



# THE IOWA LAWYER

June 2019 V 79 N 5

Incoming ISBA President  
**Bill Boyd**

Prepares for year as 133<sup>rd</sup>  
president  
**PAGE 8**



How the 2019 legislative session might affect your practice  
*p. 10*

Special section:  
All about cyber security  
ISBA members tell harrowing stories  
of their own data breaches  
*p. 18*

**ALSO IN THIS ISSUE**



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# CONTENTS

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## THE IOWA LAWYER

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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 and manuscripts to the editor for possible publication. Submissions should be no longer than 1,500 words, although exceptions can be made. Footnotes should be kept to a minimum. Include a short bio of the author(s) and professional photo(s) when submitting. NOTE: Not all submissions are guaranteed publication. The editors and bar leaders review all submissions to make a determination of suitability for publication. Email all submissions to communications@iowabar.org in Microsoft Word format.

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## ABOUT THE COVER

Bill Boyd is pictured on the terrace outside the Nyemaster Goode P.C. office, which is located at 700 Walnut St. in downtown Des Moines. He has been practicing business law at Nyemaster for 25 years, and in July takes the helm of the ISBA as its 133rd president. Learn more about the bar's new leader beginning on page 8.

## FEATURES

- 10 2019 Legislative Session Update**  
The ISBA's legislative team recaps the 2019 session so you know what laws may impact you and your practice.
- 18 If it can happen to them, it can happen to you**  
How one ISBA member was scammed out of \$400,000, and another almost fell victim to a collections scheme.
- 19 Anatomy of a data breach**  
Learn more about the intricate planning behind data breaches from the perspective of the hackers themselves.
- 22 Security awareness training for law firm employees**  
Sadly, your greatest asset – your employees – are also the greatest threat to your cybersecurity. How to train them to alleviate risk.
- 26 Cyber security help from the ISBA**  
Learn more about your insurance options and the email protection plan available as a member of the ISBA.

## COLUMNS

- 5 President's Letter: Relationships, part 2**
- 27 Disciplinary Opinions**
- 29 Transitions**
- 31 In Memoriam**
- 31 Letter to the Editor**
- 32 Classifieds**
- 34 Spotlight on Service: "Whitfield Women"**

## IN BRIEF

- 4 Gov. Reynolds appoints newest Court of Appeals judges**
- 4 Forty new attorneys join the Iowa Bar**
- 30 Drake Law spearheads passage of electronic legal material legislation**
- 30 50-year members honored**

## IN BRIEF

### GOV. REYNOLDS APPOINTS NEWEST COURT OF APPEALS JUDGES

Gov. Kim Reynolds announced her appointments of Sharon Soorholtz Greer and David May as judges on the Iowa Court of Appeals.

Greer, of Marshalltown, received her undergraduate degree from Iowa State University and her law degree from the University of Iowa College of Law. She practiced law with Cartwright, Druker & Ryden in Marshalltown. Greer fills the vacancy that was created when Gov. Reynolds appointed Justice Christopher McDonald to the Iowa Supreme Court earlier this year.

May, of Polk City, received his undergraduate degree from the University of Missouri - Columbia, and his law degree from Drake University Law School. He served as a district court judge in Judicial Election District 5C, and previously practiced law with Bradshaw, Fowler, Proctor, & Fairgrave, P.C. in Des Moines. May fills the vacancy created by the retirement of Judge David Danilson.

An investiture ceremony for the two new judges was held June 7.

### FORTY NEW ATTORNEYS JOIN THE IOWA BAR

At the admission ceremony April 30 for the latest round of successful applicants to the Iowa bar, 40 new attorneys were sworn in. The ceremony was held at Scottish Rite Consistory in Des Moines, with a reception afterwards at The Iowa State Bar Association Headquarters.

Seventy-two people took the bar exam in February, and 66 percent of those taking the exam for the first time passed.

The 2019 Summer Bar Examination will be held July 29-31 at Hy-Vee Hall at the Iowa Events Center in Des Moines.



Justice Susan Christensen performs the oath to swear-in the 40 new attorneys who successfully passed the February bar examination.



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# PRESIDENT'S LETTER: RELATIONSHIPS, PART 2

TOM LEVIS, PRESIDENT

**M**y first President's Letter was about relationships. It's only fitting that I finish my year telling you about some of the wonderful relationships I developed while president of The Iowa State Bar Association.

During my year as president, I got to know Ray Beebe, an Iowa lawyer I will never forget. Ray is a lawyer from Forest City and retired general counsel for Winnebago Industries. We met during the legislative session when he offered to help oppose the nominating commission legislation. He is not one of those "left-leaning trial lawyers" we heard so much about from proponents of the legislation. To the contrary, he is a business lawyer who spent years representing one of Iowa's most famous companies in one of the most conservative communities in the state. Ray told me that while he was general counsel for Winnebago, he had great confidence in the independence of Iowa's courts, a confidence he didn't necessarily have in other states. Ray thought the proposed nominating commission legislation politicized the selection of judges and would likely cause businesses to lose confidence in Iowa's courts. During the legislative

session, Ray was a force to be reckoned with; he communicated with legislators every day, constantly reminding them why the nominating commission legislation was bad for Iowa. He wrote wonderful op-ed articles and letters to the editor educating Iowans about the short sightedness of the bill. I am certain that without Ray Beebe's help, the nominating commission legislation would have been far worse. I am truly grateful for my relationship with my new friend, Ray Beebe.

Another relationship I made during my presidency was with Andy McKean. Andy is a lawyer-legislator from Anamosa. Like Ray Beebe, I met Andy in connection with the bar's opposition to the nominating commission legislation. From the day the legislation was introduced, Andy, a Republican member of the Iowa House, publicly spoke against the legislation. Throughout the session, the governor and Republican leadership put incredible pressure on Andy to change

his position, yet Andy held firm. At the end of the session, Andy was so disappointed with his party's efforts to change the way Iowa selects judges and justices, he switched political parties. I am convinced that without Andy's persistent opposition to the legislation, changes to the Iowa merit selection system would have been far worse. I am truly grateful for my relationship with Andy McKean.

Karen Shaff is an Iowa lawyer and general counsel for Principal Financial Group, one of the largest companies in the world. I knew Karen before my year as president, but not that well. However, we established a great relationship when she and her husband, Des Moines attorney Steve Jayne, joined me on the ISBA's sponsored trip to Cuba. Within days of our return from Cuba, I learned firsthand how important relationships could be. The nominating commission legislation was on a fast track for approval. Jim Carney, the bar's chief legislative counsel, told me that the bar association needed help from business leaders to oppose the bill. Jim and I



contacted Karen. She was as troubled by the proposed legislation as we were. She agreed to help. She spoke to her boss, Principal CEO Dan Houston, about writing a letter to the governor in opposition to the legislation. Dan Houston is not a lawyer, but he and Karen were very familiar with Iowa courts. Both knew that Principal could count on Iowa courts to be fair and impartial, something Principal could not always count on in other states. Karen and Dan Houston feared that letting the governor and the elected leaders select all of the nominating commissioners would diminish the confidence that Iowa businesses had in Iowa's Courts. With Karen's help, Dan Houston wrote a powerful letter to Governor Reynolds detailing the reasons Principal opposed the nominating commission legislation. I am convinced that Dan Houston's letter to the governor was a major reason the legislation was amended to remove district courts from the bill. I am so glad that Jim Carney and I had a relationship with Karen Shaff.

For years, I have had a wonderful relationship with former ISBA Presidents Guy Cook and Cindy Moser. But I suspect our relationship was put to the test this year. Cindy was my consigliere for the year (think of Tom from the Godfather movie). I communicated with Cindy several times every week and sometimes several times a day. A better consigliere could not be had. Cindy talked me off the ledge multiple times and for that I will be eternally grateful. Guy Cook is a master of the

sound bite and a media genius. During my presidency, when the ISBA needed to communicate with the media, Guy was there to cover for me or teach me how to do it. Without Cindy and Guy's help this year, I suspect I would have really struggled. I am deeply grateful for my relationships with them.

I have known Jim Carney for nearly half a century. We both grew up in southern Iowa and knew each other in law school. But our relationship over the years was mostly as fellow lawyers practicing in Des Moines. However, when I became president, our relationship expanded exponentially. Starting the first week of my presidency, I began attending political fundraisers with Jim. If I had a dollar for every fundraiser I attended with Jim Carney, I'd be independently wealthy! At each fundraiser, Jim knew every legislator (and spouse and assistant) like they were his longtime neighbors. Before the legislative session started, Jim and I spoke daily about ISBA legislation and the anticipated nominating commission legislation. He wanted the ISBA to be ready. Once the session began, we spoke to each other multiple times a day. I won't deny it, there were times in March and April when I was tired of talking to Jim Carney; but, come hell or high water, Jim contacted me every day, including Saturdays and Sundays. To top it off, Jim did not limit his communication to me during daylight hours. I frequently got emails from Jim sent at 3 a.m.! I hate to admit this, but I think I spent more time this year communicating with Jim Carney than

I did my wife! But it wasn't all serious communication. Occasionally, Jim sent hilarious emails to me. You see, while at the capitol, Jim could not sit down at a desktop and compose an email to me. No, he would dictate his message to me on his cell phone and then send the email to me on the fly. Spell check occasionally turned against Jim and sometimes his messages were crazy funny.

By all accounts, Jim had an incredibly tough legislature to deal with this year (*read more about this on page 10*). It was a non-election year where one party controlled the House, Senate and Governor's office, and that party had a legislative agenda that did not always align with the bar's agenda. All of us, and especially Jim Carney, were disappointed in the nominating commission legislation. But without the herculean efforts of Jim Carney, I think we would be back to the dark ages for selecting judges. I am very grateful for my "expanded" relationship with Jim Carney. The bar is lucky to have him, as well as his colleagues Doug Struyk and Jenny Dorman.

Maggie White has been the president of the YLD this year. In that role, she and I communicated regularly, attended events together and frequently discussed the changes taking place in the legal profession. For a lawyer who has only practiced law five years, Maggie has an incredibly mature view of the profession. She has been a marvelous advocate for young lawyers and a visionary proponent of needed changes to our profession. In fact, she is a marvelous advocate, period. I watched her tell Senator Grassley exactly why he needed to support the federal loan forgiveness program. Trust me, she is good! Keep your eye on Maggie White. The sky is the limit for this talented young lawyer.

Until this year, I did not know ISBA Communications Director Melissa Higgins well. But, I quickly came to appreciate her incredible talents. Once you become president, you have to deal with the news media. I am an old lawyer who avoided the press like the plague. So, I had no media skills. Thankfully, Melissa Higgins

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is a sophisticated media specialist well connected to the news media throughout Iowa. If I needed an article published anywhere in Iowa, Melissa made it happen. If I needed to appear on radio or TV, Melissa got it scheduled. If I struggled to write an article or a letter, Melissa was always there to help. If the ISBA needed an immediate press release, Melissa had it done before I could hang up the phone. Before I became president, I was not a big Facebook follower, Twitter fan or LinkedIn fanatic, but once I became president and saw the ISBA posts by Melissa Higgins, I became a social media convert. In case you can't tell, I am incredibly grateful for my relationship with Melissa Higgins.

ISBA Executive Director Dwight Dinkla and I have been friends since we started law school in 1974. So, no new relationship with Dwight. But, after working with Dwight every day for the last year, I can tell you that the ISBA is very lucky to have him at the helm. He is a marvelous leader who hires the best talent. He has the brains and institutional knowledge to help naïve bar presidents like me avoid silly mistakes. I will miss Dwight's daily humor and advice. He is, and will always be, a very good friend of mine.

I have to tell you about Assistant Director Harry Shipley too. I knew he was talented, but until I became president, I did not know the full extent of his skills. Harry has been employed by the ISBA for over a quarter of a century. During that time, Harry has been the creative genius behind virtually all of the bar's successful programs and benefits. During my year alone, Harry added the Trustifi email encryption program, the bar's new child support guidelines program and the Engage community and mobile phone app. Harry also helped set up the incredibly successful Table for Ten program where bar staff and leadership meet with lawyers for breakfast, lunch or dinner to discuss current issues affecting the bench and the bar. Harry also keeps track of the organization's statistics and financials and, at any given time, can tell you how many members we have and how much

money we have in the bank. I discovered early in my presidency that Harry gets to the office at 6:30 a.m. every day, and is usually there after 5 p.m. From conversations with other state bar associations, Harry is well known for his talents. In fact, several state bar associations have tried to hire him away from Iowa, but Harry's loyalty to Iowa lawyers keeps him here. So, someday when Dwight Dinkla retires, I hope each of you will support Harry Shipley as the next executive director of the ISBA. There is no one better suited for the job.

