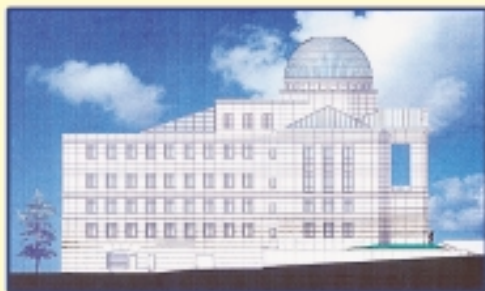
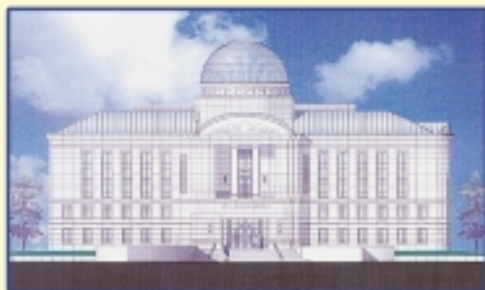
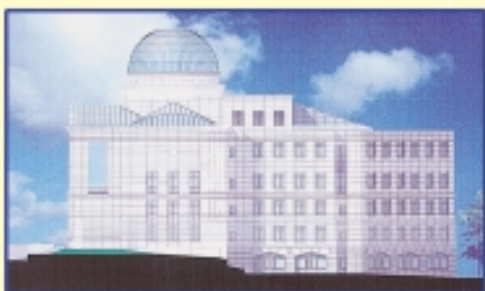




Volume 60 Number 6 June 2000

THE IOWA LAWYER

The New Iowa Judicial Branch Building
One structure to house the state's administration of justice



ALSO IN THIS ISSUE —

Making your section's year successful

Understanding electronic signatures

YLD entices future lawyers in mock trials

The importance of our "Lawyer's Oath"

Supervisors have a liability, too

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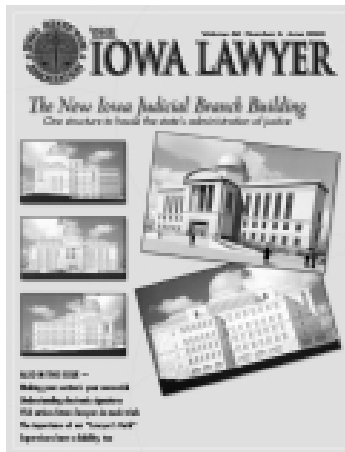
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About the Cover

The new Iowa Judicial Branch Building is an imposing edifice in drawings revealed early last month. Construction of its five stories of limestone and glass is expected to begin later this year with completion in two years. The new home for the state's highest courts will consolidate all of the state judiciary's administrative offices spread out now in five locations. Plans call for incorporating some historical art that used to grace the present Iowa Supreme Court's formal courtroom. Read the complete story on page 7.

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The President's Letter



Jay Eaton

I am proud to be an Iowa lawyer

It is with a deep sense of gratitude that I write this President's Letter to members of The Iowa State Bar Association – gratitude for the great assistance and countless hours given by hundreds of dedicated volunteers to perform the work of our Bar Association. Thanks to each and all of you for your service this year!

I want to specially mention 38 people. They are the members of your Board of Governors, who are listed on the inside cover of this magazine. The Board sets policy for the association, and wrestles with many important issues throughout the year. The Board, with recommendation from a number of sections and committees, has been particularly insightful this year on issues including: MDP developments, proposed changes in the judicial plebiscite, legislative initiatives, electronic access to judicial branch documents, amending the association's articles and bylaws, LPL insurance programs, model rules/code of professional responsibility issues, eCommerce and technology developments for members. Board members also have been of great assistance to me, personally, providing deliberative counsel while fully discharging their responsibilities on behalf of the association.

Also, I want to publicly thank every member of the ISBA staff for their outstanding dedication to our organization! They work tirelessly to accomplish, on time, whatever needs to be done for the association and its many programs. Having worked closely with them throughout this year, I have a much better appreciation for their teamwork, and for their many talents and commitment to the Bar Association and our members.

There is a high correlation between knowledge about our justice system and confidence in our justice system. The same is true about the image of our profession. Education is key. Lawyers are uniquely qualified to provide public education about the necessary role of lawyers and an independent judiciary in our society. We must take every opportunity to do so.

This year building blocks were set for new law and civic education initiatives by the Bar Association. The ISBA Center for Law and Civic Education was established. Through the Center, the Bar Association and Iowa lawyers will have new opportunities each year to reach literally thousands of students, parents, teachers and community leaders, and news media, throughout Iowa to provide education about lawyers and our judicial system. Additionally, this year the ISBA Community Service Award program was established. Under this program, annually, in each judicial district, recipients will receive awards to recognize outstanding public service to their communities. This program will honor the dedicated community service of many Iowa lawyers and provide a means to publicize their service in local media throughout the state. Law and civic education will be an ISBA priority for many years to come.

“With Liberty and Justice For All.” You recognize that phrase. It ends our national Pledge of Allegiance. I believe it also states the higher calling of our profession. Let this be a constant beacon and commitment for all of us who have chosen the profession of law.

Finally, my sincere thanks to you, our members, for the privilege to serve as your President this year. It has been my honor. I am proud to be an Iowa lawyer.

There is a high correlation between knowledge about our justice system and the profession of law, and confidence in them Law and civic education will be an ISBA priority for many years to come.

Volunteer attorneys aid future Iowa trial lawyers

By N. Tre Critelli*

Those who question our profession's future would be wise to take a look at the Iowa high school mock trial program. Iowa has the third largest high school program in the country and each year the top 32 teams gather in Des Moines for the State Tournament. Just last March, Cedar Rapids' Xavier High School managed to hold off Pocahontas Area Community High School and is set to represent the State of Iowa in the 17th Annual National High School Mock Trial Championships in Columbia, South Carolina.

In a mock trial, students assume the roles of attorneys and witnesses as they prepare and present both sides of a hypothetical legal problem. This year's problem focused on a federal suppression motion that challenged a high school principal's review of a student's e-mail, an action which led to the student being charged with drug possession. It was a timely problem and proved to be an excellent platform for the student attorneys to show their skills.

The assistance of Iowa lawyers has been crucial to the mock trial program. Without the aid of Iowa attorneys, the program simply would not exist.

"From my involvement in mock trial and interacting with lawyers in that respect, I've formed some opinions based on their involvement in the program," said Laura Schultes, a member of the runner-up Pocahontas team. "Lawyers are some of the most competent people



Some of the final round judges and event organizer who make it work. From the left, Assistant Polk County Attorney Jeff Noble, Federal Public Defender Nick Drees, ISBA President Jay Eaton, John Wheeler, organizer and director of the ISBA Center for Law and Civic Education, and the Honorable Scott Rosenberg.



Xavier High's Mock Trial 2000 State Champions. Front row, from the left, Amy Jennings, Ben Ostrander, Brian Frey, Emily Peebler. Back row, from the left, Megan Lester, Courtney Ridge, Sam Schrup

I know. They have great analytic abilities. I think mock trial has definitely shown an excellent side to lawyers."

If you are interested in learning more and possibly contributing your services to Iowa's great Iowa mock trial program, contact John Wheeler, Director of the Iowa State Bar Association Center for Law and Civic Education at 515-243-3179. E-mail him at jwheeler@iowabar.org

*N. Tre Critelli is an attorney in Des Moines at Nick Critelli Associates.

2000 Iowa High School Mock Trial State Tournament Results

Champion:

Xavier High School (Cedar Rapids)

Runner Up:

Pocahontas Area
Community High School

Semi-Finalists:

Johnston High School
Pocahontas Area
Community High School

5th Place:

Ames High School

6th Place:

Burlington High School

7th Place:

Waverly-Shell Rock High School

8th Place:

Kennedy High School
(Cedar Rapids)

9th Place:

Johnston High School

10th Place:

West Des Moines
Independent Team

Med Law Research
pick up April page22
#243955

The new Iowa Judicial Branch Building

By Chuck Corcoran, Editor, *The Iowa Lawyer*

Plans for the long anticipated Iowa Judicial Branch Building, unveiled last month at a press conference in the dark, 114-year-old Supreme Court courtroom in the state Capitol, revealed the new building to be quite a contrast. It is light, airy, spacious and "state of the art."

Its design, consistent with the state government campus, sitting majestically on Capitol Hill overlooking the architecturally reawakened city to the west, the new building echoes the old State Historical Building to its north. But its design is unique, putting a 21st Century face on justice in Iowa. Construction is to start late this fall with completion scheduled for 2002.

Sited on about 13 acres of Des Moines River Valley bluff south of Court Avenue, the five-story, 122,000 square foot building may be clad in buff-colored slabs of either Dubuque or Indiana limestone. An alternate bid specification is for limestone-look precast concrete. The bidding process will determine which. The final all-weather covering on the building will look like huge blocks of stone, but in fact be more of a massive façade made up of pre-constructed panels and attached to the building's steel skeleton.

Its roof will be copper and allowed to acquire a weathered patina. There are many avenues of natural sunlight into the new building, lots of windows for offices and a "light court" opening to a

skylight, showering the center of three top floors with natural radiation. The building is designed to create an airy, open feeling with offices and cubicles well lighted from the outside and natural light streaming down from within.

A yet-to-be-chosen frieze will grace the arch high on the front of the building. Architects are proposing a design that may require artistic talents yet to be secured. There is no word on who will be the designer or who will execute the theme-setting art for the structure.

Two main elements define the building. The front, facing north, is four visible stories in what is called a "formal wing." On its west end, the Supreme Court's courtroom is on the top floor and that of the Court of Appeals on the floor below. A conference center and small auditorium, linked by television to the courtrooms, are on the next floor down.

The wing also contains the office of the clerk of the Supreme Court.

The building incorporates stiff security measures throughout – including a 21-space underground parking lot for the high court's justices and judges of the Court of Appeals. Its computation and electronic records keeping is safely housed away from outsiders, on the ground floor in its IC&IS operations center.

The "front bar," called that for its cathedral-like transept design, extends

east and west and offers most of the public access to the structure. Getting into the back offices and staff cubicles will require a card key or staff escort.

The rear of the structure, with five visible stories, houses offices for judges and staff, records, and work and conference rooms.

Continued on page 8...

PHILLIP SCHENEIDER AD

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The new Iowa Judicial Branch Building

. . . Continued from page 7

Occupying a 25,000 square footprint, the building is expected to serve the state's continuously expanding needs for about 20 years. It has room for expansion on the site that should accommodate it for many more decades. A primary reason for the new \$30 million building – funded cumulatively by the last three legislatures – is to consolidate the five sites around Des Moines now occupied by state judicial services.

Architectural plans show not only a wide, circle drive on the east (adjacent to an existing parking lot) which is big enough for school buses to drop off visitors, but a long promenade and plaza running from the front of the building west to a proposed land bridge crossing Court Avenue. Completion of the portion proposed on the south side of Court Avenue is estimated to cost an additional half million dollars.

The imaginative design apparently has caught the eye and favor of some members of the Legislature who may

foster the plan in succeeding sessions. Time will tell if the bridge will be built. It is planned in the drawings at about the location once occupied by a foot-bridge, which was removed several years ago when it started to crumble.

Entering the building should be reminiscent of walking into the Capitol. Known for its eclectic use of more than two dozen shades of marble and other minerals, the statehouse rotunda is awash in colors. In the new structure, designers specify five colors of marble in the spacious public entry and rotunda. The color scheme ranges from medium brown to light tan with a gray accent, a bit more conservative than the Capitol but creating a hall unique to the judicial branch of Iowa government.

Renewed historic artifacts will see the light of day once again in the new building. Murals, which, when they first were installed over a century ago combined the romance and nostalgia of a young, energetic Iowa, had decorated the ceil-

ing of the old courtroom.

