



THE IOWA LAWYER

April 2021 V81 N3

THE ETHICS ISSUE

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19+

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THE IOWA LAWYER

(ISSN 1052-5327) is published monthly, except for the combined December-January issue, by The Iowa State Bar Association, 625 East Court Ave., Des Moines, IA 50309-1904. One copy of each issue is furnished to association members as part of their annual dues. Non-member subscription rates are \$40 per year. Periodicals postage paid at Des Moines, Iowa.

POSTMASTER

Send address changes to The Iowa Lawyer Magazine, 625 East Court Avenue, Des Moines, IA, 50309-1904. Members can contact the membership department to change their addresses by emailing membership@iowabar.org.

PRINTER

The Iowa Lawyer Magazine is printed by Mittera Iowa, 10776 Aurora Avenue, Des Moines, IA, 50322. Telephone 515.270.0402. Design and Production: Mittera Iowa.

ADVERTISING

CLASSIFIED. Qualifying ISBA members receive two free non-job listings annually as a member benefit. Members should contact the ISBA Communications Department for ad placement: communications@iowabar.org. For Career Center postings, visit <http://careers.iowabar.org/>

DISPLAY. Display advertising in The Iowa Lawyer Magazine is handled by Larson Enterprises, 909 50th Street, West Des Moines, IA, 50265. For display advertising and non-member classified ad rates, contact Alex Larson at 515.238.4406 or alex@larsonent.com.

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

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Number 3
April 2021

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YLD LAUNCHES "DIVERSITY, EQUITY AND INCLUSION PLEDGE" FOR IOWA'S LEGAL EMPLOYERS

The Iowa State Bar Association Young Lawyers Division (YLD) is committed to increasing diversity, equity and inclusion within Iowa's legal profession. Many lawyers want to be part of the solution, but lack direction on what attorneys can do to help make the profession more diverse, equitable and inclusive.

Therefore, the YLD Diversity Committee has created a new "Diversity, Equity and Inclusion (DEI) Pledge," consisting of voluntary, concrete action items that legal employers can take to be part of this important work. The pledge will begin April 1, and will conclude on April 1, 2022. You or your legal employer can start at any time, and those who complete the pledge will be recognized at the ISBA Annual Meeting in 2022.

Visit iowabar.org/diversitypledge to view the pledge action items and guidance for completion.

IOWA SUPREME COURT AUTHORIZES INFORMAL REFERRALS TO ILAP

In order to help lawyers and judges who may be struggling with wellness, mental health and alcohol/substance abuse, the Iowa Supreme Court has authorized informal referrals from the Attorney Disciplinary Board to the Iowa Lawyers Assistance Program (ILAP).

The ongoing COVID-19 pandemic has increased the stress on Iowa attorneys and judges both personally and professionally. The Iowa Lawyers Assistance Program, funded and supported by The Iowa State Bar Association, exists to help attorneys and judges in dealing with sources of stress.

The order, dated March 11, states that if the Assistant Director for Attorney Discipline believes that an attorney may benefit from the services of ILAP, they may make the referral and share information deemed confidential under Iowa Court Rule 35.4 as part of a referral. Unless the subject attorney has signed a release allowing ILAP to share information with the Attorney Disciplinary Board, ILAP shall not report information about the subject attorney to the Attorney Disciplinary Board.

The Iowa Lawyer Weekly electronic newsletter has been publishing a weekly "Lawyer Wellness Corner" written by the director of the Iowa Lawyers Assistance Program. You can view the weekly columns by visiting iowabar.org/wellbeing.

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Holding back Mongo: Civility in the profession

LETTER BY ISBA PRESIDENT JERRY SCHNURR III

Mongo is straining against his chain. Growling, snorting and pawing at the ground. It took all my strength to hold him back.

It was a contentious divorce. The only real issue that seemed to cause such agitation was visitation. The unfortunate couple did not have any “real or personal assets” to speak of. Custody of their three young children did not create much of an issue because dad was convicted of drug-related crimes that landed him in federal prison out of state. The other lawyer made derogatory personal attacks on my client as we negotiated a visitation schedule. I tried reminding the other lawyer that when my client heard what she was being called, she became less inclined to compromise. I might as well have been talking to a stone. After too much time and too much money spent, the parties were ultimately able to reach an agreement. Mongo remained chained up under control.

Mongo is that beast that I sometimes struggle to keep on a chain. If he breaks loose, he can harm my reputation, my relationships with other lawyers, judges, clients and the public. I hope I am not the only lawyer who has had to train a Mongo. Mongo is the beast of incivility and unprofessionalism. If let loose, he can delay resolution of disputes, unnecessarily increase cost and otherwise wreak havoc on our profession and our justice system.

The Civility Center for Law at Seattle University School of Law defines civility as a set of attitudes, behaviors and skills that call upon us to respect others, to remain open minded and to engage in honest and constructive discourse. Or: “Do unto others as you would have them do unto you.” Or: Treat others the way you want to be treated. It goes hand in hand with professionalism.

Talk of incivility among lawyers is nothing new. Lawyers face increasing pressures from many fronts, such as

an increased pace of communications, student debt, economic pressures of the practice and increasing isolation exacerbated by the coronavirus pandemic. Some have waxed nostalgic about the pre-EDMS days when lawyers would stand in the hallway outside a judge’s chambers and visit with other lawyers about family, the football game, local politics and maybe even work through some issues in a case they are working on together. Personal contact improves civility. In fact, the Iowa Rules of Civil Procedure require that we actually talk to each other over discovery disputes, or detail the failed attempts to talk, before the court will consider a Motion to Compel. Most of the time, one of these phone calls will resolve the issue civilly, efficiently and economically. Maybe communicating in voice or in person (even Zoom) would help us tame Mongo.

ISBA Executive Director Dwight Dinkla wrote an article on civility, “Civility: It Still Matters Today” in the November 2016 issue of *The Iowa Lawyer*, where he noted that the ISBA developed Standards for Professional Conduct by Iowa lawyers and judges that were adopted by the Iowa Supreme Court in 1996 after unanimous approval by the Board of Governors. A copy of the “Code of Professionalism of The Iowa State Bar Association” can be found at www.iowabar.org/ProfessionalConduct.

We often hear that the perception of lawyers and the legal profession is in decline. U. S. District Judge Marvin E. Aspen of Chicago observed that civility in the legal profession is inextricably linked to the manner in which lawyers are perceived by the public – and, therefore, to the deteriorating public confidence that our system of justice enjoys. That is not the only reason for the decline, but it is a factor that we, as lawyers, can have some immediate influence over. Also, incivility is not limited to the legal profession.

However, the legal profession is in a unique position to lead the way towards a more civil and just society.

Incivility has a corrosive effect on the administration of justice. It increases the cost and time needed to resolve disagreements. It certainly makes the practice of law less rewarding. It undermines our sense of dignity and self-worth that comes from being part of a learned profession. When Mongo is on the prowl, he brings out all the problems that accompany the lack of confidence in the justice system. Mongo is fed by anger, selfishness, frustration, fatigue and short-sightedness.

On the other hand, as we make civility and professionalism central to our daily lives, we elevate kindness, empathy, respect and public service. As these traits grow, Mongo will wither away to the point he is as tame as a kitten. As retired Supreme Court Justice Anthony Kennedy said: “Civility is the mark of an accomplished and superb professional, but it is more even than that. It is an end in itself. Civility has deep roots in the idea of respect for the individual.”

Your bar association works hard to improve civility by providing opportunities to participate in various activities, committees, sections and, soon once again, socially. Participation in bar association activities helps us forge relationships and friendships with other lawyers and judges. It will feed civility as opposed to feed Mongo. We can tame Mongo through increased and improved communication with each other. Thanks for all you do.



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A handwritten signature in dark ink, appearing to read "Jerry L. Schnurr III".

THE CALLING OF ZEALOUS ADVOCACY

By Timothy L. Gartin,
Hastings, Gartin &
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A term commonly ascribed to the lawyer is that of “zealous advocate.” Like Aristotle’s pursuit of the Golden Mean – avoiding the excess and the deficiency – we can think of lawyers who are zealous to a fault and those who lack zeal to a fault as two ditches to avoid. However, there is a second axis of tension involving zealous advocacy: that between duty to the client and duty to the court. This essay explores both aspects of zealous advocacy.

A change in rules, but not of calling

In 2005, the Iowa Supreme Court adopted the Iowa Rules of Professional Conduct. Although there are many similarities with the prior Code of Professional Responsibility, there were several important differences. Of the nine canons, Canon Seven required that “A Lawyer Should Represent a Client Zealously Within the Bounds of Law.” When the Rules of Professional Conduct were adopted, this admonition was downgraded to the status of a comment to Rule 32.1.3 (“Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.”):

[1] *A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.* A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See rule 32:1.2. The lawyer’s duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect. See Iowa Ct. R. ch. 33. (Emphasis added.)

This is more than just re-shuffling the lawn furniture; the change represents a material shift in emphasis. It is important to also note that Section 2 of the Preamble to the Iowa Rules of Professional Conduct includes “advocate” as one of the lawyer’s roles: “As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.” Not just an advocate, but a zealous advocate. Although there has been a significant change in the rules dealing with zealous advocacy, the Iowa Supreme Court has not treated the subject differently as a result of the

2005 change.
The calling of
zealous advocacy remains.

In the term “zealous advocacy,” an “advocate” is one who “pleads the cause of another.”¹ The ethics rules could just use the word “advocate” alone and not qualify the nature of the advocacy. However, the type of advocacy prescribed by the Rules of Professional Conduct, albeit in a slightly de-emphasized manner, remains one of “zealous” advocacy. “Zeal” is defined as “eagerness and ardent interest in pursuit of something; fervor; passion.”²

By contrast, “zealotry” means “an excess of zeal.”³ Our aim then is zeal – not zealotry – in our advocacy. The dictionary provides us with reasonable starting points, but the concept of zealous advocacy must be informed by principles specific to lawyers.

As Professor Gregory Sisk observes: “By requiring reasonable diligence, Rule 1.3 asks the lawyer to bring vitality and devotion to the project, similar to that which the lawyer would bring to bear if the matter were the lawyer’s own.”⁴ Or expressed another way: Be the kind of lawyer – as to zeal – that you would want for yourself or your family. (The Golden Rule has many applications for the rules of ethics.)

Zealous advocacy is a demanding expectation. We have families, other clients and our personal well-being to consider. Zealous advocacy is rarely convenient. However, sometimes the practice of law requires a few late nights and weekends spent reading cases, examining a complicated abstract, or studying trial transcripts for potential issues for appeal. Zealous advocacy requires an internal fire that demands setting aside personal convenience for a season. We must not settle for mediocrity or “zealous advocacy light.”

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Constraints on zealous advocacy

An attorney must be unencumbered by personal interests or the interests of others in order to represent a client zealously. To do otherwise will “suppress the lawyer’s zeal on behalf of the client.”⁵ An attorney with conflicts sacrifices zealous advocacy. The rules regarding conflicts of interest safeguard the zealous advocacy of the attorney. There are, unfortunately, numerous cases that address the relationship between conflicts of interest and zealous advocacy.

In addition to ethical constraints, we must “retain a degree of objectivity and emotional distance so as to provide independent and candid advice to the client.”⁶ Another expression of this (referenced in a case involving attorney-client sexual relations) is “objective detachment.”⁷ Zeal for a cause can blind the advocate to the merits of the case. This can happen without you realizing it. Thus, there is great value in having lawyers in your life who are able to ask you hard questions and make sure you have not lost your objective detachment. Keep this phrase in mind.

Duty to client vs. duty to the court

A second axis for considering zealous advocacy is the tension that arises between our duty of zealous advocacy to our client and our duty as court officers to the court (or the public).

Professor Sisk describes client-centric advocacy in terms of the sports credo attributed to the famous Green Bay Packers Coach Vince Lombardi: “Winning isn’t everything. It’s the only thing.”⁸ The “Vince Lombardi Doctrine” finds its foundation in the duty of zealous advocacy in Comment 1 to Rule 1.3.

The other object of duty is to the court (or the public generally) even while representing a private client, or as Professor Sisk calls it, the goal of seeking “truth, justice, and the American way” and thus the term “Superman Principle.”⁹ The court officer encompasses the Superman Principle. Sisk notes that the role of court officer is historically thought to be based on the idea that lawyers were granted a special licensure by the English courts and therefore have a corresponding duty to the public interest. The lawyer is therefore a quasi-public official, or “officer of the court.”¹⁰ Justice Cardozo stated, “A lawyer admitted to practice 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.”¹¹

How do we navigate this tension?