Finally, I want to tell you about President-elect Bill Boyd and Vice President Jerry Schnurr. Bill is a corporate lawyer with a nationwide reputation for representing nonprofit corporations. The ISBA is a nonprofit corporation. So, trust me, the ISBA will be in good hands with Bill (*and you can learn more about him on the next page!*). Jerry is a talented trial lawyer who brings a lifetime of courthouse experience to the table. With the independence of the courts under ever-increasing attacks, Jerry will be the perfect officer to lead the bar. Last year, these two officers and I communicated nearly every day. Their counsel and advice were invaluable to me. I am incredibly grateful for their friendship.

Over the last year, I established relationships with all of the ISBA staff. Frankly, until I became president, I did not know the full extent of the talent working for the bar. But I do now. I am happy to report that the ISBA is filled with talented staff devoted to making

the lives of Iowa lawyers better: Lisa Hanson (Meeting and Events Planner - nobody plans a party like Lisa!), Mary Hill (Membership Director), Christy Cronin (CLE Director), Jim Jessen (Facilities & Print Shop Manager), Paula Murphy-Puck (Special Projects Coordinator), Zach Zuber (Membership Relations Coordinator), John Wheeler (Director of the ISBA Center for Law & Civic Education), Virginia Sipes (Director of Innovation & Community Outreach), Chris Fritz (Marketing Director), Steve Boeckman (Communications Director Emeritus), Tuyet Vouthilak (Bookkeeper), Brian Hegg (Computer Services Director), Dewey Cantrell (Information Systems Analyst) and Hank Hanson (Membership Engagement Coordinator). The ISBA is blessed to have each and every employee. The next time you are in the bar offices, tell them thanks for the great job they do.

Folks, I have truly enjoyed my tenure as ISBA President. I will cherish the relationships I made 'til the day I head to the great courtroom in the sky. Representing Iowa lawyers has been the most gratifying experience of my legal career. Thank you for letting me serve.



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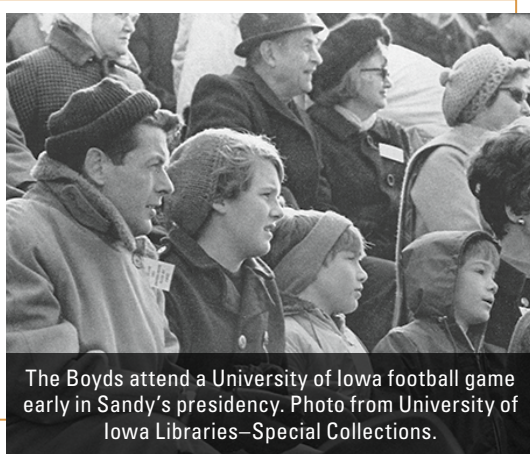
## A NEW LEADER AT THE HELM

INCOMING ISBA PRESIDENT PRACTICES AT NYEMASTER GOODE, HAS A PASSION FOR NONPROFITS

By **Melissa Higgins**, ISBA Communications Director



**B**ill Boyd was in fourth grade when his father, Willard “Sandy” Boyd became president of the University of Iowa. It was a tumultuous time on campus, rife with sometimes destructive demonstrations related to civil rights issues and the Vietnam War. Bill recalls a man dressed as “death” in bandages and fake blood, carrying an upside-down American flag, would park across the street and lie on the Boyds’ lawn morning after morning.



The Boyds attend a University of Iowa football game early in Sandy’s presidency. Photo from University of Iowa Libraries—Special Collections.

“University administrators were often viewed as standing for the status quo and were present on the campus. This made them more available targets than political leaders,” wrote Bill’s mother, Susan Kuehn Boyd, in diary entries written in 1970.

The family wrestled with decisions about where the family should stay to be safe, and his father also worried about the students and the university as well. His challenge was to keep the campus open and allow diverse

opinions to be expressed without intimidation or interruption. He also offered options to those who desired to leave.

It was a formative time for Bill, who at 10 years old, witnessed the impact of social strife up close. “I remember being impressed with the importance of the law in addressing these issues,” he recalled. It was one of the factors that piqued his interest in law as a career.

Bill, having been born and raised in Iowa City, attended the University of Michigan for undergrad and then came back home to the University of Iowa College of Law for his J.D. After clerking for federal Judge Donald O’Brien in Sioux City, he launched his career as a lawyer in Washington, D.C., before ultimately coming back to Iowa when an opportunity arose at Nyemaster Goode P.C. in Des Moines.

Bill has been working for Nyemaster, the state’s largest law firm, for 25 years in the Business, Finance and Real Estate Department. He represents clients that range from large corporations to individuals in transactional matters and regulatory compliance.

“I find the issues the firm’s clients are facing to be very interesting. I enjoy working with them to determine their goals, and then assist in developing strategies to accomplish those goals,” he explained.

Outside of the law, Bill is involved in community nonprofit work, serving on the boards of various organizations such as ChildServe, Variety – The Children’s Charity, Mercy College of Health Sciences, the University of Iowa Alumni Association, Iowa Legal Aid, Humanities Iowa and the Iowa Arts Council.

“One of the things I really like about Iowa is that it is very community-minded with a lot of great nonprofit and charitable opportunities,” he said.

It was this passion for nonprofits that led to Bill’s first significant project with The Iowa State Bar Association. When he realized the state’s Nonprofit Corporation Act hadn’t been updated since 1965, he suggested the Business Law Section set up a committee to review it. This resulted in the Revised Iowa Nonprofit Corporation Act that was ultimately adopted by the state legislature. He later published two books





through the American Bar Association on nonprofit organizations and board governance (pictured above).

Since seeing that initial first project come to fruition, Bill has served in various leadership roles within the bar association – as section and committee chair and as a member of the Board of Governors. He also served in ABA leadership roles and as president of the Polk County Bar Association, before making his way up through The Iowa State Bar Association officer rotation. Years of involvement at varying levels with bar associations made clear what he sees as a top priority: member engagement.

“The Iowa State Bar Association is a membership organization, so membership is vital to the success and sustainability of the association. My objective is to focus on member engagement in different ways – especially with the sections and committees, making sure they are active,” he said.

Bill, using his nonprofit board experience, has also been looking closely at ways to restructure ISBA governance to make sure the association is running efficiently and effectively. Additional priorities of his include access to justice, strengthened grassroots legislative advocacy efforts, support for the courts, rural practice issues and keeping the profession and bar association innovative in the modern era of practice. He has seen major changes just in his 25 years at Nyemaster.

“We did not have computers when I started and I can’t imagine working without a computer now,” he said. “We have the same challenge you see in firms around the country. The mode of communications has changed

– there is less in-person contact. Instead, it is voicemail and email, which means you always have to be mindful of what’s going on and be responsive in an extremely timely manner. But changing technology also means we have to make sure our profession is staying competitive in the marketplace.”

Bill’s predecessor, outgoing President Tom Levis, started the ISBA Innovations Committee to study big shifts in the profession. Bill has been involved in that committee and plans to oversee its continued focus on what is coming down the pipe in the legal profession. He also plans to carry over another program launched under Levis, Table for 10, where ISBA leadership drives to smaller communities around the state to meet with local attorneys for lunch or dinner on a regular basis. He and the other officers put a lot of miles on their cars this last year – visiting all corners of the state. Bill himself visited Centerville, Oska-loosa, Indianola, Atlantic, Fort Dodge and Forest City.

“Table for Ten has been very effective for hearing the concerns lawyers have around the state. We all come from different practices and these gatherings have brought to light some important issues our members are facing,” he said.

On the weekends, Bill puts some miles on his car too. Nearly every weekend, he drives to Iowa City to visit family, including two children who live there. He and his sister, Betsy, take his parents, now in their 90s, on day trips to see the sights in small towns throughout Eastern Iowa. He and his wife, Diane, have triplets: Haley, Katherine and Will. They are all graduates of the University of Iowa, just like Bill, and his brother, Tom, who is a commercial litigator in the Twin Cities.

Many Iowa attorneys may already know the Boyd name because of the family’s undeniable linkage to the University of Iowa. The current law school building is named after Sandy Boyd – his metal bust a visible fixture on the campus. His memoirs were just published by the University of Iowa Press. And while Sandy is often thought of as one of the university’s most revered figures, Bill’s peers say he encapsulates the same highly respected traits: humility, kindness, fairness, a level head and an unsurpassed work ethic.

“I could not be more confident in a successor than I am in Bill Boyd,” said outgoing President Tom Levis. “He is a smart, hardworking lawyer. To top it off, Bill is also one of the nicest lawyers I have ever met. I could not be more excited for the future of The Iowa State Bar Association with Bill Boyd at the helm.”



The Boyds during a recent trip to Washington, D.C.: Diane, Bill, Katherine, Will and Haley.

# 2019 LEGISLATIVE SESSION UPDATE

**James Carney**, ISBA Legislative Counsel  
**Douglas Struyk**, Assistant ISBA Legislative Counsel  
**Jenny Dorman**, Assistant ISBA Legislative Counsel

The Iowa General Assembly adjourned on Saturday, April 27, six days earlier than the scheduled session end date. The 2019 session was the third consecutive session with Republicans controlling the House, Senate and Governor's office. Continued Republican control impacted the legislature's agenda. This session was also the first session with Governor Reynolds as the first elected female governor in Iowa history.

## INDIGENT DEFENSE FUNDING

Funding for indigent defense has been a consistent priority of the ISBA. The rate has not been increased by the legislature since 2007. During the intervening 12 years, the ISBA's Board of Governors has pressed the legislature to adopt increases to the rate, including the adoption of an automatic adjustment mechanism to keep pace with the overhead of operating a practice.

The 2019 Legislature passed, and the Governor has signed, a \$3/hour increase in the rate effective on appointments made on or after July 1. This is a \$1.5 million-dollar investment by the legislature. While we were hopeful that the increase would be more, we are dedicated to continuing to pursue additional increases. Our discussions with legislators were that if they do \$3 now, we need to do similar increases the next several years to get to a full \$10 increase by FY 2022. This increase will affect approximately 800 Iowa lawyers who accept court-appointed cases.

Representative Gary Worthan, chair of the House Justice Appropriations Committee, along with his Senate counterpart, lawyer-legislator Julian Garrett, as well as our lawyer-legislators, were particularly instrumental in obtaining this increase in funding.

## BUDGET AND FUNDING

The FY 2020 General Fund budget passed by the 2019 General Assembly was based on total available resources of \$7.916 billion. This includes the March 2019 Revenue Estimating Conference (REC) revenue estimate of \$7.848 billion, revenue adjustments of \$-9.2 million, and a surplus carry-forward of \$76.8 million.

The General Assembly appropriated \$7.644 billion from the General Fund for FY 2020, which is \$193.8 million below the expenditure limitation of \$7.838 billion (99 percent of available resources). The FY 2020 appropriations represent a net increase of \$0.3 million (rounded 0.0 percent) compared to estimated FY 2019, after the addition of \$168.6 million for the supplemental appropriations. The General Fund ending balance for FY 2020 is estimated to be \$277.3 million.

The March REC also established an estimate of \$8.050 billion in General Fund receipts for FY 2021. This is an increase of \$201.6 million (2.6 percent) compared to the FY 2020 estimate.

## JUDICIAL BRANCH FUNDING

The Judicial Branch requested a 4.1 percent increase in funding which

would take its appropriation to \$184.8 million. The net Judicial Branch appropriation for FY 2019 was \$177.6 million. This session, the legislature appropriated \$181.1 million. This is an increase of \$3.55 million or two percent growth in funding year on year. The legislature also maintained the \$3.1 million appropriation to the Jury & Witness Revolving Fund.

## OTHER ISBA FUNDING PRIORITIES

- **State Public Defender** - \$26,995,139 (*\$489,840 increase 1.85%*)
- **Indigent Defense Contracts** - \$35,144,448 (*\$5,616,000 increase 15.98%*)
- **Poverty Grants** - \$2,634,601 (*\$330,000 increase 14.32%*)

## JUDICIAL NOMINATING CHANGES

The battle over the judicial nominating commission legislation was probably the most intense legislative effort the ISBA has ever been involved in. At stake was major changes to one of the most highly-regarded judicial nominating processes in the United States that has been in place for over 50 years. The original Senate proposal totally revamped both the district nominating process and the state nominating process, completely removing the commissioners elected by the practicing bar.