Done exquisitely in Europe in flamboyant oil colors, the allegorical paintings on linen canvas suffered smoke damage as a result of the catastrophic 1904 fire in the House of Representatives. Removed and stored, then glued to the walls of the old historical building, they were never restored – until now. They will be cleaned and hung at strategic locations in the new building, at least one over the entrance of the high court, in view of the by-then seven justices at the other end of the 2,530-square-foot room.

Moving the Supreme Court will free needed space for the legislature, though the old courtroom, first floor chambers and conference room will remain intact. They will be available for public viewing, certain ceremonies and other proceedings approved by the court.

The project team for the building is Justices Louis Lavorato and Marsha Ternus, State Court Administrator William O'Brien, his deputy David Boyd and Rebecca Colton, Chief Justice Arthur McGiverin's assistant. Project architect is Michael S. Lewis, a principal in the DLR Group that has its home office in Omaha. Design Architects are Kristina Feller and David Hobstetter of Kaplan, McLaughlin Diaz of San Francisco.

Mechanical engineering is by John Pulley of Pulley and Associates of Des Moines and pre-construction management is by Michael Carroll and Jeff Arlington of Hansen Christman Joint venture of Des Moines.

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NOTICE - USURY

In accordance with the provisions of Iowa Code section 535.2 subsection 3, paragraph "a," the superintendent of banking has determined that the maximum lawful rate of interest shall be 8.25% on May 1, 2000.

You can find the latest rate at any time on the Iowa Department of Banking Internet website - <http://www.idob.state.ia.us>

The department also posts many pages of banking information and links to pertinent state and federal sites.

New section chairs will want to read this closely

Ferris reveals secrets to Work Comp Section's successes

By Roger Ferris, Chair, 1999-2000* ISBA Section on Workers' Compensation



Roger Ferris

In the April issue (V.60 No.4 at 5) of *The Iowa Lawyer* President Eaton had great things to say about the Workers' Compensation Section, so someone suggested that I write an article outlining what Jay called the "reinvention" of the section. You know, what we did and how we did it — our secrets of success.

As my term as chair of the Workers' Compensation Section ends, I look back on a very busy and successful year. There were quite a few days along the way when I wondered why I took this job, but many more when I felt, as I do now, sorry that our team can't continue and complete all of the things we've started. Some of our goals have been achieved, but we've only laid the groundwork for others.

WE BEGAN THE YEAR by establishing a very important principle: the section council would operate by consensus, not majority vote. For an outsider to grasp the significance of this principle, you might imagine the merger of the Iowa Trial Lawyers and Iowa Defense Council. Our section council purposely has equal representation of both interests, and that creates a natural division. One of the things on which we reached early consensus was that our task was to make the workers' compensation system work better — we could do that by benefiting all, or by benefiting only one side, so long as it was not at the expense of the other. During the entire year, I do not recall one moment of dissension, which is not to say that we always agreed.

We also recognized that we, like the bar association as a whole, have dual responsibilities. One of our responsibilities is to serve lawyers. Early on, we concluded that meant serving more than experts in workers' compensation; we also needed to serve those lawyers who have occasional workers' compensation

clients, but who do not "specialize." This decision was made easier by the fact that another organization, the Iowa Association of Workers' Compensation Attorneys (IWCA), focuses on those who "specialize."

THE OTHER OF OUR DUAL responsibilities is to serve the public. In our case, the public is employers, insurance carriers and labor. In a departure from the past, it turned out to be an easy decision to expand our horizons into the arena of public service.

With our commitment to consensus and service in mind, we undertook an ambitious agenda of projects. We've always had an annual seminar open only to lawyers. It was usually lightly attended with an all time high attendance of 93 last year. With two other workers' compensation organizations having much

larger attendance, ours was something of an afterthought, and never really seemed to have found a niche. This year we analyzed the problem and concluded that our seminar needed a reason for existence. We looked at how we could best serve lawyers and decided that a seminar aimed at new lawyers and those with modest workers' compensation caseloads would fill a need not otherwise being met. By including an "update" segment we could also serve more experienced lawyers.

THIS KIND OF PROGRAM fit perfectly with our expansion into public service, because it would also benefit the non-lawyer workers' compensation community. What evolved was a comprehensive overview of the Iowa workers' compensation system with updates of recent developments. With a good program,

Continued on page 10...

**EXCELL AD
NEW FILM PROVIDED
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New section chairs will want to read this closely

. . . Continued from page 9

good speakers and increased marketing we ended up with 319 attendees, a 343 percent increase over our largest previous seminar.

A FEW COMMENTS FROM evaluation forms were: "I'm really glad I didn't pass this one up. I can't say enough good things about it." "Great seminar for a great price." "Make this seminar an annual event." There were a lot of similar comments and also constructive criticisms, which we are carefully evaluating and providing to next year's committee. Our challenge is to keep and expand our crowd, and, by the way, we've already started working on just that.

Another project which is coming to successful fruition is publication of a new Iowa Workers' Compensation Manual. It's a 350-page comprehensive manual targeting practitioners with moderate workers' compensation experience, but is so thorough that it should be of benefit to nearly everyone who practices in this area of the law. It also includes a searchable CD-ROM. As you read this article, it is hot off the presses and will be available for sale at the annual meeting later this month. Although it's aimed at lawyers, much of it is of equal benefit to workers' compensation administrators in business, insurance and labor, so for the first time, we're marketing one of our manuals to the non-lawyer workers' compensation community.

Even though very modestly priced, the seminar was profitable. We're proud of the service aspect of these projects, and are also proud that we're able to make a financial contribution to The Iowa State Bar Association.

ONE OF OUR MOST important projects has been accomplished largely due to the efforts of the bar association staff. Agency decisions are much the same to us workers' compensation lawyers as are court decisions to the rest of you, yet there has been no good complete up-to-date way to access those decisions. Workers' compensation hearing decisions are now entered on the bar website (www.iowabar.org) in fully searchable form within a day or two of filing and are complete back to 1993, with the final product to be complete

back to 1990. These decisions are available to lawyers and non-lawyers alike (and in the workers' compensation community non-lawyers *do* read decisions), and as a matter of both service and public relations we've promoted the website. Its value is evident by the large number of "hits" which it's getting.

INPUT ON MATTERS of public policy has not been left unattended by the section. Although we have traditionally advocated a legislative program, it has been many years since it was successful. This year most of our program passed and was signed into law by the governor. A major reason for passage (coupled with the skilled advocacy of the bar's legislative counsel) was that our legislative proposals were the product of consensus. That meant that business and labor could add their support, whereas in the past, one or the other had usually nixed our program as too other-side oriented. The section also made consensus proposals for administrative rules to the workers' compensation commissioner, which she subsequently adopted. We also waded in on a very important public policy issue which arose when the director of Iowa Workforce Development was suggesting procedural revisions which we thought would endanger the right of parties to a meaningful review of decisions. Our proposals, which were coordinated with IWCA, were largely followed by the workers' compensation commissioner, and the burgeoning appeal inventory, which had precipitated the director's concerns, has subsequently been reduced to manageable proportions.

The best is yet to come! The really big projects can't be completed in one year, but we've laid the groundwork for two projects which are as important as anything we've accomplished so far. One of these is the launching of a program of cooperation and coordination between the section and IWCA. The fact is that the functions of the two organizations largely overlap. They have a legislative committee; we have a legislative committee. They have an administrative rules committee; we have an administrative rules committee. They have a newsletter; we have a newsletter. Neither

organization is a claimant's nor defendant's advocacy group. Almost everyone who is a member of IWCA also is a member of the section. Committee membership is often overlapping and we compete for a limited supply of active volunteers. Through coordination and cooperation, and perhaps the merger of some of our committees and functions, both organizations can be stronger.

ONE OF THE IOWA STATE Bar Association's most heralded programs is the biennial Bench/Bar Conference. Most everyone who has participated gives high credit for its contribution to maintaining an already excellent relationship between Iowa lawyers and judges. While I don't want to overstate the problem, it cannot be said that the same relationship of respect and professionalism uniformly exists between the workers' compensation bench and bar. The reasons are complex, and, in part, have to do with the fact that deputies are a hybrid between judge and bureaucrat. Unfortunately, they are treated by some of the bar more like the latter, which sometimes fosters reaction and the spiral continues. We're working with the commissioner's office to establish a program inspired by the Bench/Bar Conference, and expect it to come to fruition sometime next year.

You can see that the workers' compensation section has a lot going on. We've got a lot of people doing a lot of work to better serve our fellow lawyers and to better serve the community. It is those people – bar members and bar staff – who are our secrets of success, and who will make next year even better than this. Consensus, service to the bar and service to the community – those have been, and I hope will remain, the section's guiding principles.

**Outgoing Section on Workers' Compensation Chair Roger Ferris can be contacted at RLF@nyemaster.com Roger is being succeeded by Chip Kinsey of Brown, Kinsey & Funkhouser, P.L.C. of Mason City.*

eCommerce: Electronic Signatures 101

By Spiwe L.A. Pierce*



Spiwe L.A. Pierce

With the explosion of Internet use, many practitioners have been deluged by issues stemming from a new area of practice that is fundamentally changing the way individuals and organizations communicate, access

information, and do business. It is also an area which the law has been characteristically slow to address with much, if any, uniformity and decisiveness. Practitioners are left to make creative inferences from the few cases that have been decided on typically narrow issues, and attempt to fit non-traditional enigmas into traditional ill-fitting solutions.

Electronic signature legislation is easily one of the hottest issues in the area of eCommerce law to date. Digital signatures, in particular, have generated the most business and technical efforts, as well as legislative responses. Web-based businesses all want to establish online relationships with existing and prospective customers. One barrier to establishing these relationships is the need to authenticate the identity of the customer and the legal requirement that physical signatures be obtained. The computer industry has created the technology for digital signatures, which can simplify and expedite customer and business-to-business transactions. In theory, if a document can be signed electronically, it eliminates the need for mail and fax originals to be sent back and forth between the parties, thus saving much time and cost.

A Few Key Terms

The terms "digital signature" and "electronic signature," although sometimes used interchangeably, are not synonymous.

Electronic signature – a generic technology-neutral term that refers to the universe of all of the various methods by which one can "sign" an electronic record. This is an electronic signature at the end of a letter:

"Truly, Spiwe L.A. Pierce"

Digital signature – one type of digital certificate and electronic signature; a code embedded within an electronic message or transaction. It is *not* an encrypted representation of a legible electronic signature. This is a digital signature at the end of a letter:

—BEGIN SIGNATURE—

pxIuXY2tV2EEL+F+33kjfHjEicBeKA
Niw8L7iIcLJ3UnfD3scTEaudc
Iscto9fio3kMOKDdFmAjsWI3m0B+L
KMfDeLKMINKoeLKJM3K97sdfKcL
dKIOkLKJcHfE/sdc8rcNjW/Mlk4cne8
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8+dJ3dIcdwe8j0lk7cUvIme3cdJNdIW4
2c/63c/Im34d9cJlkmiC38M97t8Lx
fVr9We2jHyk

—END SIGNATURE—

Digital certificate – a broad term referring to an attachment to an electronic message used for security purposes. Digital certificates are most commonly used to verify that a user sending a message is who she claims to be, and to provide the receiver with the means to encode a reply. Digital certificates are typically issued by third party certificate authorities, like Verisign, the Digital Signature Trust Company, and GTE.

Public Key Infrastructure (PKI) – a system of digital certificates, certificate authorities, and other registration authorities that verify and authenticate the validity of each party involved in an Internet transaction.

