IOWA STATE BAR ASSOCIATION

THE IOWA LAWYER

December/January 2018-2019 V 78 N 11

ALSO IN THIS ISSUE

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PAGE 6



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CONTENTS

Volume 78
Number 11
Dec/Jan 2018/19

THE COVER STORY

Senior Judge Robert Blink holds a box of wooden cars that will be given to children whose adoptions are finalized on Polk County's Adoption Saturday. The woodworking enthusiast manufactures about 70 wooden cars each year. The durability of the cars increases the chances they will be kept for years as a memento of the day when the recipient became part of a forever family. Judge Blink's story begins on page 6.

OTHER FEATURES

COLUMNS

IN BRIEF

NEW ISBA SHIRT HELPS LAWPAC

Perhaps there is no better gift for an Iowa lawyer than an ISBA-designed t-shirt stating "Iowa Lawyers: Hate Us Until You Need Us" that also raises money for Iowa LawPAC. With a $20 contribution to the ISBA's political action committee (Iowa LawPAC), you can receive the t-shirt while also helping the association support legislators who support the association's legislative priorities.

A limited number of shirts are available, and they are offered on a first-come, first-serve basis. Unisex sizes available include: Small, Medium, Large, XL, XXL, XXXL.

Visit **iowabar.org/store** (log-in required), then click on the "Misc." category to locate the latest t-shirt. Members may also purchase the previously designed "The Iowa Bar: Serving Up Justice Since 1874" t-shirt.

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ONE MORE GIFT

TOM LEVIS, PRESIDENT

December is the month of giving. Each of us will give presents to family and friends, give time and money to charities and celebrate the holidays with our loved ones. As the song goes: "It's the most wonderful time of the year."

However, for some Iowans facing legal problems, this is NOT the most wonderful time of the year. In fact, it's a terribly frightening time of the year. This December, hundreds of Iowans will appear in court without a lawyer and struggle with the complexities of our legal system. Hundreds more will simply waive their legal rights finding the path to the courthouse too complex to pursue. Without legal assistance, the legal issues for these Iowans will likely be unresolved or, worse, wrongly resolved against them. Many of them are too poor to hire a lawyer but don't qualify for Legal Aid, or Legal Aid has insufficient resources to help them. Each of these Iowans will lay awake at night this December worrying about their future and the future of their families.

As president of The Iowa State Bar Association, and in the spirit of giving, I am respectfully requesting that every Iowa lawyer make one more gift this year. I am asking that each Iowa lawyer take one pro bono case this month. If every Iowa lawyer would take just one pro bono case this month, over 8,000 needy Iowans would have legal help and quite possibly hope.

For those who read the Bible, Luke 12:48 says, "From everyone who has been given much, much will be demanded, and from the one who has been entrusted with much, much more will be asked." The practice of law is not a right. It is a privilege!

Lucille Anderson

Those of us honored with the privilege have a duty and a responsibility to make sure that everyone has access to a lawyer. Iowa lawyers have been given much. Please make one more gift this year. Give the gift of your skill and talent to someone who truly needs it. **To volunteer for your one pro bono case this month, contact one of the following:**

- Polk County VLP: (515) 243-3904
- Story County VLP: (515) 382-2471
- Iowa Legal Aid: (800) 532-1275 ext. 1675

In case you are wondering, there is another reason why you should sign up for your one pro bono case this month; the client you serve will be forever grateful and, in the end, you will feel wonderful.

Let me tell you about a wonderful pro bono case from my hometown of Chariton. Perhaps your December case will be as memorable.

Lucille Anderson was born in 1902 in Chariton. In 1933, at the height of the Great Depression, Lucille could not get a job teaching so she took a job as a secretary for a local Chariton law office. She immediately fell in love with the law. She studied in her free time and successfully took the bar exam four years later.

Lucille had a 40-year career as a lawyer in Chariton. During this 40-year career, Lucille worked full time as a general practice lawyer and later as a magistrate. She was very community minded. In 1940, she helped organize the Business and Professional Women's Club of Chariton and served as a president locally, as a district director, and as state parliamentarian and first vice president. She was an active member of the Lucas County Bar Association, The Iowa State Bar Association and American Bar Association. She was also the Iowa delegate to the National Association of Women Lawyers and received recognition from that group as a "Woman of Achievement." Lucille was a member of the Chariton Chamber of Commerce and served on its Board of Directors for years, the first woman to do so.

But despite her busy career, Lucille also found time to help the poor and needy with their legal needs. One client was an especially memorable pro bono case. In 1952, Lucille Anderson was asked to help a young mother dying of cancer place all 10 of her children in good homes before she died. This cancer-ridden mother had no money and asked Lucille to help her free of charge. Lucille readily agreed. One by one, as quickly as she could, Lucille found wonderful homes for each of these 10 children. Shortly after the last child was placed, Lucille's client died of cancer knowing her children were safe and in good homes.