The best source of guidance is from other attorneys who can offer an objectivity sorely needed by the lawyer who is too close to the case. In general, most of the Rules of Professional Conduct are more easily followed when lawyers are in community with other lawyers. This does not necessarily mean in the same physical community, although that is ideal. *The idea of community is more relational than geographical.* Having a short list of lawyers you can call with ethical dilemmas is just as important as having someone you can call with legal questions. However, sometimes we are truly on our own. As the Iowa Bar’s dear friend and Sioux City retired attorney George Madsen wrote to me:

The really tough ethical questions for “office lawyers” come in the quiet of their offices. You know a client is intent on

pursuing a course that is wrong and illegal. Your protestations have been ignored. The misconduct would be discovered once in a million years. The only proper course is to resign. The client’s view is he will not let the legal tail wag the company dog. This is gold. When you are in the quiet of your office facing this dilemma, remember George’s sage wisdom. You may lose a client, but you will have your integrity.

Specific guidance for trial lawyers and transactional lawyers

Rule 32 provides boundaries of zealous advocacy for trial lawyers. Rules 32:3.1 (Meritorious claims and contentions), 32:3.2 (Expediting litigation), 32:3.3 (Candor toward the tribunal), 32:3.4 (Fairness to opposing party and counsel), 32:3.5 (Impartiality and decorum of the tribunal), 32:3.6 (Trial publicity), 32:3.7 (Lawyer as witness), 32:3.8 (Special responsibilities of a prosecutor), 32:3.9 (Advocate in nonadjudicative proceedings), 32:4.1 (Truthfulness in statements to others), 32:4.2 (Communication with person represented by counsel), 32:4.3 (Dealing with unrepresented persons) and 32:3.4 (Respect for rights of third persons) are rules which the litigator must know well. It is good to periodically review them and the relevant cases to keep these parameters fresh.

It is a misnomer to read the rules as applying only to trial lawyers. Here are examples of ways in which transactional lawyers must also employ the principles of zealous advocacy:

- **Real estate** – Don’t just fill out a purchase agreement for a client. Make sure buyers are informed about the importance of due

diligence (e.g., the four buckets of due diligence: price, condition of the property, quality of title and intended use of the property). I have met with many buyer clients over the years with deep remorse over ignoring one of those buckets of due diligence.

- **Estate planning** – Avoid conflicts of interest that may emerge, for example, between parents and children. Don't lose sight of whom you are representing. This can sometimes be challenging.

- **Bankruptcy, tax and probate** – These attorneys routinely file documents with the court that contain information that may disadvantage their clients but the filings are nonetheless required by the rules of that practice area (e.g., a Bankruptcy Schedule A/B requires disclosure of assets, even assets that the debtor may wish to keep hidden from creditors; a tax return that recites income that the IRS might not otherwise be aware of; and a probate inventory that lists assets when this will encourage creditors to file claims against the estate). There are many ways in which these lawyers must also zealously advocate for their clients (e.g., timely filings, challenging particular interpretations of the law).

- **Corporate counsel** – Corporate counsel must be aware of the implications of Sarbanes-Oxley.¹² The case of *United States v. Stevens*¹³ has generated great interest for how attorneys should advocate for their corporate clients. This is a critical case for corporate counsel to know.

Zealous advocates must be intentional about our growth as attorneys

We never “arrive.” *Our clients need us to keep growing.* Stoke your intellectual curiosity about the law. Read appellate cases (lots of cases, both state and federal and not just in your practice areas; be well rounded), listen

to oral arguments, attend CLEs that will stretch you and not just to check a box, read books (lawyers must be readers) and find lawyers who can mentor you and lawyers who you can mentor. In the last several years, my understanding of U.S. constitutional law has grown tremendously by listening to Jeffrey Rosen's weekly podcast “We the People” from the *nonpartisan* National Constitution Center¹⁴ and watching C-SPAN's two seasons of Landmark Cases series.¹⁵ Both resources are truly outstanding. I also strongly recommend participating in The Iowa State Bar Association listserve.

Zealous advocates are people of their word

It is very challenging to have a matter with another attorney where you have misgivings about their truthfulness. As President Lincoln stated in “Notes for a Law Lecture” (July 1, 1850):

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief – resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.¹⁶

It is difficult to restore a reputation that has once been sullied by a mistruth.

If you were to explain what a lawyer is, you might reasonably use the word “advocate”

because advocacy is so deeply tied to our identity. In fact, several languages use a variation of the word “advocate” for “lawyer.”¹⁷ However, we are not merely agents acting on behalf of a principal; rather, we are called to be *zealous advocates*. Again, from Comment 1: “A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.”

On most days, we have a clear path as zealous advocates, but not all days. We all benefit from the reminder to have enough zeal in our advocacy, but not too much. We also benefit from periodically considering the tension between our duties to our clients and our duties to the court – reminders of who we are.

¹ WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 59 (1986).

² *Id.* at 1370.

³ *Id.*

⁴ GREGORY C. SISK ET AL. LEGAL ETHICS, PROFESSIONAL RESPONSIBILITY, AND THE LEGAL PROFESSION, § 4-5.3(a) at 286 (2018).

⁵ *Id.*

⁶ SISK, *supra* § 4-5.3(a).

⁷ *Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Morrison*, 727 N.W.2d 115, 118 (Iowa 2007) (citations omitted); *Iowa Supreme Court Attorney Disciplinary Bd. v. Johnson*, 884 N.W.2d 772 (Iowa 2016) (sexual relations with client resulting in a 30-day suspension); *Iowa Supreme Court Attorney Disciplinary Bd. v. Moothart*, 860 N.W.2d 598 (Iowa 2015) (sexual relations with multiple clients resulting in a 30-month suspension).

⁸ SISK, *supra* § 4-9.2. Sisk notes that Lombardi later claimed that he had been misquoted and that what he actually said was “Winning isn't everything – but making the effort to win is.” *Id.* n.18 (citation omitted).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* (citation omitted).

¹² Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204 116 Stat. 745 (2002). The obstruction provisions are 18 U.S.C. § 1512(c) (2006) and 18 U.S.C. § 1519 (2006).

¹³ *United States v. Stevens*, 771 F.Supp.2d 556 (D. Md. 2011).

¹⁴ www.constitutioncenter.org

¹⁵ www.c-span.org/series/landmarkCases

¹⁶ 2 THE COLLECTED WORKS OF ABRAHAM LINCOLN 82 (Roy P. Basler, ed.).

¹⁷ In French “avocat/e”, in Portuguese “advogado”, in Dutch “advocaat”, in Italian “avvocato”, in Spanish “abogado/a”, in Russian “адвокат/а”.

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ETHICAL MULTIGENERATIONAL INTERACTIONS

By Roxann Ryan

OK, Boomer. Now that the Millennials have taken the lead as the largest generation in the American work force, it may be time for a serious talk about multiple generations working together in the legal community.

Our lives are shaped by our experiences, and those experiences are very different through the generations. No matter our generational differences, though, lawyers must abide by a single set of ethical rules. What are the implications for the generations?

Perspective is important.

Why do generational differences matter? Humans live longer and longer lives, which means that more generations are in the workforce at the same time. Life experiences are very different for each generation, so their expectations, their communication habits and even their core beliefs may be quite different.

Today, American society is more diverse, and so are law firms. The Millennials are the most diverse generation so far, and that trend looks like it will continue. Diversity includes race, ethnicity, sexual orientation and gender identity, and experiences and attitudes.

The only constant in the law is that it has grown and changed over time. Yet there are parallels across time: lawyers are committed to logical and rigorous analysis, along with the application of legal and public policy principles. They are focused on written guidance about the meaning of law. And they are governed by ethical standards.

In meeting ethical standards, generational differences can add complexity and breadth to the work of the profession. The context of experience and understanding changes with each generation. The development of legal principles shapes each generation. The escalating change in technology creates new demands and applications for legal ethics.

And lawyers have a tradition of mentoring new lawyers, to help them to appreciate more than the black-letter law.

Traditions in legal practice and experience in legal analysis form the bedrock of the practice of law. As one mentor told me, “you never ‘master’ law, you just keep ‘practicing’ it, until your time is done.”

So what do we need to know about generational differences?

Learning is a two-way street. It’s not just older people who mentor younger people. It turns out that younger people also have some insights to share with older people. Civility and respect for each other can make learning easier.

Communication requires work. Collaboration occurs from careful listening and thoughtful talk. This applies to lawyers and clients. Older lawyers and clients may make assumptions about younger lawyers, and vice versa. Listening improves understanding. It is a two-way street.

Create opportunities for cross-generational mentoring. Let younger lawyers showcase their knowledge, and allow older lawyers to share their wisdom and experience.

Consider life paths. People go through regular transitions in their lives – childhood to teen years, and then to young adulthood, usually with additional education, and sometimes with a family. There is a time for building a life, and there is a time for

building wealth and then winding down to retirement. The transitions are similar, but the experience for each generation is very, very different because life experiences and societal changes mean that each generation experiences each transition differently. It is important for older lawyers to understand the very different challenges of younger lawyers, and younger lawyers can better meet the expectations they face when they understand the views and experiences of older lawyers.

The challenges of each generation

Each generation brings strengths and weaknesses based on the commonalities of the lived experiences in their own generations. They may or may not appreciate or understand the very different perspectives of other generations. Each generation is at a different crossroad in the life course at different times, and even common crossroads may be very different for each generation.

The Millennials and Gen Z lawyers have grown up at a time when income inequality and wealth inequality have grown notably, before and during their lifetimes. This means that younger-generation lawyers may be facing substantial debts in the early years of their legal careers – which may affect their expectations for pay and benefits. A



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MEET THE GENERATIONS

Generation	Big Events	Memories/Themes	Economics	Values
Silent 1928-1945	End of prohibition, Great Depression & recovery, WWII & recovery, Korean conflict	Traditional gender roles, radio shows, early television, Jewish migration to US, racial segregation, McCarthyism	Steady growth, predictable and affordable progress the norm, individual progress	Hard work Commitment Conflict avoidance Steady progress Focused efforts
Baby Boomer 1946-1964	Civil Rights Movement, Vietnam War, student political protests (race & anti-war), color television, moon landing, crime & drugs, early feminist movement, childhood vaccines	Popular music (Elvis, Beatles, Woodstock festival), riots/protests, extremism, drug parties, birth control pill developed, Earth Day, anti-authoritarian views, Watergate	Steady growth in the 1960s, parents gave financial support to children	Rebellion Equality Self-assurance Work ethic Progress & change Helicopter parent
Gen X 1965-1980	Environmental changes, gas shortages, Iran hostages, Anita Hill testimony, AIDS epidemic, technology & internet	"Ignored generation," better educated, parent divorces, MTV, grunge & punk rock, latch-key kids	Deregulation, savings & loan scandal, up & down economy, recessions, debt	Distrust institutions Independent Team player Equality Voting is valued Entrepreneurial
Millennials 1981-1996	Technology natives, recessions, social media growth, DVDs, internet viruses, Predator Drone, drug epidemics in 1990s	Science-focused childhood, comfortable in digital world, expensive student loans, wages did not keep pace with inflation, high housing costs	Recessions, debt-burdened, lower wages & higher housing costs	Tech comfort Individualized focus Tolerant Equality
Gen Z 1997-2012	Rapid technology changes, economic problems, political funding changes, U.S. Consumer Protection Agency, Affordable Care Act, personal DNA tests, pandemic, crime decline	Social media platforms, less TV, more games online, reliance on professional help with mental health concerns	Recessions (including Great Recession), housing crisis	Diversity (all types) Technology required to live Economic anxiety Health care options Make world better Rely on family

more diverse generation also may bring different experiences with, and views of, issues of race, ethnicity, sexual orientation, gender identity or disability. Older-generation lawyers may find it difficult to acknowledge and adjust to these differences, but the younger generations may be better suited to working with some clients, or may bring a broader perspective to the practice.

Baby Boomers and Gen Xers may find themselves to be technology-resistant, but Millennials and Gen Z lawyers have a

high comfort level and better aptitude for technology-related concerns. Baby Boomers and Gen Xers also may not understand the generational differences in work norms, development of wealth or undetected biases that younger generations can identify.

By combining forces, the generations can fill the gaps within and between generations and learn from each other in order to better respond to the needs of all clients and their own needs.

Ethical issues across generations

Ethical rules are the same for every lawyer, but the life experiences of the generations may change the way that the rules affect them in their practices. For example, in the ethical basics of competence, diligence and delay, there are likely to be some generational differences.

Every lawyer must provide competent representation and be diligent in completing the work. For the Silent Generation and the Baby Boomers, this is accomplished through long hours at work and a lifetime of experience. Both generations place work as a high priority, even if it impinges on family obligations. Gen X is more likely to want to manage the scope of the work so that a healthier work-life balance is achieved. Millennials and Gen Z are less inclined to devote most of their waking hours to the job.

The younger generations may feel conflicted. They need money in their early years, to get established, while they also are building a personal life. Their value systems are likely to cause them to want

**RULE 32:1.1
COMPETENCE**

**RULE 32:1.3
DILIGENCE**

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to work fewer hours, in order to maintain relationships that are important to them, but they are likely to face substantial debt, which will spur them to work longer hours.