How Digital Signatures are Used

Digital signature technology is used in a variety of settings:

- Between private parties to keep e-mail messages confidential. This is especially pertinent to negotiations and discussions between clients and lawyers, and lawyers for opposing parties, and the courts.
- Among corporate network users to maintain the integrity and confidentiality of documents.
- Lawyers, individuals and companies can use it to file documents with state and federal agencies.
- To authenticate and maintain the integrity of commercial transactions conducted over the Internet.
- For evidentiary purposes. For example, a party may use a digital signature to prevent another party from repudiating the sending of a message or the content of a message.

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eCommerce: Electronic Signatures 101

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How Digital Signatures Work

The sender holds the private key, which is like a password; she never gives it to anyone. She also has a corresponding public key that she can give to anyone or any establishment where she transacts business that requires authentication (for example, her insurance provider or attorney). When she sends a settlement acceptance to her lawyer, she uses her private key to create the digital signature on the outgoing letter. When the lawyer receives the authorization, his computer runs a computer program containing the same cryptographic algorithm as the one that the client used with her private key. The program automatically decrypts the digital signature using the public key. Thus, the lawyer can verify that the client did send the authorization, and that the request has not been altered.

The Current Status of Digital Signatures

Utah enacted the first comprehensive law regulating the use of digital signatures in electronic commerce in 1995. This became the prototype for legislation in other states.

At least 40 other states have enacted legislation regulating digital or electronic signatures, although states have differed

widely in their approaches to electronic and digital signature law. State laws also differ in how they address allocation of liability relating to the use of, or reliance on, electronically or digitally signed documents. Some state laws, for instance, provide that certification authorities are not liable for harm caused by reliance on digital signatures. Others, however, provide that certification authorities warrant that their certificates are issued in accordance with their practice statement.

Current Status

In the United States, the practical problem is that PKIs are currently evolving and there is no single PKI nor even a single agreed-upon standard for setting one up. It is clear, however, that reliable PKIs are necessary before electronic commerce can become widespread. Many of the regulations are still at the state level and many states have either not acted, or restricted the use of digital signatures, thereby precluding widespread business use. Some lawmakers and Internet business representatives argue that the inconsistency among state electronic signature legislation will impede the development of electronic banking and commerce nationwide. Thus, several organizations have proposed uniform rules to govern electronic signatures.

Last year the Senate passed S761, the Millennium Digital Commerce Act, while the House passed HR1714 the Electronic Signatures in Global and National Commerce Act. The most promising of the two is HR 1714 because not only does it address digital signatures, but also deals with electronic records as well. Both the House and the Senate must now appoint conferees to iron out the wrinkles in the bill and address privacy issues. The House has appointed its conferees, but the Senate has yet to do so. Thus, to date, there is no uniform legislation at the federal level.

**Spiwe L.A. Pierce is manager of eBusiness Strategic Alliances at the Principal Financial Group®. She received her J.D. from the University of Dayton, and her B.A. in business management and criminal justice from Defiance College. Prior to her current employment, she was engaged in private practice in Dayton, Ohio, heading the civil division at the law firm of McCray & Associates.*

City Attorney

The City of West Des Moines, the fastest growing city in Iowa, with virtually every quality of life a community can provide and a cost of living which is lower than the national average is seeking a team oriented attorney to support the Mayor & City Council and City Staff as the City Attorney. West Des Moines has a population of over 47,000 in a greater metropolitan area with a population in excess of 400,000. The City is well known for its outstanding neighborhoods, parks and trails, quality of life, low tax rate, and boasts the top rated school district in the state, according to Expansion Magazine. The City is also in close proximity to more than 7 area colleges & universities. West Des Moines is governed by a Mayor and City Council with an appointed City Manager. The City Attorney will be appointed by and report directly to the Mayor & Council.

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Law needs to change to stay abreast of eCommerce boom

By Janet Huston* and Tim Teeter**

As businesses stream ahead in the world of eCommerce, changes in current law are necessary to protect the parties involved in the formation and performance of electronic contractual agreements. Businesses entering into online contracts must be given assurances that their intrastate, interstate, or international electronic records which are signed using electronic signatures (including digital and other similar technologies) will be declared valid and that they will have standing to pursue legal protections in a court of law. Mark Merkow, *The State of Digital Signatures Today, The E-Commerce Guide* (Sept. 1, 1999).

Just as businesses are looking for guidance with respect to the conduct of eCommerce, policy-making bodies throughout the world are moving forward individually and collectively to protect the interests of both consumers and businesses transacting business in cyberspace. At the national level, each body of the United States Congress has enacted its own version of an eCommerce bill. In the House, the initiative is known as HR 1714, "Electronic Signatures in Global and National Commerce." The Senate enacted S.761, "The Millennium Commerce Act." Recently these initiatives were referred to Conference Committee for resolution of their differences.

THE FEDERAL INITIATIVES are noteworthy for two reasons –

1. Both HR 1714 and S.761 contain provisions to pre-empt state law that is inconsistent with the National Conference of Commissioners on Uniform State Laws (NCCUSL) uniform legislative proposal entitled the "Uniform Electronic Transactions Act (UETA)."
2. Both federal bills take a minimalist approach to regulating eCommerce. The proposed federal statutes remove existing barriers and impediments to eCommerce nationally and establish the legal infrastructure necessary for the growth and development of business-to-business (B-to-B) e-transactions as well as e-transactions involving consumers.

After almost three years in the drafting process, NCCUSL adopted UETA and submitted it to the states for consideration in July, 1999. The Iowa version of UETA, together with modifications to accommodate uniquely local concerns, was introduced in the Iowa General Assembly in February, 2000, as House File 2205. The Iowa UETA replaces the current Iowa statute on eCommerce that is entitled the "Iowa Electronic Commerce Security Act" (Iowa Code chapter 554C) that was enacted in 1999 and became law on July 1st of last year. The Iowa UETA was passed by both bodies of the General Assembly and has been signed into law by Governor Vilsack. It will be effective on July 1 and will apply to all e-transactions on and after that date.

UETA'S FIVE OBJECTIVES

The expressed legislative intent of Iowa's UETA statute (which will become Iowa Code chapter 554D) encompasses five stated objectives. First, the General Assembly desires to promote "electronic communications by means of reliable electronic records." Next, the General Assembly desires to promote electronic commerce. Fostering the growth and development of electronic commerce is essential to the long-term stability of many Iowa producers, including the family farmer. Each year new industries take their place on the Internet. The newest arrivals to the cybermarketplace are in the field of agriculture. Two of the newest Internet entities that provide services to the agricultural community are **XSAg.com** and **agservices.com**. These sites provide links to other sites from which purchasers can buy ag products.

The General Assembly also seeks to promote the electronic filing of documents with state and local agencies and to expedite the efficient delivery of government services from these agencies, as well as, to establish the reliability of electronic records and signatures. Another point of legislative concern is to minimize the incidence of forged or fraudulent electronic records and signatures; to this end, criminal penalties are imposed for certain violations of the

statute. Finally, the legislature intends to promote confidence and legitimacy in electronic transactions. H.F. 2205 (subsequent references in this article to the legislation will be to the new Iowa Code sections); Iowa Code section 554D.102.

THE IOWA UETA simplifies, streamlines, and updates the current eCommerce statute and acknowledges our general acceptance of technology as a viable means of conducting our personal and our business affairs using an electronic medium. At the heart of the new statute, UETA gives legal recognition to electronic signatures, including the use of digital signature technology and other technologies, electronic records, and electronic transactions. ("Transactions" in this context are defined as "an action or set of actions occurring between two or more persons relating to the conduct of business, consumer, commercial or governmental affairs." New Iowa Code section

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Law needs to change to stay abreast of eCommerce boom

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554D.103.

ALL ELECTRONIC ACTIVITIES

are not covered. The new statute does not cover all activities conducted electronically. For instance, social discourse between friends or colleagues using e-mail would not ordinarily fall within the definition of the term "transaction."

Additionally, there are six categories of activities specifically excluded from the Iowa UETA. (It should be noted at the outset that the NCCUSL version of UETA contemplates exclusions from the statute for issues of local concern within the individual states. Exclusions from UETA do not render the Iowa version inconsistent with the NCCUSL proposal.) In addition, there are special rules governing mortgages, deeds and other instruments that create an interest in real property.

THE EXCLUSIONS ARE:

- To rules of law governing the creation or execution of a will, trust, power of attorney, and similar documents because the demeanor and capacity of the signer cannot usually be determined electronically (Iowa Code section 554D.104(2)(b));
- To a construction of a rule of law that would be clearly inconsistent with the manifest intent of the rule of law, the otherwise undefined catchall exclusion (Iowa Code section 554D.104(2)(a)(1)(a));
- In a consumer transaction, to a record that is unique and serves to transfer title wherein possession of the instrument is deemed to confer title (e.g., car title), because as a practical matter

recorders are not yet ready to accept e-filings of such records (Iowa Code section 554D.104(2)(a)(1)(b)) [emphasis supplied];

- To transactions involving electronic transfers of funds by use of an automated teller machine (or satellite terminal) that are otherwise governed by Iowa code chapter 527 (Iowa Code section 554D.104);
- To disclosures required in consumer transactions (Iowa Code section 554D.104(2)(a)); and,
- Iowa Code chapter 554 (except articles 2 and 13 and sections 554.1107 [waiver] and 554.1206 [statute of frauds]) (Iowa Code section 554D.104(2)(a)(2)(c)).

REAL PROPERTY RULES are special. Special rules apply to e-transactions creating an interest in real property and the disclosures required under Iowa Code chapter 558A. For an e-transaction involving the creation of an interest in real property to be valid, the record must be created using a security procedure (digital signature technology), and the e-record shall not be recorded or have effect against third parties until a duplicate paper original of the e-record has been executed in pen and ink by the parties, acknowledged and recorded. The transaction must also comply with applicable recordation statutes and other applicable state law. Iowa Code section 554D.108.

UETA is not intended to displace other substantive law governing transactions that would require, for instance,

that a record be formatted in a certain manner, worded according to a statute, or presented or transmitted in a prescribed fashion. Therefore, in addition to the rules of law established in new Iowa Code chapter 554D relative to e-transactions, the application and effect of an electronic activity will be governed by chapter 554D and other substantive rules of law applicable to the activity. (For instance, in e-transactions involving consumers, they will continue to be governed by the limitations of liability set forth in federal *Regulations E* and *Z* and the Iowa Consumer Credit Code, Iowa Code chapter 537.)

WE BELIEVE THAT understanding and appropriately applying the Iowa UETA to e-transactions will soon become an issue of core legal competency for lawyers. This article discusses only the high points and a few of the unusual twists in the statute. We strongly urge all practitioners to read, digest and understand Iowa Code chapter 554D before advising clients about the ramifications of electronic transactions.

During the coming months, we will be discussing specific aspects of the Act in more depth and detail. Please feel free to contact us at teeter@powersurge.net or jhuston@max.state.ia.us should you have questions regarding UETA.

Both of the authors are founding members of the ISBA eCommerce Section Council.

**Janet Huston was the primary drafter of the current eCommerce statute (patterned after a similar Illinois Act) and the Iowa UETA. She speaks frequently on eCommerce issues and represents executive branch agencies in technology related acquisitions and other technology matters*

***Tim Teeter serves on the Cyberspace Committee of the Business Section of the American Bar Association. He is an attorney with Murphy, Teeter and Buffington Law Office in Sumner, Iowa.*

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Inside the Iowa Lawyer's Oath

By Neil Hamilton* and Sandra Francis**

To understand the importance of the oath we took on entry into the profession, we must look at the profession's history. We are members of one of the four original learned professions (law, medicine, theology, and the professoriate) with a 750-year tradition reaching back into the medieval universities. The historical characteristics of the learned professions were: (1) the pursuit of a learned art through formalized education and extensive training; (2) a commitment to a distinctive ideal of public service which imposes ethical demands, to which ordinary citizens are not subject, to restrain self-interest and to use the special knowledge and skills gained for the common good; and (3) professional autonomy obtained from self-regulation. Another essential characteristic related to self-regulation has been the imposition of controls over entry into the profession.