This story about Lucille's pro bono case was published in Redbook magazine and twice in Readers Digest. In 1982, the story was made into a movie called "Who Will Love My Children." In her first TV movie role, Ann Margaret played the part of the dying mother. Cathryn Damon played the part of Lucille Anderson. The movie won an Emmy Award and two Golden Globe Awards.

Lucille died in 2000 at the age of 98. Before her death, Lucille frequently said that helping this mother was the most rewarding experience of her entire legal career.

"Who Will Love My Children" is a wonderful true story of a lawyer giving back to her community and her profession. I was honored to know Lucille. I hope this December you will follow in Lucille's footsteps and make one more gift.

Thank you, Tom

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WOODEN CARS AND ADOPTION SATURDAY

By Steve Boeckman, Communications Director Emeritus

District 5C Senior Judge Robert Blink creates wooden cars for children who join forever families

It's obvious when talking with Judge Robert Blink that his grandchildren are special to him in more ways than one. They provided the inspiration to make wooden toys for the children whose adoptions are finalized on Adoption Saturday held annually in Polk County on the Saturday before Thanksgiving.

A long-time participant in the annual adoption event, the veteran judge saw the joy on his grandchildren's faces when they played with the wooden toys he made for them. Plus, he realized how much enjoyment he felt watching them play.

"A man who makes wooden gifts is twice happy," he says, "once when he makes the toy and once when he gives it."

At some point, several years ago, the thought occurred to him that newly adopted children might find the same joy from a wooden toy as did his grandchildren. Children who are adopted on Adoption Saturday receive Beanie Babies and, in some cases handmade quilts. But the District 5C senior judge, who retired in November a year ago, thought maybe the new adoptees would enjoy a toy with wheels – a car or truck – that they could push around.

"I thought, this is not too difficult," he recalls when he considered the idea more seriously. "I'd been involved in the Adoption Saturday program for some time and thought this might be interesting."

What he hadn't counted on, though, is the amount of time it would require. When he first started, he made several different styles of cars and trucks because "part of the fun is to be creative." He quickly learned, however, that 1) it takes a lot more time to make several different styles, and 2) children don't always agree on the style they want.

"You don't want them arguing on Adoption Saturday about who gets what," the judge says. "So, if all things are equal, you ameliorate problems."

Today, he makes only one style of car – a sedan – that he can construct in about 17 minutes. That still requires about 24 hours for the 70 cars he makes each year.

"It's not difficult work," he acknowledges. "It's repetitive production work."

As a result of his experiences, he has a greater appreciation for Henry Ford. Ford discovered nearly 100 years ago that a production line is the best way to make the same thing over and over again.

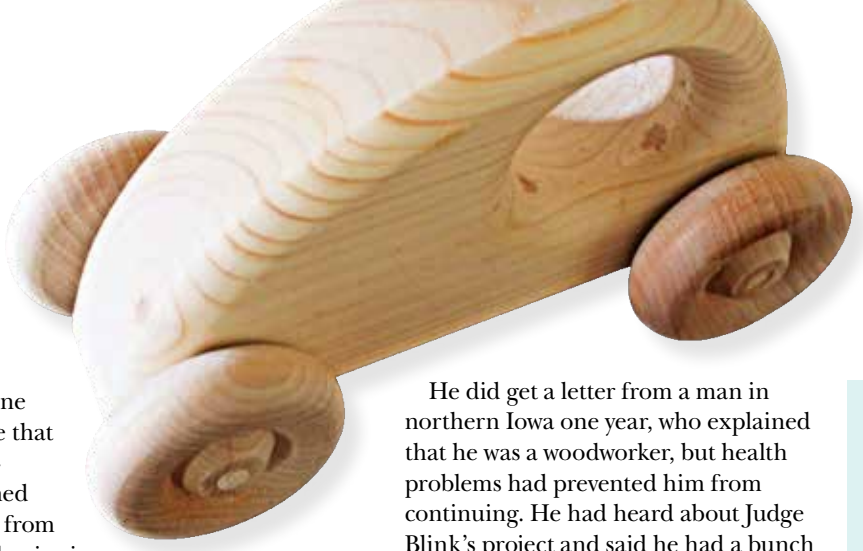
The design he settled on is simple yet sturdy.

"It's amazing how the children react to them," he says. "I designed them so there's a large hole in the middle like a window, and it works perfectly for little fingers to fit inside."

It's a good thing the cars are sturdily built. The judge says that almost as soon as a child gets the car, he or she starts banging it on the counsel table or zooming it around.

That doesn't bother him. In fact, he enjoys it. "It's like watching your grandchildren play," he says.

This is the template Judge Blink uses to create his cars. After initially creating a half dozen templates in different styles, he settled on this one.



One issue that concerned him from the beginning was how to finish the cars. He wanted something that would stand up to the banging around that the cars get. He also wanted something that would not create an allergic reaction in children.

He finally settled on pure beeswax. It's simple, natural and shouldn't cause any reactions even if a child puts it in his mouth.

He also thought about using shellac because it's not harmful in any way. It's also natural once it hardens. Thus far, he has stuck to the beeswax, even using a lavender-orange beeswax one year. "It really smelled good," he laughed.