As a result of a great grassroots lobbying effort by ISBA members, we were able to get a major change in the judicial nominating commission proposal as it came out of the House Judiciary



Committee. This change eliminated the district nominating language from the bill. We had great support from House leadership and once again our lawyer-legislators. However, the House amendment still made changes to the state judicial nominating process that were unacceptable to the ISBA Board of Governors. The BOG discussed the various bills and amendments at the December meeting and two special emergency meetings by phone, and recommended we remain in opposition. Based on the BOG directions, we continued our lobbying efforts to seek reinstatement of Senate confirmation for gubernatorial appointments to the state commission, and the removal of the provisions of the bill changing the method by which the chief justice of the supreme court is determined.

As the bill was finally passed, Senate confirmation was added, but we were unsuccessful in our efforts to remove

the language changing the method of selecting the chief justice.

## ISBA AFFIRMATIVE LEGISLATION

The 2019 Affirmative Legislative Program consisted of six proposals. Items contained in the Affirmative Program are proposed by the various ISBA sections and approved by the Board of Governors. The Affirmative Program consisted of the following:

- **SF 569 – Uniform Protected Series Act** - Signed by Governor 4/15/2019
- **SF 112 – Certification of Trust Code Changes** - Signed by Governor 4/23/2019.
- **SF 158 – Post Conviction Relief Record** - Signed by Governor 5/1/2019.
- **HF 328 – Definition of Vulnerable Elder Clarification** - Signed by Governor 5/10/2019.

- **SSB 1242 – Guardianship and Conservatorship Update** - See HF 591 and HF 610, both signed by Governor 5/1/2019
- **SF 604 – Calculation of Probate Court Costs** - Passed Senate and now in House Ways & Means Committee. Eligible for debate in 2020.

## SIGNIFICANT LEGISLATION OF INTEREST TO THE ISBA THAT PASSED

### Guardianship and Conservatorship Overhaul:

#### HF 591 - Iowa Minor Guardianship Proceedings Act

This law establishes the new Iowa Minor Guardianship Proceedings Act and establishes that minor guardianship proceedings are under the exclusive jurisdiction of the juvenile court. All open minor guardianships



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## PROGRAM HIGHLIGHTS

Changes to Juvenile Guardianships

Proper Role of Attorney for a Child, GAL and Child and Family Reporter

Family First Prevention Services Act

Family Law Update

Analyzing Small Business Owner's Tax Return

The Intersection on Elder Law and Family Law

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will be transferred to juvenile court on Jan. 1, 2020. The act outlines the basis for minor guardianships, and provides specific procedural requirements for each basis, including the following circumstances: involuntary termination of parental rights; Child in Need of Assistance proceedings; parental death; voluntary termination of parental rights; and guardianships proceedings with parental agreement, and/or parental consent. In addition, this act provides new procedural requirements that must be followed in all minor guardianship proceedings that are done without the parent's consent. **Notice:** Establishes new requirements for who is entitled to notice and how that notice is provided. **Petition:** Outlines what must be contained within the petition. This includes the qualifications of the proposed guardian, whether a limited guardianship is appropriate, why the guardianship is necessary and in the best interests of the child, and any additional information known or reasonably ascertainable, required by section 598B.209. **Representation:** Requires that a court appoint an attorney for the child, if the court deems it necessary. In addition, it stipulates that an indigent parent has a

right to an attorney, if a parent objects to the appointment of a guardian.

**Hearing:** Provides that a minor, if age appropriate, has the right to attend and participate in the hearing. **Court**

**Visitor:** Allows for the appointment of a court visitor to aide the court. The court visitor is an independent source of information for the court about the respondent and the appropriateness of establishing a guardianship or conservatorship for the respondent.

**Background Checks:** Requires the Judicial Branch to establish standards for mandatory background checks.

**Court Order, Duties & Responsibilities:** Specifies the powers for a guardian and the monitoring duties of the court, both with and without court approval. Provides a separate section outlining the duties and responsibilities of the guardian. **Reporting:** Stipulates the reporting requirements and mandates the use of an initial care plan.

**Miscellaneous:** Requires the court to investigate the ability of a minor and the parents of the minor to pay expenses and allows the court to determine who to assess legal expenses. Allows the court to assess the county if the parents or the minor are under 150 percent of the Federal

Poverty Line, and for other reasons. Requires that minor guardianship and conservatorship proceedings not be combined. Effective for all Guardianships pending or established on, before or after January 2020. *Signed by Governor 5/1/19. Effective 1/1/20.*

#### **HF 610 - Adult Guardianships & Conservatorships**

Amends the Iowa Probate Code, which provides for the opening and administration of guardianships and conservatorships for adults and minors. This act is a comprehensive overhaul of Iowa's current Guardianship and Conservatorship proceedings. **Definitions:** Replaces the term "ward" with protected person, and uses the term "respondent" to refer to a person alleged to be in need of a guardianship or conservatorship. Creates new requirements for the Establishment of a Conservatorship or Guardianship. **Notice:** Expands who is entitled to notice in these proceedings, and how this notice should be served. Creates a separate code provision for notice to minor respondents. **Petition:** Establishes what information must be provided in the petition including the new requirements that the petitioner provide a brief description of the respondent's alleged functional limitations, a statement of why there is no less restrictive alternatives to their appointment, and the proposed guardian's qualifications to serve in this capacity. Creates a separate code for provision for petitions for appointment of a conservator for a minor. **Hearing:** Establishes new hearing requirements that provide due process to the respondent. This includes the respondent's right to attend all hearings and be heard. Additionally, this provision requires the court make reasonable accommodation to ensure the respondent can attend. **Procedural Protections:** Requires that the court consider the use of a limited guardianship or conservatorship in each proceeding, and provide a written finding to why a less restrictive alternative is not appropriate. **Background Checks:** Creates the requirement that proposed guardians and conservators, other than financial institutions, undergo



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background checks and checks against Iowa child abuse, dependent adult abuse, and sexual offender registries.

**Bond Requirement:** Removes the 25k threshold for the bond requirements.

Provides that all conservators shall execute a bond unless the courts find that there is an alternative to a bond that will provide sufficient protection.

The conservator is required to submit a plan for any proposed alternative for approval to the court. **Court Visitor:**

Creates the role of court visitor to help aide the respondent and the court in these proceedings. **Professional Evaluations:**

Requires the court order a professional evaluation of the respondent in all proceedings to establish or modify a guardianship or conservatorship. Provides a limited number of exceptions. **Responsibilities of the Guardian:**

Provides a detailed list of responsibilities for a guardian, including what powers a guardian may

exercise without court approval and what powers must receive specific prior authorization from the court to exercise. **Duties and Responsibilities of the Conservator:**

Amends the current duties of a conservator. Eliminates the current code sections governing the

“powers of a conservator without court approval” and “the powers of a conservator with court approval” replacing those sections with “Responsibilities of Conservator.” All responsibilities of a conservator are subject to prior court authorization. Thus, starting Jan. 1, 2020, Iowa Code will no longer allow conservators to exercise any powers without court approval. **Court Monitoring:**

Creates new reporting requirements for Conservators and Guardians. Establishes the requirement to file an initial care-plan for guardianship and an initial financial plan for conservatorships. Establishes new requirements for guardian and

conservator annual reports and final reports upon termination. **Initial Financial Plan, Inventory and Accounting:**

The initial financial plan for conservatorships triggers new procedural protections, allowing for a respondent or his/her attorney to file objections to the plan that the court must consider prior to court approval. Modifies current Inventory and Accounting requirements. **Mediation:**

Allows for the court to require a mediation, outlines the required standards for mediation, and establishes the qualifications for mediators. **Miscellaneous:**

Removes the provision on temporary conservatorships, replacing it with a provision on emergency conservatorships and guardianships. Specifies that minor conservatorships and guardianships shall not be combined, and directs the court to bifurcate any combined proceedings on 1/1/20, keeping the conservatorship proceeding in probate

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and transferring the guardianship proceeding to juvenile court. Amends the burden of proof for terminating guardianships and conservatorships. Requires guardians to take care of the assistive animals, service animals and companion animals of the protected persons and provides definitions. Stipulates that the cost of the Professional Evaluation, Court Visitor and Attorney for an indigent Respondent be assessed against the County. *Signed by the Governor 5/1/19. Effective 1/1/20.*

**SF 475 - Remote Notary**

This act provides for notarial acts, including by providing for the use of electronic media, providing penalties and including effective date provisions. This law makes changes to conform to the most recent Uniform Law on Notarial Acts to allow notarial acts to be performed remotely through audio visual means using approved communication technology. The legislation directs the Secretary of State's Office to prepare rules that establish clear standards for the following:

- 1) prescribe the means and process, including the training requirements, for performing a remote notarial act using communication technology;
- 2) establish the standards for the communication technology and identity proofing;
- 3) establish requirements and procedures to approve providers of the technology and identity proofing;
- 4) establish standards for data security and a period of retention.

In addition, this law creates a non-uniform code section that restricts a public notary or person involved in performing an electronic notarization from using or selling any personally identifiable information contained in their record and makes penalties applicable. Makes the effective date for most, but not all, provisions July 2020. *Signed by Governor 4/19/19. Various effective dates.*

**SF 532 - Curing Construction Defects**

An act relating to notice and opportunity to repair construction defects in new construction. The new law establishes a mandatory process for resolving disputes over construction defects in class action lawsuits prior to being allowed to file a claim in court. Establishes new notice requirements and timelines for the defect to be cured or for the claim to be denied. Allows the claimant to reject a timely settlement offer. Defines a claimant as a private owner, subsequent private owner or an association who asserts a claim in a class-action lawsuit. Allows for court actions after the process is completed. **Applicability:** Stipulates that the process outlined in this legislation must be applied to all actions that arise on, or after the enactment date of this legislation, unless litigation has already started prior to this legislation being signed into law. *Signed and Effective 5/1/19.*

**SF 589 - Criminal Law Omnibus**

This is an act that comprehensively

amends multiple areas of criminal law and procedure including certain related administrative proceedings. **Expungement:** The act establishes a new process for expunging misdemeanors. An individual is eligible for expungement if all of the following conditions are met: 1) eight years have passed since the commission of the offense; 2) during that period, individual has no new convictions (this includes a deferred judgment); and 3) the individual has paid all fees, costs, restitution or any other obligation the court provided. However, this section does include provisions for county attorneys to object and excludes some offenses, including assault and domestic abuse offenses from being eligible for expungement. An individual may only expunge one offense, one time. **Robbery:** This provision requires a person to serve between 50-70 percent of a sentence for 1st Degree Robbery, and outlines what factors should be considered for parole. Additionally, this act eliminates the 3rd Degree Robbery Offense. **Simulated Weapon:** Specifies that robbery with a simulated weapon or explosive is 1st Degree Robbery. **Arson:** This provision requires a person convicted of 1st Degree Arson to serve between 50-70 percent of a sentence, and outlines what factors should be considered for parole. **Theft/Fraud/Value:** These provisions make changes to the value thresholds to determine the level for theft/fraud and vandalism/criminal mischief offenses. This act also consolidates some theft/fraud provisions in the Code and makes other changes related fraud/forgery. Additionally, it extends the statute of limitations for fraud and breach of a fiduciary duty to five years. **Appeals:** Only allows direct appeals from defendants who plead guilty for good cause shown, except for Class A felonies. Makes changes to discretionary review by appeals court. Limits ineffective assistance of counsel claims and challenges to guilty pleas. **General Verdicts:** This provision allows general verdict from juries when prosecutors present multiple theories of a crime and limits the basis for overturning such verdicts.

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Partner



**Miscellaneous:** Prohibits a defendant with counsel to file a motion pro se in any court. Does not allow a claim of ineffective counsel to toll the limitation periods or to relate back to earlier filings to toll the limitation periods.

Deems an ineffective assistance of counsel claim to not be grounds of fact or law that could not have been raised in at applicable time. Changes post-conviction relief record keeping.

**Victims:** Requires the judge to verify that the defendant has seen the pre-sentence report. Mandates that the victim be allowed to make a statement.

