor or inputting it into the statewide voter registration database.

An address confidentiality program is not a witness protection program. It provides services to ensure that the participant's address does not become public record; however SAH does not relocate participants. It is the responsibility of the participant to use the substitute address and not his or her actual address. Iowa law also does not allow for redaction of already established records.

Participation is not confidential

A participant's address and private information is confidential. However participation in the program is not confidential. This allows businesses, organizations and agencies to verify participation when an individual uses the substitute address.

When residency within a district is required, a request for verification can be submitted to SAH staff. Staff will verify whether the participant resides within that district and his or her participation in the program.

Federal agencies and legislation

Federal agencies are not required to accept the SAH substitute address — only state agencies, businesses and organizations. In October of 2019, U.S. Representative Betty McCollum (Minnesota) reintroduced before Congress the Safe at Home Act (H.R. 4705). If passed by the U.S. House and Senate, this would extend state-level address confidentiality protections for participants to federal executive agencies and courts.

Powerful impact

The powerful impact of SAH was illustrated by the results of a recent survey of current participants. Results

show that prior to enrollment in SAH, 54 percent of respondents never felt safe and 41 percent felt safe only sometimes. After enrollment, 67 percent of respondents feel safe most of the time and 27 percent always feel safe. Safe at Home is a crucial piece to a survivor's safety plan. However, when working with survivors it's important to understand it is only one piece of that plan.

Additional resources

Applicants are also encouraged to contact one of the following agencies to discuss their safety plan and to learn more about available resources: Iowa Coalition Against Domestic Violence: www.icadv.org or 515-244-8028, Iowa Coalition Against Sexual Assault: www.iowacasa.org or 515-244-7424, and the Iowa Attorney General's Crime Victim Assistance Division: www.iowaattorneygeneral.gov/for-crime-victims or 515-281-5044.

If you or someone you know would like more information or to fill out an application, visit the SAH website at www.safeathome.iowa.gov or call 515-725-SAFE (7233). If you would like materials or a program training for your organization, please contact us. Brochures, removable stickers, palm cards, magnets and booklets are available free of charge.

For quarterly e-mail updates, sign up for our newsletter at safeathome.iowa.gov. Thank you for all you do to help victims become survivors in the state of Iowa. Every Iowan deserves to be Safe at Home, and together we can make this a reality.



Paul Pate is a nationally-recognized entrepreneur, currently serving in his third term as Iowa Secretary of State. Pate's office oversees elections and business filings for the State of Iowa. He is the immediate Past-President of the National Association of Secretaries of State.

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Iowa's longest-serving magistrate to retire



Courtesy of the Fort Dodge Messenger

One wintry Fort Dodge morning, Bill Thatcher was shoveling snow out front of his law office on North Ninth Street when a car skidded to a stop on the other side of the street. A large man climbed out and walked directly toward him.

"My initial thought was that this was not going to have a happy ending," he recalled. "My yellow snow shovel was not going to be much protection. He walked right towards me, pointed his hand at me and said, 'Are you Judge Thatcher?' I wanted to say, 'No, are you kidding? He's inside having a cup of coffee.' But I said yes.

"He took off his glove and held out a huge hand and came up to me and said I want to thank you. I gratefully took off my glove and shook his hand and asked him why. He said that a year ago I had put him in jail for 30 days. He said the first 10 days in jail he was so mad at me he just wanted to get out and beat me up. The second 10 days, he said he felt sorry for himself. And the third 10 days, he decided that he never would do anything which would put him back in jail.

He was released from jail and reconciled with his wife, got his job back and stopped using alcohol and drugs. He put his life back together again. And he said he wanted to thank me for getting him started on that path."

They talked for a short time before the man returned to his car and drove away, but Thatcher said he was so startled that he cannot remember the man's name.

"That incident and success story kept me going for a long, long time," he said. "People usually don't thank you for helping them in the legal system. I do

get letters and thank you notes every now and then but very infrequently."

William J. Thatcher has served as a Webster County magistrate judge since his initial appointment July 1, 1973 – except for a four-year break when he was Webster County attorney. He concluded his career of judicial public service on Sept. 5 when he reached the mandatory retirement age of 72, leaving as the longest-serving of the 140 magistrate judges in Iowa.

The third-generation Fort Dodge native is one of three part-time Webster County magistrates – Steve Kersten, who was appointed in 1992, and Bill Habbab, who was appointed in 2012, are the others. They work one week on, two weeks off – serving 24/7 for a full week as a magistrate before returning to their law practices.

Magistrates handle initial appearances for every criminal case. As the first rung of the law ladder, they hold trials for all simple misdemeanors, handling such offenses as speeding, public intoxication, domestic assault, theft, as well as trials on small claims (cases up to \$6,500), uninsured car accidents, unpaid cash rent and construction claims. They also handle commitment hearings for substance abuse and mental health – cases Thatcher calls the most difficult. They issue search warrants and arrest warrants for the police, sheriff's office and state patrol.

When he is not wearing magistrate's robes, Thatcher partners with Sarah Livingston, a fellow University of Iowa Law graduate, in the Thatcher and Livingston LLC law firm. His wife, Carol Thatcher, and Sheryl Reed are legal assistants, and Cathy Mickelson is a part-time legal assistant.

Katrina O'Brien is the court attendant for the three magistrates.

Thatcher plans to continue to practice law, with no immediate plans to retire.

"When I go over there and walk into the courtroom, my friends say I become a different person," Thatcher said. "With that black robe on, you have to judge someone: Is that person telling the truth or lying, what's the motive, what really happened here? When Tom Bice retired (as a district court judge), he said the most difficult part of the job is sentencing a criminal case. You only have one chance to sentence someone. You have to be able to look at that person, you have to determine if this person may need a slight talking to or a harsh admonition. Sentencing is the most important thing we do."

Nearly half a century after it happened, Thatcher said that in his first year as a magistrate, he sentenced a man "and I think I got it all wrong. I know his name, someday I want to find him and apologize... I found him guilty and found out later that I shouldn't have believed a witness."