So far, he has been making the 70 cars each year by himself. Other than his wife, Kim, who is very patient with him "hiding in his sanctum santorum" when maybe she'd prefer that he mow the grass or help her with a project, he hasn't had any takers. Even his friends, including former colleagues, who do woodworking have declined to this point. As he puts it, "when I invite people in, there hasn't been a rush to the door."

Judge Blink cuts out the body of a wooden car on the bandsaw in his basement shop.

He did get a letter from a man in northern Iowa one year, who explained that he was a woodworker, but health problems had prevented him from continuing. He had heard about Judge Blink's project and said he had a bunch of wooden wheels that he wondered if the judge could use. Judge Blink replied that he thought he could.

"I kind of forgot about it," he says. "One day about a month after the exchange, a large box showed up on my doorstep. I opened it and there were 100 wheels inside. And, best of all, they were the perfect size for my cars.

"I used the wheels on the next batch of cars I made, took a picture of the cars and sent it to him. That was such a kind gesture."

Despite the time involved and the sanding of 70 car bodies (he hates sanding) each year, Judge Blink plans

WOODWORKING & LAW: MUCH THE SAME

It's probably no surprise that Judge Robert Blink enjoys woodworking. Law and woodworking are very much alike, he says.

The District 5C senior judge, who retired in November 2017, likens the law to a woodworking tool sitting on a bench. It's inanimate until someone puts a hand to it.

There's an art and science to dealing with the law, just as there is with making something out of wood, he adds. You can be creative with both, but there are also rules to follow in both cases.

A difference between the two is that working with wood is very tactile, he concludes.

to continue. What adoptive parents do is beyond measure, he says. They're not only giving to the child they adopt, they're giving to society in general.

"Well beyond the financial aspect, you have children who will undoubtedly be better adjusted because they grew up in a loving home," he explains.

So now, every time he sands a car body, glues on a wheel or applies beeswax to the final creation, he thinks about where it will go. These cars are relatively indestructible so they're going to be around for a long time, maybe on a shelf or packed away, he says. But each one serves as a good memento for that child of a wonderful time when he was brought into a forever family.

And, "that's why grandpas do what they do," he says.

Judge Robert Blink is this issue's Spotlight on Service honoree. If you would like to nominate an ISBA member to be recognized in the monthly Spotlight on Service feature, please contact **mhiggins@iowabar.org.**

2018 POLK COUNTY ADOPTION SATURDAY SEES 26 CASES FINALIZED

A total of 39 children were adopted in 26 separate adoption proceedings at Polk County's 18th Annual Adoption Saturday on Nov. 17. The total included one family from Mitchellville who adopted four children ages 3, 4, 8 and 12.

Adoption Saturday began in Los Angeles County, California, partially in response to the 1997 federal Adoptions and Safe Families Act. Its goal was to raise awareness of the more than 117,000 youth in foster care who were waiting for permanent loving families. Nearly 70,000 youth have been adopted since the one-day event began.

Polk County joined the movement in 2001, with the first Adoption Saturday seeing adoptions finalized for 21 children. At least four other counties in the state also hold Adoption Saturdays in November.

The Polk County event, which occurs the last Saturday before Thanksgiving, is designed for the families and their attorneys who have completed the requirements for adoption and merely need to have it finalized. Organizers make the event a festive occasion with craft projects and face painting for children in the common area, and balloons, stuffed toys and wooden cars in the courtrooms. This year Batman and Wonder Woman wandered around the waiting areas and had their photos taken with children and parents waiting for their turns in the courtrooms.

Perhaps the day's impact can best be described by an article in the January 2001 Iowa Lawyer that stated: Children who are adopted "will now know where they will celebrate Thanksgivings and Christmases and their birthdays and Fourth of July celebrations for all the years of their childhood."

Wooden cars rest on the bench in one of the courtrooms used during Adoption Saturday.

A face painter offers children the opportunity to sport a favorite image on their faces.

Organizers give Adoption Saturday a festive atmosphere. Here children make creations out of beads.

Superheroes Batman and Wonder Woman strolled throughout the crowds and posed for photos with the children.

AUTHENTICATING SOCIAL MEDIA EVIDENCE

By Brett Wessels, Assistant County Attorney for Pottawattamie County

"There is no way Plaintiff can overcome the presumption that the information he discovered on the Internet is inherently trustworthy. Anyone can put anything on the Internet."
- St. Clair v. Johnny's Oyster & Shrimp, Inc., (S.D. Tex. 1999)[1]

In late August, the National Computer Forensic Institute (NCFI) hosted a Digital Evidence course outside Birmingham, Alabama. While Alabama football fans eagerly anticipated their season opener, our class of 20 prosecutors attended four days of instruction in a magnificent 32,000-square-foot facility. One evidentiary issue discussed was the uncertainty surrounding authenticating social media evidence. This short article briefly addresses this topic and contains footnotes for reference.