A mentor for these younger generations should be aware of the competing interests. In addition, the two younger generations are far less likely to feel the same sense of loyalty to the organization, and will be content to move from one job to another in the effort to balance work hours, pay and personal time.

And when talking about competence, the aging process for the Silent Generation and the Baby Boomers may mean that these older generations have lost their edge in the legal work they perform. Other lawyers who work with them must find ways to monitor whether there are lapses in the substantive work, or in the relationships with clients that facilitate the work.

As lawyers in older generations have come to understand, the desire to work and earn money, which competes with the desire to have a fulfilling personal life, can lead to mental health and substance abuse issues. Younger generations are already attuned to those issues, and thus may make different decisions about how to spend their time. The generations may ultimately come to similar conclusions about their work-life balance and the related mental health concerns, but the amount of time and the openness to seek help is likely to be different.

Communication, confidences and secrets

Communication with clients is essential for every lawyer. Communicating across generations can be a challenge, which is why it is valuable for every lawyer to understand generational differences – whether it involves clients, lawyers, judges or others. The ethical duty is on the lawyer, who should be proactive in learning appropriate techniques for conveying information to persons of all ages and stages of life. **Trauma** can affect the ability to communicate. **Diverse** clientele may require different efforts and skills to communicate effectively, and the more diverse younger generations of lawyers may be better equipped for more complex communication.

Part of the communication duties include **protection of confidential information**. This has implications for storage of information, methods of communication, closing a law practice or changing jobs,

which may implicate conflicts of interest. Older lawyers must consider technological changes that affect confidentiality, which younger lawyers may understand better. Lawyers of all ages must consider what to do if the practice closes. Younger generations are more likely to move from one job to another, which has important implications for conflicts of interest and preservation of confidential client information.

The lawyer also must avoid **inadvertent disclosure**. Digital and electronic communications add a new wrinkle to the ethical standard. Every lawyer must have some knowledge about electronic and digital systems – and may need to rely on technology experts – in order to maintain confidentiality of all information that is deemed confidential. Younger lawyers may be better able to address these issues, because technology is second nature to them.

More and more, litigants are **representing themselves**, or are interested in **unbundled legal services**. Specific rules govern each of these issues. A lawyer who assists a litigant in preparing a document must acknowledge the assistance in the document, or the “ghostwriting” may be considered unethical dishonesty, fraud or deceit.

Current technology makes surreptitious recording easy. **Secret recordings** by lawyers are prohibited in Iowa. The Iowa Supreme Court has made it clear that secret recordings by lawyers are a violation of the rules of ethics in most circumstances. But lawyers can provide legal advice to clients regarding Iowa’s one-party-consent standard.

The ethics rules specifically address obligations to clients with **diminished capacity**. But lawyers also should be aware of other communication barriers, including the impact of trauma, language concerns, vulnerable clients or clients with mental health concerns.

Younger generations are more likely to favor a flatter hierarchy. Yet the rules of

ethics clearly set out the **duties of supervisory attorneys**, as well as other law office management expectations. Restrictions on billing and collection of fees also require certain law practice management capacities. Conversion of client funds may result in severe discipline. And *each* attorney must complete the annual forms regarding client trust accounts.

Lawyers can be **disciplined** for the commission of crimes for personal relationships with clients, for making false statements and for other conduct that is prejudicial to the administration of justice and conduct that bears on the lawyer’s fitness to practice law.

From a multi-generational perspective, there are many opportunities to share these legal principles across generations, as lawyers meet their ethical obligations. Given the different experiences that lead to special expertise, lawyers of all ages may be able to provide ethical training to other lawyers, including their law partners. A younger lawyer might build on the familiarity with technology to address ethical implications for lawyers. Or an older attorney might share tips on how to communicate with clients who have limited abilities, or to communicate with clients who lack the experience and expertise to understand complex legal principles.

Lifelong learning

Practicing law provides a chance to continue to learn new things throughout a career, because the law is constantly evolving. As new generations enter the profession, the older generations can integrate new ideas with previous wisdom, in helping the evolution of the law. Understanding the nature of experiential differences can help lawyers to work together better, to represent many clients more effectively and to enrich the experiences of each generation by understanding generational differences in perspective and experience.

RULE 32:4.2(a): UNREPRESENTED PARTIES

RULE 32:1.1: SECRET RECORDINGS

RULE 32:8.4: GHOSTWRITING (dishonesty, fraud or deceit)

RULE 32:1.14 CLIENT WITH DIMINISHED CAPACITY

RULE 32:5.1-5.3 SUPERVISORY ATTORNEYS

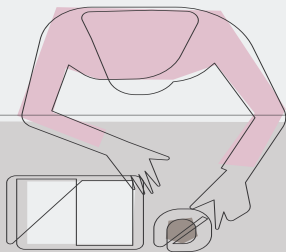
RULE 32:1.15 TRUST ACCOUNTS

RULE 32:1.1 COMMUNICATION

RULE 32:1.3 CONFIDENCES & SECRETS



Roxann Ryan retired from state government in 2017 to care for her parents. She previously worked for Iowa Attorney General Tom Miller for 24 years and for the Iowa Department of Public Safety for 12 years. She also taught full-time at Simpson College for two years and still teaches as an adjunct for both Simpson College and Drake Law School. She is a graduate of Iowa State University (Economics, 1977), the University of Iowa College of Law (1980) and the University of Nebraska (1998), where she earned her Ph.D. in Criminal Justice.



The Iowa Supreme Court has stated that when the ABA issues an ethics opinion covering an area of practice, the ISBA should refer Iowa lawyers to that opinion for guidance. For the latest ABA formal ethics opinions, visit the American Bar Association website.

Lawyers Working Remotely – Formal Opinion 495

Filed December 16, 2020

Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction. This practice may include the law of their licensing jurisdiction or other law as permitted by ABA Model Rule 5.5(c) or (d), including, for instance, temporary practice involving other states' or federal laws. Having local contact information on websites, letterhead, business cards, advertising, or the like would improperly establish a local office or local presence under the ABA Model Rules.¹

Introduction

Lawyers, like others, have more frequently been working remotely: practicing law mainly through electronic means. Technology has made it possible for a lawyer to practice virtually in a jurisdiction where the lawyer is

Two recent ABA Formal Ethics Opinions

Opinions by the American Bar Association Standing Committee on Ethics and

licensed, providing legal services to residents of that jurisdiction, even though the lawyer may be physically located in a different jurisdiction where the lawyer is not licensed. A lawyer's residence may not be the same jurisdiction where a lawyer is licensed. Thus, some lawyers have either chosen or been forced to remotely carry on their practice of the law of the jurisdiction or jurisdictions in which they are licensed while being physically present in a jurisdiction in which they are not licensed to practice. Lawyers may ethically engage in practicing law as authorized by their licensing jurisdiction(s) while being physically present in a jurisdiction in which they are not admitted under specific circumstances enumerated in this opinion.

Analysis

ABA Model Rule 5.5(a) prohibits lawyers from engaging in the unauthorized practice of law: "[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so" unless authorized by the rules or law to do so. It is not this Committee's purview to determine matters of law; thus, this Committee will not opine whether working remotely by practicing the law of one's licensing jurisdiction in a particular jurisdiction where one is not licensed constitutes the unauthorized practice of law under the law of that jurisdiction. If a particular jurisdiction has made the determination, by statute, rule, case law, or opinion, that a lawyer working remotely while physically located in that jurisdiction constitutes the unauthorized or unlicensed practice of law, then Model Rule 5.5(a) also would prohibit the lawyer from doing so.

Absent such a determination, this Committee's opinion is that a lawyer may practice law pursuant to the jurisdiction(s) in which the lawyer is licensed (the "licensing jurisdiction") even from a physical location where the lawyer

is not licensed (the "local jurisdiction") under specific parameters. Authorization in the licensing jurisdiction can be by licensure of the highest court of a state or a federal court. For purposes of this opinion, practice of the licensing jurisdiction law may include the law of the licensing jurisdiction and other law as permitted by ABA Model Rule 5.5(c) or (d), including, for instance, temporary practice involving other states' or federal laws. In other words, the lawyer may practice from home (or other remote location) whatever law(s) the lawyer is authorized to practice by the lawyer's licensing jurisdiction, as they would from their office in the licensing jurisdiction. As recognized by Rule 5.5(d)(2), a federal agency may also authorize lawyers to appear before it in any U.S. jurisdiction. The rules are considered rules of reason and their purpose must be examined to determine their meaning. Comment [2] indicates the purpose of the rule: "limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons." A local jurisdiction has no real interest in prohibiting a lawyer from practicing the law of a jurisdiction in which that lawyer is licensed and therefore qualified to represent clients in that jurisdiction. A local jurisdiction, however, does have an interest in ensuring lawyers practicing in its jurisdiction are competent to do so.

Model Rule 5.5(b)(1) prohibits a lawyer from "establish[ing] an office or other systematic and continuous presence in [the] jurisdiction [in which the lawyer is not licensed] for the practice of law." Words in the rules, unless otherwise defined, are given their ordinary meaning. "Establish" means "to found, institute, build, or bring into being on a firm or stable basis."² A local office is not "established" within the meaning of the rule by the lawyer working in the local jurisdiction if the lawyer does not hold out to the public an address in the local jurisdiction as an office and a local jurisdiction address does not appear on letterhead, business cards, websites, or other indicia of a lawyer's presence.³ Likewise it does not "establish" a systematic and continuous presence in the jurisdiction for the practice of law since the lawyer is neither practicing the law of the local jurisdiction nor holding out the availability to do so. The lawyer's physical presence in the local jurisdiction is incidental; it is not for the practice of law. Conversely, a lawyer who includes a local jurisdiction address on websites, letterhead, business cards, or advertising may be said to have established an office or a systematic and continuous presence in the local jurisdiction for the practice of law.

Subparagraph (b)(2) prohibits a lawyer

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from “hold[ing] out to the public or otherwise represent[ing] that the lawyer is admitted to practice law in [the] jurisdiction” in which the lawyer is not admitted to practice. A lawyer practicing remotely from a local jurisdiction may not state or imply that the lawyer is licensed to practice law in the local jurisdiction. Again, information provided on websites, letterhead, business cards, or advertising would be indicia of whether a lawyer is “holding out” as practicing law in the local jurisdiction. If the lawyer’s website, letterhead, business cards, advertising, and the like clearly indicate the lawyer’s jurisdictional limitations, do not provide an address in the local jurisdiction, and do not offer to provide legal services in the local jurisdiction, the lawyer has not “held out” as prohibited by the rule.

A handful of state opinions that have addressed the issue agree. Maine Ethics Opinion 189 (2005) finds:

Where the lawyer’s practice is located in another state and where the lawyer is working on office matters from afar, we would conclude that the lawyer is not engaged in the unauthorized practice of law. We would reach the same conclusion with respect to a lawyer who lived in Maine and worked out of his or her home for the benefit of a law firm and clients located in some other jurisdiction. In neither case has the lawyer established a professional office in Maine, established some other systematic and continuous presence in Maine, held himself or herself out to the public as admitted in Maine, or even provided legal services in Maine where the lawyer is working for the benefit of a non-Maine client on a matter focused in a jurisdiction other than Maine.

Similarly, Utah Ethics Opinion 19-03 (2019) states: “what interest does the Utah State Bar have in regulating an out-of-state lawyer’s practice for out-of-state clients simply because he has a private home in Utah? And the answer is the same—none.”

In addition to the above, Model Rule 5.5(c)(4) provides that lawyers admitted to practice in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services on a temporary basis in the local jurisdiction that arise out of or reasonably relate to the lawyer’s practice in a jurisdiction where the lawyer is admitted to practice. Comment [6] notes that there is no single definition for what is temporary and that it may include services that are provided on a recurring basis or for an

extended period of time. For example, in a pandemic that results in safety measures—regardless of whether the safety measures are governmentally mandated—that include physical closure or limited use of law offices, lawyers may temporarily be working remotely. How long that temporary period lasts could vary significantly based on the need to address the pandemic. And Model Rule 5.5(d)(2) permits a lawyer admitted in another jurisdiction to provide legal services in the local jurisdiction that they are authorized to provide by federal or other law or rule to provide. A lawyer may be subject to discipline in the local jurisdiction, as well as the licensing jurisdiction, by providing services in the local jurisdiction under Model Rule 8.5(a).

Conclusion

The purpose of Model Rule 5.5 is to protect the public from unlicensed and unqualified practitioners of law. That purpose is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which

the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible as a lawyer to a local jurisdiction where the lawyer is physically located, but not licensed. The Committee’s opinion is that, in the absence of a local jurisdiction’s finding that the activity constitutes the unauthorized practice of law, a lawyer may practice the law authorized by the lawyer’s licensing jurisdiction for clients of that jurisdiction, while physically located in a jurisdiction where the lawyer is not licensed if the lawyer does not hold out the lawyer’s presence or availability to perform legal services in the local jurisdiction or actually provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.