Thatcher and his sisters – Barbara Thatcher Lyall of Woman Lake in northern Minnesota and Jody Thatcher Cook of Indian Wells, California – are the children of Bernice and Bill Thatcher. Their father was a surgeon who started his medical practice in 1939 and was joined a year later by his brother Donald, an internist, along with their sister Mildred Thatcher Warren, a registered nurse and office assistant. Their father, Orville Thatcher, was a banker with the Webster County National Bank from 1914-1922.

Both brothers joined the Army during World War II, but only one came back. Bill was a surgeon in field hospitals behind the lines in North Africa, Sicily and Anzio. But Don, a flight surgeon stationed in England, was killed when he volunteered to go with a B-24 crew that was shot down on a bombing run over France in late June 1944; it was the flight crew's last mission before they were to return home. Bill returned to his medical practice in Fort Dodge and was joined by Drs. Paul Stitt and Hoyt Allen in the Thatcher, Stitt and Allen practice. Dr. Thatcher died in 1980 and his wife died in 2008.

Magistrate Bill Thatcher is married to Carol Anderson, who he met in their senior year at Fort Dodge Senior High. They were married in 1968 while attending Iowa State University – Carol earning a degree in home economics education and Bill a degree in industrial administration (later, the Ivy College of Business). Carol taught for three

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years “and put me through law school” at the University of Iowa, Thatcher said. Bill and Carol have two children – Amy, a sales rep for a specialty pharmacy who lives in Denver, and Scott, a corporate pilot who lives with his wife Duree, and their children Lily, 16, and Charlie, 14, in Eau Claire, Wisconsin. Duree’s brother, Darren Driscoll, is the Webster County attorney. Scott is the third generation of his family to be a pilot, following in the footsteps of his father and grandfather.

Thatcher’s pathway to law started with a summer job in Minnesota when he was 17 years old.

Thatcher worked for three summers for a boat dealership at Woman Lake in Longville, Minnesota – where his parents had a cabin (and where Thatcher and his wife still have a residence.) He was the only person in the shop over the noon hour one day when “a tall distinguished guy walked in and said he wanted to buy a fishing boat.” The man, Bill Schrapfer, was the first head of the Department of Industrial Administration at Iowa State and learned Thatcher planned to attend school there for a degree in agricultural business. Schrapfer, an Iowa Law graduate, would be his adviser.

“It was the best thing that ever happened to me,” Thatcher said. “He decided I should go to law school. He gradually moved me to being interested in law – I would have never gone to law school if dad hadn’t got me that summer job and I hadn’t sold that boat.”

Thatcher worked as a law student intern

in the summer of 1972 for County Attorney Louie Beisser, who would later become a district court judge. Back then, Iowa had municipal court judges, police court judges and justices of the peace. But the state legislature created the Legislature Court Unification Law that became effective July 1, 1973 – the same date that Thatcher became a Webster County magistrate judge.

“I am the only remaining magistrate who started out with the new law,” Thatcher said.

“I had always wanted to come back to Fort Dodge and open my own law practice and this allowed me to do that because it (magistrate judge) was a part-time position. It was a great way to start my practice – criminal law and civil law – everything fit perfectly. A good friend of mine was head of drug cases and wanted me to come to Chicago as an assistant U.S. attorney. That was exciting for someone 24 years old – this would be near, but I’m a small-town boy and I was just not comfortable moving to Chicago. Carol and I had a baby daughter, Fort Dodge seemed like a better answer. I think I made the right decision.”

The COVID-19 pandemic has turned the world upside down – with the court systems being no exception. They reopened in mid-July with cautionary procedures in place.

“As a magistrate, we had done everything by telephone – all the initial appearances. I talked to each defendant, while they were sitting in jail, told them their rights, assigned an attorney for them. We had built up a huge

backlog of trials and were just starting to hold those trials – and for the next foreseeable months, tried to whittle down the number of cases. Everyone had to wear a mask. There were certain areas where you could sit, we kept people apart, limited the number who could be in the courtroom. We tried to get every case done in 20 minutes. It forced us to be more efficient with our time. I missed not being able to look at every defendant in the courtroom. I read the reports, but I’m an old-fashioned guy. I like to be able to look at someone, look in their eyes, read their body language, respond to my questions. I think we all erred on the side of caution...we may have been more lenient in letting people out of jail than before because we were more aware we didn’t want people sitting in jail spreading this disease.”

Thatcher said applications have been taken for his position but the nominating commission has decided not to fill it immediately and will reconsider doing so in early December.

“The court system has changed dramatically in the last 47 years,” Thatcher said. “It is more formal now and more responsive to individual rights. The Iowa Judicial Branch is more independent from the legislative and executive branches than in the past. All in all, we have a better court system than in the past. Iowans can be very proud of the integrity and independence of their courts. That may sound like a political ad but it is my personal observation.”

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How to persevere in politics?

State Auditor Rob Sand says it's all about servant leadership

By Melissa Higgins,
ISBA Communications Director



Sand is pictured at his computer in his office in the Iowa State Capitol building, where he leads a team of approximately 100 people as State Auditor.

When 100-mile-per-hour winds tore through large swaths of neighborhoods and fields across Iowa this summer, they left an unimaginable path of destruction. Many towns, like Cedar Rapids, are still a long way from recovery after the Aug. 10 derecho.

Within days of the storm, Iowa State Auditor Rob Sand loaded up his truck with supplies – chainsaws, gasoline, power tools, generators – and a mattress, so he could sleep in his vehicle between clean-up shifts. He put out a call to his 20,000 followers on Twitter asking which areas needed the most help. And he drove in.

“Cedar Rapids is my mom’s hometown, so I spent a lot of time there growing up,” Sand said of what motivated him to head toward the damage. It is also an area where he has done disaster recovery work before.

“After the 2008 floods, I organized an effort that had law students volunteer over 1,000 hours for clean-up in Cedar Rapids,” he said. It was a project he spearheaded while president of the student bar association at the University of Iowa College of Law. “I personally feel a sense of

community and belonging in Cedar Rapids.”

Sand also spent time in the communities of Huxley and Marshalltown in the weeks after the derecho, even bringing one of his young sons along – hoping to inspire in him the same desire to “be a helper.”