AUTHENTICITY AND SOCIAL MEDIA

There are few evidentiary rules as longstanding and uncontroversial as authenticity. A condition to admissibility since ancient times, Wigmore on Evidence called the rule an "inherent logical necessity."[2] When being codified in the early 1970's, even legislators couldn't argue over authenticity, and the common law seamlessly carried over to the Federal Rules of Evidence.

While authenticity epitomizes uncontroverted longevity, technology has spurned the social media explosion. Since you started reading this article, about 180 new Facebook profiles were created and over 180,000 Tweets were sent. Facebook and Twitter are two widely popular platforms, but social media exists for nearly every interest group.[3]

The accessibility and self-revelatory nature of social media has created a potential evidentiary goldmine (or perhaps, landmine) for litigators. However, evidence must first be admitted. If a purported social media account holder denies ownership, this scenario implicates authenticity. This raises the topic of this article: What is the status of authenticating social media evidence?

THE LEGAL STANDARD FOR AUTHENTICITY

For authenticity, a judge makes a preliminary legal determination of whether a reasonable jury could find the item to be what it purports to be. Unlike a highly categorical rule like hearsay, authentication is a very flexible.[4] The origin of the evidence does not need to be conclusively proven and extrinsic evidence establishing authenticity can be entirely circumstantial. The question can be viewed on a continuum: Clearly authentic evidence is admitted, clearly inauthentic evidence is excluded and everything between is conditionally admitted and left for the jury to decide.[5]

Ideally, an offering attorney will be armed with a stipulation, admission, or direct witness. For example, John Doe admitting responsibility for sending a Facebook message likely meets 'clearly authentic.' Additionally, Jane Doe witnessing John Doe type and send the Facebook message likely meets 'clearly authentic.'

Traditionally, the conditional admittance threshold has been very attainable.[6] However, since 2011, two approaches – the Texas and Maryland Approaches – for authenticating social media have been popularized and one is inconsistent with the traditional standard.

The "Texas Approach" is the majority approach for authenticating social media evidence and is consistent with the traditional authentication standard.[7] The preliminary question remains whether a reasonable jury could find the evidence authentic and this can be established by entirely circumstantial evidence.

Obviously, some unique challenges exist. For example, a handwriting analysis cannot be conducted on a Facebook post. However, other traditional methods (i.e., identifying distinctive characteristics) are still applicable under the Texas Approach. In other words, the name "Texas Approach" might be a misnomer because this approach largely applies the traditional legal principles of authenticity and does not carve out any special rules.

The "Maryland Approach" represents a more skeptical contingent of jurisdictions applying a higher standard of authentication.[8] These courts believe that social media evidence is inherently unreliable and highlight easily created accounts, unattended devices and hacking, as reasons for concern.[9] Disadvantageously, the offering attorney must affirmatively disprove the possibility that someone else created the evidence. Geographically speaking, this approach appears more prevalent on the East Coast and does not appear to have widespread acceptance.

SUCCESSFULLY AUTHENTICATING SOCIAL MEDIA EVIDENCE

Despite the Maryland Approach's best efforts, the good news is that social media evidence has not dramatically altered the authentication landscape.[10]

However, the bad news is that no uniform approach exists. From a methodology standpoint, authenticating social media evidence remains a flexible process. Since no one-size-fits-all approach exists, below are three wide-ranging observations on authenticating social media evidence.

Extrinsic evidence. Any type of circumstantial evidence is helpful.[11] This implicitly means that several small strands of extrinsic evidence may be sufficient. In other words, extrinsic evidence may be used in piecemeal fashion to cumulatively establish authentication. For example, helpful extrinsic evidence might include a Facebook profile being linked on a phone, consistent email addresses, or GPS location establishing where a social media posting was made.

Extrinsic evidence includes witness testimony. This includes witnesses communicating with the purported author on social media,[12] witnesses in social media photos, or witnesses corroborating unique information posted on social media.

Significantly, a witness does not need to be positive about the identity of the author, but just provide evidence supporting the likelihood of the social media authorship.[13] For example, Jane Doe does not need to be positive John Doe was the author of a Facebook Chat, but does need to testify why she believed John Doe was on the other end of the Facebook Chat.

Distinctive characteristics. A subset of extrinsic evidence, distinctive characteristics is often regarded as the most successful method of authentication. This can be thought of as highlighting corroborating information on the social media account to help establish authorship.

The more unique and specific the information is, the more persuasive.[14] Social media profiles are replete with personal information such as birthdays, hometown, hobbies, personal background, lifestyle preferences, pictures, status updates, Twitter followers and Facebook Friends. A fake social media account may still contain truthful, revelatory biographical information. The text itself may provide authentication evidence by substance, syntax, internal patterns, unique information, slang, nicknames or consistency.

For example, if Jane Doe denies posting a Facebook status update, look at Jane Doe's previous Facebook status updates. Examine the punctuation, emojis, language, style, substance and frequency. Jane Doe's previous Facebook status updates can potentially connect Jane Doe to the offered evidence. If previous Facebook status updates resemble the offered evidence, this means Jane Doe is more likely to have authored the offered Facebook status based on these distinctive characteristics. This is authenticating the Facebook status update. Remember, conclusive proof of Jane Doe's authorship is unnecessary, just enough circumstantial evidence to be conditionally admitted.