¹ This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2020. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.

² [DICTIONARY.COM](https://www.dictionary.com/browse/establish?s=t), <https://www.dictionary.com/browse/establish?s=t> (last visited Dec. 14, 2020).

³ To avoid confusion of clients and others who might presume the lawyer is regularly present at a physical address in the licensing jurisdiction, the lawyer might include a notation in each publication of the address such as “by appointment only” or “for mail delivery.”

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Virtual Practice — Formal Opinion 498

Filed March 10, 2021

The ABA Model Rules of Professional Conduct permit virtual practice, which is technologically enabled law practice beyond the traditional brick-and-mortar law firm.¹ When practicing virtually, lawyers must particularly consider ethical duties regarding competence, diligence, and communication, especially when using technology. In compliance with the duty of confidentiality, lawyers must make reasonable efforts to prevent inadvertent or unauthorized disclosures of information relating to the representation and take reasonable precautions when transmitting such information. Additionally, the duty of supervision requires that lawyers make reasonable efforts to ensure compliance by subordinate lawyers and nonlawyer assistants with the Rules of Professional Conduct, specifically regarding virtual practice policies.

Introduction

As lawyers increasingly use technology to practice virtually, they must remain cognizant of their ethical responsibilities. While the ABA Model Rules of Professional Conduct permit virtual practice, the rules provide some minimum requirements and some of the comments suggest best practices for virtual practice, particularly in the areas of competence, confidentiality and supervision. These requirements and best practices are discussed in this opinion, although this opinion does not address every ethical issue arising in the virtual practice context.²

Virtual Practice: Commonly Implicated Model Rules

This opinion defines and addresses virtual practice broadly, as technologically enabled law practice beyond the traditional brick-and-mortar law firm.³ A lawyer's virtual practice often occurs when a lawyer at home or on-the-go is working from a location outside the office, but a lawyer's practice may be entirely virtual because there is no requirement in the Model Rules that a lawyer have a brick-and-mortar office. Virtual practice began years ago but has accelerated recently, both because of enhanced technology (and enhanced technology usage by both clients and lawyers) and increased need. Although the ethics rules apply to both traditional and virtual law practice,⁴

virtual practice commonly implicates the key ethics rules discussed below.

A. Commonly Implicated Model Rules of Professional Conduct

1. Competence, Diligence, and Communication Model Rules 1.1, 1.3, and 1.4 address lawyers' core ethical duties of competence, diligence and communication with their clients. Comment [8] to Model Rule 1.1 explains, "To maintain the requisite knowledge and skill [to be competent], a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject." (Emphasis added). Comment [1] to Rule

1.3 makes clear that lawyers must also "pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." Whether interacting face-to-face or through technology, lawyers must "reasonably consult with the client about the means by which the client's objectives are to be accomplished;... keep the client reasonably informed about the status of the matter; [and] promptly comply with reasonable requests for information..."⁵ Thus, lawyers should have plans in place to ensure responsibilities regarding competence, diligence, and communication are being fulfilled when practicing virtually.⁶

2. Confidentiality

Under Rule 1.6 lawyers also have a duty of confidentiality to all clients and therefore "shall not reveal information relating to the representation of a client" (absent a specific exception, informed consent, or implied authorization). A necessary corollary of this duty is that lawyers must at least "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."⁷ The following non-exhaustive list of factors may guide the lawyer's determination of reasonable efforts to safeguard confidential information: "the sensitivity of the information, the likelihood of disclosure if additional safeguards are not

employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use)."⁸ As ABA Formal Op. 477R notes, lawyers must employ a "fact-based analysis" to these "nonexclusive factors to guide lawyers in making a 'reasonable efforts' determination."

Similarly, lawyers must take reasonable precautions when transmitting communications that contain information related to a client's representation.⁹ At all times, but especially when practicing virtually, lawyers must fully consider and implement reasonable measures to safeguard confidential information and take reasonable precautions when transmitting such information. This responsibility "does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy."¹⁰ However, depending on the circumstances, lawyers may need to take special precautions.¹¹ Factors to consider to assist the lawyer in determining the reasonableness of the "expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement."¹² As ABA Formal Op. 477R summarizes, "[a] lawyer generally may transmit information relating to the representation of a client over the Internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access."

3. Supervision

Lawyers with managerial authority have ethical obligations to establish policies and procedures to ensure compliance with the ethics rules, and supervisory lawyers have a duty to make reasonable efforts to ensure that subordinate lawyers and nonlawyer assistants comply with the applicable Rules of Professional Conduct.¹³ Practicing virtually does not change or diminish this obligation. "A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product."¹⁴ Moreover, a lawyer must "act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision."¹⁵ The duty to supervise nonlawyers extends to those both within and outside of the law firm.¹⁶

B. Particular Virtual Practice Technologies and Considerations

Guided by the rules highlighted above, lawyers practicing virtually need to assess whether their technology, other assistance, and work environment are consistent with



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their ethical obligations. In light of current technological options, certain available protections and considerations apply to a wide array of devices and services. As ABA Formal Op. 477R noted, a “lawyer has a variety of options to safeguard communications including, for example, using secure internet access methods to communicate, access and store client information (such as through secure Wi-Fi, the use of a Virtual Private Network, or another secure internet portal), using unique complex passwords, changed periodically, implementing firewalls and anti-Malware/Anti-Spyware/Antivirus software on all devices upon which client confidential information is transmitted or stored, and applying all necessary security patches and updates to operational and communications software.” Furthermore, “[o]ther available tools include encryption of data that is physically stored on a device and multi-factor authentication to access firm systems.” To apply and expand on these protections and considerations, we address some common virtual practice issues below.

1. Hard/Software Systems

Lawyers should ensure that they have carefully reviewed the terms of service applicable to their hardware devices and software systems to assess whether confidentiality is protected.¹⁷ To protect confidential information from unauthorized access, lawyers should be diligent in installing any security-related updates and using strong passwords, antivirus software, and encryption. When connecting over Wi-Fi, lawyers should ensure that the routers are secure and should consider using virtual private networks (VPNs). Finally, as technology inevitably evolves, lawyers should periodically assess whether their existing systems are adequate to protect confidential information.

2. Accessing Client Files and Data

Lawyers practicing virtually (even on short notice) must have reliable access to client contact information and client records. If the access to such “files is provided through a cloud service, the lawyer should (i) choose a reputable company, and (ii) take reasonable steps to ensure that the confidentiality of client information is preserved, and that the information is readily accessible to the lawyer.”¹⁸ Lawyers must ensure that data is regularly backed up and that secure access to the backup data is readily available in the event of a data loss. In anticipation of data being lost or hacked, lawyers should have a data breach policy and a plan to communicate losses or breaches to the impacted clients.¹⁹

3. Virtual meeting platforms and videoconferencing

Lawyers should review the terms of service (and any updates to those terms) to ensure that using the virtual meeting or videoconferencing platform is consistent with the lawyer’s ethical obligations. Access to accounts and meetings should be only through strong passwords, and the lawyer should explore whether the platform offers higher tiers of

security for businesses/enterprises (over the free or consumer platform variants). Likewise, any recordings or transcripts should be secured. If the platform will be recording conversations with the client, it is inadvisable to do so without client consent, but lawyers should consult the professional conduct rules, ethics opinions, and laws of the applicable jurisdiction.²⁰ Lastly, any client-related meetings or information should not be overheard or seen by others in the household, office, or other remote location, or by other third parties who are not assisting with the representation,²¹ to avoid jeopardizing the attorney-client privilege and violating the ethical duty of confidentiality.

4. Virtual Document and Data Exchange Platforms

In addition to the protocols noted above (e.g., reviewing the terms of service and any updates to those terms), lawyers’ virtual document and data exchange platforms should ensure that documents and data are being appropriately archived for later retrieval and that the service or platform is and remains secure. For example, if the lawyer is transmitting information over email, the lawyer should consider whether the information is and needs to be encrypted (both in transit and in storage).²²

5. Smart Speakers, Virtual Assistants, and Other Listening-Enabled Devices

Unless the technology is assisting the lawyer’s law practice, the lawyer should disable the listening capability of devices or services such as smart speakers, virtual assistants, and other listening-enabled devices while communicating about client matters. Otherwise, the lawyer is exposing the client’s and other sensitive information to unnecessary and unauthorized third parties and increasing the risk of hacking.

6. Supervision

The virtually practicing managerial lawyer must adopt and tailor policies and practices to ensure that all members of the firm and any internal or external assistants operate in

accordance with the lawyer’s ethical obligations of supervision.²³ Comment [2] to Model Rule 5.1 notes that “[s]uch policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.”

a. Subordinates/Assistants

The lawyer must ensure that law firm tasks are being completed in a timely, competent, and secure manner.²⁴ This duty requires regular interaction and communication with, for example, associates, legal assistants, and paralegals. Routine communication and other interaction are also advisable to discern the health and wellness of the lawyer’s team members.²⁵

One particularly important subject to supervise is the firm’s bring-your-own-device (BYOD) policy. If lawyers or nonlawyer assistants will be using their own devices to access, transmit, or store client-related information, the policy must ensure that security is tight (e.g., strong passwords to the device and to any routers, access through VPN, updates installed, training on phishing attempts), that any lost or stolen device may be remotely wiped, that client-related information cannot be accessed by, for example, staff members’ family or others, and that client-related information will be adequately and safely archived and available for later retrieval.²⁶

Similarly, all client-related information, such as files or documents, must not be visible to others by, for example, implementing a “clean desk” (and “clean screen”) policy to secure documents and data when not in use. As noted above in the discussion of videoconferencing, client-related information also should not be visible or audible to others when the lawyer or nonlawyer is on a videoconference or call. In sum, all law firm employees and lawyers who have access to client information must receive appropriate oversight and training on the ethical obligations to maintain the confidentiality of such information, including when working virtually.

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b. Vendors and Other Assistance

Lawyers will understandably want and may need to rely on information technology professionals, outside support staff (e.g., administrative assistants, paralegals, investigators), and vendors. The lawyer must ensure that all of these individuals or services comply with the lawyer's obligation of confidentiality and other ethical duties. When appropriate, lawyers should consider use of a confidentiality agreement,²⁷ and should ensure that all client-related information is secure, indexed, and readily retrievable.

7. Possible Limitations of Virtual Practice

Virtual practice and technology have limits. For example, lawyers practicing virtually must make sure that trust accounting rules, which vary significantly across states, are followed.²⁸ The lawyer must still be able, to the extent the circumstances require, to write and deposit checks, make electronic transfers, and maintain full trust-accounting records while practicing virtually. Likewise, even in otherwise virtual practices, lawyers still need to make and maintain a plan to process the paper mail, to docket correspondence and communications, and to direct or redirect clients, prospective clients, or other important individuals who might attempt to contact the lawyer at the lawyer's current or previous brick-and-mortar office. If a lawyer will not be available at a physical office address, there should be signage (and/or online instructions) that the lawyer is available by appointment only and/or that the posted address is for mail deliveries only. Finally, although e-filing systems have lessened this concern, litigators must still be able to file and receive pleadings and other court documents.

Conclusion

The ABA Model Rules of Professional Conduct permit lawyers to conduct practice virtually, but those doing so must fully consider and comply with their applicable ethical responsibilities, including technological competence, diligence, communication, confidentiality and supervision.

AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

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¹ This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2020. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.
² Interstate virtual practice, for instance, also implicates Model Rule of Professional Conduct 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law, which is not addressed by this opinion. See ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 495 (2020), stating that "[l]awyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction."

³ See generally MODEL RULES OF PROFESSIONAL CONDUCT R. 1.0(c), defining a "firm" or "law firm" to be "a lawyer or lawyers in a partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization on the legal department of a corporation or other organization." Further guidance on what constitutes a firm is provided in Comments [2], [3], and [4] to Rule 1.0.

⁴ For example, if a jurisdiction prohibits substantive communications with certain witnesses during court-related proceedings, a lawyer may not engage in such communications either face-to-face or virtually (e.g., during a trial or deposition conducted via videoconferencing). See, e.g., MODEL RULES OF PROF'L CONDUCT R. 3.4(c) (prohibiting lawyers from violating court rules and making no exception to the rule for virtual proceedings). Likewise, lying or stealing is no more appropriate online than it is face-to-face. See, e.g., MODEL RULES OF PROF'L CONDUCT R. 1.15; MODEL RULES OF PROF'L CONDUCT R. 8.4(b)-(c).

⁵ MODEL RULES OF PROF'L CONDUCT R. 1.4(a)(2) - (4).