“Part of what compels me is my faith, which teaches me to serve others,” Sand said. “It is also the way I was raised.”

Sand grew up in Decorah and describes his childhood as “bucolic.” His father is from the Northeast Iowa town, so the Sands have deep roots there. Sand discovered his passion for public service in high school when he worked for two years to build a public skatepark in Decorah.

“The sense of community in Decorah is wonderful. It felt like people were in the world together. You can see the connections between your actions and how they affect other people. I don’t know if I would have understood that if I grew up outside of Iowa,” he said.

When he’s not chain-sawing trees and collecting debris, Sand oversees approximately 100 people as the head of the Auditor of State’s Office. This office

provides audits of the financial operations of state and local governments to ensure the government is open and accountable to citizens. The auditor is required to audit the records and accounts of every department of state government each year.

“I care a lot about good governance, and this is the office of accountability for the state of Iowa. So, I get excited about the opportunity to help make government work well,” Sand said.

He was elected as a Democrat in 2018 and campaigned on a promise to change the focus of the office.

“I read Chapter 11 of the Iowa Code three times before I wanted to run as state auditor. The office as it is described and how it was run were entirely different things. So, we have been working on turning the office back to what it was intended for: The watchdog of Iowa. We’re focused on accountability and integrity, rather than only making sure accounts reconcile,” he said.

Sand started by hiring more investigators with legal backgrounds. He wanted to approach the job the same way he



Sand is pictured atop a house in Cedar Rapids with his chainsaw, as he helped to cut limbs and clear debris after the storm.



Sand snapped this photo of the damage he saw in Cedar Rapids by the derecho on Aug. 10.



Sand brought his first-grade son, Tait, with him to help clean up storm damage.

approached his previous work with the Iowa Attorney General's Office – with an eye toward building each investigation so that it would hold up in a court of law. He also spends a lot of his time traveling the state to hear from the public about what his office could do better.

"I plan to visit every county in Iowa, every year," he said. "If I do 10 county stops, I have at least one or two people approach me on some issue. Sometimes they give me a ream of paper and say, 'you need to read this,' and walk away. People want accountability. They want to report things." Sand says most of his office's special investigations start with a tip from the public.

His office has taken on a new role during the COVID-19 pandemic. Sand joined a bipartisan group of state auditors from around the country who are keeping a close eye on how public health officials are collecting and reporting pandemic-related data in their states. Sand released a report in July related to how the Test Iowa program results were being reported. His office, which initiated a mandatory work-at-home order in March that continues today with few exceptions, is also auditing how federal and state COVID-19 relief dollars are spent.

"As most state and federal spending in Iowa is in our jurisdiction, our workload has increased with each dollar allocated to pandemic relief," he explained. "But we are working diligently to balance that with our pre-existing obligations. We have so many great public servants on staff and I feel confident that the teams we have built will do a good job."

Sand began his legal career at the Iowa Attorney General's Office in 2010 focusing on white-collar crime. He gained statewide notoriety prosecuting the Iowa Film Office tax credit scandal, and national notoriety with the Hot Lotto fraud case. He led a nationwide lottery-fixing investigation that uncovered seven fixed lottery tickets across five states with total values of nearly \$25 million.

"With the lottery case, that was something I was handed when we had no idea it would be anything. We had no idea it was part of a lottery-rigging scheme. It was just one of those things where the more we kept learning, the deeper it got," he said. That case earned him a profile in the New York Times magazine, among other national media coverage of his work.

Sand started working at the AG's Office right out of law school. He was the youngest prosecutor in a small division which handled the office's toughest cases. It weighed on him.

"There is a negativity and sadness to criminal law in general," he said. "Even if it was a financial case, there is still the very sad day of sentencing when someone goes to prison, and that person may have kids, and now

that parent is gone from their lives. I had this image in my head of being a crusader righting wrongs. But at the end of the day, those people are still people with families. Even if it's justice, it's not always a positive thing to see that justice served."

Sand also dealt with cases involving the state's most violent sexual predators and says those were the cases he has never talked about with anyone.

"There are cases I worked on that I never want to burden anyone else with. There are some people who are temperamentally equipped to do that kind of work, but I am someone who sees possibilities and opportunities, and when it's that heavy and dark you feel like you begin to lose some of that part of yourself," he said.

Sand says he always tries to see the good in people. It's why he is not disillusioned by politics – vowing to keep partisanship at bay by always treating other elected leaders as thoughtful people who want to do the right thing.

He hopes that his style of governance – "servant leadership" as he calls it – might compel other Iowans, especially lawyers, to consider running for office or getting involved in politics in other ways.

"When you're young and you say what

"We often don't want government visible, until suddenly we do. For those times when we do, I think we are seeing that it is important to always have leaders in charge who believe there is a role for government to work towards the greatest good for the greatest number."

you want to be when you grow up, people say 'that's great, kid, you can do it!' But at some point, when you tell people you want to be in politics, they look at you sideways or think you have nefarious intent," he said. "It shows how little people think of our system. But it should also tell us how little we think of ourselves. Because it's ours. It's our system."

Well-intentioned professional people can be the antidote for that, he says: "When you come into political service as a professional – as a lawyer, for example, or

SAND ON SOCIAL MEDIA

State Auditor Rob Sand is a prolific Tweeter. He has more than 20,000 followers on Twitter at the handle @RobSandIA, an impressive number for a state official from Iowa. He uses the platform mostly to share insights into his personal life, which often include his love of breakfast pizza.

"My strategy (on social media) is to be a human being. Most people have such sadly low expectations for people in office, so when they see you're a human being, they react with joy," he said. "I think I'm a pretty ordinary guy, but what motivates me in this role is a disappointment in what we see in government and what government can be. So, I want to show people what government can be."

nurse or teacher – it's important. It takes some of the partisanship out of your view. And when your profession is working with the law, you take that professionalism to writing the law as well. That's why lawyers can make good leaders in our government."

Sand didn't always want to be a lawyer. His original career goal, spurred by a love of social studies from a young age, was to be a teacher of history or political science at a high school level. Now, as a lawyer-turned-politician, he's not sure what his next career goal might be. His name often comes up on Democratic lists of potential candidates for higher office, but Sand says the balance between work and family life will always be the biggest consideration for him. Sand is married with two young sons: Tait and Axel.