Photographs and video. Social media photographs and videos are authenticated similarly to non-social media photographs and videos. For example, a Facebook photograph would be authenticated by establishing the Facebook photograph is a fair and accurate representation of the subject matter.

However, note that careful lines must be drawn between photographs/videos and textual evidence during authentication.[15] This requires paying close attention to the type of extrinsic evidence being used and a basic working knowledge of the underlying platform.

For example, John Doe might put a photograph from Google Images on his Twitter account. However, John Doe did not take the photograph, does not know the photograph's origin and does not know whether the photograph accurately represents the subject matter. All John Doe did was copy and paste the photograph to his Twitter account. Therefore, even as a cooperative witness, John Doe is unlikely to be able to authenticate a photograph on his own Twitter account.

Now suppose John Doe did take and post the Twitter photograph, but denies doing so. When authenticating the Twitter photograph, exclusively relying on John Doe's Tweets to authenticate the Twitter photograph may be insufficient. John Doe's Tweets may help authenticate information on the Twitter account, but by itself, arguably does not authenticate the Twitter photograph.

How do the Tweets show where the Twitter photograph came from? How do the Tweets establish personal knowledge of the photograph? John Doe's Tweets might be a helpful strand of evidence offered in the cumulative for authentication, but if possible, try not to exclusively rely on that evidence to authenticate a photograph.[16]

Conversely, using John Doe's Twitter picture may be insufficient to authenticate textual information. John Doe's Twitter profile picture, by itself, does not prove John Doe's authorship for all the information on the Twitter account.

AUTHENTICATING SOCIAL MEDIA EVIDENCE IN IOWA

There are two helpful Iowa Court of Appeals cases, one juvenile and one criminal. In 2012, In re A.D.W. examined whether the juvenile court improperly admitted a Facebook photograph tying one parent to a marijuana growing operation.[17]

Although not reversing the holding, the Court determined that authentication of the Facebook photograph was insufficient.[18] There was no evidence

identifying the time or place of the photograph, who took the photograph, who posted the photograph, who was aware the photograph was posted, or any personal knowledge surrounding the photograph. Therefore, there was insufficient authentication because there was no foundational testimony offered.[19] Despite being decided by lax juvenile evidentiary standards, In re A.D.W. still illustrates insufficient authentication.

In 2018, a defendant contested the admission of incriminating Facebook messages in State v. Akok. Ultimately, the Court concluded there was no abuse of discretion in admitting the Facebook messages and provided a clear, logical statement of Iowa's law on authenticity. The Court stated authenticity can be predicated on circumstantial evidence, generally clear proof is not required, and any speculation to the contrary affects weight.[20] The Court then applied these principles to the admitted Facebook messages. This legal analysis reaffirms that the traditional legal standard of authenticity applies in the social media context.

Iowa's approach. Akok and In re A.D.W., neither of which have negative treatment on Westlaw, establish that Iowa follows the majority Texas Approach. In re A.D.W. cites to the leading Texas Approach case, and neither Iowa case demands a heightened standard of authentication.[21] In fact, Akok concluded sufficient authentication based on only two circumstantial pieces of evidence. In re A.D.W. only found the evidence to be clearly inauthentic because not a single competent witness verified the social media photograph.

Furthermore, both Akok and In re A.D.W. acknowledge that social media photographs are authenticated the same as traditional photographs. Noticeably, both cases cite to law from well before the advent of social media. For example, Akok cites to two Iowa cases from the 1920's.[22] This underscores the fact that the Iowa judiciary believes the law of authenticity has not changed, even with the emergence of social media. Therefore, despite some new challenges, the longstanding standard and methods of authenticity are still applicable to social media evidence.

AUTHENTICATING SOCIAL MEDIA EVIDENCE: MAIN TAKEAWAYS

- Authenticity does not need to be proven conclusively, can be entirely circumstantial, and attacks typically go to the weight of the evidence. The best evidence for authentication is a stipulation, admission or a direct witness.
- Traditional rules and methods of authentication apply to social media evidence.
- There are two primary legal standards for authenticating social media evidence. The Maryland Approach is a heightened standard and the Texas Approach embodies the traditional standard. The Texas Approach is the majority and followed by Iowa.
- Identifying distinctive characteristics of text on a social media account (i.e., Facebook Post, Tweets, profile information) may not by itself be sufficient for authenticating photographs/videos (i.e., Facebook photo, profile photo). Conversely, using only photographs/videos to authenticate text on a social media account may be, by itself, insufficient.
- There is Iowa case law illustrating insufficient authentication (In re A.D.W.) and sufficient authentication (Akok) of social media evidence.

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1. St. Clair v. Johnny's Oyster & Shrimp, Inc., 76 F. Supp. 2d 773, 775 (S.D. Tex. 1999).

2. 7 J. Wigmore, Evidence in Trials at Common Law § 2129, at 703 (Chadbourn rev. ed. 1978).