⁶ Lawyers unexpectedly thrust into practicing virtually must have a business continuation plan to keep clients apprised of their matters and to keep moving those matters forward competently and diligently. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 482 (2018) (discussing ethical obligations related to disasters). Though virtual practice is common, if for any reason a lawyer cannot fulfill the lawyer's duties of competence, diligence, and other ethical duties to a client, the lawyer must withdraw from the matter. MODEL RULES OF PROF'L CONDUCT R. 1.16. During and following the termination or withdrawal process, the lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. MODEL RULES OF PROF'L CONDUCT R. 1.16(d).

⁷ MODEL RULES OF PROF'L CONDUCT R. 1.6(c).

⁸ MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. [18].

⁹ MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. [19].

¹⁰ *Id.*

¹¹ The opinion cautions, however, that "a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security." ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 477R (2017).

¹² MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. [19].

¹³ MODEL RULES OF PROF'L CONDUCT R. 5.1 & 5.3. See, e.g., ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 467 (2014) (discussing managerial and supervisory obligations in the context of prosecutorial offices). See also ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 483 n.6 (2018) (describing the organizational structures of firms as pertaining to supervision).

¹⁴ MODEL RULES OF PROF'L CONDUCT R. 5.3 cmt. [2].

¹⁵ MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. [18] (emphasis added).

¹⁶ As noted in Comment [3] to Model Rule 5.3: When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law).

¹⁷ For example, terms and conditions of service may include provisions for data-soaking software systems that collect, track, and use information. Such systems might purport to own the information, reserve the right to sell or transfer the information to third parties, or otherwise use the information contrary to lawyers' duty of confidentiality.

¹⁸ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 482 (2018).

¹⁹ See, e.g., ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 483 (2018) ("Even lawyers who, (i) under Model Rule 1.6(c), make 'reasonable efforts to prevent the . . . unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client,' (ii) under Model Rule 1.1, stay abreast of changes in technology, and (iii) under Model Rules 5.1 and 5.3, properly supervise other lawyers and third-party electronic information storage vendors, may suffer a data breach. When they do, they have a duty to notify clients of the data breach under Model Rule 1.4 in sufficient detail to keep clients 'reasonably informed' and with an explanation 'to the extent necessary to permit the client to make informed decisions regarding the representation.'").

²⁰ See, e.g., ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 01-422 (2001).

²¹ Pennsylvania recently highlighted the following best practices for videoconferencing security:

- Do not make meetings public;
- Require a meeting password or use other features that control the admittance of guests;
- Do not share a link to a teleconference on an unrestricted publicly available social media post;
- Provide the meeting link directly to specific people;
- Manage screensharing options. For example, many of these services allow the host to change screensharing to "Host Only;"
- Ensure users are using the updated version of remote access/meeting applications. Pennsylvania Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Formal Op. 2020-300 (2020) (citing an FBI press release warning of teleconference and online classroom hacking).

²² See, e.g., ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 477R (2017) (noting that "it is not always reasonable to rely on the use of unencrypted email").

²³ As ABA Formal Op. 477R noted: In the context of electronic communications, lawyers must establish policies and procedures, and periodically train employees, subordinates and others assisting in the delivery of legal services, in the use of reasonably secure methods of electronic communications with clients. Lawyers also must instruct and supervise on reasonable measures for access to and storage of those communications. Once processes are established, supervising lawyers must follow up to ensure these policies are being implemented and partners and lawyers with comparable managerial authority must periodically reassess and update these policies. This is no different than the other obligations for supervision of office practices and procedures to protect client information.

²⁴ The New York County Lawyers Association Ethics Committee recently described some aspects to include in the firm's practices and policies:

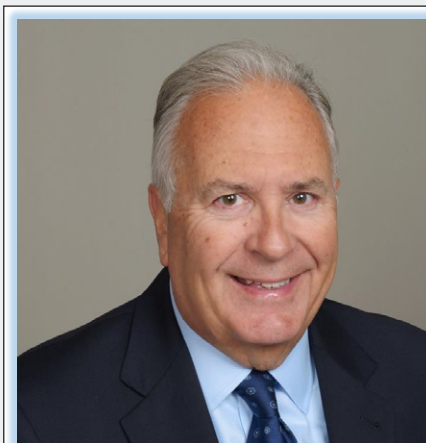
- Monitoring appropriate use of firm networks for work purposes.
- Tightening off-site work procedures to ensure that the increase in worksites does not similarly increase the entry points for a data breach.
- Monitoring adherence to firm cybersecurity procedures (e.g., not processing or transmitting work across insecure networks, and appropriate storage of client data and work product).
- Ensuring that working at home has not significantly increased the likelihood of an inadvertent disclosure through misdirection of a transmission, possibly because the lawyer or nonlawyer was distracted by a child, spouse, parent or someone working on repair or maintenance of the home.
- Ensuring that sufficiently frequent "live" remote sessions occur between supervising attorneys and supervised attorneys to achieve effective supervision as described in [New York Rule of Professional Conduct] 5.1(c). N.Y. County Lawyers Ass'n Comm. on Prof'l Ethics, Formal Op. 754-2020 (2020).

²⁵ See ABA MODEL REGULATORY OBJECTIVES FOR THE PROVISION OF LEGAL SERVICES para. I (2016).

²⁶ For example, a lawyer has an obligation to return the client's file when the client requests or when the representation ends. See, e.g., MODEL RULES OF PROF'L CONDUCT R. 1.16(d). This important obligation cannot be fully discharged if important documents and data are located in staff members' personal computers or houses and are not indexed or readily retrievable by the lawyer.

²⁷ See, e.g., Mo. Bar Informal Advisory Op. 20070008 & 20050068.

²⁸ See MODEL RULES OF PROF'L CONDUCT R. 1.15; See, e.g., ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 482 (2018) ("Lawyers also must take reasonable steps in the event of a disaster to ensure access to funds the lawyer is holding in trust. A lawyer's obligations with respect to these funds will vary depending on the circumstances. Even before a disaster, all lawyers should consider (i) providing for another trusted signatory on trust accounts in the event of the lawyer's unexpected death, incapacity, or prolonged unavailability and (ii) depending on the circumstances and jurisdiction, designating a successor lawyer to wind up the lawyer's practice.").



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During the Covid-19 pandemic, Jeff and Mark are hosting ZOOM mediation teleconferences to keep all participants safe.

WHEN YOU LACK STANDING, YOUR CASE SINKS

By Brandon M. Schwartz, Esq. and Maya Mallavarapu

It is axiomatic that to file a lawsuit, the plaintiff(s) must have standing. A rarely discussed standing argument recently reached the Iowa Court of Appeals in *Mallavarapu, et al. v City of Cedar Falls, et al.*, 2020 WL 7383115 (Iowa Ct. App. 2020).

Calling themselves the ‘pond scum neighbors,’ this band of homeowners sought to force the City of Cedar Falls and a local property association to clean up the detention basin abutting each of their houses. The basin had become infected with cyanobacteria and was a health hazard to the neighbors, the neighborhood, pets and those downstream.

The court of appeals rejected their claim holding they lacked standing to enforce the maintenance agreement and stating they were not intended

beneficiaries of the maintenance agreement. What is the difference between an intended beneficiary and an incidental beneficiary and why does one, but not the other, have standing?

EPA GUIDELINES

The United States Environmental Protection Agency (“EPA”) requires cities, here the City of Cedar Falls, to have a permit related to the discharge of stormwater. Stormwater is simply surface water from heavy rains or snowfalls. With land development and increases in impervious cover altering the hydrologic response of local watersheds and increases in stormwater runoff rates and volumes, there has been an increase in the quantities of water-borne pollutants. As a result, cities utilize detention basins to help protect local water resources from degradation and to regulate stormwater.

The City of Cedar Falls adopted Ordinance No. 2718 which was “applicable to all surface waters” in the city. The ordinance, in turn, adopted the Iowa Stormwater Management Manual which was a collaborative publication between the Iowa Department of Natural Resources and The Center for Transportation Research and Education at Iowa State University. The manual provides maintenance requirements for detention basins to ensure that they are serving their two main purposes: 1) flood control, and 2) pollutant control. The city and association also had a maintenance agreement requiring specific maintenance obligations to ensure that the detention basin functionally served its two main purposes.

CYANOTOXINS

There was no dispute here that the city and the association conducted absolutely no maintenance on the detention basin abutting the ‘pond scum neighbors.’ The basin lost more than 60 percent of its volume and became infected with dangerous bacteria. Cyanobacteria (blue-green algae) are prokaryotic organisms which are known as one of earth’s pioneer organisms. They are considered to be the main

producers of oxygen released into the atmosphere. Cyanobacteria multiply quickly in surface waters, especially in optimal conditions.

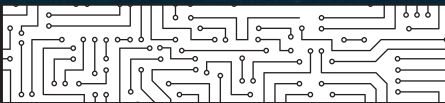
However, when they reproduce, they form blooms and these blooms can be harmful to humans and other organisms due to the fact that cyanobacterial species produce toxic metabolites otherwise known as cyanotoxins. The majority of the time, humans are exposed to cyanotoxins orally meaning through contaminated drinking water or contaminated foods. However, it is also possible for humans to be exposed to cyanotoxins through inhalation.

Not only can cyanobacterial toxins enter the human body orally, but they can also enter the human body through a parenteral route of exposure. For instance, cyanobacteria-contaminated surface water has been used for hemodialysis, increasing the amount of cyanotoxins in the human body. Certain types of cyanotoxins can cause damage to the kidneys, spleen, heart and other organs. The timeframe when these effects could take place is currently unknown as such negative effects could occur within a few minutes or even a few days.

Because of the significant negative health impact to their families, their pets, themselves and those who come in contact with the detention basin, the ‘pond scum neighbors’ filed suit in Black Hawk County District Court requesting the city and the association complete the agreed-upon maintenance on the detention basin pursuant to the maintenance agreement. Their case was sunk by the court of appeals.

INTENDED VS. INCIDENTAL BENEFICIARIES

To file suit for breach of a contract, you must either be a party to the contract or an intended beneficiary of the contract. The difference between an intended beneficiary and an incidental beneficiary is nuanced and not well-developed. Iowa adopted the Restatement (Second) of Contracts, § 302 in *Midwest Dredging Co. v. McAninch Corp.*, 424 N.W.2d 216 (Iowa 1988). The key difference



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between an incidental beneficiary and an intended beneficiary is the duty owed to the third-party by the contracting parties. But oftentimes the performance of a contract will impact third parties. So how do you tell the difference between intended and incidental beneficiaries?

Luckily, the restatement provides a helpful example. The operator of a chicken processing and fertilizer plant contracts with a municipality to use its sewage system. With the purpose of preventing harm to downstream homeowners, the municipality obtains a promise from the operator to remove specified types of waste from its deposits in the system. In this example, the downstream homeowner is an intended beneficiary and would have standing to enforce the contract at issue.

Thus, as the plaintiffs all abut the detention basin, the purpose of the detention basin is to control flooding (thereby protecting the homeowners' land) and pollution (thereby protecting the homeowners' health), the plaintiffs in this case clearly had standing, right? Wrong. While the district court held the plaintiffs had standing, and notwithstanding that one of the plaintiffs lost property due to flooding, they all lost property value, and their health was at risk, all facts which were undisputed, the court of appeals held that the plaintiffs were merely incidental beneficiaries and had no standing to enforce the maintenance agreement. Case closed. The cyanotoxins live to grow and spread another day.

IMPLICATIONS

'So what' you may ask. What is the big deal? From an environmental standpoint, the court of appeals' decision results in pollutants continuing to impact the plaintiffs and those who walk, live and play around the basin, but

also those who come in contact with the Cedar River. The detention basin drains into the river and ultimately the river that the Cedar River flows to, the Mississippi River. Hundreds of thousands, if not millions, of people per year come into contact with this infected water. The decision also jeopardizes the plaintiffs' property; with over 60 percent of the volume lost, the basin does not drain as it should and has already flooded causing property loss.

From a legal standpoint, the decision creates substantial ambiguity as to who is an intended beneficiary. Where is the distinction between the example given in the restatement and the plaintiffs here? The court of appeals even cited the illustration in its decision, but still found the 'pond scum neighbors' case was sunk. From this biased opinion (one of the authors was trial and appellate counsel, the other is a much smarter high school student whose house abuts the detention basin), the court of appeals' decision creates substantial flux in this underdeveloped area of law.



The neighborhood pond in Cedar Falls is shown before it became infected with the cynotoxins discussed in this article.



This photo reflects the current state of the infected pond.



Maya Mallavarapu is a sophomore at Cedar Falls High School. In her free time, she enjoys spending time with her family and friends and playing tennis. She is passionate about helping the environment and saving the planet.