"I want to be somewhere I can have a big impact. But I also want to be a good dad. Any decisions about future political office involve where I can make a difference and what is the opportunity that makes the most sense for my family," he said.

Regardless of where he ends up next, Sand's view of servant leadership remains steadfast: "You need to come into politics thinking you're there to serve Iowans and do the right thing. Then it's a noble job. You *can* do good."



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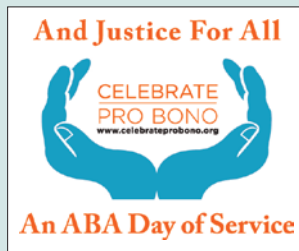
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Iowa attorneys donate thousands of hours of pro bono legal services annually and make financial contributions to legal service organizations that assist low-income Iowans. The ISBA commends all member attorneys who perform pro bono work for clients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

This month, the ISBA recognizes the following Iowa attorneys:

(Names are sorted by county and were provided by Iowa Legal Aid unless otherwise indicated. Bolded names indicate 50+ hours of pro bono work.)

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Estate planning with charitable giving funds

By Jordan Richardson

Over \$43 billion were given to charity by bequest in 2019, according to Giving USA's annual study. Put another way, nearly 10 percent of all charitable giving (\$449.64 billion) occurred through estate plans.

It is likely not a surprise to any of us that charity plays a role in the estate. For a few, it offers shelter against the estate tax. But for many individuals, the bequest provides an opportunity to leave a legacy with the organizations that best align with their values and passions.

In its simplest form, an individual might choose to name a specific charity to receive a residual benefit from his or her will. Your firm probably has templated language to address this. In fact, many non-profits do, too.

While that strategy works well in simple cases, simplicity is increasingly rare. For example, your client might feel anxious about selecting a specific list of charities today. And even if they feel confident about their list today, a future experience or programmatic change at an organization might result in a change of heart. Your clients may also desire more flexibility and fluidity in the timing of their gifts, rather than giving the charity a significant single contribution at their deaths.

These potential barriers can be addressed effectively by engaging a charitable giving fund. Charitable giving funds, such as donor-advised funds (DAFs), provide a simple, powerful and personal approach to giving. For individuals who give charitably during their lifetimes, a donor-advised fund can provide significant value by streamlining giving over time in an efficient, organized and tax-wise manner now and in the future.

For clients with an existing DAF (or clients who might be interested in

establishing one), the DAF has the potential to act as an effective charitable complement to their will or trust. This is because most DAFs include a succession plan. Those plans range from appointing heirs to oversee future charitable giving decisions, to naming specific charities or areas of interest to receive a one-time gift or a stream of future distributions.

Take Client A for example. Client A gives regularly to several charities and has established a DAF to streamline charitable giving during his lifetime. When updating his will, Client A tells his attorney he would like to set aside the residual of his estate to benefit two charities equally. While he could name those two charities directly in his will, his attorney suggests he bequeath the residual of his estate to the DAF instead. The result is the same, as the two charities are now in line to receive a distribution from Client A, but Client A has now given himself the flexibility to amend his charitable plans in the future without requiring the will to be revised.

Five years later, Client A begins serving as a board member for a third charity and feels drawn to adding this additional organization to his charitable estate plan. Thanks to the

foresight of his attorney five years prior, Client A simply reaches out to his DAF administrator and updates his succession plan to include the third charity. No update to the will is necessary. Easy!

But what if your client does not have an existing DAF and does not have a current giving plan that justifies establishing one? Could they establish a testamentary DAF? Possibly!

At the Community Foundation of Greater Des Moines, we call this a legacy fund, and it provides for significant flexibility and peace of mind in planning for future charitable giving.



Let's consider Client B. Similar to Client A, Client B would like to leave a sizable portion of her estate to charity. Unlike Client A, however, Client B does not currently utilize a donor-advised fund and is not interested in doing so. Client B and her attorney have determined 50 percent of her estate should go to charity, but she is challenged to develop a specific list of charities. Client B's giving changes periodically as new opportunities arise that align with her goals and values.

Rather than losing sleep over developing a list of charitable beneficiaries, Client B and her attorney opt to instead create a legacy fund – the “Client B Family Legacy Fund.” The will is drafted to give 50 percent of the estate to the legacy fund at the local community foundation. Client B meets with community foundation staff to develop her charitable instructions. Subsequent meetings with the community foundation result in a few adjustments to the plan, but much like Client A, Client B is never required to revise her will to make those changes.

At Client B's death, 50 percent of her estate flows to the Client B Family Legacy

Fund at the community foundation and the predetermined charitable instructions are executed. In Client B's case, several charities receive an immediate distribution, while the remainder of the charitable balance lives on as a donor-advised fund, with Client B's children overseeing future distributions.

While Clients A and B are fictional cases, I have had the opportunity to connect with many individuals in similar scenarios. Planning for our legacy can be challenging – especially when it involves trusting organizations to steward our financial resources after we are gone. Charitable giving funds like these can be powerful tools to provide peace of mind with efficiency and flexibility, while giving clients opportunities to tangibly share their charitable hopes and dreams.



Jordan Richardson is the director of charitable giving at the Community Foundation of Greater Des Moines. Richardson is a Chartered Advisor in Philanthropy and works with professional advisors and their clients to promote charitable giving.



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TRANSITIONS



Ryleigh Keeney has joined Grefe & Sidney PLC in Des Moines as an associate attorney in the firm's litigation division. Her practice focuses on trial, litigation, insurance coverage and defense, and alternate dispute resolution. Keeney received her J.D. from the University of Iowa College of Law in 2020.



Katherine Anderegg, Joel Aschbrenner and Michael Kaufmann have joined Davis Brown Law Firm in Des Moines.

Anderegg joins the Davis Brown Law Firm as an associate attorney in the litigation division. She will primarily work in the insurance defense department.



Aschbrenner joins the business division after clerking with the firm for two summers. He worked as a journalist for several years including at the Des Moines Register where he covered real estate, development, downtown Des Moines and the Des Moines Airport among other areas. He currently serves on the Des Moines Water Works Board of Trustees and previously served on the Des Moines Historic Preservation Commission.