Essentially, society and members of a learned profession form a social compact whereby the members of a profession agree to restrain self-interest to promote ideals of public service, and to maintain high standards of performance while the society in return allows the profession substantial autonomy to regulate itself through peer review. The ethics of each profession are descriptive of the profession's duties under the social compact. Historically, an oath committing the entrant into the profession to use her skills for the public good was an important step in becoming a member of a learned profession.

IN THIS CENTURY, as prerequisites to entry to the bar, the legal profession has required a legal education, an examination, and an oath of persons wishing to practice law. Although the first two are readily acknowledgeable substantive requirements, the swearing of an oath has become viewed as a mere procedural prerequisite to entering the bar.

To dismiss the oath as a procedural nicety demeans the tradition of the profession and the profession's role in the justice system. The oath is part of a long and rich tradition that predates the substantive requirements of the bar examination and formalized education. It is a

universally respected tradition in the American legal system - before an attorney is admitted to practice law, the taking of an oath is required in every state as well as in the military and federal court systems.

THE OATH TAKEN by Iowa attorneys today is substantially similar to those required in the thirteenth century. For example, under the 1295 statutes of Archbishop Winchelsea, advocates seeking to practice in court were required to take an oath to act diligently and faithfully in their office to the best of their ability, to observe the customs and statutes of the court; not to make untrue or unjust claims or statements in court; to elicit the truth from their clients as far as possible; to warn them of the dangers awaiting them if they continued with their suits; and not to refuse to take on or abandon parties with just suits or defenses.

Black's Law Dictionary, 7th edition 1999, defines an oath as: "[a]ny formal attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully." Thus, attorneys wishing to gain entry into the profession in Iowa formally attest that they are bound in conscience to perform the following obligations faithfully and truthfully:

"I will support the Constitution of the United States and the Constitution of the State of Iowa; I will maintain the respect due to Courts of Justice and Judicial officers; I will counsel or maintain no other actions, proceedings, or defenses than those which appear to me to be legal and just, except the defense of a person charged with a public offense; I will employ, for the purpose of maintaining causes confided to me, such means only as are consistent with truth, and will never seek to mislead the judges by any artifice or false statement of fact or law; I will maintain inviolate the confidence, and, at any peril to myself, will preserve the secret of my client; I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness, unless



Neil Hamilton



Sandra Francis

required by the justice of the cause with which I am charged; I will refuse to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest; I will never reject from any consideration personal to myself, the cause of the defenseless or oppressed; and I will faithfully discharge the duties of an attorney and counselor at law to the best of my ability and in accordance with the ethics of the profession, So Help Me God.

- Iowa Statutes §601.10112 codifies this oath.

What is the significance of the words of the oath?

I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE CONSISTUTION OF THE STATE OF IOWA. Wendell Smith argues that the legal profession "is perceived as the foundation that supports the rule of law upon which this country was founded. Lawyers are expected to abide by, support and uphold the laws of the land, and, thereby, the State and Federal Constitutions."

I WILL MAINTAIN THE RESPECT DUE TO COURTS OF JUSTICE AND JUDICIAL OFFICERS. "Maintain" is defined as "to keep in existence or continuance," which connotes an active rather than passive act. "Respect" means "a feeling of high regard, honor, or esteem." The legal profession has been struggling with a declining confidence in the judicial system. This clause calls on each lawyer actively to foster public trust in the

Inside the Iowa Lawyer's Oath

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courts and in the office of the judge. The clause is not conditioned on time and place. At all times, not just in the courtroom, a lawyer is to maintain the respect due to courts and the office of the judge.

I WILL COUNSEL OR MAINTAIN NO OTHER ACTIONS, PROCEEDINGS, OR DEFENSES THAN THOSE WHICH APPEAR TO ME TO BE LEGAL AND JUST.

"Counsel" is synonymous with "advise" and "maintain" is defined above. "Appear" means "to become understood or apparent." And "proceeding" is, according to Black's Law Dictionary, "the succession of events constituting the process by which judicial action is invoked and utilized." The fact that proceeding is included in this clause indicates that more than the narrow and traditional notion of a suit is intended. "Unjust" means not in accordance with correct principles or lacking in fairness. This clause calls upon each lawyer, mak-

ing a personal assessment of ethical duty, the facts, and the applicable principles of law, not to recommend or continue any proceeding that it either unsupported in fact or law or unfair.

EXCEPT THE DEFENSE OF A PERSON CHARGED WITH A PUBLIC OFFENSE. Every defendant is entitled to effective counsel by virtue of the Sixth Amendment which is made applicable to the states by the Fourteenth Amendment. More importantly, however, our system of justice is based on the assumption that each side is zealously represented by effective counsel. Iowa Statute (813.2 Rule 26 reflects this belief: "Every defendant who is indigent . . . is entitled to have counsel appointed to represent the defendant at every stage of the proceedings."

I WILL EMPLOY, FOR THE PURPOSE OF MAINTAINING THE CAUSES CONFIDED TO ME, SUCH MEANS ONLY AS ARE CONSISTENT WITH TRUTH. "Consistent" constant adherence to the same principles. "Truth" in this context is conforming with fact. The lawyer commits him or herself to use only means that are both in constant conformity with the facts.

AND WILL NEVER SEEK TO MISLEAD THE JUDGES BY ANY ARTIFICE OR FALSE STATEMENT OF FACT OR LAW. By taking this oath, we are swearing NEVER, that is, "not ever; at no time; not at all," to seek to mislead the judge or jury by artifice or false statement of fact or law. "Mislead" is defined as "to lead in the wrong direction." "Artifice" means "skills or ingenuity." Therefore, we may at no time try to lead the judge or jury in the wrong direction by either ingenuity or false statement of fact or law.

I WILL MAINTAIN INVIOLEATE THE CONFIDENCE, AND, AT PERIL TO MYSELF, WILL PRESERVE THE SECRET OF MY CLIENT. Client confidentiality is a cornerstone of the relationship between attorneys and

clients and is also a tenet in the Model Rules of Professional Conduct.

I WILL ABSTAIN FROM ALL OFFENSIVE PERSONALITIES.

To "abstain from" means to "refrain from" and "offensive" means "unpleasant" or "repugnant" and "personality" means "habitual patterns qualities or behavior" but it also means "remarks, usually of offensive or disparaging nature, aimed at or referring to a person." Therefore, we have promised to refrain from ALL unpleasant or repugnant behavior. Again, it is interesting that this statement is not limited by time or context. It would seem, therefore, that in recognition of the reflection each of us is on the judicial system, we are promising to refrain from offensive behavior at all times, both inside of and outside of the courtroom.

AND ADVANCE NO FACT PREJUDICIAL TO THE HONOR OR REPUTATION OF A PARTY OR WITNESS, UNLESS REQUIRED BY THE JUSTICE OF THE CAUSE WITH WHICH I AM CHARGED.

"Prejudicial" means "causing prejudice or harm; injurious; detrimental." From the plain language of this clause, there seems to be no room for compromise and it is only when "justice" or "the cause with which I am charged" is in need of a fact that is injurious or detrimental to the reputation of a party or witness may it be advanced.

I WILL REFUSE TO ENCOURAGE EITHER THE COMMENCEMENT OR CONTINANCE OF AN ACTION OR PROCEEDING FROM ANY MOTIVE OF PASSION OR INTEREST. "Passion" and "Interest" are personal to each lawyer. "Passion" connotes excessive emotions and visceral feelings about a particular thing or act. "Interest" encompasses personal stakes, such as a monetary interest, as well as personal appeal or concern. This clause, in effect, requires each attorney to actively REFUSE even to encourage, let alone institute, an action or proceeding when the motive is for personal gain or excessive personal emotion.

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I WILL NEVER REJECT, FROM ANY CONSIDERATION PERSONAL TO MYSELF, THE CAUSE OF THE DEFENSELESS OR OPPRESSED.

This language reflects the social compact that we have made with society. In exchange for self-regulation by our peers and the public trust with which we are given, we will NEVER reject the cause of the defenseless or oppressed from any consideration personal to myself. This sentiment is also reflected in Rule 6.1 Rules of Professional Conduct by which we are bound. Rule 6.1 asks that each attorney donate 50 hours of law related public service to low income clients.

AND I WILL FAITHFULLY DISCHARGE THE DUTIES OF AN ATTORNEY AND COUNSELOR AT LAW TO THE BEST OF MY ABILITY AND IN ACCORDANCE WITH THE ETHICS OF THE PROFESSION.

The Iowa Supreme Court has adopted the Rules of Professional Conduct (Iowa Statute §602) which lay out more specific guidelines and aspirations. Attorneys, then, are swearing to "faithfully" or painstakingly discharge their duties, including those outlined in the Rules of Professional Conduct to the BEST of his or her ability and in accordance with the ethics of the profession.

SO HELP ME GOD. The invocation of the Deity is somewhat implicit in the taking of an oath. Deliberately to invoke the Deity to witness what is said makes the act one of the greatest consequences. In a Man For All Seasons, an oath is taken when a person "wants to make an identity between the truth of it and his own virtue; he offers himself as a guarantee." The United States Supreme Court, quoting Justice Cardozo, reminds us in Theard v. United States, 354 U.S. 278, 281 (1956), that "membership in the bar is a privilege burdened with conditions. . .The Appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court and, like the court itself, an instrument or agency to advance the ends of justice."

The oath reminds us of the critical importance of personal conscience in guiding a lawyer to advance the ends of justice. The oath calls upon each lawyer not to counsel or maintain a proceeding which shall appear to be "unjust." Each lawyer is to employ on such means as are consistent with "truth." To realize the oath's commitments, each lawyer must develop and draw upon personal conscience.

Although the oath sworn upon induction into the legal profession is ceremonial and procedural, it is an important aspect of our history as a profession. Oaths are, John Kultgren emphasizes, "instruments for persuasion both of members of the profession and the public. They enhance the sense of community among members, of belonging to a group with common values and a common mission." They are also an acknowledgment of the social compact we make with society, that we, as attorneys, will uphold the rules of law and strive to improve the administration of justice in exchange for the position of public trust that we are given. The oath reminds us that we are keepers of the sacred flame of justice.

* Neil W. Hamilton is Trustees Professor of Law, William Mitchell College of Law. B.A., economics, Colorado College, 1967; J.D., University of Minnesota, 1970; M.A., economics, University of Michigan, 1979. Neil practiced with the firms of Gray, Plant, Mooty, Mooty and Bennett, Minneapolis and Krieg, Devault, Alexander and Capehart, Indianapolis, before going into teaching. He taught at the Law Faculty of Airlangg University in Indonesia from 1972-75 and at the Case Western Reserve University Law School from 1977-80. Joined William Mitchell College of Law faculty, 1980; was named Trustees Professor of Regulatory Policy, 1982; Fulbright Schola, University of Singapore, 1987. Neil has taught administrative law for 23 years and both required courses in professional responsibility and an ethics seminar for 12 years. He has authored two books and over 50 articles. He presents 10-12 programs annually on legal and academic ethics.

** Sandra Francis was Professor Hamilton's research assistant. She graduated May 2000 from William Mitchell College of Law and was to join the National Labor Relations Board.

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Legal Services Corporation honors those who serve

By Dennis Groenenboom*



Frank Nidey



Stephen Jackson, Sr.



Stephen Jackson, Jr.