Brandon M. Schwartz is a trial attorney with Schwartz Law Firm in Oakdale, Minnesota. Schwartz is board certified by the Minnesota State Bar Association as a civil trial specialist and is board certified by the National Board of Trial Advocacy as a civil trial law advocate. He focuses his practice primarily on business law and business litigation involving such matters as shareholder disputes, derivative actions, contract creation and litigation, company formation, and age discrimination for clients throughout Iowa, Minnesota, Wisconsin and Arizona.

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Board of Governors Spring Quarterly Meeting

During the spring virtual ISBA Board of Governors quarterly meeting, the BOG nominated new 2021-2022 ISBA officers and heard reports on new initiatives including those led by the ISBA and YLD.

ACTION ITEMS

Approved the nomination of new 2021-2022 ISBA candidates: Hon. Henry Hamilton III – President-elect; Ian Russell – Vice President; Jane Lorentzen – ABA Delegate

REPORTS

President's report

ISBA President Jerry Schnurr reported on his recent activities and provided highlights from the legislative session including the advocacy efforts made by ISBA BOG District 7 Representative David Henschler. Schnurr asked governors and members to continue to serve as trusted sources of information for their legislators throughout the legislative session.

In October, the ISBA Center for Law & Civic Education launched a new law-related education series, Civics, the Law & You. This ongoing program links high school students and teachers with legal experts on civic and law-related topics of interest. A new webpage has been created for the program and serves as a resource of materials for educators.

Schnurr announced that he recently formed a new ISBA Digital Asset Transactions and Blockchain Study Committee at the direction of the ISBA Administrative Committee in order to examine Iowa's regulatory

framework insofar as it addresses digital asset transactions and blockchain technology.

The study committee has representation from the ISBA Commercial Bankruptcy Law, Business Law, eCommerce, and Real Estate and Title Law Sections. John Blyth, who serves as chair of the study committee, described the bill that inspired the creation of the study group: it proposes amendments to Iowa Code Chapter 554D, Iowa's version of the Uniform Electronic Transactions Act, to add blockchain technology and smart contracts. This technology has implications beyond Chapter 554D. The committee will report back to the governors after communicating with the bill's sponsor and further study.

ISBA executive director's report

ISBA Executive Director Dwight Dinkla provided an update on the ISBA's plans for the 2021 ISBA Annual Meeting CLE that will take place via a live webinar format from June 7 – 11. The Annual Meeting of the Corporation and the quarterly meeting of the ISBA Board of Governors will take place on Wednesday, June 23.

Dinkla reported that ISBA offices have remained open for the duration of the

pandemic, with increased safety measures and rotating staff schedules to maintain social distancing. The ISBA 2020-2021 dues process resulted in a net loss in membership for 2020-21 of 396 members. Even though the non-renewals are much smaller than anticipated, it is still problematic for the future of the ISBA. Dinkla reported on the success of the CLE Department in transitioning all CLE programming to virtual in 2020. CLE revenue was down because of the decrease in registration fees, but most events exceeded attendance numbers from prior year.

Dinkla reported on the ISBA's involvement in the COVID-19 Legal Advice Hotline and the Derecho Legal Hotline (see Legal Aid report), as well as the success of the 2020 Iowa Middle School Mock Trial competition. Eighty teams of middle school students from 42 different schools participated in the first statewide mock trial program conducted virtually, which was used as a model for other states and for the high school tournament in March.

Assistant Executive Director Harry Shipley provided a report on the transition of approximately 726 firms to IowaDocs® 2.0 on XpressDox. He noted that the Trustifi email security and encryption service is now available at no cost to members and has seen a five percent increase in use since it was made free to members.

ISBA Ways & Means Committee Chair Gary Streit reported on the financial condition of the ISBA and membership statistics. While overall income is down due to the pandemic, expenses are also down and the ISBA has benefited from a strong equity market. Membership is declining with the number of members retiring exceeding the number of new members joining by virtue of smaller graduating law school classes.

ISBA ADR Section Chair Joe Happe presented the section council's preliminary proposal to initiate a voluntary, board certification program for lawyer mediators and arbitrators under Iowa, R. Prof. Cond. 32:7.2. An update is anticipated after input is received from the Office of Professional Regulation.

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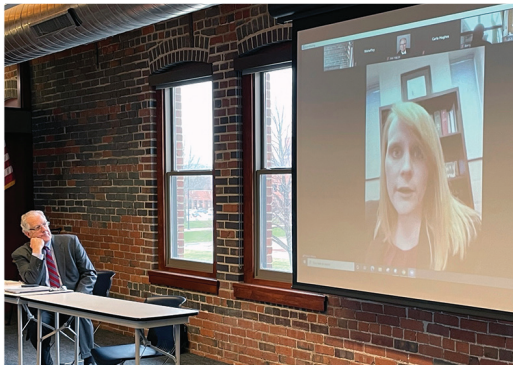
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YLD president's report

YLD President Torey Cuellar reported on the ISBA YLD Executive Council's recent efforts, provided highlights of the YLD Committees' activities currently underway and the upcoming virtual trivia night on Thursday, April 8.

YLD Diversity Committee leaders Abhay Nadipuram and Gabe Walsh announced the creation of the ISBA YLD's Diversity, Equity & Inclusion (DEI) Pledge that consists of voluntary, concrete action items that lawyers and legal employers can take to make the profession more diverse, equitable and inclusive. The pledge will begin April 1, and will conclude on April 1, 2022. More information about the DEI Pledge can be found at iowabar.org/diversitypledge.

Legislative report

ISBA Legislative Counsel Jim Carney provided a status update on the ISBA's affirmative legislative program including legislation proposed by the ISBA Business Law and Probate and Trust & Estate Planning Sections. He also highlighted the program's support for full funding for the Iowa Judicial Branch, Iowa Legal Aid and indigent defense.



Carney reported on progress to defeat cap bills that would negatively impact the rights of Iowans who have been injured, through no fault of their own, by medical malpractice and commercial motor vehicles. They are companion bills HF592 and SF557 that cap medical malpractice recoveries at \$1 million for non-economic damages; and companion bills HF772 and SF537 that cap recoveries for non-economic damages in commercial motor vehicle cases.

ISBA Assistant Legislative Counsel Jenny Dorman provided an update on the status of Guardianship & Conservatorship bills HF 834 and HF 836. The bills address technical errors, provide substantive corrections or updates and are eligible for debate in the House.

An updated chart with the status of the 2020 ISBA Affirmative Legislative program can be found on page 26.

ISBA AWARDS PRESENTATION

At its spring quarterly meeting, the ISBA officially recognized the recipients of two important awards.

2020 ISBA AWARD OF MERIT

Created in 1947, the Award of Merit is the highest honor the association can bestow upon an individual. Former Iowa Supreme Court Chief Justice **Mark S. Cady** embodied the principles it represents – a selfless dedication to the legal profession, the bar association and his community – and was granted the award posthumously.



Cady's family, represented by his wife, Becky, and son, Spencer, were present to receive the award on his behalf.

From his start as a judicial law clerk in Fort Dodge, to his final day as chief justice, Cady worked tirelessly to bring equal justice under the law to all Iowans and to the nation. He was relentless in striving for a fairer legal system in Iowa – recognizing that it was not always the easy thing to do, but the right thing.

2020 ROLLAND E. GREFE PRO BONO PUBLICO AWARD

This award was established in recognition of Rolland E. Grefe's long service to The Iowa State Bar Association, as well as his support for access to justice for all people. The award recognizes an attorney who has enhanced the human dignity of others by delivering pro bono legal services and has committed his or her talent and training to improving the quality of justice in Iowa.



Des Moines attorney **Hope Wood** received the award because she is a passionate advocate for pro bono volunteer legal work – helping Iowans through the Iowa Free Legal Answers project, the Polk County Bar Association Volunteer Lawyers Project, the ISBA People's Law School program and other pro bono endeavors.



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State of Iowa Attorney General

Attorney General Tom Miller provided governors with updates from the Office of the Attorney General and highlighted the work of several new and past office leaders. Miller expressed his thanks to the ISBA and availability to meet with leaders and members.



Iowa Judicial Branch Remote Pilot Programs

State Court Administrator Todd Nuccio provided governors updates on three online dispute resolution (ODR) pilot projects. Nuccio described how ODR is providing parties involved in court actions with options to resolve their legal matters through online platforms with greater convenience, easier access to the courts, lower costs and increased satisfaction with the court system. Parties can negotiate online directly with each other. If negotiations are successful, the parties do not have to appear in court. If negotiations are not successful, the parties can still have their day in court.

Iowa Judicial Branch Information Technology Project Manager Christy Schreiner provided governors with a demonstration of the three pilot ODR platforms in use and testing. The first pilot project provides ODR for

Carroll County traffic citations and includes options to request installment payment plans, submit evidence to dispute charges, or request an amended charge. The second pilot project focuses on forcible entry and detainer (FED) cases in Story County and provides a short, pre-suit process that will incorporate a navigator to provide legal information and an inventory of all community resources to help address underlying issues that lead to evictions. The third pilot program focuses on small claims money judgment actions in Black Hawk County. The program starts with direct negotiation and then moves on to a mediation phase.

Iowa Legal Aid

Iowa Legal Aid Executive Director Nick Smithberg highlighted Iowa Legal Aid's work throughout the past year. The COVID-19 Legal Advice Hotline dedicated to answering questions related to COVID-19, including unemployment, workplace and safety issues, was established within about two and a half days. To date, the hotline has fielded more than 5,300 calls and enlisted the services of more than 200 volunteer lawyers.

Smithberg reported that Iowa Legal Aid's unemployment-related intakes increased by 400 percent when compared with last year. The uptick in unemployment intakes was a precursor to a huge surge in eviction cases. Iowa Legal Aid saw an unprecedented 140 percent increase in eviction cases during the pandemic. Iowa Legal Aid, together with the

Polk County Board of Supervisors and the Polk County Housing Trust Fund, developed a new eviction diversion program that was replicated in Black Hawk County and will be soon in Linn and Pottawattamie Counties. During the pandemic and through an Iowa winter, Iowa Legal Aid was able to prevent more than 4,300 evictions, helping 10,152 people, including 4,364 children, avoid homelessness.

ABA delegate report

ABA Delegate David L. Brown reported on the election of ISBA Board of Governor representative Melvin Shaw as an ABA General Practice Solo Delegate. Brown provided highlights from ABA Iowa State Delegate Alan Olson's report on Resolution 106C adopted by the 597-member ABA House of Delegates at its Feb. 22 virtual meeting. Resolution 106C is intended to ease the financial burdens many law students and recent graduates are experiencing because of the legal profession's uncertain financial environment and tightened job market.

In his report, Olson describes how Resolution 106C urges the federal government to implement programs to assist lawyers and law students experiencing financial hardship due to their student loans. Resolution 106C, now ABA policy, recommends extending loan deadlines, allowing either refinancing or transferring of obligations to federal from commercial programs, and authorizing suspension or forgiveness of student loans.

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PROFESSIONAL TRACKS

- Ag Law
- Business Law
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- Elder Law
- Family and Juvenile Law
- Litigation
- Probate
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HIGHLIGHTED PRESENTATIONS

- Employment Law: State and Federal Law Update
- Pointers for Practitioners in Probate Court
- Constructing and Delivering Opening Statements
- Small Business Reorganization Act
- Estate Planning Strategies for Potentially Higher Tax Rates
- Civil and Criminal Case Law Update
- Uniform Custodial Trust Act

SPECIAL PROGRAMMING

for judges and the ISBA Young Lawyers Division



iowabar.org/annualmeeting

JUNE 7—11

IN MEMORIAM

Martin Begleiter of Clive, died March 11. Begleiter was born in Albany, New York. He received his J.D. from Cornell Law School. He practiced law at one of New York City's big law firms for seven years and was then recruited to teach at Drake Law School. Begleiter was elected to membership in the American Law Institute and The American College of Trusts and Estates Counsel, and he co-authored a leading course book in the trusts and estates field. He served as an advisor for the Restatement (Third) of the Law of Trusts and was an American Bar Association advisor to the National Conference of Commissioners on Uniform State Laws revision to Uniform Probate Code, as well as the Uniform State Laws Uniform Anatomical Gift Act.

John Langdon Timmons, 74, of Ames, died Feb. 16. Timmons was born in Washington D.C. in 1946. He served in the Peace Corps for two years, then in the U.S. Army, and received his J.D. from the University of Iowa College of Law. He began his career as a law clerk in Minnesota District Court in Faribault, Minnesota. He returned to Ames in 1976 and joined the Pasley and Singer Law Firm where he practiced as a trial attorney until his

retirement in December 2016. He served on various boards, among them the Iowa Association of Justice, Ames Education Foundation and Arc of Story County.