Kaufmann joins the litigation division to practice in business, commercial and construction litigation. He represents construction and design firms in matters relating to construction defect and mechanic's lien litigation.



Jeremy Masterson and R. Charles Bottenberg, who founded the Masterson & Bottenberg Law Firm in 2013, are joining the Ahlers & Cooney law firm in Des Moines as special counsel.

Masterson will work in the trusts, estates and personal taxation practice group. He received his J.D. from Drake University Law School.



Bottenberg will focus his work with the business entities practice group. He received his J.D. from Drake University Law School.

Grace Bogart and Rachel Soderstrum have joined Dickinson, Mackaman, Tyler & Hagen, P.C. as associate attorneys.



Bogart is a 2020 graduate of the University of Iowa College of Law and holds a B.A. in political science (summa cum laude) from Iowa State University. As a member of the firm's Banking, Start-Up, and Real Estate Groups, she will be assisting businesses, creative professionals and innovators to achieve their objectives and protect their brands.



Soderstrum graduated with highest honors from Drake University Law School and holds a B.A. in social work (summa cum laude) from the University of Northern Iowa. Her practice at Dickinson Law will focus primarily in the areas of Employment, General Civil Litigation and Family Law by providing solutions for businesses and individuals.



Thomas Bush, Jenny Juehring and Austin Lenz have joined Lane & Waterman in Des Moines.

Bush graduated from Drake University Law School in 2020. He clerked at Brick Gentry in Des Moines and Bush, Motto, Creen, Koury & Halligan in Davenport for several years.



Juehring is a 2019 graduate of Washington University Law School. Prior to joining the firm, she was a clerk for Chief Judge Leonard T. Strand of the United States District Court of the Northern District of Iowa.



Lenz graduated from Drake University Law School in 2020. He clerked for Lane & Waterman in the summer of 2019 and was a judicial intern for the Scott County Juvenile and Associate Court in 2018.

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IN MEMORIAM

Richard Frederick Stageman, 93, of West Des Moines, died Aug. 21. Stageman was born in 1926 in Omaha. He served in the U.S. Naval Air Corps during World War II and received his J.D. from Creighton University Law School. He practiced law in Nebraska and Iowa after receiving his degree in 1951. During his time with Smith, Pogge, and Stageman, he was elected to the Iowa 59th General Assembly as a representative from Pottawattamie County. In 1962, he was appointed Referee in Bankruptcy for the Southern District of Iowa by District Judge Roy L. Stephenson. In 1973, he was appointed as a full-time magistrate. Later that year, Judge Stageman was appointed as a full-time bankruptcy judge for the Southern District of Iowa. He retired from the bench temporarily in 1986 but was recalled two months later to serve pending the appointment of Judge Lee M. Jackwig.

Michael E. Hansen, 82, of Urbandale, died Aug. 28. Hansen was born in Des Moines, in 1938. He received his J.D. from the Drake University Law School, then served in the U.S. Navy as a Commander, JAG. He returned to Iowa and

began work as a prosecutor at the Polk County Attorney's Office from 1967-80 then worked as general counsel for American Federation State County and Municipal Employees (AFSCME) from 1980-2005.

Don Botorff, 78, of Omaha, died Aug. 19. Botorff was born in Webster City in 1942. He served in the U.S. Navy during the Vietnam War and received his J.D. from the University of Iowa College of Law. After graduating, he served as Special Assistant Attorney General in Minnesota before joining the law firm of Hemingway and Myers in Webster City in 1971. During that time, he also served as a magistrate judge in Hamilton County.

Earl W. Sutton, 89, of Ankeny, died Sept. 1. Sutton was born in 1930 in Des Moines. He received his J.D. from Drake University Law School and served as an officer in the United States Air Force.

William "Bill" R. King, 81, of Des Moines, died Sept. 3. King received his J.D. from the University of Iowa College of Law. He was an attorney at the Davis Brown Law Firm.

Robert Bruce Scism, 95, of Bella Vista, Arkansas, died Sept. 3. Scism was born in Evansville, Indiana, in 1925. He served in the U.S. Navy in World War II and received his J.D. from Drake University Law School. From 1965 to 1967, he served as an assistant attorney general of the state of Iowa, and in that capacity represented it in the Supreme Court of the United States in the case of *Nebraska v. Iowa*. In 1967 he was a founding partner in the Des Moines law firm Scalise, Scism, Gentry & Brick.

Kathleen Neylan, 75, of Elkader, died July 16. Neylan received her J.D. from the University of Iowa College of Law. Kathleen worked for the Department of Agriculture in Washington, D.C. after law school. She was a delegate and speaker at the historic 1972 Democratic National Convention in Miami. She was a long-time member of the Women's Rights Council and the Democratic Party. Other organizations she belonged to were the Commission of the Status of Women, the Iowa Juvenile Justice Advisory Council, the Association of Trial Lawyers and the Iowa and Clayton County Bar Associations.

ISBA CLE CALENDAR

■ All held via live webinar format

OCT. 21-23
Family Law Seminar

OCT. 26
Slowing the Avalanche:
Gain Control of Your Email
Before it Buries You

NOV. 2
The Language of
Judicial Opinion Writing

NOV. 16
Silver Linings: New
Opportunities for
Online Mediation

NOV. 17
Drug Testing in Child
Welfare Cases: Chemistry,
Methodology and
Legal Implications

NOV. 18
Unemployment Insurance
Appeals During COVID-19

NOV. 19
Safe Harbors and Calm Seas:
Navigating Risk
in Law Practice

NOV. 19-20
Labor and Employment
Law Seminar

DEC. 2-4
Bloethe Tax School

DEC. 11
Federal Practice Seminar

FAMILY LAW SEMINAR

- Appropriate Parenting Plans for Geographically Separated Parents
- Attorney Burnout/Compassion Fatigue
- Family Law Appeals
- Positive Programs in Iowa: What's Working

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iowabar.org/calendar

DISCIPLINARY OPINIONS

CASE NO. 20-0472: IOWA SUPREME CT. ATTORNEY DISCIPLINARY BD. V. JESSE MICHAEL MARZEN

Filed Sept. 11, 2020

(Summary adapted from the opinion by Justice Oxley)

The Iowa Supreme Court Attorney Disciplinary Board (“Board”) brought a complaint against attorney Jesse Marzen arising out of his representation of a couple involving two different matters. The first matter involved his work in preparing income tax returns for the couple’s business, and the second matter involved his transfer of an estate matter to another attorney without the client’s prior consent.