3.Gaming: World of Warcraft, PlayStation, and Xbox Live; Social Games: Clash of Clans and Farmville; Discussion Forums: Meebo and Skype; Sharing: Instagram and Pinterest; Publishing: Blogger and Wikia; Microblog: Twitter and Pownce; Virtual Worlds: Second Life and Club Penguin; Livecasting: Justin.tv and Periscope; Lifestreams: Socializr and Friendfeed; Relationships: eHarmony, Tinder, and Bumble

4. Aviva Orenstein, Friends, Gangbangers, Custody Disputants, Lend Me Your Passwords, 31 Miss. C. L. Rev. 185, 203 (2012) ("Unlike hearsay, which is very technical and categorical, authentication is ultimately more flexible and practical, but less uniform and predictable.") (citation omitted).

5. Authentication of Social Media Evidence, 36 AM J. Trial Advoc. 433, 457-458 (2013); Andrew Jablon, "God Mail": Authentication and Admissibility of Electronic Mail in Federal Courts, 34 Am. Crim. L. Rev. 1387, 1399 (1997).

6. For preventing admissibility, a more effective approach might be properly identifying hearsay. Since statements on social media are by definition out of court, such a statement potentially raises traditional hearsay concerns. In fact, there is scholarly work stating that hearsay is easier to apply to social media evidence than authentication. See Emma W. Sholl, Exhibit Facebook: The Discoverability and Admissibility of Social Media Evidence, 16 Tul. J. Tech. & Intell. Prop. 207, 221 (2013).

7. Elizabeth Flanagan, #Guilty? Sublet v. State and the Authentication of Social Media Evidence in Criminal Proceedings, 61 Vill. L. Rev. 287, 293-294 (2016).

8. United States v. Hobbs, 403 F.2d 977, 978 (6th Cir. 1968); See Also Deborah R. Eltgroth, Best Evidence and the Wayback Machine: Toward A Workable Authentication Standard for Archived Internet Evidence, 78 Fordham L. Rev. 181, 188 (2009).

9. Lorraine v. Markel American Ins. Co., 241 F.R.D. 534, 537, 73 Fed. R. Evid. Serv. 446 (D. Md. 2007). This is considered the landmark case standing for the proposition that the traditional rules of evidence apply to social media evidence.

10. "The authentication of electronically stored information in general requires consideration of the ways in which such data can be manipulated or corrupted, and the authentication of social media evidence in particular presents some special challenges because of the great ease with which a social media account may be falsified or a legitimate account may be accessed by an imposter. But the authentication rules do not lose their logical and legal force as a result." United States v. Browne, 834 F.3d 403, 412 (3d Cir. 2016) (citations omitted).

11. United States v. Browne, 834 F.3d 403, 412 (3d Cir. 2016) (examining other jurisdictions using extrinsic evidence to authenticate social media evidence).

12. United States v. Barnes, 803 F.3d 209, 217 (5th Cir. 2015) ("The Government laid sufficient foundation regarding Holsen's Facebook and text messages. Holsen testified that she had seen Hall use Facebook, she recognized his Facebook account, and the Facebook messages matched Hall's manner of communicating.")

13. United States v. Barnes, 803 F.3d 209, 217 (5th Cir. 2015) ("Although she was not certain that Hall authored the messages, conclusive proof of authenticity is not required for the admission of disputed evidence. As the district court correctly recognized, the jury holds the ultimate responsibility for evaluating the reliability of the evidence.") (Citations omitted).

14. Tienda v. State, No. 05-09-00553-CR, 2010 WL 5129722, at 5 (Tex. App. Dec. 17, 2010) (stating that even users who choose to use pseudonyms often still reveal unique information which can help establish authentication).

15. Textual social media evidence refers to anything that is text. Facebook posts, Facebook status updates, Facebook profile information, Twitter account information, Tweets, and a Twitter handle, are examples of textual information.

16. While a photograph on a social media account does not by itself authenticate a social media profile, a large number of pictures (including a profile picture) matching the purported author will be helpful evidence. See United States v. Lewisbey, 843 F.3d 653, 658 (7th Cir. 2016).

17. In re A.D.W., 821 N.W.2d 778 (Iowa Ct. App. 2012).

18. For a more in-depth case involving no evidence tying a purported author to a social media page, See United States v. Vayner, 769 F.3d 125,132 (2d Cir. 2014) ("And contrary to the government's argument, the mere fact that a page with Zhyltsou's name and photograph happened to exist on the internet...does not permit a reasonable conclusion that this page was created by the defendant or on his behalf.")

19. In re A.D.W., 821 N.W.2d 778 (Iowa Ct. App. 2012).

20. State v. Akok, No. 17-0655, 2018 WL 4362065, at 1 (Iowa Ct. App. Sept. 12, 2018).

21. Id. ("In admitting the Facebook messages into evidence, the trial court noted that the Facebook messages were sent from the account of a person identifying himself to be Akuk Akok. The specific messages in the exhibit were sent from an internet protocol address associated with the University of Iowa Hospitals and Clinics during a time when Akok was being diagnosed and treated there. The court determined this circumstantial evidence was sufficient to make a prima facie showing of authentication.")