**Statute of Limitations for Sex Crimes:** Extends the statute of limitations for various sexual offenses to 15 years.

**Public Intoxication:** Strikes second and third public intoxication offenses. *Signed 5/10/19. Effective 7/1/19.*

**HF 719 - Conciliation Procedures**

This act relates to participation in conciliation related to a dissolution of

marriage. Allows, instead of requires, a court, on its own motion or the motion of one of either party, to require the parties in a divorce proceeding to go through conciliation efforts. Requires the court to consider elder, child and domestic abuse issues when determining whether requiring conciliation services is appropriate. *Signed on 5/1/19. Effective 7/1/19.*

**SF 502 - Protecting Employee Complaints/Whistle-blower Protections**

This act allows employees of political subdivisions in Iowa to report complaints to the Office of the Ombudsman without fear of reprisal. More specifically, this act authorizes public employees to disclose information to the human resources division and seek injunctive relief to enforce Code provisions against reprisals against employees. Additionally, this law requires that each political subdivision provide procedures for notifying and

informing their public employees of the power of the Ombudsman to investigate complaints and be given the toll-free number of the Ombudsman. This act limits civil damages to three times the person's annual wage and benefits. Requires that employee disclosures be done in good faith for this law to apply to them. *Signed 5/10/19. Effective 7/1/19.*

**SF 507 - Injuries from Falls**

This act relates to the definition of personal injuries arising out of and in the course of the employment for the purposes of compensable acts for workers' compensation. Specifically, this act deems that personal injuries from falls onto a level surface from the same level that are unexplained or from idiopathic causes do not arise from employment and are not covered under Worker's Compensation policies. *Signed 4/23/19. Effective 7/1/19.*



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- ▶ Stand Your Ground Update
- ▶ Juvenile Law Discussion
- ▶ Top 10 Myths and Mistakes Made in Farm Estate Planning

**SF 570 - Architect Emergency Immunity**

This act establishes immunity provisions for licensed architects and professional engineers who perform inspections and other related services at the request of government officials during a declared state of emergency. However, this liability shield from civil damages does not apply if their actions constitute reckless or willful and wanton misconduct. Deems that accepting reimbursement for expenses to not disqualify the architect/engineer. *Signed and Effective 5/10/19.*

**HF 650 - Negligent Hiring**

This act relates to the liability of private employers, general contractors and premises owners for negligently hiring or failing to supervise employees, agents or independent contractors convicted of a public offense. This act specifies that the tort of negligent hiring/supervision cannot be solely

brought due to a prior conviction of an employee of a public offense. The crimes of dependent adult abuse, domestic assaults and other felony assaults are excluded from this act. In addition, it requires the employer or contractor have knowledge of the offense and that the offense was committed while the employee was performing duties similar to the duties for which the employee was hired, including situations where the original offense was fraud and the employee has a fiduciary responsibility. This chapter does not apply to employment of prisoners in prison, nor does it create a cause of action or expand an existing cause of action. *Signed 4/17/19. Effective 7/1/19.*

**SF 377 - Municipal Emergency Tort Act**

This act extends immunity from tort liability to certain non-profit corporations providing emergency response

services under the Municipal Tort Act. Specifically, it extends municipal immunity from torts for various emergency actions, except where specifically authorized by statute, to a non-profit with a contract to provide fire safety and prevention or EMS with political subdivisions of this state. *Signed 5/17/19. Effective 7/1/19.*

**SIGNIFICANT LEGISLATION THAT FAILED TO PASS**

**SF 422 - Driving Emergency Vehicles**

This proposal allowed drivers of authorized emergency vehicles to disregard various traffic laws in specified circumstances.

**SF 457 - Criminal Surcharges & Civil Fees**

Changed the criminal penalty surcharges to criminal services surcharges. Allocated 15 percent of the

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surcharge to the county treasurer; and split the remaining 85 percent three ways (59 percent to the victim fund, 38 percent to the criminalistics lab fund and three percent to DARE).

#### **SF 527 - Title Insurance**

A bill for an act relating to evidence of title by state banks and credit unions for certain loans. Specifically, this proposal provided that state banks and credit unions may evidence title with a written legal opinion from an attorney admitted to practice law in the state where the property is located, a title guaranty certificate issued by the Title Guaranty Division of the Iowa Finance Authority (IFA), or a commercial title insurance policy insuring title to the property and the validity of the new instrument as a lien on the property.

#### **SF 540 - Temporary Delegation of Parental Authority**

This bill allowed parents to temporarily give up all of their parental rights through a power of attorney. Allowed a parent or guardian to designate a person to have custody over a child, except for the power to consent to marriage, abortion or adoption, through a power of attorney.

#### **SF 571 - Presumption of Joint Physical Care**

This legislative proposal created a rebuttable presumption that joint physical custody is in the best interest of the child in instances where the court previously awarded joint legal custody. This presumption can only be overcome if the court finds by clear and convincing evidence that joint physical custody is not in the best interests of the child.

#### **HJR 11 - Marsy's Law**

Proposed "Victim's Rights" amendment to the Iowa Constitution. Proposed a constitutional amendment on the rights of victims, including the rights to be treated fairly, to be notified of proceedings and to appear at those proceedings.

#### **SF 609 - AG and DNR Approps**

This bill originally included language creating a warehouse lien. A warehouse's lien created in subsection 1, that is in favor of a warehouse operator licensed under either chapter

203C or the United States Warehouse Act, 7 U.S.C. ch. 10, is effective against all persons and is superior against all other competing security interests and agricultural liens. This language was removed before the final passage of the bill.

*The ISBA legislative team appreciates the countless hours that ISBA legislative committee members invested in reviewing legislation, providing comments and participating in hearings. The ISBA is very well-respected at the Capitol due to the expertise and accessibility of the ISBA members. Thank you all for your efforts this session and your great support.*



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# IF IT CAN HAPPEN TO THEM, IT CAN HAPPEN TO YOU

## IOWA ATTORNEYS SHARE STORIES ABOUT SOPHISTICATED CYBER ATTACKS

By **Melissa Higgins**, Communications Director

### ONE IOWA ATTORNEY FALLS VICTIM TO \$400,000 WIRE TRANSFER SCAM

**I**t's a chilling story, with a devastating ending. A veteran Northeast Iowa attorney is on the hook for \$400,000. He was caught in a "man in the middle" wire transfer scheme.

"When I figured out what had happened, I felt like vomiting all over my desk," the attorney said. He doesn't want his name used, but authorized his story to be told as a warning to others.

It happened in April of this year, beginning as a legitimate real estate transaction. The attorney had a client who was purchasing farmland from someone else. He had been corresponding with the seller's attorney via email, and they were nearing closing.

That back-and-forth email exchange between attorneys at some point was flagged by cybersecurity scammers as an opportunity. If your email address at some point has been hacked, it's possible your emails are being continuously searched for terms like "wire transfer." The scammers then step in to launch the "man in the middle" attack once they get a key word hit.

What happened next is alarmingly sophisticated. The Iowa attorney got an email from the other attorney saying they were ready to close, and he would be faxing wire transfer instructions. The attorney received the fax, verified via email the instructions were accurate, then proceeded to wire \$400,000 that he was holding for his clients in his trust account, to the seller for purchase of the property.

A few days later he got a call from the other attorney wondering why he hadn't heard from him in a while. He realized he had been duped, but it wasn't until the FBI got involved that he fully realized the lengths to which these scammers went.

Investigators were able to determine that the hackers accessed this attorney's email account and set up a rule that

re-directed all legitimate correspondence from the other attorney to a hidden folder. Then, they proceeded to create an email address that was only one letter off from the legitimate email and continued correspondence with this address.

Looking back, the attorney says he did notice some red flags. The fax information instructed the money to go to an account in Mexico. And while that seemed a little suspicious at the time, he followed up via email with the attorney to verify it was accurate. Of course, at that point he didn't realize the "attorney" he was communicating with via email was in fact the scammer.

"I should have picked up the phone to verify this information," he said, in retrospect.

Additionally, the font changed slightly when the new email address took over, something he also didn't notice until after the fact. The attorney used Microsoft Office email, and admits "I am hideously computer illiterate." His firm had no additional security measures in place to protect email communication.

The attorney immediately contacted the Office of Professional Regulation, and his professional liability insurer, only to realize that his policy specifically excludes wire fraud from coverage. So, he's on the hook. For \$400,000.

"I'm going to do my best to make good for my client," he said. He was approximately three years away from retiring, but admits that will have to take a back seat now.

### CLEAR LAKE ATTORNEY OFFERS ADVICE AFTER RUN-IN WITH CYBER SCAMMERS

Matt Berry, an attorney in Clear Lake and an ISBA Board of Governor member, received an email in April from an individual with a company in Florida looking to hire an attorney to facilitate collecting on accounts receivable owed by a company in Coulter, Iowa. Berry began with some due diligence: he googled the company in Coulter,

determined he had no conflict of interest, then sent an attorney fee contract.

The Florida company sent back by email a signed attorney fee contract without the agreed-upon retainer. On that same day, Berry got a letter from the Coulter company with a check for the amount owed that stated they had been informed by the Florida company the account receivable collection had been referred to Berry for handling. Berry deposited the check and informed the Florida company, but advised he would not send the money until the initial check cleared.

And it's a good thing he didn't. The bank alerted him the next day that the check came back fictitious. Luckily, Berry wasn't out anything, except some wasted time.

"It was a good, inexpensive learning experience," he said.

He followed up by calling the CEO of the company in Coulter, which had no idea his company name was being used in this way. The person's signature on the letter was, in fact, a former employee there who had just retired.

Berry also googled the name of the person in Florida and found an obituary under that name with the date of death one day before the contact was initiated. The scammers had obviously put some effort into this.

Berry has done legitimate business as a middleman when companies are trying to collect on debts, but "will no longer do this type of work." He says it is a transaction too ripe for scammers to get involved, and urges other attorneys, especially younger ones who might be extra hungry for new clients, to take this into consideration.

The number one lesson he learned through this ordeal: Attorneys should verify the parties involved in transactions are legitimate simply by getting them on the phone.

"The practice of law has changed so much that we do so little in person. We need to have our antennas on high alert if we continue to do so much business by email," he said.

# ANATOMY OF A DATA BREACH

BY SHARON D. NELSON, ESQ.  
AND JOHN W. SIMEK,  
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BREACH TARGET

## INTRODUCTION

Hacking can indeed be a passion, proving that you can outfox governments and big league corporations. The thrill of the chase can be addictive – and the addiction is fueled by the monies to be made.

Breaches come in many variants, far too many to cover in a single article. But there is a general flow to a breach. Since we make a living investigating breaches and remediating the vulnerabilities that caused them, let us take you on an anatomical tour of a typical breach, highlighting some of the common elements.

To make the reading more fun, we have offered up “quotes” from the players typically involved in a breach. Many are taken from real-life incidents.

### HACKERS: “LET’S PLAN OUR ATTACK.”

Whether they are massive attacks of automated bots looking for vulnerabilities and exploiting them, or spear-phishing attacks (tailoring a phishing email to a specific target), there is planning. When state-sponsored hackers from China attack governmental facilities in the U.S., the planning is intense – and highly coordinated. These hackers are often working in government buildings. Other hackers, primarily cybercriminals, belong to loosely affiliated groups; they are often working together in the ether, not in a physical location.

Many cybercriminals are looking for a known vulnerability to exploit. This was the case with the WannaCry ransomware, which succeeded so well because Windows 7 users hadn’t timely patched their operating systems.

If you want to, you can go on the Dark Web and buy a vulnerability. It

“I COULD HAVE EVADED THE FBI A LOT LONGER IF I HAD BEEN ABLE TO CONTROL MY PASSION FOR HACKING.” – Kevin Mitnick  
*(the first hacker to make the FBI’s 10 Most Wanted List)*

is not quite as simple as an Amazon 1-Click purchase, but it’s not hard either. Some hackers will pay big money for a “zero-day” piece of malware (one that has never been used and therefore no specific defenses exist against it). Some will pony up a lot of cash (or cybercurrency) for a previously undisclosed vulnerability, again with a high probability of success.

Do they want to attack through the weak security of Internet-of-Things devices? Do they want to exploit all the entities, including law firms, which have moved to Office 365 without properly securing it? There are many decisions to make. They involve targets, attack surfaces, tools, objectives, dates, methodologies, etc.

If they are crafting phishing e-mails, the more sophisticated hackers will hire native English speakers to help them; that means that poor grammar and wrong forms will not give them away.

Like the old-time grifters used to say, there’s no con without a plan. And part of the plan is not getting caught, right? So, you use a sleight of hand. If you’re Russian and you want to hide the source of the attack, you do some technical magic and now it looks like the attack came from China. Hackers are all about smoke and mirrors.

### HACKERS: “3-2-1 – FIRE!”

When it is time to push the button, the hackers involved are usually pretty intense in watching their attack proliferate across the globe. Or, if they

are spearphishing, they are on high alert watching for a response to their bogus or spoofed e-mail. Or they are waiting for an unthinking employee to click on an attachment (containing malware) or click on a link to a website (containing malware).

Some results are fast, some less so. But you can be sure the watchers are riveted, monitoring the results of their handiwork. The truly sophisticated don’t even watch. They have automated systems that notify them automatically when a target has been breached.