Marzen was admitted to practice law in Iowa in 2005. He was previously disciplined in 2010 after he had a sexual relationship with a client and disclosed confidential information about the client during his campaign for county attorney, which resulted in a six-month suspension of his license.

The Iowa Supreme Court Grievance Commission (“Commission”) found the Board proved Marzen violated most, but not all, of the cited rules. Based on Marzen’s

violations and the aggravating factors in this case, the Supreme Court agreed with the Board that Marzen’s license should be suspended, contrary to the Commission’s recommendation of a public reprimand. The Court indicated it was most troubled by Marzen’s willingness to provide knowingly inaccurate tax returns for his clients to give to their bank in support of a loan application. This, coupled with Marzen’s prior disciplinary record, led the court to **suspend Marzen’s license for 30 days.**

CASE NO. 20-0298: IOWA SUPREME CT. ATTORNEY DISCIPLINARY BD. V. JOHN P. BEAUVAIS, JR.

Filed Sept. 4, 2020

(Summary adapted from the opinion by Justice McDermott)

John Beauvais Jr. graduated from law school in 2013 and was admitted to practice law in Iowa that same year. He started his legal career as an associate with a Sioux City law firm, but in March 2016, he left to start a solo practice. In September 2014, while still at his prior firm, Beauvais

filed a personal injury lawsuit on behalf of Sharel Banks and her minor child against the owner and manager of a rental property where Banks and the child previously lived. The lawsuit sought damages for the child’s exposure to lead paint while residing at the rental property.

With trial looming and a discovery sanctions motion pending, Beauvais told opposing counsel and the court that his client had accepted the opponent’s \$15,000 settlement offer. But the client had forcefully rejected that offer, saying she’d rather get nothing. The lawyer then pressured the client into accepting the \$15,000 settlement using false information. The Supreme Court calls this “a cautionary tale to the unprepared lawyer to avoid attempts to whitewash one’s poor performance by pressuring a client to settle to end the case. Here, the settlement ended the lawsuit but triggered this attorney disciplinary matter.”

A division of the grievance commission heard the evidence and concluded the lawyer committed multiple violations of the Iowa Rules of Professional Conduct. The Supreme Court concurred and imposed a **three-month suspension.**

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2020

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- 2020 Legislation Impacting Farm Returns
- Summary of Rates and Tables for Use in Preparing 2020 Returns
- Tax Issues Associated with Financially Distressed Clients

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POSITIONS AVAILABLE

Attorney – Personal Injury Law – Franklin D. Azar & Associates, Aurora, CO - Franklin D. Azar & Associates, P.C. is the largest personal injury plaintiffs firm in Colorado and has represented thousands of people entitled to recover damages from injuries in all types of accidents, from dangerous and defective products, and from employers not paying adequate wages. To apply, visit <https://careers.iowabar.org/jobs/13826911/attorney-personal-injury-law>.

Attorney – Peters & Longmuir, PLC, Independence, IA – Established and growing three-person law office is seeking a lawyer ready to join an active family law and criminal practice. We have a broad regional client base handling real estate, probate and tax matters. Applicants must have an interest in working to continue the growth of the practice and a desire to assume a management and ownership role. Competitive compensation options. Lawofficeadvert@gmail.com

Public Law Attorney (Bond Counsel/Public Finance) – Ahlers & Cooney, P.C., Des Moines, IA – Ahlers & Cooney, PC is seeking an Iowa attorney with 3-5 years of experience in public finance, municipal bonds, disclosure matters, or other experience in corporate finance and/or general transactional matters, negotiations, contract drafting and contract review. To apply, visit <https://careers.iowabar.org/jobs/13887962/public-law-attorney-bond-counsel-public-finance>

Associate Attorney – Newbrough Law Firm LLP, Ames, IA - Newbrough Law Firm, LLP, is seeking an associate attorney. Excellent research and writing skills are required, and trial experience is preferred. The ideal candidate would also possess a strong work ethic and dedication to serving the community. All applications will be handled confidentially. Send resume and cover letter to *Newbrough Law Firm, LLP, Attention*

Nicole S. Facio, Personnel Partner, P.O. Box 847, Ames, IA 50010 or nfacio@newbroughlaw.com.

General Counsel – Truman State University, Kirksville, MO – Truman State University – Missouri’s only public liberal arts and sciences university seeks an experienced, skilled, collegial and collaborative attorney to serve as its next General Counsel. This position provides a unique opportunity to formulate and oversee legal policies and procedures that will have lasting impact on the ability of Truman to fulfill its mission for many years to come. Review of candidates will begin immediately; to receive full consideration, materials must be received by October 16, 2020. Applications should include a curriculum vitae, detailed cover letter, and contact information for three references and be sent to: *Jennifer Kopp Dameron, Chair, General Counsel Search Committee, Truman State University, President’s Office, McClain Hall 200, 100 E. Normal Ave., Kirksville, MO 63501, presoffice@truman.edu*

Audubon County Attorney – Audubon County, Audubon, IA - The Audubon County Board of Supervisors intends to fill the vacancy of the office of County Attorney by appointment. The candidate will serve the remainder of the existing term, which ends December 31, 2022. To be considered for appointment, eligible candidates must submit an application, resume, and proof of eligibility to the *Audubon County Auditor, 318 Leroy Street, Audubon IA 50025, no later than October 5th, 2020.*

Medical Malpractice Defense Attorney – BrownWinick Law Firm, Des Moines, IA – Seeking an experienced full-time qualified defense attorney with at least 3 years of experience (5+ years is preferred) to join our medical malpractice group. Candidates must have excellent academic credentials and be proactive, detail oriented, and organized. Prior courtroom experience strongly preferred. Confidential inquiries, including cover letter, resume and law school transcript (unofficial is acceptable) should be directed to: *Tia Calhoun, Recruiting Coordinator, BrownWinick Law Firm, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309, E-mail: tia.calhoun@brownwinick.com*

Staff Attorney – Davenport Community Schools Project – Iowa Legal Aid, Davenport, IA – Iowa Legal Aid is seeking an energetic and creative attorney to join our new Davenport Community Schools Project. The attorney will have principal responsibility for working in conjunction with the Executive Director and other staff to establish a new program with the Davenport Public Schools, including the establishment of a new legal aid clinic on site in an elementary school in the Davenport School District. To apply, submit letter of application, resume, law school transcript (recent graduates only), recent representative writing sample, and names, addresses and phone numbers of at least three professional references to akness@iowalaw.org.