E.J. Giovannetti



Beverly Whiteaker



Diane Kolmer



Robert Sackett

The private bar has a long history of commitment to meeting the legal needs of low-income Iowans. This partnership covers a broad spectrum of support from the organized activities of The Iowa State Bar Association to the contributions of its individual members.

During 1999, the private bar, through organized pro bono programs across the state assisted over 2,100 clients and donated time valued at close to \$1.5 million.

In April, four Iowa attorneys, as well as the Jackson Law Firm in Cedar Rapids, were recognized for outstanding contributions at ceremonies in Des Moines held in conjunction with the annual meeting of the Legal Services Corporation of Iowa (LSCI) Board of Directors.

ISBA President-Elect Bruce Graves keyed the event. Bruce spoke on multi-disciplinary practices and their implications in providing assistance through legal services programs like LSCI. Special guests at the luncheon included State Senator O. Gene Maddox and Dwight Dinkla, ISBA executive director.

E. J. Giovannetti of the Hopkins and Huebner Law Firm in Des Moines was presented LSCI's "Excellence in Service Award."

The "Excellence in Service Award" honors individuals who have worked to promote justice and/or to ensure that society becomes more hospitable to low-income people, recognizing significant work toward the development and delivery of legal services to low-income people and extending services to underserved segments of the population

Giovannetti was cited for his work to help maintain state funding for Legal Services programs. Appreciation was expressed for his assistance in articulating to many legislators the services Iowa's Legal Services programs provide. His knowledge of the legislative process, and of the individuals involved in the process, has been extremely helpful in ensuring that access to justice remains possible for Iowa's low-income citizens

Diane Kolmer of Des Moines was recognized for the key role she has played during the past three years in efforts to obtain state funding for Legal Services.

Beverly Whiteaker of Council Bluffs was honored for the time she has volunteered in support of the services provided to clients at LSCI's Southwest Iowa Regional Office.

LSCI Volunteer Lawyers Project Awards were presented to **Kathryn Mahoney** of Gottschalk, Shinkle and Noonan-Day in Cedar Falls; the **Jackson Law Firm** in Cedar Rapids; **Frank Nidey** of Nidey, Peterson & Goldberg in Cedar Rapids; and **Robert Sackett** of Sackett & Sackett in Milford. This award honors Iowa lawyers who donate their services, on a pro bono publico basis, to extend legal services to low-income people and to provide legal assistance to the poor.

Kathryn Mahoney has been of great assistance to LSCI's Waterloo Regional Office and also chaired the area's Iowa Lawyers Campaign for Legal Services in 1998. One of her pro bono clients had been in an abusive relationship, and the case involved an appeal to the Iowa Supreme Court.

Stephen B. Jackson, Sr. and **Stephen B. Jackson, Jr.** together donated over 240 hours assisting clients since each joined the LSCI Volunteer Lawyers Project. The Jackson Law Firm also initiated an intake project at the Cedar Rapids Regional Office of LSCI in July of 1997, which, since its inception, has served 66 clients. Once each month a member of the firm meets with clients in the Cedar Rapids Regional Office.

Frank Nidey has donated 180 hours since joining the LSCI Volunteer Lawyers Project in 1988. Last year, he agreed to represent a VLP client in a dissolution of marriage involving domestic abuse and a custody dispute. Immediate action was required since there was an answer deadline less than two weeks from the date he accepted the case. From April through December of 1999,

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he devoted 84 hours to obtaining a divorce, custody and child support order for his client.

Robert Sackett represented a client in a housing foreclosure matter and devoted 200 hours on behalf of the client from September 1998 through July 1999. Through his efforts, the client and her son were able to stay in their home long enough for the child to finish the school year uninterrupted.

The six attorneys recognized have provided pro bono services which involved a combined total of over 650 hours. They have generously given of their time and have personally made a difference in the lives of low-income Iowans seeking equal justice under law.

The contributions of the hundreds of Iowa lawyers who are part of the public/private partnership for equal justice and who support Legal Services providers throughout the state are very much appreciated.

**Dennis Groenenboom is executive director of the Legal Services Corporation of Iowa. His office is at 1111 Ninth Street, Suite 230, Des Moines 50314-2527.*

Insured ISBA members can consult claims counsel

If you have a question regarding a potential legal malpractice situation, The Iowa State Bar Association provides members insured under its program with a free, confidential consultation service.

Roy Voigts, a member of Nyemaster, Goode, Voigts, West, Hansel & O'Brien, P.C., Des Moines, serves as the consulting claims counsel. The consulting counsel position was developed to address claim-handling procedures and to provide a local contact for discussing claim matters.

Historically, it was felt that attorneys might hesitate to report or discuss matters with their professional liability carrier due to the potential negative impact against their premiums or coverage. As a result, late claim reporting caused negative delays and costs to the program as well as the firm in question. Speaking with a neutral party, attorneys can get an insight on how to address their situation. Roy does not report any conversations or statistics to the bar association, its administrator, or to any attorney's professional liability carrier.

He takes three to four calls per month on average, or about 30 calls a year.

Questions range from what to do about an anxious client who is making verbal threats of suing for malpractice to questions that border on ethical considerations. While the consulting counsel may not solve the problem presented, sometimes having a sounding board can help attorneys see their situations more clearly.

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Roy Voigts can be reached at 1-800-642-7728 and locally in Des Moines at 515-283-3137. His office address is Nyemaster, Goode, Voigts, West, Hansel & O'Brien, P.C. 700 Walnut Street, Des Moines, IA 50309.

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Attorney disciplinary decisions

David Graeser
Sidney, Iowa
Public Reprimand
Supreme Court Order, April 21, 2000

Graeser had been subject to notices of delinquency in 13 probate matters, and had been subject to notices of delinquency and notices of complaint from the Board of Professional Ethics and Conduct on four occasions since January of 1997. Graeser was publicly reprimanded that his failure to resolve delinquencies in multiple probate matters despite repeated notices thereof was the neglect of clients' legal matters, contrary to DR 6-101(A)(3) of the Iowa Code of Professional Responsibility for Lawyers.

Vernon McKinley
Iowa City, Iowa
Public Reprimand
Supreme Court Order, April 21, 2000

McKinley was called as a witness and testified at a hearing held October 8, 1999, in the Iowa District Court in and for Johnson County on a motion in arrest of judgment filed on behalf of his former client in a criminal matter. McKinley acknowledged that he

had signed his client's name on a written guilty plea and, as a notary public, completed his notary's acknowledgment falsely stating the criminal defendant had signed the document in his presence. He then caused the document to be filed. McKinley testified that he had done so because his client was not present but was in Illinois and he had done so to prevent a warrant being issued for his arrest. The Johnson County District Court found that the written guilty plea was fatally flawed and would not accept the guilty plea on that basis.

McKinley was publicly reprimanded that in signing his client's name to a written plea of guilty and then, as a notary public, completing the notary's acknowledgment that the signature was that of his client, he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, contrary to DR 1-102(A)(4); conduct prejudicial to the administration of justice, contrary to DR 1-102(A)(5); and conduct adversely reflecting on his fitness to practice law, contrary to DR 1-102(A)(6) of the Iowa Code of Professional Responsibility for Lawyers.

Jeffrey L.L. Stein
Waverly, Iowa
Public Reprimand
Supreme Court Order, April 21, 2000

A mother who had divorced and remarried and her new husband employed Stein for the purpose of the new husband's adoption of the minor children of that prior union. The matter was not concluded when Stein closed his office and left the practice of law in August of 1998. Although Stein referred the file to another lawyer, that lawyer returned the file to Stein when he determined he would not be

able to accept that representation. Later Stein learned the mother and her new husband had become involved in dissolution proceedings and no longer wished to pursue the adoption. Although Stein promised the mother he would return her retainer, he did not do so and failed to respond to any of her further requests for a refund although he continued to hold the retainer in a trust account. Stein finally refunded the retainer upon his receipt of notice of her complaint to the Board of Professional Ethics and Conduct.

Stein was publicly reprimanded that his neglect in responding to the mother's requests was the neglect of a client's legal matter, contrary to DR 6l-101(A)(3); and his failure to promptly refund the unearned retainer was in violation of DR 9-102(B)(4) of the Iowa Code of Professional Responsibility for Lawyers.

Ted Breckenfelder
Davenport
Public Reprimand
Supreme Court Order, April 21, 2000

Breckenfelder represented a client whose action was subject to a motion for summary judgment. Breckenfelder failed to file a complete resistance to the motion for summary judgment and then concealed his failure to do so from his client. Breckenfelder was publicly reprimanded that in failing to complete that resistance and in then concealing that omission from his client he both neglected a client's legal matter contrary to DR 6-101(A)(3) and engaged in conduct involving misrepresentation, contrary to DR 1-102(A)(4) of the Iowa Code of Professional Responsibility for Lawyers.

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Supervisors individually liable Under the Iowa Civil Rights Act

By Tory L. Lucas*



Tory L. Lucas

Until recently, the Iowa Supreme Court had never squarely decided whether a supervisory employee could be subjected to individual liability for employment discrimination under the Iowa Civil Rights Act of 1965. On 13 October 1999, the Court definitively ruled in *Vivian v. Madison* “that the Iowa Civil Rights Act does authorize the subjecting of a supervisory employee to individual liability.”¹

In *Vivian*, Wendy Vivian filed a multi-count complaint in federal court against her employer, United Parcel Service, and her supervisor, Gerry Madison, alleging racial and sexual harassment in violation of Title VII of

the Civil Rights Act of 1964² (Title VII) and the Iowa Civil Rights Act of 1965³ (ICRA).⁴ Defendant Madison moved to dismiss the complaint against him on the ground that supervisory employees could not be held individually liable under the Iowa Civil Rights Act.⁵ After noting that the federal courts in Iowa were split over the issue of supervisor liability under the ICRA and without unqualified precedent from the Iowa Supreme Court on which to base its decision, the United States District Court for the Southern District of Iowa, Judge Ronald E. Longstaff, certified the following question to the Iowa Supreme Court: “Is a supervisory employee subject to individual liability for unfair employment practices under Iowa Code section 216.6(1) of the Iowa Civil Rights Act?”⁶

The Court gave a clear yes to the certified question. In determining that supervisory employees are subject to individual liability for unfair employment practices under the ICRA, the Iowa Supreme Court simply read and applied the statute’s plain language. In reaching its holding, the Court distinguished the ICRA from Title VII, the legislation upon which the ICRA was modeled.⁷

The Plain Language

The Iowa Supreme Court and the federal courts in Iowa have consistently analyzed the ICRA against the backdrop of federal law.⁸ When the debate turned to whether supervisors can be individually liable under the ICRA, however, federal law provided an unnecessary impediment as opposed to analytical guidance. As the Iowa Supreme Court stated in *Vivian*, Title VII “differs from the ICRA in several key respects.”⁹

Iowa Code section 216.6(1) (a), entitled *Unfair Employment Practices*, makes it “an unfair or discriminatory practice for any *person* to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employ-

ee because of the age, race, creed, color, sex, national origin, religion, or disability of such applicant or employee.”¹⁰

Person, as used in the ICRA, “means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.”¹¹

The ICRA also states that “[i]t shall be an unfair or discriminatory practice for: (1) Any *person* to intentionally aid, abet, compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter. (2) Any *person* to discriminate or retaliate against another person in any of the rights protected against discrimination by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.”¹²

Finally, the ICRA’s relief mechanism, section 216.15, provides that “[a]ny person claiming to be aggrieved by a discriminatory or unfair practice may . . . file with the [civil rights] commission a . . . complaint which shall state the name and address of the *person* [or] employer . . . alleged to have committed the discriminatory or unfair practice of which complained.”¹³

As seen by the ICRA’s clear language, a discrimination claim can be brought under the ICRA against any person or employer who discriminates in an employment context. The ICRA simply does not require the person to be an employer. In fact, the ICRA expressly distinguishes between person and employer throughout the statute. The ICRA separately defines person and employer, revealing that person and employer are two distinct terms.¹⁴ As discussed above, a number of sections apply to persons. Similarly, the ICRA also has sections that apply to employers.¹⁵

As the Iowa Supreme Court said, rules of statutory construction should “be

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applied only when the explicit terms of a statute are ambiguous.”¹⁶ In the ICRA’s case, the Iowa Legislature chose to use both person and employer. Person and employer can, in no way, be read to mean exactly the same thing.¹⁷ Therefore, the use of the term person in Iowa Code section 216.6(1)(a) does not, and cannot, mean employer as used in the statute. Although it sounds redundant and even patronizing, the term person means person as defined in the statute.