Kathleen Corcoran, 73, of Iowa City, died Feb. 14. Corcoran was born in Iowa City in 1947. She received her J.D. from the University of Iowa College of Law, where she was a writer for and the managing editor of the Iowa Law Review. Corcoran clerked for Iowa Supreme Court Justice Linda K. Neuman, then became an associate attorney practicing civil litigation and bankruptcy for the Childers & Fiegen law firm in Cedar Rapids. She was executive director of the Iowa Supreme Court Commission on Planning for the 21st Century, which resulted in the state court system's first strategic plan. In 1994, she joined the University of Iowa School of Journalism and Mass Communication, where she would spend the next 10 years as an adjunct professor and director of career services. In 2000, the school's student chapter of the Society of Professional Journalists recognized her with its Faculty Member of the Year award. She was also honored for her work in mediation with a Governor's Award for Public Service in 1997.

Annette Jennings Scieszinski, 65, of Albia, died Feb. 26. Scieszinski was born in 1955 in Muscatine. She received her J.D. from the University of Iowa College of Law, where she was a published author and editor of the Iowa Law Review. She then started her law practice in Albia in 1979 and was elected Monroe County Attorney. She also served in various service capacities over the years for the University of Iowa College of Law, Drake University Law School and Iowa Wesleyan University, recently assuming the chairmanship of the Iowa Wesleyan Board of Trustees. She practiced law 15 years, including with the Scieszinski & Owens Law Firm, until 1996, when Governor Terry E. Branstad appointed her as a district court judge for the 10 counties of Iowa District 8A. She served 20 years before retirement, and worked as a senior judge for three years. During that time, she was elected president of the Iowa Judges Association and received the Association's highest honor, the Award of Merit. On the national level, Scieszinski attained the chairmanship of the National Conference of State Trial Judges.



GOVERNMENT PRACTICE SEMINAR

May 7 • 8:30 AM - 3:30 PM • Live Webinar

SCHEDULED PRESENTATIONS

Legislative Session Update – Doug Struyk and Jenny Dorman, Carney Appleby Law

Government Case Law Update – Bret Dublinske, Fredrikson & Byron

Policing, Protests, and Race – Russell Lovell and David Walker, Professors Emeriti, Drake University Law School; Rita Bettis Austen, Legal Director, ACLU of Iowa

Attorney Wellness: Our Mental Health – Tyler Coe, Whitfield & Eddy

Hot Topics in Open Records – Margaret Johnson, Executive Director, Iowa Public Information Board; Laura Belin, Publisher, Bleeding Heartland; Kristine Stone, Ahlers & Cooney; and Holly Corkery, Lynch Dallas

Ethics Opinions Update – Roger Kuhle, Polk County Attorney's Office (Retired)

6 state hours which includes 1 ethics and 1 attorney wellness hour

IOWABAR.ORG/GOVERNMENT

Sponsored by The Iowa State Bar Association Government Practice Section

KUDOS

Drake University Law School announces the recipients of this year's alumni awards.



ALUMNI OF THE YEAR

Joe P. Crookham is chairman of the board and principal owner of Musco Lighting.



Jeffrey L. Goodman is a trial attorney with Goodman/Keller, P.C. and the president of Harbinger Jury Consultants.



RECENT ALUMNI OF THE YEAR

Adam Gregg serves as Iowa's 47th Lieutenant Governor. He chairs the Governor's Feeding Iowans Task Force and FOCUS Committee on Criminal Justice Reform and is co-chair of the Governor's Empower Rural Iowa Initiative. Gregg previously served as the State Public Defender.



DISTINGUISHED PUBLIC SERVICE AWARD

Janet Phipps Burkhead served as director of the Iowa Department of General Services and Iowa Department of Administrative Services. She retired from state service in May 2019.

The award winners will be honored during Drake Law School's 84th Annual Supreme Court Celebration Alumni Award Recognition and Celebration which will be held virtually on Thursday, April 15.

TRANSITIONS



Brianna Vaughn has joined U.S. Bank Wealth Management in Des Moines as a trust advisor. She received her J.D. from Drake University Law School in 2015, then worked at Bradshaw, Fowler, Proctor & Fairgrave, P.C. as a transactional associate attorney. Vaughn is currently servicing fiduciary accounts across the state.



Peter E. Deegan, Jr. has joined Taft Law in Chicago as a partner. Before joining the firm, he served as the United States Attorney for the Northern District of Iowa. He will join the firm's white collar criminal defense and commercial litigation practice groups.



John R. Gilliland has been promoted to vice president at Morgan Stanley in Des Moines. Gilliland received his J.D. from Creighton University School of Law and has been with Morgan Stanley Wealth Management since 2012.



Kayla L. Sproul has joined Bradshaw, Fowler, Proctor & Fairgrave, P.C., in Des Moines as an associate. Sproul earned her J.D. from Drake University Law School in 2019. After graduating law school, she clerked for the 5th Judicial District of Iowa before going into private practice. She joins the firm as part of its business and corporate law practice group.



ISBA CLE CALENDAR

APRIL 20
Construction Law
Seminar

APRIL 21
Working with High-Conflict
Personalities in Divorce

MAY 7
Government Practice
Seminar

MAY 10
Immigration Issues for
Family Law and Domestic
Violence Practitioners

MAY 12
Power of Attorney:
More Than a Form

JUNE 7-11
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IOWA STATE BAR ASSOCIATION— 2021 Affirmative Legislative Program *(Updated 4/2/21)*

BILL NO.	SUBJECT	DESCRIPTION	STATUS
HF 711/ SF 244	Probate & Trust Law Calculation of Probate Court Costs	Iowa Code §633.31 is currently being applied inconsistently throughout the state. There are now several district court cases declaring the clerks in at least six counties to be calculating court fees inappropriately. The bill addresses how the clerks of probate court determines and collects charges in connection with services provided in probate matters. Excludes from the determination of court fees property over which the court lacks probate jurisdiction and for which the clerk renders no services.	House: Unanimously Passed House Floor 93-0 on 3/9/21 Senate: Ways & Means Subcommittee recommended passage 2/17/21
HSB 836	Probate & Trust Law Guardianship & Conservatorship Update	Proposed changes to HF 610 to “fix” technical errors and substantive issues with the legislation that passed during the 2019 Legislative Session. This bill only addresses requested changes in Iowa Code 633.	House: Placed on Unfinished Business Calendar Senate: Funneled
HSB 834	Probate & Trust Law Family Law Guardianship & Conservatorship Update	Proposed changes to HF 591 to “fix” technical errors and substantive issues with the legislation that passed during the 2019 Legislative Session. This bill only relates to amendments to Iowa Code 232D, or the Iowa Minor Guardianship Act. Specially, this bill makes clarifications to the role of “court visitor,” background checks, court confidentiality, and when and how the Court should be notified with regard to minor conservatorships.	House: Funneled Senate: Funneled
SF 173	Probate & Trust Law Certification of Trusts	Amends Iowa Code section 633A.4604 (Certification of Trusts) to require these certifications to include names of all currently acting trustees, state how many trustees must agree if there is more than one trustee, and allow signers to certify these documents (no longer will signature notarization be required). Amends Iowa Code section 633A.4703 (general order of abatement) to make trust code provisions for abating shares of surviving spouses who don’t take elective shares of the trust be the same as the probate code provisions for abating shares of surviving spouses who don’t take elective shares under the decedent’s will.	Signed by the Governor on 3/8/21
SF 239	Probate & Trust Law Liability of Decedent’s Estate	Amends Iowa Code Section 611.22 to limit the parties who can represent a decedent’s interest in litigation following a decedent’s death to parties who can and must treat the results of litigation as any other asset or liability of the decedent’s estate. Legislation would ensure that a decedent’s liability pursuant to litigation isn’t given a higher priority for payment than any other claim under §633.425 of the Probate Code, and that any additional assets to which a decedent becomes entitled after death as a result of litigation aren’t exempt from taxes or other obligations to which estate assets are subject. As proposed, only a personal representative of a decedent’s estate as defined in Section 633.3 or a “successor” as defined in Section 633.356 (the affidavit procedure for settling estates with probate assets worth \$50,000 or less) because only these parties are obligated to pay the decedent’s financial obligations (taxes, debts, Medicaid claims etc.).	Signed by the Governor on 3/8/21
SF 240	Probate & Trust Law Uniform Custodial Trust Act	Creates a new chapter in Iowa Code called “Uniform Custodial Trust Act.” This legislation would provide a tool to facilitate small gifts to adults akin to the Uniform Transfers to Minors Act (Chapter 565B). Additionally, this act would be used for litigation proceeds, gifts or bequests to vulnerable adults who may not be qualified to manage the new assets, but where a conservatorship isn’t a suitable vehicle. Finally, this proposal will facilitate the management of property for adults and will facilitate estate planning for testators and trust settlers.	Signed by the Governor on 3/8/21
SF 235	Probate & Trust Law Contested Claims in Probate	This proposal amends and updates the Iowa Probate Code that governs contested claims in Probate Proceedings, Iowa Code § 633.68-633.449. More specifically, this legislative proposal updates the required procedures in these proceedings to coordinate with the EDMS electronic court-filing system. Increases the value of contested claims that can be litigated under these statutes from \$300 to the small claims statutory values passed by the legislature in 2019 (\$6,500). Finally, this legislative proposal streamlines the notice requirements in these proceedings by removing outdated provisions regarding the use of USPS.	Signed by the Governor on 3/22/21

BILL NO.	SUBJECT	DESCRIPTION	STATUS
HF 561/ SF 341	Construction Law Mechanic's Lien Proceedings	<p>This proposal amends Iowa Code § 572.8 to allow a mechanic's lien involving real property covering multiple counties to be posted once on the centralized, digital MNL system and indexed on all applicable counties.</p> <p>In addition, this legislative proposal amends Iowa Code § 572.32 to provide statutory certainty on the recovery of attorney fees by prevailing claimants in mechanic's lien actions where the lien is discharged by a bond.</p>	<p>House: Unanimously passed House 93-0 on 2/23/21 Received from the Senate and Placed on the Unfinished Business Calendar on 4/1/21</p> <p>Senate: Unanimously passed 45-0 with amendment, returned to the House on 3/29/21</p>
HSB 844/ SF 579	Business Law Uniform Model Corporations Act	<p>Along with 33 other states and the District of Columbia, Iowa has generally followed the Model Business Corporation Act in enacting the law governing business corporations. It is substantively sound and well drafted, and it offers benefits to Iowa courts, practitioners, and businesses on account of its widespread adoption, court interpretations (although non-binding), and useful Official Comments. In December 2016 the ABA Corporate Laws Committee published a 4th Edition of the MBCA. The 4th Edition amends the MBCA in various substantive ways. It also represents in part a restatement of the MBCA to include amendments approved since publication of the 3rd Edition; and in recognition of continuing developments in the law, the 4th Edition integrates the MBCA with the law governing unincorporated business associations such as LLCs. Finally, some changes were made simply to improve clarity.</p>	<p>House: Placed on Unfinished Business Calendar</p> <p>Senate: Placed on Unfinished Business Calendar</p>

In addition to the above legislative proposals, The Iowa State Bar Association supports the following positions as part of its 2021 Affirmative Legislative Program:

- Full funding of indigent defense and adoption of legislation providing for \$5 per hour increase with an automatic cost of living increase in indigent defense fees.
- Full funding of the Judicial Branch.
- Full funding for Legal Services.
- Full funding of the IA Secretary of State's Office as requested by IA Secretary of State Paul Pate.
- Full funding for the Office of Substitute Decision Maker through the Aging and Disability Resource Center to protect the interests of Iowans who have no one else to manage their financial and health care needs.
- Support for child abuse prevention and treatment efforts and funding for child abuse prevention and treatment.
- Opposition to the legalization of title insurance.
- Opposition to absolute immunity legislation.
- Opposition to arbitrary caps on the recovery of damages in medical malpractice cases.