22. Id.

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CHANGES TO MARITAL DISSOLUTION LAWS WITH SIGNIFICANT FINANCIAL IMPACTS

By Jeremy J. Green

DEDUCTIBILITY OF ALIMONY ENDING

Due to recent changes in federal tax law, The Tax Cuts and Jobs Act, alimony payments will no longer be deductible by the payor for income tax purposes through the year of 2025 for divorce decrees entered after December 31, 2018.

Though alimony payments have never been popular with those who have had to make those payments, there has been an income tax "silver lining." Due to the progressive structure of the income tax rate schedule where the higher your income the higher the tax rate, what the payor saved in income taxes through deductibility was more than the income tax cost of the alimony income to the recipient. Thus, the treasury of the government has subsidized the alimony recipient with the difference in the payor's tax savings and the recipient's tax cost.

What does this mean for the now? It means there still could be a financial benefit to the higher earning payor agreeing to make alimony payments to settle the divorce, but only before 2019. Divorce decrees in existence prior to 2019 will continue to enjoy the tax benefit of being "grandfathered" with continued deductibility of the alimony amount from their taxable income in future years. In other words, if the divorce decree is not final until 2019 and alimony will be paid, the alimony will no longer be deductible by the payor for income tax purposes.

Though counter intuitive, the spouse receiving alimony may also wish to have the divorce settled prior to 2019. The reason is that the alimony payor, due to lack of tax deductibility, may not be able to afford to pay as much in alimony payments as the amount that could have been paid had the alimony still been tax deductible. Thus, the alimony recipient will likely have less disposable income than if the divorce had concluded prior to 2019 as the "silver lining" subsidy has ended.

COMPARATIVE EXAMPLES OF THE IMPACT

Example One:

Let's say our higher earner has taxable income of $100,000 a year and pays their ex-spouse $10,000 in alimony. Under the old law for 2018, our higher earner, a "single" filing status taxpayer, will pay taxes on $90,000 of net taxable income since the $10,000 of alimony is fully deductible for federal income tax purposes. The lower earner carries the tax burden for the alimony received by reporting it as taxable income and paying federal income tax on the amount. Also, let's assume that the ex-spouse, a "head of household" filing status taxpayer, has a small amount of income from a part-time job. Therefore, the total tax paid on the $10,000 alimony payment is $1,000. See the calculation below:

EXAMPLE ONE			
Higher Earner – Payor			
Taxable Income Reduction	Effective Tax Rate	Reduction in Tax Liability	Out-of-Pocket Cost
$10,000	24%	($2,400)	$7,600
Lower Earner – Ex-spouse Recipient			
Taxable Income Reduction	Effective Tax Rate	Increase in Tax Liability	Net Alimony Received
$10,000	10%	($1,000)	$9,000

The "after tax" cost of the deductible alimony to the higher earner is $7,600 ($10,000 less $2,400) and the net alimony received by the lower earner is $9,000 ($10,000 less $1,000) with a treasury subsidy of $1,400 – a 18.4 percent beneficial difference to the recipient ex-spouse.

Example Two:

Contrasting the above example with a divorce that is dated after 2018, our higher earner has $100,000 of taxable income per year but claims that, due to income taxes owed, will only agree to make alimony payments to the ex-spouse per year that equate to an out-of-pocket cost of $7,600 (the same amount as the payor's out-of-pocket cost of Example One above). Therefore, under the new law in effect at the time of their divorce decree, the higher earner's taxable income would be the full $100,000 because the alimony payments are no longer deductible. Per the following analysis, the out-of-pocket cost to the payor would be $7,600. This leaves only $7,600 to pay as non-taxable alimony to the ex-spouse. See the example two chart:

EXAMPLE TWO			
Higher Earner – Payor			
Out-of-pocket Cost	Effective Tax Rate	Tax Liability	Net Alimony Paid
$7,600	0%	0	$7,600
Lower Earner – Ex-spouse Recipient			
Taxable Income	Effective Tax Rate	Tax Liability	Net Alimony Received
$0	0%	0	$7,600

As is evident from the above examples that compare current tax law through 2018 to new tax law in 2019, the ex-spouse recipient's disposable alimony is reduced by $1,400 ($9,000 less $7,600), a nearly 16 percent reduction of disposable alimony in this example. However, since the new maximum federal income tax rate can be as high as 37 percent on high income individuals, the reduction of alimony percentage can be as high as 30 percent to the ex-spouse recipient. Essentially, the new tax law for 2019 shifts the tax burden from the low earner paying a lower tax rate (recipient), to the higher earner (payor) and eliminates the treasury subsidy.

The loss of deductibility will mean less funds available. Since many recipient ex-spouses also provide a home for the children of the former marriage, the 2019 tax law change removes a tax subsidy to them. Regardless of which side of the table you are sitting in marital dissolution matters, understanding the changes in the federal income tax treatment of alimony payments beginning in 2019 is crucial when calculating the availability of funds to meet these payment obligations and when advising clients in negotiating equitable agreements.