When the term person is used in the statute, as opposed to employer, the legislature’s clear intent is that it meant to use person, as opposed to employer. As the Iowa Supreme Court has said, “The express mention of one thing in a statute implies the exclusion of others.”¹⁸ When the Iowa Legislature used the term person in sections 216.2(11), 216.6(1), 216.11 and 216.15, instead of the term employer, which was used elsewhere in the statute, we must interpret the statute based on that usage.¹⁹

The Iowa Supreme Court stated that “it is not the province of the court to speculate as to probable legislative intent without regard to the wording used in the statute, and any determination must be based upon what the legislature actually said, rather than what it might or should have said.”²⁰ Although one could most certainly presume that the Iowa Legislature intended to hold only employers liable for employment discrimination – as Title VII does – the Iowa Legislature did not enact legislation that said so.

Finally, the ICRA itself mandates that it “shall be construed broadly to effectuate its purposes.”²¹ Similarly, the Iowa Supreme Court has said to “look to the object to be accomplished and the evils and mischiefs sought to be remedied in reaching a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it.”²²

This statutory construction principle, along with the ICRA’s own rule of construction and plain language, cries out for individual liability. If person were interpreted to mean employer and supervisors were not held individually liable under the ICRA, then the net result of such an interpretation would be an extremely narrow and restrictive construction of

the ICRA. Clearly, this would violate cardinal rules of statutory construction and rupture the ICRA’s own plain language and rule of construction.

If the ICRA’s goal is to stamp out employment discrimination, how best could the Iowa Legislature accomplish this goal? As seen from the ICRA’s plain language, providing a remedy against those individuals who actually discriminate would effectuate the ICRA’s purposes far easier than attempting to use agency principles to hold the employer liable.²³

The Stumbling Block

The biggest stumbling block to correctly deciding whether supervisors can be individually liable under the ICRA has been an over-reliance on Title VII. A simple reading of Title VII alongside the ICRA reveals that the two statutes simply do not say, and thus cannot mean, the same thing when addressing the issue of supervisor liability.

Title VII of the Civil Rights Act of 1964 makes it an “unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”²⁴

Title VII defines employer as “a person engaged in an industry affecting commerce who has fifteen or more employees . . . and any agent of such a person.”²⁵

Title VII defines person as including “one or more individuals, . . . partnerships, associations, corporations, legal representatives, . . . trusts, . . . trustees, . . . or receivers.”²⁶

Thus, only employers can be held liable for employment discrimination under Title VII’s plain language. Unlike the ICRA, Title VII’s plain language simply does not answer the question of whether a supervisory employee can be held individually liable for employment discrimination, though. The reason is Congress’ use of the phrase “any agent of such a person” when defining employer. Thus, the debate has raged over whether Congress was simply codifying *respondeat superior* in Title VII or whether it intended to hold supervisory employees individually liable.

While the U.S. Supreme Court has

not ruled on whether individuals can be held liable under Title VII, the vast majority of federal courts to hear the question have decided that supervisory employees are not liable under Title VII.

Given this backdrop of federal litigation under Title VII, Iowa federal district courts encountered litigation over whether supervisory employees can be held individually liable for employment discrimination under the ICRA.²⁹ As seen in *Bales v. Wal-Mart Stores, Inc.*, the United States District Court for the Southern District of Iowa, Judge Celeste F. Bremer, compared Title VII and its use of the term employer with the ICRA and its use of the term person.³⁰ Notwithstanding the glaring differences between the two statutes, the Court allowed itself to use Title VII as strong guidance for interpreting the ICRA.

Another Title VII section may also be contributing to the over-reliance on federal law when interpreting the ICRA. As quoted above, Title VII contains a small-business exclusion for employers with fewer than fifteen employees.³¹ The ICRA also contains a small-business

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Supervisors individually liable

. . . Continued from page 23

exclusion, somewhat similar to that found in Title VII. Specifically, the unfair employment practices section (section 216.6) states that the section “shall not apply to any employer who regularly employs less than four individuals.”³² Even though the two statutes both have small-business exclusions, the application of the ICRA’s small-business exclusion should in no way depend on the application of Title VII’s small-business exclusion.

On the issue of the small-business exclusions, the ICRA differs substantially from Title VII. Title VII states that only employers can be held liable for employment discrimination. On the other hand, the ICRA makes a clear distinction between employers and persons and allows complaints to be made against both employers and persons. Title VII’s small-business exclusion is contained in the definition of employer itself. The ICRA’s small-business exclusion is not contained in any definitions. And, of course, the ICRA contains no “small-person” exclusion.

It is important to note that the ICRA’s small-business exclusion is not found in the remedies section that authorizes claims by any aggrieved person against the person or employer guilty of the discrimination. The ICRA’s small-business exclusion is found only in section 216.6, the unfair employment practices section, and states that it applies only to that section, not the entire chapter. Therefore, the small-business exclusion does not prohibit complaints under section 216.15 against persons, which includes supervisors. The term employer is used in section 216.6(1)(c), while the term person is used in section 216.6(1)(a). Because employer is only used in section 216.6(1)(c) and not in section 216.6(1)(a), the small-business exclusion simply cannot apply to section 216.6(1)(a) because the exclusion applies only to employers, not persons. In addition, the small-business exclusion cannot apply to the remedies section (216.15) because the exclusion explicitly states that it applies only to section 216.6.

Title VII substantially differs from the ICRA when individual liability is the issue. In addition, Title VII substantially

differs from the ICRA in the application of the small-business exclusion. Using Title VII as guidance when analyzing either issue makes little sense.³³

Although the courts have not relied on the small-business exclusion as a reason to hold that individuals cannot be held liable under the ICRA for employment discrimination, the courts should make sure that they do not use Title VII as guidance when interpreting the ICRA’s use of the small-business exclusion.

The bottom line is that Title VII’s small-business exclusion should never be used to wrongly interpret the ICRA’s small-business exclusion. Over-reliance on Title VII should not continue to be a stumbling block to correctly deciding cases under the ICRA.

The Confusion

In addition to the confusion caused by relying on Title VII at the expense of the ICRA’s plain language, the earliest problem began in 1991 when the Court said regarding Iowa Code section 601A.6(1)(a)³⁴: “Obviously, only the employer, and not third parties, can discharge an employee. Moreover, we hold that the language “otherwise discriminate in employment” pertains only to employers. Therefore, acts of third parties are not “unfair or discriminatory practices” for purposes of section 601A.16(1), and actions against such third parties are not preempted by chapter 601A.”³⁵ Although the Court seemed to transform the ICRA’s use of the term *person* into the use of the term *employer*, the Court apparently wanted to save an otherwise time-barred complaint from being preempted as an untimely civil rights claim.

In a 1997 case, the Court again discussed the use of the term *person* in the ICRA. This time the Court said that the use of the term *person* instead of employer “extends the prohibition of the [discriminatory] act to some situations in which a person guilty of discriminatory conduct is not the actual employer of the person discriminated against.”³⁶ Once the Court noted the difference between *person* and *employer* and stopped relying on Title VII on this issue, the ICRA’s plain language started to shine

through brightly. Now that the Court has issued its *Vivian* opinion, supervisors can be held individually liable for their discriminatory acts under Iowa Code section 216.6(1)(a).

The Aftermath

Now that the question of whether only employers can be held liable under the ICRA has been answered, litigation may expand to include lawsuits against individual employees. In addition, I believe we also may see employment discrimination suits against employers with fewer than four employees because the ICRA’s small-business exclusion does not apply to section 216.6(1)(a) or section 216.15, the remedies section. As the term *person* includes partnerships, associations and corporations, an unfair employment practice under section 216.6(1)(a) by one of these entities – even if they employ less than four employees – can result in an employment discrimination suit against them under section 216.15. The small-business exclusion, as written, simply does not apply to these situations.

* *Tory L. Lucas, a captain in the United States Air Force, is the Deputy Staff Judge Advocate at Arnold Air Force Base, Tennessee. He earned a B.A., Magna Cum Laude, at Culver-Stockton College and his J.D., Summa Cum Laude, at Creighton University. Before entering military service, Tory was a litigation associate with Klass, Hanks, Stoos, Stoik, Muga, Villone & Phillips in Sioux City, Iowa.*

This article expresses the views of Tory L. Lucas and does not reflect or represent the views of the Department of Defense, the United States Air Force or The Iowa State Bar Association.

¹*Vivian v. Madison*, 601 N.W.2d 872, 872 (Iowa 1999).

²42 U.S.C. § 2000e et seq.

³Iowa Code chapter 216.

⁴*Vivian*, 601 N.W.2d at 872.

⁵*Id.*

⁶*Id.* at 872-73.

⁷*Id.* at 873. In all fairness, the Court did not simply read the ICRA and distinguish it from Title VII. The Court spent seven pages discussing two of its prior decisions, the ICRA’s meager legislative history, a recent Iowa federal district court decision holding that no individual liability could attach under the ICRA, California cases involving their Fair Housing and Employment Act, and the New York Human Rights Law. Although it made for interesting read-

ing, the ICRA's plain language and traditional statutory construction principles would have allowed the Court to rule after two pages that supervisory employees can be held individually liable under Iowa Code section 216.6(1).

⁸See, e.g., Bales v. Wal-Mart Stores, Inc., 972 F. Supp. 483 (S.D. Iowa 1997), aff'd without addressing ICRA claim, 143 F.3d 1103 (8th Cir. 1998); Vivian, 601 N.W.2d at 873-74; King v. Iowa Civil Rights Comm'n, 334 N.W.2d 598, 601 (Iowa 1993).

⁹Vivian, 601 N.W.2d at 873.

¹⁰Iowa Code § 216.6(1) (a) (emphasis added).

¹¹Id. at § 216.2(11).

¹²Id. at § 216.11 (emphasis added).

¹³Id. at § 216.15 (emphasis added); see also id. at § 729.4(1) & (3) (criminal statute making it a simple misdemeanor for a "person or employer [to] discriminate in the employment of individuals because of race, religion, color, sex, national origin, or ancestry") (emphasis added).

¹⁴Id. at § 216.2(7) (defining employer as "the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state").

¹⁵See, e.g., Iowa Code § 216.6(1) (c) ("It shall be an unfair or discriminatory practice for any employer . . . to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex, national origin, religion, or disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation.") (emphasis added).

¹⁶Marcus v. Young, 538 N.W.2d 285, 289 (Iowa 1995) (citations omitted); see also Franklin Mfg. Co. v. Iowa Civil Rights Comm'n, 270 N.W.2d 829, 832 (Iowa 1978) (citations omitted) ("Where language is clear and plain, there is no room for construction.").

¹⁷As seen already, the definition of person does not include employer. Iowa Code § 216.2(11). However, the term employer includes "every other person employing employees within the state." Id. at § 216.2(7) (emphasis added).

¹⁸State v. Hatter, 414 N.W.2d 333, 337 (Iowa 1987).