Corporate/Transactional Attorney – BrownWinick Law Firm, Des Moines, IA – Seeking a full-time qualified attorney with two to five years of experience to join our corporate practice group. Candidates must be proactive, detail oriented, and organized. Candidates should also have experience in transactional work, including mergers and acquisitions and securities. Confidential inquiries, including cover letter, resume and law school transcript (unofficial is acceptable) should be directed to: *Tia Calhoun, Recruiting Coordinator, BrownWinick Law Firm, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309, E-mail: tia.calhoun@brownwinick.com*

Chief Deputy Attorney General – Iowa Department of Justice – Attorney General, Des Moines, IA – Iowa Attorney General Tom Miller seeks a Chief Deputy Attorney General. Duties include office-wide supervision in the following areas: legal issues, public policy, budget, personnel, and general administration. Also handles numerous projects and assignments at the request of AG Miller. To apply, visit <https://careers.iowabar.org/jobs/13930566/chief-deputy-attorney-general>

Litigation Attorney – BrownWinick Law Firm, Des Moines, IA – Seeking a full-time qualified attorney with at least three years of experience (five+ years is preferred) to join our litigation practice group. Candidates must have excellent academic credentials and be proactive, detail oriented, and organized. Prior courtroom experience strongly preferred. Confidential inquiries, including cover letter, resume and law school transcript (unofficial is acceptable) should be directed to: *Tia Calhoun, Recruiting Coordinator, BrownWinick Law Firm, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309, E-mail: tia.calhoun@brownwinick.com*

Staff Attorney – Waterloo VOCA – Iowa Legal Aid, Waterloo, IA – Iowa Legal Aid has a Staff Attorney opening in its Waterloo Regional Office. The current opening in Waterloo is partially funded by the Victim of Crime Act (VOCA). The VOCA funded Staff Attorney will help victims of crime, primarily with protection orders, dissolutions of marriage and other emergency family law matters. To apply, visit <https://careers.iowabar.org/jobs/13934985/staff-attorney-waterloo-voca>

Associate Attorney – Schweitzer & Wink, Columbus Junction, IA – A well-established general practice law firm in Louisa County, Iowa is looking to hire a full-time associate attorney with the intention of entering into a long-term partnership. This practice involves probate, real estate, criminal, family law and tax preparation. To apply, email cover letter and resume to: tinadawn5@windstream.net

Temporary Secretary – The law firm of Johnston, Hicks & Griffith in Knoxville is in need of a temporary secretary for January and February of 2021 for preparation of documents and filing. If interested, please contact *Jim Hicks by phone: 641-842-2197, or email: jhicks@jhgglaw.com*

SERVICES OFFERED

Mediation – Former Justice Michael J. Streit who served for over 27 years on the bench is offering mediation and arbitration services. Streit was appointed as a district court judge in 1983 where he served the Fifth Judicial District. In 1996 he was appointed to the Iowa Court of Appeals and in 2001 to the Iowa Supreme Court where he served until 2010. For information and scheduling please call *515-244-3500 or 515-247-4708.*

Freelance Litigation Services – Iowa-licensed attorney provides freelance litigation services to other lawyers and law firms on an hourly, as-needed basis - research, motions, brief writing, discovery, document review, appellate work and other trial preparation tasks. *Melinda Ellwanger, P.L.L.C., /515.988.5622/melwanger@yahoo.com/www.LinkedIn.com/in/melindaellwanger*

FOR SALE

Building and Land: Law building – 7109 Hickman Rd. Urbandale Iowa, 50322 & adjoining lot and woods @ 7113 Hickman. Two attorney tenants possible along with equipment and furniture if needed. Negotiable terms before formal listing. *Berger Law Firm P.C. 515-288-8888.*

PERSONAL

If depression, stress, alcohol or drugs are a problem for you, we can help. We are a non-profit corporation offering attorneys free help in a totally confidential relationship. We are the Iowa Lawyers Assistance Program. Under order of the Iowa Supreme Court, all communication with us is privileged and private. Our director is a former lawyer, and a recovering alcoholic and drug addict. He is a trained substance abuse counselor. We cannot help unless you call – *515-277-3817 or 800-243-1533 – or message (in confidence) help@iowalap.org*. All you have to do is ask us to contact you. No other details are necessary. We will call you. The Iowa Lawyers Assistance Program also can provide speakers for local bar associations.

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The ISBA would like to thank the following people for speaking at ISBA-sponsored CLE programs in September:

Sweeping Changes to Court Debt Assessment and Collection – Sept. 1

Sponsored by The Iowa State Bar Association Criminal Law Section
Speaker: Alex Kornya, Iowa Legal Aid

2020 Bridge the Gap Seminar – Sept. 10-11

Speakers:
Jared Adam, Shuttleworth & Ingersoll
Hon. Paul Ahlers, Iowa Court of Appeals
Jace Bisgard, Shuttleworth & Ingersoll PLC
Jeffrey Boehlert, Boehlert Brownlee ADR
Nathan Borland, Timmer & Judkins PLLC
Magistrate Judge Celeste Bremer, Southern District of Iowa
Stephen Brown, Cutler Law Firm PC
Tyler Coe, Whitfield & Eddy Law
James Cook, Dutton Daniels Hine Kakhoff Cook & Swanson PLC
Nick Critelli, Critelli Law PC
Jennifer Dorman, Carney & Appleby PLC
Robert Gainer, Cutler Law Firm PC
Timothy Gartin, Hastings Gartin & Boettger LLP
David Grooters, Pappajohn Shriver Eide & Nielsen PC
Sara Linder, Bray & Klockau, P.L.C.
Robert Rehkemper, Gourley Rehkemper & Lindholm PLC
Tim Semelroth, RSH Legal
Doug Struyk, Carney & Appleby PLC
Greg Taylor, Cutler Law Firm PC
Tara van Brederode, Assistant Director/Administrator, Iowa Supreme Court Attorney Disciplinary Board
James Weston, Tom Riley Law Firm PLC
Breanna Young, Davis Brown Law Firm