### HACKERS: “WE’RE INSIDE. LET’S PWN EVERYTHING WE CAN!”

If the point of the breach is to purloin data, the hackers will try to use their malware to move laterally across your network and “pwn” (‘hackerspeak’ for ‘own’) everything they can. Imagine the value of data in a mergers and acquisition law firm. You could sell the data to others or use it yourself to get rich on the stock market. State-sponsored hackers can give their countries a competitive advantage against the U.S. Economic System.

The longer a hacker is inside the network, the more the hacker learns about the network itself and its users. That knowledge can be a springboard for figuring ways to compromise more user accounts and gain access to more data. One primary objective is to keep the attack hidden.

We haven’t made a lot of progress in discovering data breaches. According to the *2018 Ponemon/IBM Cost of a Data Breach Study*, it still takes an average of more than six months to discover a data breach – and the mean time to contain the breach is 69 days. This gives hackers a lot of time to gather your data.

**LAW FIRM MANAGING PARTNER: "OH CRAP, WE'VE BEEN BREACHED."**

'Crap' may or may not be the exact word choice, but we have heard many such utterances. They are generally made in a nervous (sometimes hysterical) voice, and the stress of dealing with a data breach is immediate and runs throughout the investigation and remediation. The stress is worse if knowledge of the breach becomes public.

If the law firm has an Incident Response Plan, it is the first resource for those within the firm in charge of dealing with the breach. They begin picking up the phone to call the regional office of the FBI, their insurance company, their data breach lawyer, their digital forensics company, their bank, and the list goes

on. All 50 states now have data breach notification laws, so those will be carefully read to determine if a report (or reports) must be filed and when.

Rarely, if ever, does a law firm notify clients at this juncture. In most breaches, it is not immediately known what data may have been compromised – and there is a natural reluctance to tell clients anything until the investigation is well underway. The exception is when the breach goes public, and then there is little choice but to talk to clients.

**LAW FIRM RECEPTIONIST: "THE FBI AGENTS ARE HERE."**

There is something about the arrival of the FBI agents that unnerves those delegated to meet with them. In our own experience, the agents are polite but somewhat humorless. Understandably, from their point of view, it is a Joe Friday "Just the facts ma'am" kind of meeting.

If it makes you feel better (at least slightly), the agents do not arrive in marked vehicles and they are not wearing the emblazoned FBI jackets. They are also not loose-lipped – you will not find an account of their meeting with you leaked to the press or elsewhere. They are in the business of keeping things confidential.

But be forewarned, it is not their place to do the actual investigation and remediation of the breach; that job belongs to private digital forensics investigators. This seems to disappoint some law firm leaders, who hope that the FBI can "fix the problem." The FBI agents are there to gather data. This is how the government gathers facts which may help everyone, for instance by sharing information about hacking methods, tools, groups, etc., through such vehicles as the FBI's Infragard program.

If there are national security implications to the breach, the FBI may bring in colleagues from other agencies, notably the Department of Homeland Security. At that point, they may go beyond information gathering and take actions – but that is the exception rather than the rule.

**DIGITAL FORENSICS INVESTIGATOR: "YEAH, WE KNOW HOW THEY GOT IN. YOU PRETTY MUCH SENT THEM AN ENGRAVED 'HACK ME' INVITATION."**

OK, the investigators will probably be more diplomatic. But between themselves, this is often the conclusion they reach – that the client's security was sloppy. It is exceedingly rare for qualified, highly-certified digital forensics investigators not to find the cause of the breach, though it may take time. As noted above, the average time to contain breaches is 69 days – 69 days of long, hard, excruciatingly detailed work, with every step carefully recorded.

Progress reports will be given regularly to law firm management. Once it is known how the hackers got in, you will be informed. Remediation steps and their costs will be presented for approval. Given that there has been a breach, there's usually not a lot of deliberating about spending the monies.

Typically, breaches are traced to a long list of possible causes (the engraved 'hack me' invitation), including users clicking on a link in or attachment to an email, sharing of log-in credentials, reusing of passwords, weak passwords, failure to update/patch software, lost or stolen devices, privilege misuse, insecure websites, malicious insiders, social engineering, etc. But at the end of the day, there is generally some kind of malware which must be rooted out of the network, and this process can be time-consuming and complicated.

Longer term recommendations usually include employee training, phishing tests (with consequences for multiple failures, up to and including termination), regular security assessments and penetration testing, in which the security company acts as though it were an attacker.

**LAW FIRM INSURANCE COMPANY: "WE DON'T COVER 'STUPID.'"**

The cyberinsurance world remains the Wild, Wild West. With a notable absence of historical data

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to guide the industry, even Warren Buffet, CEO of Berkshire Hathaway, which holds numerous insurance companies, is skeptical. He said in May of 2018: "Cyber is uncharted territory. It's going to get worse, not better ... There's a very material risk which didn't exist 10 or 15 years ago and will be much more intense as the years go along." He went on to say: "We don't want to be a pioneer on this ... I think anybody that tells you now they think they know in some actuarial way either what [the] general experience is like in the future, or what the worst case can be, is kidding themselves." We could not concur more.

Buffet's views are reflected in more and more cyberinsurance policies, which now often include requirements for security audits and also include language about conforming to industry cybersecurity standards. The case we refer to above because it became known in the press as the "We don't cover stupid" case is *Columbia Casualty Co. v. Cottage Health System*. There are now more cases in the judicial system where insurers are saying the insured did not take the reasonable security steps required by the policy. We certainly know a lot of law firms whose cybersecurity practices wouldn't stand up to some of these new insurance requirements of "best practices" or "industry standards."

The sound of clients beating a path to the law firm exit door is a scary thought, but in light of all the law firm data breaches that have become public, we know that more and more clients are not taking even long-term relationships with law firms as a continued certainty where cybersecurity is lacking.

**LAW FIRM CLIENT (WHOSE DATA WAS COMPROMISED):**  
"WE NEED TO REEVALUATE OUR ASSOCIATION WITH YOUR FIRM."

Ten years ago, only a handful of clients seemed deadly serious about demanding that their law firms

demonstrate that they were focusing – and spending money – on cybersecurity. That has markedly changed. Now clients are demanding that law firms fill out security questionnaires and are sometimes demanding a third-party audit which certifies that any critical vulnerabilities found have been remediated.

In 2017, the Association of Corporate Counsel upped the ante when it released *Model Information Protection and Security Controls for Outside Counsel Possessing Company Confidential Information*. The gauntlet was effectively thrown down, identifying the standards outside counsel are expected to meet with a hint of "or else."

**LAW FIRM MANAGEMENT MEETING: "ANYONE THINK WE NEED TO SPEND MORE MONEY ON CYBERSECURITY NOW?"**

From our foxhole, there is a bit of "we told you so" in seeing law firms, given a well-thought cybersecurity proposal, reject the proposal and then suffer a breach because of the very vulnerabilities that were addressed by the proposal. From our colleagues in the cybersecurity industry, we understand that this happens all the time. It is frustrating. Much of the time it has to do with spending money (hence the subhead above) or simply a wrong-headed belief that "it can't happen here."

On a regular basis, you probably see CLEs advertised focusing on how to get cybersecurity buy-in from law firm management. Data breaches have a marvelous way of getting law firm ostriches to remove their heads from the sand. With perfect clarity of vision, they now see that cybersecurity is an integral part of any law firm's risk management planning. And they do tend to crowbar open their wallets, especially when their clients or their insurance company require various reassurances.

## FINAL THOUGHTS

At the end of the day, hackers want your data or your money and sometimes both. Their motivations are not complex. You may remember the movie "Bonnie and Clyde" and the scene where Clyde announces to strangers: "We rob banks!" Simple, to the point, and said with pride. Hackers, who are also criminals, are generally equally enthused about their work.

When you are up against an expert hacker with a wide array of hacking tools and sufficient funding, you don't have much of a chance. Your best defense is being prepared and making cybersecurity a priority. The hacking community is gunning for you – of that, you can be quite sure.

*The authors are the president and vice president of Sensei Enterprises, Inc., a legal technology, cybersecurity and digital forensics firm based in Fairfax, Virginia. 703-359-0700 (phone) www.senseient.com*

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# SECURITY AWARENESS TRAINING FOR LAW FIRM EMPLOYEES

by Sharon D. Nelson, Esq. and John W. Simek, © 2017 Sensei Enterprises, Inc.

## INTRODUCTION AND STATS

Sadly, your greatest asset – your employees – are also the greatest threat to your cybersecurity. We know this because we regularly see data breaches and ransomware infections caused by click-happy employees. You also have rogue employees determined to use their own devices and go where they want on the Internet, irrespective of firm policies. When we train them, they tell us that they are scared – and you know what? That means we did our job.

One of the great fallacies that employees believe is sometimes called “The IT Shepherd.” They simply have faith that the flock (employees) is protected no matter what they do by the shepherd (technology). You need to make them understand that no technological defenses are ironclad.

Let’s look at a few statistics. The Computing Technology Industry Association (CompTIA) released the results of a study of 1,200 full-time employees in October of 2015. Of those employees, 63 percent used work mobile devices for personal activities, 94 percent used mobile business devices to connect to public Wi-Fi networks, 78.5 percent used public Wi-Fi to check work email and 60 percent accessed work documents.

The study also showed that 45

percent of the employees have never had any cybersecurity training from employers, and 41 percent don’t know what 2FA is. If you don’t know, it is two-factor authentication, a more secure way to protect data than using a password alone. Only 27 percent know the name 2FA but not how it works.

When researchers salted 200 unbranded USB drives in public, at airports, coffee shops and parks in Chicago, Cleveland, San Francisco and Washington D.C., 17 percent were picked up and used. The flash drives had a trackable link and a text file to tell them to mail an email address. Even IT workers did this – and they should know better!

The Association of Corporate Counsel published The State of Cybersecurity Report in December of 2015: Over 1,000 general counsels responded. The dismal result of the survey included the fact that only one in three track attendance at mandatory cybersecurity training, only 19 percent give a test and only 17 percent have “simulated security events.”

## WHO SHOULD DO THE TRAINING?

Certainly not law firm owners, even if they think they know something about cybersecurity. The biggest hammer is a third-party consulting firm whose trainers clearly know what

they are talking about and can answer a fusillade of questions, which generally come fast and furious during training sessions. They bring credibility with them because of their credentials.

If you are an Am Law 200 firm, you are likely going to hire one of the big guns with a hefty price tag. If you are a smaller firm, there are likewise plenty of smaller companies who do cybersecurity training. You want a company that has something of a specialty in training. Hopefully, they have sample phishing emails and tests they can give your employees to demonstrate that they are aware of security risks. If an employee repeatedly fails such tests, is that really an employee you want around sensitive data?

Using paper manuals to train is worthless. Online training is not as engaging or effective (our opinion) but 32 percent of employers use it. In-person group workshops seem to work best. And for heaven’s sake, don’t bellyache about the loss of billable time. If you think training is costing you money, just think about what a data breach would cost you – that may put it in perspective.

## TRAINING TIPS

It sounds silly, but make training (as much as you can) fun. Encourage interactivity. Make sure you ask your outside training company HOW they train. You want to hear about sample phishing emails, post training testing and on-the-fly interactive responses as to whether an email shows any evidence of being a phishing email (the number one way law firms are breached). Better yet, if you hear that the company makes a contest out of it, have a whiteboard to list the phishing methodologies employees discover – even giving out small prizes. Use real life scenarios. The trainers should tell stories. They may have attendees watch short security videos from YouTube (Sophos makes great ones). We love their tag line: “Skip the book and just



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watch the movies.” And they are right – this is a vital part of effective training.

Time of day? Best done in the morning, when folks are most alert. Spring for breakfast and keep the coffee coming. Cybersecurity can be mind-numbing if not done right.

Make it mandatory? Absolutely. Take attendance. When we trained at one law firm, the managing partner told us he had sent around a memo stating bluntly that the training was mandatory and that he would be at the training and expected to see everyone from the firm there. Splendid idea –and everyone did indeed show up.

How often should you train? At least annually. Threats change and defenses to threats change. Both technology and security policies change. You should assess these changes and your security policies on a regular basis to stay ahead of the curve. You can never “set it and forget it” in cybersecurity.

Here is one famous story that may give you pause: Weeks after falling victim to a data breach in 2015, JPMorgan sent a fake phishing email, which 20 percent of its employees clicked on. If your results are anything like that, you are in desperate need of cybersecurity training for your employees. JPMorgan got the point. Having spent \$250 million on cybersecurity in 2014, it vowed to double its cybersecurity budget to \$500 million over the next two years.