¹⁹The Iowa Supreme Court has also stated that when "considering legislative enactments we should avoid strained, impractical or absurd results." Franklin Mfg. Co., 270 N.W.2d at 831 (citations omitted). If person is read out of the statute in order for it to mean employer, we will have completely strained the plain language in order to reach an absurd result.

²⁰Marcus, 538 N.W.2d at 289; see also Hatter, 414 N.W.2d at 337.

²¹Iowa Code § 216.18.

²²Marcus, 538 N.W.2d at 289 (citations omitted); Franklin Mfg. Co., 270 N.W.2d at 831.

²³Again, we can make assumptions and presumptions all day long about what the Iowa Legislature meant to do or what they should have done, but what they actually did in the ICRA is clear. Person and employer are separate and distinct entities under the ICRA. Person includes individuals, which must include supervisors. By interpreting the ICRA this way, we give meaning to all the terms used in the statute and satisfy the statute's own rule of construction.

²⁴42 U.S.C. § 2000e-2(a) (1994) (emphasis added).

²⁵Id. at § 2000e(b).

²⁶Id. at § 2000e(a).

²⁷Bales v. Wal-Mart Stores, Inc., 143 F.3d 1103, 1111 (8th Cir. 1998); Haynes v. Williams, 88 F.3d 898, 901 (10th Cir. 1996); Cross v. Alabama, 49 F.3d

1490, 1504 (11th Cir. 1995); Gary v. Long, 59 F.3d 1391, 1399 (D.C. Cir.), cert. denied, 516 U.S. 1011 (1995); Greenlaw v. Garrett, 59 F.3d 994, 1001 (9th Cir. 1995); Tomka v. Seiler Corp., 66 F.3d 1295, 1313 (2d Cir. 1995); Williams v. Banning, 72 F.3d 552, 555 (7th Cir. 1995); Grant v. Lone Star Co., 21 F.3d 649, 653 (5th Cir.), cert. denied, 513 U.S. 1015 (1994).

²⁸See, e.g., Tracy L. Gonos, A policy analysis of individual liability – The case for amending Title VII to hold individual persons liable for their illegal discriminatory actions, 2 N.Y.U. J. Legis. & Pub. Pol'y 266 (1998/1999).

²⁹See Bales, 972 F. Supp. at 489 (stating that the "federal courts in this district have split in unpublished decisions over whether a plaintiff can proceed with claims against individual defendants in their individual capacities under the ICRA, where the defendants are supervisory employees").

³⁰Id. at 489-90.

³¹42 U.S.C. § 2000e(b).

³²Iowa Code § 216.6(6) (a).

³³I understand that the ICRA was enacted after Title VII and most likely was meant to mimic the federal legislation. Notwithstanding, the Iowa Legislature did not mimic the federal legislation. If the Legislature indeed intended to mimic Title VII, they could have copied Title VII to show that intent. They did not.

³⁴Chapter 601A of the Iowa Code was transferred to chapter 216 in Code 1993." Vivian, 601 N.W.2d at 875.

³⁵Grahe v. Voluntary Hosp. Coop. Ass'n of Iowa, 473 N.W.2d 31, 35 (Iowa 1991).

³⁶Sahai v. Davies, 557 N.W.2d 898, 901 (Iowa 1997); see also id. at 903 (Lavorato, Justice Dissenting) (stating that the "majority concedes, as it must, that persons other than employers may be held liable under Iowa Code 216.6(1) (a)" because the "statute is abundantly clear on this point").

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ATTORNEY JOBS: The nation's #1 job hunting bulletin for attorneys is now exclusively online at: AttorneyJobsOnline.com. Subscribe online or call us on 1-800/296-9611. Extensive website provides thousands of attorney and law-related jobs nationwide and abroad at all levels of experience in public (federal, state, and local), private and non-profit sectors, plus legal career transition advice and information in our content-rich Legal Career Center. Quality Counts. Sponsored by West Group.

SHEPARD'S, PART OF LEXIS PUBLISHING, seeks Legal Editors located in Colorado Springs, CO to review opinions and create case summaries for the LEXIS online service. Requires: J.D.; excellent analytical and writing skills; MS Office experience. Salary \$35,000, complimented with and outstanding benefits package and 40-hour workweek. Send resume and writing sample (10 pages or less) to Laurie Cohn, 555 Middle Creek Pkwy, Colorado Springs, CO 80921; Fax (719) 488-7101.

ADMINISTRATOR WANTED: O'Connor & Thomas, P.C. of Dubuque seeks an administrator for a full-time position in the management of a 13-attorney law firm. Position requires a college degree and experience with personnel issues, computers, accounting and facilities management. Excellent benefit package. Send letter of application and resume to President, O'Connor & Thomas, P.C., Dubuque Building, 700 Locust Street, Suite 200, Dubuque, IA 52001. (700)

FEDERAL PUBLIC DEFENDER of Iowa seeks applicants for investigator/interpreter position in Des Moines office. Applicants must have experience conducting interviews or investigations, law degree, or other equivalent training or experience. Must be able to communicate orally and in writing in English and Spanish, including interpreting legal documents. Excellent writing skills required. Position may require exposure to some dangerous situations. Excellent benefits. Salary \$38,000 to \$70,000 depending upon experience and skills. Submit resume and cover letter by May 7, 2000, to Nick Drees, Federal Defender, 300 Walnut Street, Suite 295, Des Moines, Iowa 50309. Equal opportunity employer. Women and minorities encouraged to apply. No telephone inquiries. (700)

ATTORNEY POSITION: Noah, Smith & Schuknecht, PLC of Charles City is a three-person general practice law firm looking for an attorney to help assume the workload of a full partner who is making a career change. Terms of employment are negotiable depending on experience. Please submit inquiries and resume to Ralph Smith or Cynthia Schuknecht, P. O. Box 309, Charles City, IA 50616. (700)

ASSOCIATE WANTED: AV-rated central Iowa law firm seeks an experienced attorney to join active county seat practice. Candidate should have two- to five-years experience. We are looking for a candidate who has an excellent academic record, and strong interpersonal, organizational and communication skills. Competitive salary and benefits. Send resume, law school transcript, description of legal work experience and salary requirements in strictest confidence to: Patrick J. Craig, Craig & Smith, LLP, P. O. Box 431, Eldora, IA 50627-0431. (700)

THE LEGAL SERVICES CORPORATION of Iowa (LSCI) with regional offices in Cedar Rapids, Council Bluffs, Des Moines, Dubuque, Iowa City, Mason City, Ottumwa, Sioux City, and Waterloo is seeking applications for staff attorney positions. Positions are anticipated in some, but not all, offices. Salary dependent on experience. Excellent fringe benefits. Submit letter of application with geographic preferences, resume, transcript (recent graduates), recent writing sample and at least three professional references to Dennis Groenenboom, Executive Director, LSCI, 1111 Ninth Street, Suite 230, Des Moines 50314-2547. LSCI is an Equal Opportunity Employer. (700)

POTTAWATTAMIE COUNTY ATTORNEY'S OFFICE: Two positions — Misdemeanor County Attorney tries misdemeanor and minor felony cases. Juvenile/Misdemeanor County Attorney represents the state in juvenile court cases including, but not limited to, delinquencies and child in need of assistance matters and is responsible for handling some misdemeanor and minor felony cases. Both require graduation from a recognized school of law and admission to the Iowa Bar. Salaries range from \$28,210 to \$37,612. Submit resumes by 4:30 p.m., Friday, June 2, 2000, to Pottawattamie County Board of Supervisors, Attention: Lois, Pottawattamie County Courthouse, 227 South 6th Street, Council Bluffs, Iowa 51501 (700)

FULL-TIME ATTORNEY in the civil division of the Johnson County Attorney's Office. Current or admission to practice in Iowa by September is required. Initial duties would involve primarily serving as counsel to zoning, secondary roads and health departments. This is a new position available July 1 which will involve advice, research, drafting, document review and enforcement. Starting salary \$32,900-\$40,000 based on experience. Submit resume by May 12th to J. Patrick White, Johnson County Attorney, P.O. Box 2450, Iowa City, IA 52244-2450. Screening and interview process will begin immediately. Johnson County is an Affirmative Action Equal Opportunity Employer. Women, minorities and elderly are encouraged to apply. (700)

ATTORNEY POSITION: Multi-attorney Grinnell firm with diverse and challenging practice base seeks high quality associate or possibly lateral transfer partner. Apply in confidence by sending resume and cover letter to Debra Kenealy, Charnetski, Olson, Lacina & Garland, Box 655, Grinnell, IA 50112. (700)

OMAHA LAW FIRM ADDING BUSINESS ATTORNEYS: Abrahams Kaslow & Cassman is seeking attorneys with three to ten years' experience in the areas of mergers, acquisitions, securities, real estate and general business law. Abrahams Kaslow & Cassman has been providing legal counsel to individuals and businesses for more than 55 years. We are a mid-size full-service business firm with local, regional, national, and international clientele. Abrahams Kaslow & Cassman is the only firm in Nebraska accepted as a member of Commercial Law Affiliates and we pride ourselves on our professionalism and client service. Abrahams Kaslow & Cassman offers an attractive compensation package with superior benefits together with a congenial working environment. Qualified candidates will possess a background strong in academics and commercial transactions. Interested candidates should forward resumes and/or inquire in confidence to: Abrahams Kaslow & Cassman, ATTN: Aaron D. Weiner, 8712 West Dodge Road, Suite 300, Omaha, NE 68114, Phone: 402-392-1250, Fax: 402-392-0816, E-mail: aweiner@akclaw.com

STAFF ATTORNEY/LOBBYIST Planned Parenthood of Greater Iowa has an opening for a staff attorney/lobbyist. The position involves lobbying at the state and federal level, assisting in designing and directing state lobbying strategies and messages, providing in-house consultation and education and interpreting laws affecting the organization. License to practice law in the state of Iowa required and 1-2 years experience preferred. We offer a competitive salary and benefit package. Please submit cover letter and resume to Heidi Henson, Director of Human Resources. Applications accepted until position filled. Planned Parenthood of Greater Iowa, 851 19th Street, Des Moines, IA 50314, 515-280-7004, ext. 111

DES MOINES AV-RATED law firm seeks established attorney to join busy general practice. Please send resume in confidence to Code 623, The Iowa Lawyer, 521 East Locust Street, Floor 3, Des Moines, IA 50309-1939 (800)

WRIGHT COUNTY has an immediate opening for an assistant county attorney. The position requires a motivated, organized candidate and involves prosecution of simple and indictable misdemeanor cases and some civil work. Trial experience a plus, but not required. Excellent salary, medical, dental, cafeteria plan and other benefits. Includes associate position with well established firm and an opportunity for additional income. Send cover letter, resume and writing sample to Michael E. Houser, Wright County Attorney, P.O. Box 247, Belmond, Iowa 50421, no later than June 15, 2000. EOE (800)

ASSOCIATE POSITION: Growing firm with offices in West Central Iowa and Des Moines area is seeking an associate. Experience of 3 - 5 years preferred but would consider graduate with appropriate education emphasis. Areas of practice: litigation, tax, probate, estate planning, personal injury and workers' compensation, real estate. Experience in some or all areas helpful. Prefer individual with small community or agricultural background. All inquiries kept confidential. Send resume and letter of introduction to Recruiting Attorney at Code 678, The Iowa Lawyer, 521 East Locust Street, Floor 3, Des Moines, Iowa 50309-1939 (800)

ATTORNEY POSITION: Des Moines Firm seeks an experienced attorney in the areas of tax, business and commercial law. Candidate should have 8+ years experience. Please submit letter and resume to Brenda Westvold, Bradshaw, Fowler, Proctor & Fairgrave, P.C., 801 Grand, Suite 3700, Des Moines, Iowa 50309. (800)