Voting Rights, Hard Won, Not Done: Honoring the Legacy of the 15th and 19th Amendments – Sept. 14

Sponsored by The Iowa State Bar Association Diversity and Inclusiveness Committee and Administrative Law Section
Speakers:
Emily Chafa, Attorney at Law
Henry Hamilton III, Administrative Law Judge

Safe at Home Program – Sept. 17

Sponsored by The Iowa State Bar Association Government Practice Section
Speakers:
Christy Johnson, Office of Iowa Secretary of State, Safe at Home Outreach Coordinator
Molly Widen, Office of Iowa Secretary of State

2020 Corporate Counsel and Trade Regulation Seminar – Sept. 18

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

Speakers:
Hon. Chief Magistrate Judge Helen Adams, Southern District of Iowa
Leslie Behaunek, Nyemaster Goode
Lori Chesser, Davis Brown Law Firm
Denise Claton, Davis Brown Law Firm
Kimberly Cullen, Law Student
Anthony Gaughan, Professor of Law and Kern Family Law Chair, Drake Law School
Mark T. Hamer, Hamer Law Office
Tim Hill, Bradley & Riley
Erin Hoffman, Faegre Drinker
Debra Hulett, Nyemaster Goode
Justice Edward M. Mansfield, Iowa Supreme Court
Matt McGuire, Nyemaster Goode
Jennifer Smith, Lead Counsel at ACT
Elizabeth Van Arkel, Davis Brown Law Firm
Tara van Brederode, Assistant Director, Office of Professional Regulation of the Supreme Court of Iowa
Aaron Van Oort, Faegre Drinker
Chuck Webber, Faegre Drinker

2020 Ag Law Seminar – Sept. 23

Sponsored by The Iowa State Bar Association and ISU Center for Agricultural Law and Taxation

Speakers:
Dario Arezzo, Attorney and Senior Tax Consultant at Farm Credit East, ACA
Pat Dillon, Attorney and Owner, Dillon Law P.C.
Jeffrey Fetter, Attorney and President, Scolaro Fetter Grizanti & McGough, P.C., Syracuse, NY
Michael Fielding, JD, Attorney and Partner, Husch Blackwell LLP

Chad Hart, PhD, Associate Professor, Department of Economics / Extension and Outreach, Iowa State University
Erin Herbold Swalwell, Attorney and Shareholder, Brick Gentry PC
Eldon McAfee, Attorney and Shareholder, Brick Gentry PC
Leslie Mille, Agricultural Loan Officer, Marion County Bank
Wayne Reames, Attorney and Shareholder, Belin McCormick PC
Jesse Richardson, Professor of Law and Land Use Attorney, West Virginia University
Kristine Tidgren, Center for Agricultural Law & Taxation
Kitt Tovar, Center for Agricultural Law & Taxation
Anthony Schutz, Associate Professor of Law, University of Nebraska

Child-focused Innovations in Family Law – Sept. 29

Sponsored by The Iowa State Bar Association Family & Juvenile Law Section and Drake University Law School
Speaker: Diane Dornburg, Iowa Center for Children's Justice

Recognizing and Managing Burnout – Sept. 30

Sponsored by The Iowa State Bar Association Criminal Law Section
Speaker: Kimberly Stamatelos, Kimberly Stamatelos Office of Law & Mediation

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14	15	16	17 AM	18 AM	19 AM	20
21	22	23 AM	24 AM	25	26	27
28	29	30				

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Spotlight ON Service

BrownWinick attorneys break fundraising record for



BrownWinick is proud to congratulate attorneys Ashley Fuhrmeister, Karen Karr and Allison Lindner on their efforts in making the 2020 Polo on the Green a record-breaking year for Variety – The Children’s Charity of Iowa. Fuhrmeister, Karr and Lindner served as co-chairs of this year’s Polo on the Green event. Typically, Polo on the Green is a fundraising event held each July which features a live polo match, live and silent auction, dinner and other live entertainment.

However, due to the coronavirus pandemic, it became clear that Variety could not hold the event (which has been attended by 500 guests in the past) as originally planned. The Polo on the Green committee knew that COVID-19 would increase the needs of children in the year to come, so cancelling the event entirely was not an option.

“For over 20 years, Polo on the Green has raised funds to support Variety and its mission of caring for Iowa children,” said Fuhrmeister, committee co-chair of Polo on the Green. “After cancelling this year’s event, we knew

we’d have to be creative when thinking of ways to continue to raise funds.”

Under Fuhrmeister, Karr and Lindner’s leadership, Polo on the Green was changed into a month-long virtual fundraising event, featuring a “20 for 20” bike campaign with a goal to fund 20 specialized mobility bikes for children in 2020, as well as new social media and

marketing strategies. Donors were given the option to direct their funds to multiple fund-a-need categories. The results of the month-long fundraising campaign exceeded everyone’s expectations – Variety raised a record-breaking \$226,325 and the event’s sponsors funded 21 specialized mobility bikes for Iowa children.

“We are extremely grateful for our corporate sponsors who have remained true in their commitment to Variety and for those community members who have donated to the fundraiser,” said Fuhrmeister, a transactional attorney at BrownWinick.

Variety – the Children’s Charity is dedicated to improving the lives of children who are underprivileged, at-risk, critically ill and living with special needs throughout Iowa. Funding is provided to programs and initiatives that directly impact the well-being of children in Iowa communities. In 2020, over \$1.9 million in grants were awarded by Variety to 71 children’s organizations throughout the state.



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