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POSITIONS AVAILABLE

Biotechnology Patent Attorney/Agent – McKee Voorhees & Sease, PLC, Des Moines, IA – McKee Voorhees and Sease, PLC, a boutique IP firm established in 1924 serving global clients at the intersection of science and law, seeks an experienced IP attorney to join the firm in the chemical and biotechnology practice group. The candidate must be licensed to practice before the USPTO and have 3+ years' experience prosecuting patents in the areas of molecular biology, molecular genetics and biochemistry with agricultural or medical applications of biotechnology. *To apply, please send a current CV and links to at least two published patent specifications and office action responses for biotechnology applications to cassie.edgar@ipmvs.com.*

Associate Attorney – Klay Law Firm, Orange City, IA – We are looking to add an associate attorney to our team. The right candidate will have strong legal knowledge, work ethic and the ability to build and maintain relationships. Initial focus at the firm will be learning the business from the senior partner in this general practice firm, focused on delivery of compassionate, client centered, affordable service. *If you have any interest or questions Dan Mc Carty 712-441-5475, daniel.mccarty333@gmail.com.*

In-House Counsel – Fidelity National Title Group, Omaha, NE – Fidelity National Title Group is hiring claims counsels to fill multiple attorney positions in Omaha, Nebraska. The claims counsel position gives attorneys the ability to make independent analysis, utilize strategic

thinking to resolve complex issues and to further develop litigation expertise. The candidate does not need to have title claims experience. *To apply, visit <https://careers.iowabar.org/jobs/14507985/in-house-counsel>.*

Transactional Partner/Associate – Phelan Tucker Law, LLP, Iowa City, IA – Phelan Tucker Law LLP, an AV-rated Iowa City firm, is seeking an exceptional individual to join its active transactional practice. The ideal candidate will have significant experience with real estate and commercial transactions, real estate development, business entities, and estate planning and estate/trust administration with extraordinary communication and analytic abilities, as well as connections to the Iowa City area. *Please send a resume and cover letter to Christine Gaudet at gaudet@phelantuckerlaw.com.*

Litigation partner/Associate – Phelan Tucker Law, LLP, Iowa City, IA – Phelan Tucker Law LLP, an AV-rated Iowa City firm, is seeking an exceptional individual to join its active litigation practice. The ideal candidate will have significant courtroom and discovery experience, extraordinary written and verbal communication skills, strong analytic abilities, as well as connections to the Iowa City area. *Please send a resume and cover letter to Christine Gaudet at gaudet@phelantuckerlaw.com.*

Associate Attorney – Stoneberg, Giles & Stroup, P.A., Marshall, MN – Stoneberg, Giles, and Stroup, P.A. is an established general practice firm in southwest Minnesota with lawyers specializing in real estate, agriculture, family, business, trust,

estate planning and litigation. We are searching for an attorney who is interested in establishing and growing a practice in rural Minnesota. We offer a unique opportunity for new attorneys to begin participating in complex legal matters shortly after being hired. *Applications can be sent to Stoneberg, Giles, and Stroup, P.A., 300 South O'Connell Street, Marshall, MN 56258; Phone Number (507)-537-0591; Fax Number (507) 532-2398; email Barry@sgslawyers.com.*

City Attorney – City of Iowa City, Iowa City, IA – The city attorney is one of three positions appointed and managed by the city council and serves as the legal advisor to the city council, city staff, and most city boards and commissions while also managing the city attorney's office. In addition to the city attorney, the office is staffed by four assistant city attorneys, one legal assistant and one administrative assistant. City of Iowa City online application and resume must be submitted by April 15. *The online application can be accessed at www.icgov.org/jobs.*

Attorney, Family Law – Sullivan & Ward, P.C., West Des Moines, IA – Sullivan & Ward, P.C., a West Des Moines law firm, is seeking a motivated established family law attorney to join our team and provide quality legal guidance to both new and existing clients. Client services would include divorce, child custody and adoption cases. We also welcome inquiries from candidates with experience and clients in other areas of the law that are interested in practicing in family law. *To apply, visit <https://careers.iowabar.org/jobs/14552302/attorney-family-law>*



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Law Clerk 1 – State of Iowa Judicial Branch, Adel, IA – The Fifth Judicial District is seeking qualified applicants to fill a law clerk position. This is intended to be a clerkship opportunity beginning in August 2021, or earlier if available, and ending July 2022. Depending on funding, availability, and performance, this clerkship may be extended up to an additional year. To apply, visit <https://careers.iowabar.org/jobs/14577814/law-clerk-1>

State Court Administrator – State of Iowa Judicial Branch, Des Moines, IA – The Iowa Supreme Court has an excellent opportunity for an innovative and progressive state court administrator (SCA). The SCA is responsible for the administration of all non-judicial activities in a unified, state-funded court system. We are looking for a person who will provide direction and leadership to implement statewide goals established by the Supreme Court. Submit your cover letter, resume, and the Iowa Judicial Branch *Application for Employment* to: SCAHR@iowacourts.gov.

Law Clerk 1 – State of Iowa Judicial Branch, Des Moines, IA – The Fifth Judicial District is seeking qualified applicants to fill a law clerk position. This is intended to be a clerkship opportunity beginning in August 2021, or earlier if available, and ending July 2022. Depending on funding, availability, and performance, this clerkship may be extended up to an additional year. To apply visit, <https://careers.iowabar.org/jobs/14577795/law-clerk-1>

Legal Counsel to the State Court Administrator – State of Iowa Judicial Branch, Des Moines, IA – The Iowa Judicial Branch has an opportunity for an attorney to serve as the counsel to the state court administrator. This position is responsible for providing legal counsel and advice to judicial officers and employees of the judicial branch. This position reports directly to the state court administrator and may supervise another attorney. Submit your cover letter, resume, and the Iowa Judicial Branch *Application for Employment* to: SCAHR@iowacourts.gov.

Corporate/Transactional Attorney – Shindler, Anderson, Gopelrud & Weese, P.C., West Des Moines, IA – Seeking a corporate/transactional attorney with 0-5 years' experience. The ideal candidate would possess outstanding academic credentials, work experience and a strong work ethic. The successful candidate will be involved in the firm's corporate/transactional matters. Please send a cover letter and resume to Jody Jones, 5015 Grand Ridge Drive, West Des Moines, IA 50265 or by email to jones@sagwlaw.com.

Litigation Attorney – Bradshaw Fowler Proctor & Fairgrave, Des Moines, IA – Bradshaw Fowler Proctor & Fairgrave seeks an attorney with 4-6 years of experience in general litigation practice. Bradshaw attorneys in the litigation practice area represent clients in litigated matters in Iowa state and federal courts from the time of filing through trial and appeal, where necessary. Send CV to Jason Palmer at Palmer.Jason@bradshawlaw.com.

OFFICE TRANSITION OFFER

Last chance – Store front practice – Owner of storefront law practice, at same location in central Iowa for more than 50 years, will be retiring at the end of the year. The office is located within 45

minutes of the Polk County Courthouse. Core practice areas include probate, real estate, estate planning, small business entities, criminal, divorce and tax preparation. Excellent opportunity for a confident, industrious, client-oriented attorney with a strong transactional background to mold a practice to suit his or her interests. All terms negotiable. For more information please write: The Iowa State Bar Association, Code 872, 625 East Court Ave., Des Moines, 50309-1904, or email at isba@iowabar.org. Please include Code 872 on the envelope if mailing and in the subject line if emailing.

BUSINESS OPPORTUNITY

Attorneys – Are you interested in expanding your real estate practice and generating more revenue? Unique opportunity awaits. All inquiries will be kept strictly confidential. Please contact the ISBA via email at communications@iowabar.org using reference code 873.

Request for Proposal (RFP) for Legal Services – Des Moines Water Works (DMWW) is seeking law firms with extensive experience representing municipal entities in the areas of municipal law and government relations, employment and labor law, construction law, contract preparation and review, and litigation. Only attorneys who are currently licensed to practice law in Iowa and maintain an office in Des Moines, or firms including such attorneys, may respond to this RFP. Proposals must be submitted no later than 4 p.m. CDT on May 14. Firms interested in responding to this RFP should email Amy Kahler, chief financial officer, at kahler@dmww.com for more information. DMWW reserves the right to reject any and all proposals received in response to this RFP.

PERSONAL

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

Thank you to the speakers for CLE events sponsored by the ISBA in March 2021.

Document Retention and Litigation Holds: Can I Delete This? – March 11, 2021
Michael Dee, BrownWinick Law Firm
Jennifer Lindberg, BrownWinick Law Firm

Stubborn Things: The Importance of Sticking to the Record Facts on Appeal – March 12, 2021
Hon. Mary Tabor, Iowa Court of Appeals

Deposition Tips and Tactics – March 16, 2021
Alex Wonio, Hansen, McClintock & Riley

Introduction to Series LLCs and the Uniform Protected Series Act – March 25, 2021
David Walker, Drake University Law School

Immigration in the Biden Administration: What Has Happened and What to Expect – March 31, 2021
Lori Chesser, Davis Brown Law Firm
Elizabeth Coonan, Davis Brown Law Firm
Elizabeth Van Arkel, Davis Brown Law Firm



Andrew B. Howie APPELLATE LAWYER

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Spotlight ON Service Jay Nardini

For Cedar Falls attorney Jay Nardini, volunteer work is a couples' activity. Nardini and his wife, Candy, have an

impressive tandem devotion to the causes important to them.

One of those causes is cancer. They have both been volunteering for the American Cancer Society in various capacities over the last 30 years, and have volunteered, raised money, and at times been co-chairs, of the Black Hawk County Relay for Life. Candy came up with an idea to help the Hope Lodge in Iowa City, which also serves cancer patients, by "Packing the Bus" for daily needed items. Nardini built several small "buses" to place at local Hy-Vees each year for customers to donate. Then, Nardini and other volunteers deliver the items to the Hope Lodge.

"Some of my volunteer work, I just tagged along on Candy's coattails, others I branched out myself. What I have learned along the way is that we need lots of volunteers for all kinds of organizations," he said.

There aren't many local organizations Nardini hasn't touched in some way. He frequently boxes food for the Northeast Iowa Food Bank, rings bells for the Salvation Army Red Kettle Campaign, served on the board and as chair of a local retirement community, served on the Waterloo Community School Board, serves in leadership roles within his church, and more.

Nardini has been involved in community college service and advocacy since 2011. He was first elected as a Trustee of Hawkeye Community College, then on the board and as chair of the Iowa Association of Community College Trustees (IACCT), and in various capacities on the National Community College organization. He will now serve as the chair of that national association beginning in October 2023.

Nardini has practiced law in Iowa since 1973, serving as an Assistant County Attorney in Woodbury and Black Hawk County until 1978, when he began private practice as a solo

practitioner focused mostly on personal injury cases. But he always made time for volunteer work, and his commitment has only increased since his semi-retirement a few years ago.

"You make time for what interests you," he said. "I've always found service to others to be very rewarding and fulfilling."

Nardini's big heart was recently on public display when news channel KCRG recognized him in a "9 Who Care" spotlight that aired in February. KCRG featured the story of Candy's father, Herbert Kane, a WWII Navy Veteran, who was in a local care facility that locked down on March 14, 2020, his 96th birthday, because of COVID. In the seven years leading up to the lockdown, the Nardinis had visited him nightly, but now couldn't do so in-person.

"We visited him through the glass door at the end of his hall. We could see him confused and failing, and after about two weeks of that, we decided that we had to get him out or watch him die through the glass," he said.

So, they made the decision to pull him out of the facility and move him into their house under the watch of hospice care. They took turns sleeping on the floor by his hospital bed in their living room in case he needed something. He got home-cooked meals and spent time outside until his passing on June 11, 2020.

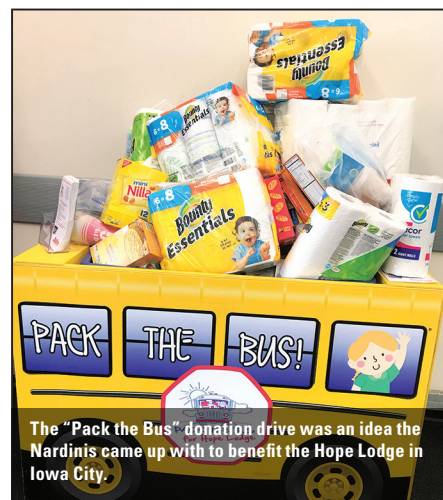
"The time we spent with my father-in-law in the care facility, even before bringing him home, was so impactful," he said. "We developed lots of friendships with people who were residents in the facility. We saw so many people there with nobody to visit them, so we decided to help plan and sponsor holiday parties and special events for them. It was very meaningful."

Nardini grew up in a family that valued service. They owned a grocery store on the square in the small Southeast Iowa town of Bloomfield. His mother became the first female mayor of Bloomfield and served the community as mayor for 20 years.

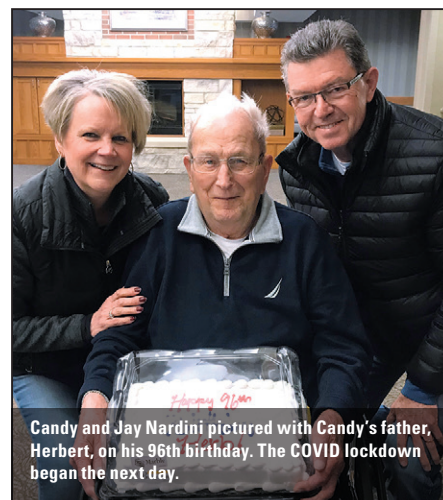
"Between my mother's influence and my wife who has that same service DNA, I have been blessed to be able to serve others," he said.



Nardini is pictured ringing bells for the Salvation Army Red Kettle Campaign. He says he enjoys singing Christmas carols while he rings the bell.



The "Pack the Bus" donation drive was an idea the Nardinis came up with to benefit the Hope Lodge in Iowa City.



Candy and Jay Nardini pictured with Candy's father, Herbert, on his 96th birthday. The COVID lockdown began the next day.



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