IOWA GREAT LAKES region established county seat small firm seeks an attorney to join our practice. New and experienced lawyers will be considered. Flexibility in practice areas and in meeting career goals is offered. This position offers immediate opportunities and equity potential in high-quality-of-life community. Above average law school performance or demonstrated competence in the practice of law is required. Please respond to Donald J. Hemphill, Hemphill Law Firm, P.O. Box 1475, Spencer, Iowa 51301-1475. (800)

COMMERCIAL ATTORNEY: A 60-year-old Des Moines-based AV-rated law firm is seeking an attorney to work primarily in the firm's business and commercial law practices. An applicant must be a graduate of an accredited law school, a member in good standing of the State of Iowa bar, and have at least five years of experience. Reply in confidence to The Iowa Lawyer, Code 659, 521 East Locust Street, Des Moines, Iowa 50309-1939. (800)

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Positions Desired

ATTORNEY/PILOT: Des Moines Metropolitan Area. Could you use an associate, who is a pilot and an experienced business manager but can't justify the cost of three additional employees? What if you could have those skills in a single employee? I may have the skills and experiences your firm needs. J.D. from Drake Law School, 1993; joined a small law firm that restricted its practice to aviation related matters. Before law school, 10 years as business manager of a growing litigation firm; investigated aircraft crashes for 13 years. Professional pilot and certified flight instructor since 1972. I am both willing and able to meet new challenges. I am returning to Des Moines in June and am seeking an engaging and rewarding position. If your firm can use these skills and experience, please contact me. John R. DeWitt, 5138 Robertson Drive, Des Moines, IA 50312 Phone 515-279-9249. dewitt@cfu.net (700)

FORMER LAW REVIEW EDITOR and judicial clerk seeks position as attorney. Interested in general practice and immigration law, but open to other areas. Knowledgeable in criminal law and legislative process from recent work as staff counsel to the Iowa Sentencing Commission. Excellent writing skills and interpersonal abilities. Hard worker and enjoyable to work with. Licensed in Iowa, Missouri and Minnesota. Please call Eric J. Sponheim, 515-255-7562, or e-mail woodsponheim@juno.com

Office Space Available

WEST DES MOINES: Convenient West Towers office suite with large window office and outer office. Services available including reception and conference rooms. Ideal for sole practitioner. Available July 1, 2000. Call 222-0201 (700)

DES MOINES LAW OFFICE space available for one attorney in a law office suite with eight attorneys at The Plaza, 300 Walnut Street, Des Moines, Iowa. Includes secretary, receptionist, library, conference room, reception area and kitchen, with use of copier and fax machines. All inquiries confidential. Phone 515-244-7820. (800)

OFFICE SPACE AVAILABLE immediately for rent - 1,250 square feet. Parking and utilities provided, at 4900 University Avenue, Des Moines. Call 515-255-8300 or 515-279-1754. (700)

Miscellaneous

NOTICE CRIME VICTIM COMPENSATION SUBROGATION. Do you represent a client who has received medical benefits, lost wages, loss of support, counseling or funeral and burial assistance from the Crime Victim Compensation Program of the attorney general's office? When your client applied for compensation benefits, a subrogation agreement was signed pursuant to Iowa Code section 912.12 (1995). The attorney who is suing on behalf of a crime victim should give notice to the Crime Victim Compensation Program upon filing a claim on behalf of the recipient. The Crime Victim Compensation Program will pay a pro rated share of the expenses incurred in obtaining a judgment or verdict. Questions? Contact Julie Swanston, MBA compensation administrator, Crime Victim Assistance Division, (515) 281-5044.

WAS YOUR CLIENT INJURED OR ARRESTED IN LAS VEGAS? Call Craig P. Kenny & Associates. A Law Firm Committed to the Client. Call Craig 1-888-275-3369 or WWW.CPKLAW.COM

NOTICE TO ATTORNEYS: Estate Recovery Program. Iowa Code section 249A.5(2)f(2) provides that medical assistance recipients, age 55 and older, shall reimburse the state for Title XIX benefits received. Title XIX funds the Medicaid, Medically Needy, and Elderly Waiver programs. A medical assistance claim for reimbursement is a priority claim, Iowa Code section 633.425. Iowa Code section 249A.5(2)f(2) provides that the personal representative or executor of the estate of the recipient may be personally liable for the claim to the extent of the recipients assets at the time of death, if such assets were not used to pay the medical assistance debt. For further information contact: Ben Chatman; Estate Recovery Program; 200 Tenth Street, Fifth Floor; Des Moines, IA 50309-3609; telephone (515) 246-9841; fax (515) 243-5941; <http://www.iowa-estates.com> E-Mail: estate@sppg.com

SKIP TRACING - LOCATOR: Need to find someone? Will locate the person or no charge and no minimum fee for basic locate. 87% success rate. Nationwide. Confidential. Other attorney needed searches/records/reports/information services in many areas from our extensive databases. Tell us what you need. Verify U.S.A. (888) 2-Verify.

NOTICE - MEDICAID LIEN: The Iowa Department of Human Services has a lien against the recovery recipients obtained from third party tort-feasors pursuant to Iowa Code 249A.6. Questions? Call CONSULTEC, INC., Rocco Russo, 1-515-327-0950 ext. 1114.

Litigation Support Services

MEDICAL RECORDS REVIEW SERVICE, INC. (We know medicine. You know the law.) MRRS, Inc. will perform objective and confidential review of the pathophysiological process. References obtained will define the documented medical issues. MRRS, Inc. will provide application of medical concepts to interrogatories; at deposition and trial allowing "on the spot" scrutiny of medical testimony. MRRS, Inc., 1420 Woodland Ave., Suite 1, Des Moines, IA 50309-3204; telephone (515) 244-6777; fax (515) 244-1131; email mrrsinc@netins.net.

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FOR SALE: General legal practice, established in 1937, located in small, progressive, west central Iowa town. Includes modern, equipped office building. Will safe and files will remain on premises. Cash preferred; contract considered. Length of time principals remain in practice is negotiable. For more information, write The Iowa Lawyer, Code 603, 521 East Locust Street, Des Moines, Iowa 50309-1939 (800)

SOLE PROPRIETOR with a general legal practice and a modern, active law office in central southwest Iowa, located in a county seat community, seeks a sale to, or a business merger with, an established law office interested in creating a branch office to expand into new geographic markets for traditional lines of legal business, such as taxation, real estate, probate, personal injury, and the like. Practice includes computer, e-mail capabilities, teleconferencing and facsimile. This is an opportunity for firms from Des Moines to Omaha. For further information, please write The Iowa Lawyer, Code 512, 521 East Locust Street, Floor 3, Des Moines, Iowa 50309-1939 (700)

Vacation Rental

BOCA GRANDE CONDOMINIUM for rent. At water's edge overlooking Gulf of Mexico. Two bedrooms, two baths, full kitchen, dining, living rooms with all furnishings and house wares, complete laundry. \$650/week off-season to \$1,700/week season, net of owner's discount. Yale Kramer 515-281-9237 (800)

Grant Funds Competition

LEGAL SERVICES CORPORATION Notice of Availability of Competitive Grant Funds for Calendar Year 2001. The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2001. Information pertaining to the LSC Grants Competition will be available from the LSC website at www.ain.lsc.gov on or about April 24, 2000. In accordance with LSC's multi-year funding policy, grants are available for only specified service areas. A listing of those service areas for each state, and the estimated grant amounts are included in Appendix-A of the Request for Proposals (RFP) at <http://www.ain.lsc.gov> on or about April 24, 2000. Applicants must file a Notice of Intent to Compete (NIC) to participate in the competitive grants process. The NIC will be available at www.ain.lsc.gov on or about April 24, 2000. E-mail grants competition inquiries to: Competition@LSC.GOV Fax inquiries to 1-877-378-9997. (700)

Law Books Wanted

ATTORNEY WANTS TO BUY these law books – Iowa Digest, Iowa Rules of Civil Procedure, Iowa Code Annotated, N.W. Reporter, and N.W. 2nd. Immediate need. Please call Mark Beckman at 319-588-4088. (800)

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Summing Up – Historic Courtroom Murals

When the State Capitol was completed in 1886, ten allegorical murals were installed in the ceiling of the Supreme Court Courtroom. The murals were designed by August Knorr, a Des Moines decorator who was responsible for decorating the Capitol. The designs were sent to Germany to painter Fritz Melzer who was “much in vogue as a decorative artist at the time!” There are four large rectangular murals entitled Justice, Columbia, Justice and Peace, and Ceres and six small oval murals, each depicting a child. The murals are oil on linen canvas.

In 1904 a fire in the House of Representatives located directly above the courtroom damaged the murals. They were removed from the courtroom and placed in storage. In 1907, the murals were installed in the State Historical Building, now known as the Ola Babcock Miller Building, where they are located today. They were mounted directly on the wall with adhesive. Although one historical report states that the paintings were “restored” when they were installed in the Old Historical Building, a recent study indicates that the murals were never cleaned after the fire in the Capitol. At the time the murals were installed in the Old Historical Building, an artist, perhaps a gentleman named Charles A. Cumming, painted the wall surrounding the smaller murals to create more background. The artist even took care to mix the paint so that it matched the dark smoke damaged appearance of the murals.

After nearly one hundred years, the murals will soon be cleaned, repaired and displayed for public viewing. Using funds earmarked for art for the new Iowa Judicial Branch Building, which is scheduled to be completed in 2002, the Iowa Supreme Court has arranged for M. Randall Ash, a fine arts conservator, to restore the murals to their original splendor. Following their restoration, the murals will be installed on panels and placed in prominent locations in the new building.



Columbia



Justice & Peace

Courtesy of the Iowa Supreme Court's Judicial Branch Building Development Team

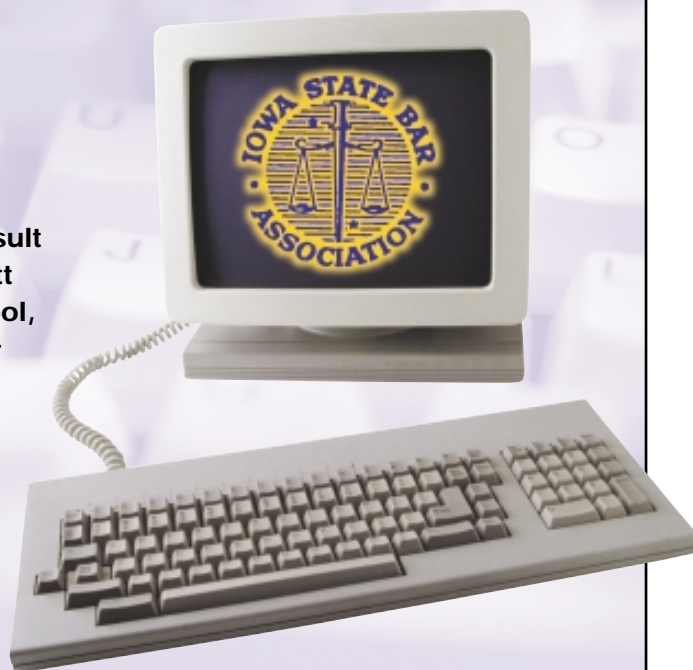
Is tort liability your area of interest?

Visit your ISBA website

<http://www.iowabar.org>

Three substantive changes in tort liability were considered in the last Iowa Legislature but did not result in new legislation. Keith C. Miller, Ellis and Nelle Levitt Distinguished Professor at Drake University Law School, examines them in detail. These issues could reappear next year and his evaluation is incisive.

Professor Miller dissects proposed laws that would have granted immunity to product sellers if a product has been misused, changed rules governing admissibility of expert testimony and adopted limited aspects of “Daubert” while overturning Leaf v. Goodyear Tire, and allowed admission into evidence in tort cases that a seatbelt was not used.



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