## PHYSICAL SECURITY

Trainers should be talking about physical security too – not leaving files in stacks around the office, being aware of strangers in the office, etc. One of our friends dressed as a custodian and followed a real custodian right into an office building and got into a law firm. Easier than you think. The infamous “office creeper” in the D.C. area during 2015 got into all sorts of “secure” buildings, once getting into a law firm. She was a standard issue thief, taking money from drawers and purses, lifting laptops and cameras which were easy to pawn. But what if she had been after data?

She got through building security by piggybacking and tailgating. Your

trainer will explain those terms if you don’t know them. And we’re betting most readers do not.

## DON'T BE STUPID!

This is the essential message of training. Above, we told you about “salted” flash drives in public places. That’s called “baiting,” and people fall for that tactic all the time.

Likewise, if you know that another employee is engaging in insecure behavior, you should inform a supervisor. “See something? Say something” doesn’t apply just to possible terrorism, but to cybersecurity as well.

## ENCRYPTION

Every training session is going to include encryption. Not the math, which employees don’t need to understand, but the critical need for encryption to protect confidential data. They will learn about encryption on all of their devices and about email encryption. There was a day when encryption was costly, cumbersome and a royal pain, but those days are long gone. It is now cheap, simple and easy. More and more ethicists are stating that lawyers should use encryption “where appropriate” – which is pretty much anywhere that data which ethically must be protected exists.

## DON'T BE MAD AT YOUR EMPLOYER!

Employees dislike many aspects of information security. A good trainer

## THE AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT SPECIFY A REQUIRED LEVEL OF TECHNICAL COMPETENCE:

### Rule 1.1 Competence – Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

will have your back on this one. They will explain why your security policies are needed and why they must be enforced. They’ll talk about how the firm may protect its data through application whitelisting, logging of certain events and installing software or hardware that “reports” when certain files (or a certain large number of files) are accessed. They will talk about the dangers of bringing your own device, bringing your own network and bringing your own cloud. They will explain why such things may be forbidden or why they are tightly managed.

They will explain if your technology prohibits employees from opening attachments without asking for the attachment to be released by your IT or information security department. If you control where employees go on the Internet, they’ll explain that too. They will explain why employees have to give up their beloved (name your software of choice) because it is no longer receiving security updates.



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Trainers explain the importance of strong passwords, especially log-on, screen saver and financial credentials. They will encourage the use of two-factor authentication where it is available and they will report on the new Carnegie Mellon studies showing that password length is more important than complexity, which is agreeable news since it is easier to remember a lengthy passphrase than a complex password. There is a new draft document from the U.S. National Institute for Standards and Technology (NIST) which recommends password length over complexity. The rules keep changing, don't they? But that too is why you train on a regular basis.

And trainers will preach the value of encrypted password managers – darn near a necessity if you are going to follow the cardinal rule of not reusing passwords everywhere which often leads to one breach compromising

your security, and that of the law firm, in many places rather than just one.

## SOCIAL ENGINEERING

People who are experts at penetrating businesses through social engineering say it generally takes them less than an hour to get into your network. We are so anxious to be helpful. Your employees need to know that Microsoft Tech Support will never call and ask for access to their machines (yes, we've seen lawyers duped). They also need to understand that someone who calls and says they are from your IT company and need log-in credentials to fix a problem may not really be from your IT company, even if they know the company name.

## PHISHING

As we said before, phishing is the easiest way into law firms. Even good enterprise anti-malware software doesn't catch everything – and there are plenty of zero day (no known defense) exploits sold on the Dark Web every day. Lots of studies have shown that roughly 20 percent of phishing emails will be opened.

The worst threat comes from targeting phishing attacks, where the hackers are specifically targeting your law firm. Law firms are at a disadvantage here – so much legal data is public. A hacker may know what cases you are involved with, who the attorneys are, which courts cases are in, etc. And they can spoof the email address of an attorney or a court. How many folks can resist opening something that appears to come from a court?

Law firms are also at a disadvantage because they are “honey pots” – they hold the data of so many clients. Hackers may do a little research on the firm's website or on an attorney's LinkedIn page where they may find personal information that they can insert into a targeting phishing email. Trainers will get them to PAUSE, THINK, INSPECT and REPORT before clicking on any attachment or links in the email.

There are obvious phishing clues to pass on to employees:

- You don't know the sender
- You do know the sender but if you look closely, the address is one letter off (this one happens a lot)
- Nothing in the note seems personal to you
- You weren't expecting the email
- Reference is made to a bank/product/service you don't use
- Words are misspelled
- The grammar is poor
- The email doesn't address you by name
- The message asks for personal information
- There is an attachment which seems suspicious in conjunction with other factors or a link to a website (and no, hovering over the link doesn't necessarily ensure that you will go to the address shown – drive-by malware infections from visiting malicious sites are quite common)

The list goes on and on – you need to advise your employees to be alert to anything suspicious and not to be quick to click!

If they end up with malware, they may not know it. But some possible signs might include: sudden slowness of devices, strange messages appearing on the screen, the inability to open a file, machine crashes, running out of hard drive space, a high volume of machine activity, suddenly having a new browser home page or tool bar the employee didn't install, new programs appear that start automatically, etc.

## RANSOMWARE

Ransomware is an international epidemic. Your employees need to understand that it is usually contracted via phishing emails. Click on a link in the email or an attachment and the malware is downloaded invisibly irrespective of what you see on the screen. Then it sets about encrypting the firm's data, file by file. If the backup is connected to the network at the time, it will encrypt that too. Employees really need to understand how dangerous ransomware can be, how prevalent it is, how the ransom to get your data

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back is more and more expensive and that you are out of business until you slog through trying to figure out how to get sufficient funds in bitcoins (which the hackers generally want as payment). And then there is a delay in restoring the files after receiving the decryption key (assuming you do in fact get the key).

While you can be protected from ransomware by having a properly engineered backup, if you get ransomware, you still have to live through some period of time while the files on an unaffected backup are restored. And we are now seeing ransomware on mobile devices, including phones – most from downloading apps from unsanctioned app stores, a very common practice among employees!

## BUSINESS EMAIL COMPROMISES

These are also known as CEO scams and the FBI reports that they have netted more than three billion dollars thus far. From January 2015-June 2016, there was an increase of 1,500 percent in successful attacks. That's one heck of a statistic. Basically, someone who has authority to order money wired appears to be emailing someone who actually does the wiring. Law firms have been hit hard by these scams, so it is critical that employees understand how they work and that they be conditioned to seek affirmation of any order to transfer significant monies.

## MORE IN THE MORASS

Clearly, there is a wealth of threats that employees need training on – more than we can possibly address in a single article. Employees need to be trained on the dangers of metadata, the safe use of public Wi-Fi, the safe use of file-syncing software in the cloud, the perils of using social media, the need to protect all devices (including Apple devices), the malware that may be present on public computers in hotel business centers, public libraries and Internet cafés, the need to make sure (if they work from home without a VPN) to make sure that their home Wi-Fi is secure, how to secure their smartphones (especially if they are allowed to connect personal devices to

the firm network), and the need for managed vendor access.

Hopefully, you have a sense of how critical it is that you train your law firm employees on cybersecurity. We know of one firm in California that averted disaster because all employees had recently received training on phishing emails and when they were on the receiving end of a targeted attack against their law firm, the employees recognized the phishing emails and quickly spread the word. Disaster averted. We have no doubt that the firm invested time and money in the training, but we're betting that, having survived the attack, the firm counted every dollar as well spent!

*The authors are the president and vice president of Sensei Enterprises, Inc., a legal technology, cybersecurity and digital forensics firm based in Fairfax, Virginia. 703-359-0700 (phone) [www.senseient.com](http://www.senseient.com)*

## HOW INSURERS DODGE LIABILITY

### ▶ Not paying retroactively

Given that breaches can be discovered months after compromise, law firms should carefully consider when coverage starts.

### ▶ Terrorism/act of foreign enemy exclusions

Many cyberattacks originate from outside a country's borders, and many of them are believed to be state-sponsored. Depending on the policy's wording, your firm could be left high and dry.

### ▶ Lack of coverage for negligence

Insurers are starting to cover only data theft, not negligence. If an employee loses an encrypted laptop with sensitive data, some policies won't cover the breach. Insurance companies may also refuse to pay when a firm hasn't followed "minimum required practices" spelled out in the policy.

### ▶ Failure to make a timely notification to the insurance company

Make sure you know when you need to report an incident to your insurer. The clock may be ticking, and you don't want to find that your delay means there are costs you cannot recover – and remember that costs start to mount up quickly after a breach.

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# CYBER INSURANCE DEFINED | LOCKTON®

By Nathan Borghardt, Lockton Affinity

A cyber insurance policy cannot protect your firm from cyber risk, but it can mitigate the risk by helping to offset the costs involved with a cyber theft or cyber breach. Exposures that firms face in our digital age are wire transfer fraud, social engineering and data breach. Technology, social media and internet-based transactions and communications are all exposures firms have every day. Below are outlines of the different types of cyber-related risks faced by law firms in an effort to clarify terms and help you think about your own exposures.

The first type of cyber exposure is **Computer Fraud and Wire Transfer Fraud**. This is a loss resulting in theft of money by a non-employee utilizing a computer system or fraudulent wire transfer instructions sent directly to a

financial institution without the firm's knowledge. This coverage does not apply if the policyholder is tricked into sending the wire instructions themselves; we cover that next.

A form of fraud on the rise in recent years is **Social Engineering Fraud** (a.k.a. **Fraudulent Impersonation Fraud**). This is when theft of money occurs by a non-employee who purports to be a trusted source and successfully induces an authorized person to send wire or payment instructions resulting in the transfer of funds to the fraudulent party.

There is one insurance product that actually has the term "Cyber" in its name, **Cyber Liability** insurance, which pays expenses, legal costs and liabilities arising from the theft of personally identifiable information.

This differs from the two listed above. The theft here is data, not money, by either an employee or a non-employee via a data breach or "hack." A breach of customer or employee information will inevitably lead to costs associated with notifications, forensics, public relations, credit monitoring and legal services, and may result in civil legal and/or regulatory liabilities.

There are plenty of cyber insurance policies out there by many reputable carriers. If cyber insurance is something you want to incorporate in your firm's risk management plan, ISBA partnered with Lockton Affinity over a decade ago for your professional liability needs. Lockton can also help you with cyber coverage.

Visit <http://iowabarinsurance.com/> or call at 1-800-679-7154.

## GET EMAIL ENCRYPTION NOW THROUGH THE ISBA

Email privacy is crucial to a law firm, but few take email security seriously.

Only 36<sup>2</sup> percent of all attorneys and only 25<sup>1</sup> percent of sole practitioners use email encryption. Yet, it is one of the easiest steps lawyers can take to help protect themselves against cybercriminal activity.

Not using email encryption in the past was understandable because it was clunky and difficult to use. But this excuse is no longer true or acceptable.

Attorney emails have become more and more attractive to cybercriminals. If you haven't been attacked yet, you will be. Verizon's 2018 Data Breach Investigation reports 90 percent of breaches occur via email using phishing or social engineering techniques.

Email encryption is no longer a fringe technology only used by self-professed technology geeks. It is a technology that every firm needs to implement. As your partner in practice, the ISBA wants to help you protect your email. Bar leaders have spent the past 18 months reviewing a variety of services and ultimately partnered with Trustifi Email Encryption.

Trustifi was selected because it provides an easy-to-use interface for both the users and recipients. An additional feature is Trustifi's Incoming Email Authentication. This service scans every incoming email and runs a variety of tests to confirm whether the email sender can be authenticated or not. Trustifi provides you an analysis of every incoming email similar to the example on the left. This service is not a replacement for your antivirus programs, rather it is a supplement in identifying phishing attempts and emails with malicious intent.

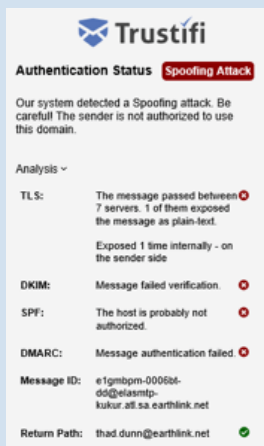
The ISBA is committed to increasing the use of email encryption by Iowa attorneys and made this service available for \$25 annually per email address. If you are interested in protecting your data, please visit <http://www.iowabar.org/trustifi> for more information.

Here are a few additional tips to help avoid phishing attacks:

1. Educate, Educate, Educate
2. Be vigilant
3. Carefully examine the senders of unexpected or suspicious communications. Often these phishing attempts change only one number or letter within the address. There are many things

you can look for that indicate a potential scam:

- a. Poorly written or impersonable messages; Look for typos.
  - b. Messages requesting financial information should automatically be scrutinized.
  - c. Emails referencing activities (such as orders, shipment notifications, etc.) that you don't recognize.
  - d. Verify the validity of any wire transfer with a phone call.
4. Carefully verify links provided in emails - Don't click on the link(s) in unsolicited emails. Even if you recognize the sender, hover over links and double check if the destination URL is what it's claiming to be. If you wish to be extra careful, you should type out URLs manually and avoid links altogether.
5. Research online: When concerned, do an online search for the email address or content of the email to further investigate the validity of the communication. Often, you can find results showing key components of the email identifying it as a scam.



**Footnotes:**

1. 2017 ABA Techreport
2. 2017 ABA Techreport



# DISCIPLINARY OPINIONS

## CASE NO. 18-2191: IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD V. PAUL A. CAGHAN

*(From the opinion by Justice Brent Appel issued May 10)*

“In this case, the Iowa Supreme Court Attorney Disciplinary Board charged an attorney who appeared pro hac vice in Iowa proceedings with violating Iowa Rules of Professional Conduct 32:3:1 (prohibiting lawyer from bringing a frivolous proceeding or controverting a frivolous issue), 32:3.3(a)(1) (prohibiting lawyer from knowingly making or failing to correct false statements of material fact or law to a tribunal), and 32:8.4(d) (prohibiting lawyer from engaging in conduct prejudicial to the administration of justice).

The charges arise out of Iowa litigation in which an out-of-state attorney admitted pro hac vice claimed, among other things, that his clients lacked knowledge of an Iowa foreclosure proceeding and, as a result, could not be precluded from bringing a separate fraud action arising out of the same transaction that gave rise to the foreclosure proceeding. In addition, the attorney supported his fraud action by claiming that his clients were without counsel at a key stage of the negotiations with the bank prior to the institution of the foreclosure. Finally, the attorney asserted that his clients were defrauded by “phony court orders” foisted upon them by the defendants.

After granting summary judgment in the fraud action adverse to the attorney’s clients, the district court found the above assertions were made “falsely and in bad faith” in an attempt to avoid the defendants’ motion for summary judgment. The district court imposed sanctions of \$123,359.60 against the attorney and his clients. The district court also entered a monetary sanction of \$2,500 against an Iowa attorney serving as local counsel.

Proceedings were instituted by disciplinary authorities. After a hearing, the Iowa Supreme Court Grievance Commission found that the Board established the alleged violations of the Iowa Code of Professional Conduct by a convincing preponderance of the evidence and recommended that the court enter an

injunction prohibiting the attorney from practicing law in Iowa for at least one year. The commission further recommended that the injunction not be lifted until the sanctions in the matter had been satisfied in full.

...We affirm the commission’s findings and conclusions regarding the violations. We conclude that the proper sanction for these violations is an injunction prohibiting the attorney from practicing law within the State of Iowa for six months. We also order that the injunction not be lifted until the attorney demonstrates to the satisfaction of the Board that the sanctions imposed in the fraud case have been satisfied.”

## CASE NO. 18-2219: IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD V. DON RICHARD JOHN BAUERMEISTER

*(From the opinion by Justice Thomas Waterman issued May 3)*

“Attorney Don Richard John Bauermeister pleaded guilty to federal felony drug charges. He sent a coconspirator on multiple trips to Oregon to acquire bulk quantities of marijuana for Bauermeister to sell for profit in Omaha. His mule was arrested in Utah returning with thirteen pounds of marijuana. When federal agents served a search warrant on Bauermeister, he self-reported to the Iowa Supreme Court Attorney Disciplinary Board, and his license was placed under temporary suspension. The Board charged Bauermeister with violating Iowa Rule of Professional Conduct 32:8(4)(b) (committing a criminal act reflecting adversely on the lawyer’s honesty, trustworthiness, or fitness). A division of the Iowa Supreme Court Grievance Commission found Bauermeister violated the rule and recommended revocation of his law license. The Board seeks revocation. ... We revoke his license to practice law.”



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28	29	30				

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# TRANSITIONS



SIMMONS

**John D. Simmons** joined Califf & Harper, P.C. as a new associate of counsel in 2019. Simmons received his J.D. from the University of Illinois College of Law in 2006. He practiced in Central Illinois until 2015, when he moved to the Quad Cities area. His practice has focused on civil litigation, especially in the arena of personal injury.



ECKEL

**Gene M. Eckel** has joined the Goosmann Law Firm in the Omaha office. Eckel is a real estate attorney who helps landlords and property management companies resolve problems with tenants and advocate on behalf of the apartment industry. He has 18 years of experience as a local Omaha attorney practicing in real estate, landlord and tenant issues and fair housing.



LANGSTON

**Eric Langston** has joined the business and transactional practice of Simmons Perrine Moyer Bergman PLC. Langston received his J.D. from DePaul University in 2015. He has extensive experience in navigating the complexities of the bankruptcy process and helping clients explore restructuring alternatives.



HAHN

**Jeremy B. Hahn** and **Stephanie A. Sailer** have joined Roberts & Eddy, P.C. as associates in Independence.

**Hahn** received his J.D. from Valparaiso University in 2016. His primary focus will be litigation, family law, estate planning and probate and guardianships/conservatorships.



SAILER

**Sailer** received her J.D. from Drake University in 2017. Her primary focus will be estate planning, probate, business law, real estate and taxation.

## WHAT'S NEW?

**Phelan, Tucker Mullen, Walker, Tucker, & Gelman, LLP** announces that it has become known as **Phelan Tucker Law LLP**, effective June 1. The firm remains committed to its focus on serving the legal needs of a growing community. Interested parties can learn more about the legal services offered by Phelan Tucker Law LLP on the firm's website, [www.phelantuckerlaw.com](http://www.phelantuckerlaw.com).

The offices of **Timmer & Judkins, P.L.L.C.** will move to a new address in June. The firm's new address will be 1415 28th Street, Suite 375, West Des Moines, IA 50266.

After 30+ years in the legal and lending business, **John** and **Brenda Orrell** have teamed together to launch a new real estate business in West Des Moines. Visit [www.orrellrealty.com](http://www.orrellrealty.com) for more information.



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# 50-YEAR MEMBERS HONORED

THE ISBA HONORED ITS 50-YEAR MEMBERS WITH A LUNCHEON AT ISBA HEADQUARTERS IN DES MOINES ON MAY 23.

Attending the luncheon honoring the 50-year members were (back row, from left) Robert Sheerer, Frank Pechacek, Jr., John Bickel, Thomas Cahill, John Thompson, Donald Beneke, A. John Frey, Jr., David Phipps, Richard Santi, Benjamin Ullem and Robert Swanson; (third row, left to right) Roger Sutton, Richard Allbee, James Stanton, August Luthens, Thomas Miller, David Mason, Donald Schild and Ralph Brown; (second row, left to right) Hon. James Bauch, Hon. David Remley, Gary Taylor, Kenneth Kessler, Robert Gallagher, Donald Neiman and Michael Rickert; (front row, left to right) Eli Wirtz, Darrel Morf, Hon. John Crouch, Gary Lane, Hon. Karla Fultz and Don Bottorff.



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## DRAKE LAW SPEARHEADS PASSAGE OF ELECTRONIC LEGAL MATERIAL LEGISLATION



The Governor signed the UELMA law on May 8. From left to right: Julie Smith (*Director of Drake's Legislative Practice Center*), Josh Duden (*3L in Julie's class*), David Walker (*Drake Emeriti Dean and Dwight D. Opperman Distinguished Professor*), Representative Jon Jacobsen, Governor Kim Reynolds, Lieutenant Governor Adam Gregg, and Drake Law Library faculty Karen Wallace, Rebecca Lutkenhaus and John Edwards (*Associate Dean and Law Library Director*).

Iowa adopted the Uniform Electronic Legal Material Act (UELMA) thanks to the efforts of Drake University Law School personnel. Previously, printed versions of legislative documents have been the only authenticated format in Iowa. This act will allow digital versions of statutes, administrative rules and other legal and legislative documents to be accepted as "official" documents.

Karen Wallace, current president of the Mid-America Association of Law Libraries, along with Drake Law Library faculty John Edwards, David Hanson, Rebecca Lutkenhaus and Julie Thomas, drafted multiple communications to legislators urging support for the bill. Drake's former Dean David Walker and Drake's Legislative Practice Center, led by Director Julie Smith and student Josh Duden, made many contacts with key legislators.

# IN MEMORIAM

**Richard Elwood**, 83, of North English, died Feb. 4. Elwood was born in Williamsburg in 1935. He received his J.D. from the University of North Dakota and was a veteran of the Korean War. Following law school, Elwood began practicing law with Clarence Off. He later was joined in practice by his brother, Mike Elwood, Tom Buchanan and Bob Leinen. Elwood was also a 50-year member of the ISBA.

**William James Lillis**, 76, of Urbandale, died May 8. Lillis was born in 1943 in Williamsburg. He received his J.D. from Creighton University School of Law. Lillis began his legal career at the Polk County Attorney's office and soon after joined the law firm that would eventually bear his name. Lillis was a 25-year board member of Anawim Housing, served on numerous boards and committees of the diocese of Des Moines and was a member of the Dowling Catholic Foundation Board, as well as being a supporter and advocate for many organizations including United Way, Men on the Move, Des Moines Art Center, Drake University, Salisbury House, Easter Seals and Central Iowa Shelter and Services.

**John W. Carty**, 95, of Mt. Union died April 22. Carty was born in Bina, North Carolina, in 1923. He worked for the war department in Washington D.C., from 1942-43, and served in the Army in France, Luxembourg, Germany, Austria and Czechoslovakia, including time under General George Patton.

He received his J.D. from Drake University Law School in 1952. Upon completion of his degree, his family moved to Winfield where he practiced law until his retirement. He was a member of the Henry County Bar Association and president from 1961-62.

**Jack Hudson**, 71 of Des Moines, died April 25. Hudson received his J.D. from the University of Iowa College of Law. Following law school, Jack was appointed as an assistant attorney general of Iowa. Later he became a founding partner in the law firm of Carney, Hudson and Williams where he embarked on a distinguished legal career. He was always an advocate for the under-represented, and even argued a case before the U.S. Supreme Court.

**Terrance "Terry" Swanson**, 77, of Des Moines, died April 15. Swanson was born in Cedar Rapids in 1941. He worked for the Navy as a scientist and received his J.D. from George Washington University in 1969. Swanson served as the director of TRACIS (Traffic Records and Criminal Information System) and the director of Information Services for the state of South Dakota and for the Des Moines Register. He started his own information systems business shortly thereafter and a private practice law firm in 2000.

## LETTER TO THE EDITOR

**Dear Editor,**

I thought you might be interested in two letters that I sent to Tim Eckley and Wood Foster regarding their articles in the April edition of The Iowa Lawyer (*shown below*). I compliment you and The Iowa State Bar Association on the excellent quality of articles that make The Iowa Lawyer magazine even more readable and interesting. Congratulations on a job well done.

Very truly yours,  
*Jeffrey L. Goodman*

**Dear Mr. Eckley,**

I enjoyed reading your article in the April edition of The Iowa Lawyer regarding the word "shall." I have been a "shall sinner" for a long time. Your article convinced me to pick a new term and your reliance on Bryan Garner was the crowning blow that has led to my

decision to change a 34-year personal preference. The hard part will be to walk down the hall and ask my colleagues to "disregard my prior insistence that we use 'shall' whenever possible."

Very truly yours,  
*Jeffrey L. Goodman*

**Dear Mr. Foster,**

I do not know how your pen, paper and mind found its way to The Iowa Lawyer, but I enjoyed reading your recent article entitled "A Profession on Edge – Part Two – Hello, Big Law" (April 2019).

Thank you for sharing your thoughts with your brethren to the South.

Very truly yours,  
*Jeffrey L. Goodman*



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**Public Law Attorney** - Ahlers & Cooney, P.C., Des Moines, IA - Ahlers & Cooney, PC is seeking an Iowa attorney to join its Government Law Practice Group. The ideal candidate will have strong analytical, writing, and interpersonal skills. The candidate must be well organized and able to handle multiple transactions concurrently. An undergraduate degree, or work background, in finance, accounting, real estate, or other experience with state laws governing municipal finance or public law generally would be helpful. To apply, visit <https://careers.iowabar.org/jobs/12270825/public-law-attorney>

**Manager, Corporate Coverage** - Great West Casualty Company, South Sioux City, NE - Due to recent promotions within Great West, we currently have an opening for an experienced manager in our South Sioux City location. In this position, you will provide guidance and support to manage a top-notch team of coverage attorneys handling corporate coverage opinions for trucking claims across the country. To apply or learn more about Great West and our office locations, please visit our website [www.gwccnet.com](http://www.gwccnet.com).

**Associate Attorney** - Rawlings, Ellwanger, Mohrhauser, Nelson & Roe, L.L.P., Sioux City, IA - An established "AV" rated law firm in Sioux City, is seeking to hire an attorney to work in the areas of business, real estate, probate and estate planning. Candidates will be organized and possess excellent writing

and oral skills. We offer competitive salary, 401(k), health insurance, CLE and bar dues. Membership in Nebraska and/or South Dakota bars a plus. Confidential inquiries, including resume, should be sent to Kathleen Roe, 522 4th Street, Suite 300, Sioux City, IA, 51101, or to [kroe@rawlings-law.com](mailto:kroe@rawlings-law.com).

**Trial Attorney** - Nationwide Insurance, Des Moines, IA - We are looking for a senior defense attorney to join our team. Commercial insurance defense experience is required (including workers comp). Must also have 1st chair trial experience and be able to manage a case from beginning to end. This is a paper-free office. The selected candidate provides legal representation for clients in matters of significant importance and/or risk. To apply, visit <https://careers.iowabar.org/jobs/12272524/trial-attorney>.

**Paralegal** - Affiliates Management Company, West Des Moines, IA - We are currently seeking a talented paralegal to provide effective and proficient legal support. Our ideal candidate thrives in an ever-changing, fast-paced environment and must be able to successfully work independently and collaborate in a team atmosphere. The paralegal supports our team of attorneys by performing a variety of functions that may include drafting transactional and corporate documents, document analysis, research and site checking. If you are highly motivated, team oriented and ready to lead the diversity of opportunities that AMC provides, please submit your resume, cover letter and salary requirements at [www.affiliatesmgt.com/careers](http://www.affiliatesmgt.com/careers).

**Labor Relations Counsel** - Polk County, Des Moines, IA - Under limited supervision, performs highly responsible supervisory/professional work in formulating/ administering the labor relations program for Polk County; represents management in the negotiation, interpretation, and administration of multiple collective bargaining agreements; oversees and administers employee county benefit programs; represents the county in administrative law proceedings; reviews/investigates complaints; and administers county policies.

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**Paralegal** - Iowa Legal Aid, Des Moines, IA - Iowa Legal Aid is recruiting a paralegal for the Disaster Project in the Southwest Regional Office. This paralegal position will focus primarily on outreach and intake but may include other responsibilities based on needs and capabilities. To apply, visit <https://careers.iowabar.org/jobs/12316721/paralegal>.

**Civil Rights Specialist** - City of Dubuque City Attorney's Office, Dubuque, IA - The City of Dubuque, (population 58,000) invites applications for the position of Civil Rights Specialist. The successful candidate will be responsible for accepting, reviewing and investigating complaints of discrimination in employment, public accommodations, housing, credit and education and other areas within the city organization and community at-large and performing internal and community education activities. Please submit an employment application to the City of Dubuque Human Resources Department, City Hall, 50 West 13th Street, Dubuque, Iowa 52001-4864 by June 14, 2019. The Human Resources Department may be contacted at (563) 589-4125 or [citypers@cityofdubuque.org](mailto:citypers@cityofdubuque.org). The employment application, benefit summary and job description are available at [www.cityofdubuque.org/employment](http://www.cityofdubuque.org/employment).

**Staff Attorney** - Iowa Legal Aid, Multiple Location in Iowa - Iowa Legal Aid has staff attorney openings in its regional offices located in Council Bluffs, Des Moines and Mason City, and the Legal Hotline for Older Iowans. Staff attorneys provide free legal assistance and community legal education to low-income people. Submit letter of application (indicate geographic restrictions), resume, law school transcript (recent graduates only), recent representative writing sample, and names, addresses and phone numbers of at least three professional references.

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**Assistant City Attorney** - Intergovernmental - City of Des Moines, Des Moines, IA - Provides professional legal representation for the City of Des Moines; works independently with minimal supervision; performs related work as required. Performs professional legal work related to economic development programs, real estate development, planning and zoning, building code, city finance and other municipal law matters. To apply, visit <https://careers.iowabar.org/jobs/12252867/assistant-city-attorney-intergovernmental>

**Associate Attorney** - Lynch Dallas, P.C., Cedar Rapids, IA - Seeking an associate attorney to practice in municipal law and insurance defense including workers' compensation. Ideal candidate must have a strong work ethic and excellent analytical, interpersonal, writing and research skills. Experience is a plus but will train the right candidate. Competitive salary and benefits. Please send cover letter, resume and copy of law school transcript to Heather Golden, Lynch Dallas, P.C., P.O. Box 2457, Cedar Rapids, IA 52406-2457 or [hgolden@lynchdallas.com](mailto:hgolden@lynchdallas.com).

**Administrative Assistant** - Linn County Bar Association, Cedar Rapids, IA - The Linn County Bar Association is seeking an organized and motivated individual to serve as a part-time administrative assistant. This person will be required to maintain a membership roster, bill and collect membership dues, communicate with members, facilitate organization of special events, engage in social media marketing, and generate monthly reports for the Board of Governors. Preferred applicants will have administrative experience in the preceding within the past six years, including record keeping, basic bookkeeping, filing, and calendar management. The administrative assistant will be an independent contractor working remotely with flexible work hours. Anticipated workload is 10 to 12 hours per week. Interested candidates should send a resume and cover letter to Amy L. Reasner at [areasner@lynchdallas.com](mailto:areasner@lynchdallas.com).

**City Attorney** - City of Waterloo, Waterloo, IA - Professional and administrative position appointed by City Council and under the

general direction of the mayor. Responsible for providing professional legal advice and ensuring professional representation for city departments and employees in civil and criminal cases. To apply, visit <https://careers.iowabar.org/jobs/12345256/city-attorney>

**Litigation, Real Estate & Tax Attorneys** - Bradley & Riley PC, Cedar Rapids and Iowa City, IA - Bradley & Riley PC, an AV-rated firm with offices in Cedar Rapids, Iowa City, and Chicago is seeking candidates for the following positions: Experienced tax attorney with a minimum of 2 years of experience in State and Federal tax law for their Iowa offices; experienced real estate attorney for their Cedar Rapids office; litigation associate attorney for their Iowa offices. Send cover letter, writing sample and resume in confidence to: Bradley & Riley PC, Attn: Kandi McElroy, 2007 1st Avenue SE, Cedar Rapids, IA 52402, or electronically to: [kmcelroy@bradleyriley.com](mailto:kmcelroy@bradleyriley.com).

### SERVICES OFFERED

**OFFICE SPACE AVAILABLE** - Professional Office Space/Private Offices for rent. Prime WDM location 10 minutes to downtown with front door parking. Exclusive meeting rooms; access to a printer, scanner, and photocopier; utilities, internet, cable included; networking opportunities. For inquiries, please email [hannah@dsmlawyers.com](mailto:hannah@dsmlawyers.com) or [mikeo@dsmlawyers.com](mailto:mikeo@dsmlawyers.com)

### FOR SALE

**PRACTICE FOR SALE** - Solo general practice for sale in centrally located community in north central Iowa. Thirty-plus-year-old firm has been providing a broad spectrum of legal services to a largely rural community. Currently, there is one additional 2-person firm in this community. Good opportunity for growth in a vibrant community. Contact P.O. box 502, Iowa Falls, IA or 641-648-4227.

**FOR SALE** - Law Firm in North Central Iowa community of 7500 people which swells to over 10,000 in the summer. The county has 45,000 people. Includes furniture, copier, car, no computers, closed file storage, and a small number of cases. May buy or lease the building which will hold 2 attorneys and staff

with a conference room or 3 attorneys and staff and no conference room. Large parking lot and no steps. This city had 14 full-time attorneys in 1990. It now has 5 full-time and 3 part-time attorneys. Great satellite office for a larger firm. If interested, email contact information to the ISBA at [communications@iowabar.org](mailto:communications@iowabar.org) with code 868 in the subject.

**OFFICE EQUIPMENT** - Moving to a smaller office space by July 31 and have the following items for sale: 8 foot wooden conference table with protective glass top and 8 matching chairs; Black faux leather love seat for reception area or office; 2 glass topped end tables and one glass topped coffee table for reception area; IBM Wheelwriter 1000 Electric Typewriter; IBM Selectric Correcting Electric Typewriter; 3 shelf Glass front barrister bookcase; Olympus Digital Voice Recorder DS-7000 with charging dock. Anyone interested can contact Jay A. Nardini, Nardini Law Office at 319-505-7233.

### 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, 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](mailto: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.

### OFFICE SPACE & REFERRALS

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# SPOTLIGHT ON SERVICE

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

Melissa Higgins, [mhiggins@iowabar.org](mailto:mhiggins@iowabar.org).



◀ Some of the members of the “Whitfield Women” pictured. From left, Danni Harris, Alexis Warner Grove, Denise Hill, Kay Oskvig, Jennifer Chavez-Rivera (Law Clerk), Alecia Meuleners, Maureen Roach Tobin, Elizabeth Shaw (Law Clerk), Elaina Steenson (Law Clerk), Jaki Samuelson, Kara Sinnard.

Sometimes colleagues become more than co-workers. They become friends, mentors and even partners in service. That’s what has happened for a group of colleagues at the Whitfield & Eddy firm in Des Moines, who formed the “Whitfield Women” group back in 2016.

“The ‘Whitfield Women’ group is a direct result of our firm retreat in 2016. We recognized an opportunity to have honest, authentic conversations amongst ourselves both personally and professionally,” explained Kara Sinnard, a member attorney and Whitfield’s Business & Banking Practice Group chair and Real Estate Practice Group co-chair.

The group started as a way for the firm’s female attorneys to mentor, empower and uplift each other, but its members quickly realized their ability to uplift the community as well. So they started planning service

outings – events like serving meals to the homeless at Central Iowa Shelter & Services, packing meals for Meals From the Heartland and the Food Bank of Iowa, wrapping gifts for a

Paks” through the Chrysalis Foundation. They also support other local legal entities, like the Kids First Law Center, through fundraising activities, as well as the Polk County Women Attorneys’

Annual Basket Auction for the Young Women’s Resource Center and the Polk County Women Attorneys’ “prison book club.”

“Whitfield Women” is now one organized way for the firm’s attorneys to give back, as well as bond outside of the office over shared and individual passions beyond the law.

“We support each other as colleagues in our individual endeavors by participating in volunteer efforts as a group that are close to each of our passions,” said Ashley Charnetski, an associate attorney and the Associate Professional Development Committee co-chair. “The members of ‘Whitfield Women’ are committed to community service and involvement.”

**“WHITFIELD WOMEN” MEMBERS:**  
Alecia Meuleners, Alexis Warner Grove, Anjela Shutts, Anna Mallen (Law Clerk), Ashley Charnetski, Bryn Hedlund (Law Clerk), Danni Harris, Denise Hill, Diana Miller, Elaina Steenson (Law Clerk), Elizabeth Shaw (Law Clerk), Jaki Samuelson, Jennifer Chavez-Rivera (Law Clerk), Kara Sinnard, Kay Oskvig, Kim Bartosh, Maureen Tobin, Molly Brown, Sally Reavelly, Tyler Coe

holiday event for single moms and collecting toiletry items for “Girlpower



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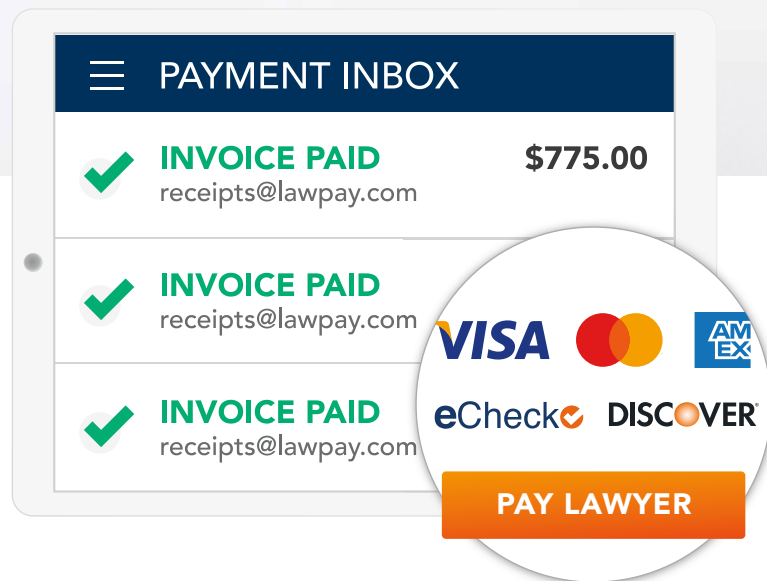


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