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HAPPY 75TH ANNIVERSARY IOWA STATE BAR FOUNDATION!

By Bruce Graves

Convoluted and verbose though it may be, the message of that Old English toast (at the top of adjacent page) fittingly expresses the spirit behind the founding of the Iowa State Bar Foundation. Next year the Foundation will mark the 75th, or "Diamond Jubilee," Anniversary of that visionary and far-reaching event, and the occasion provides us with an opportunity to reflect on how well that goal has been met over those years.

THE FOUNDATION'S BIRTH

The date was Dec. 29, 1944, and the world was at war in Europe and in the Pacific. Bread was nine cents a loaf, gasoline was 21 cents per gallon, a new car cost $1,220 and the average annual salary was $2,600.

Directors of the Iowa State Bar Foundation gather at the ISBA's headquarters building for a quarterly meeting. Directors review grant requests, receive updates on the Foundation's investment status and other items at these quarterly meetings.

That was the era and the date on which the Iowa State Bar Foundation (ISBF) sprang into existence upon the filing of its articles of incorporation with the Iowa Secretary of State. The Iowa State Bar Association, whose membership consisted of 2,100 of the 2,800 lawyers in the state (including 600 who had enlisted in the military), had been incorporated two years before (although its origin went back to 1874.), and it was both natural and logical that the Foundation would soon follow.

The idea was first presented at a meeting of the association's board of governors in June 1944, when a former ISBA President, Burt J. Thompson of Forest City, proposed establishing a "trust fund" to receive gifts and bequests "for the use and benefit of the association." Demonstrating that some things never change, the idea was promptly referred to a newly-formed committee for study. By September 1944, the "Committee on Endowment Fund" chaired by Thompson had prepared articles of incorporation for the "Iowa State Bar Foundation" containing a four-paragraph clause enumerating the corporation's specific purposes and powers, one of which was "for the benefit, aid, assistance, or maintenance of The Iowa State Bar Association, or for the advancement or support of the interests and purposes of said association." The articles were later revised to specify that "the receipt of gifts and devises (were) to be used for the advancement of jurisprudence and the promotion of the administration of justice and uniformity of judicial decisions."

When Thompson presented the proposed articles to the association's board of governors that September, they were approved unanimously. The articles as filed showed the signatures of the five incorporators and directors: Thompson; Wayne G. Cook of Davenport, then president of the association; James W. Bollinger, likewise of Davenport; John A. Senneff of Mason City; and Thomas B. Roberts of Des Moines. They listed Thompson as president, Bollinger as vice-president and Roberts as secretary-treasurer. These were the same five lawyers comprising the Committee on Endowment Fund that had been directed by the association to study the idea. The Foundation's beginning principal fund consisted of contributions totaling $7,000.

The five founders also signed a declaration that in part explained the purpose of the Foundation:

"is soliciting funds in the hope that a substantial endowment may be built which will be used indefinitely...As long as there are lawyers and a legal profession this corporation will continue to function...[I]t will live long into the future and those who are interested may confidently depend upon a long and useful service of any fund entrusted to its care."

> **"When we and ours have it in our power to do for you and yours what you and yours have done for us and ours, then we and ours will do for you and yours what you and yours have done for us and ours."**

With prescience born of wisdom, they continued:

"We are going to live in a new world. There will be new and serious problems. It is hoped that what we do now will be carried forward in greater measure by those who follow us and that we will have in a few years a strong institution equipped to perform a much greater service than our profession has ever been able to render heretofore."

From their founding documents, and especially from the commonality of their original purposes, the link between the bar association and the Foundation is obvious. Today, under its restated articles, the Foundation exists "to support those programs and services of The Iowa State Bar Association and other organizations approved by [it] which...facilitate understanding of and compliance with the law, promote the study of the law and research thereof,...encourage and promote legal assistance to the poor and disadvantaged people, [and]...furnish or manage any building, lands or grounds relative to the administration of justice..."

RAISING FUNDS

The Foundation carries out its eleemosynary purposes by soliciting and accumulating contributions from Iowa lawyers and distributing its earnings through grants for qualifying purposes and organizations. Throughout the Foundation's history, the programs, sections and committees of the bar association have been the recipients of the great majority of the Foundation's grants ($58,000 out of $77,000 in FY 2018), but other worthy entities such as Iowa Legal Aid, the Iowa College of Law and the American Judicature Society have also received significant grants over the years. And over the years, the Foundation has attracted donations from the lawyers of Iowa through a variety of innovative fundraising programs.

In 1991, for example, the Foundation's board of directors included Ed Hansell of Des Moines, who later became president of the ISBA and then the ISBF. As all good board members do, Ed thought frequently about how to generate more contributions to increase the Foundation's principal fund. Searching about for ideas, Ed came across the American Bar Association's Fellows program and, after pondering whether the ISBF might adopt a similar program, consulted with Al Brennecke of Marshalltown, a former member of the ABA Board of Directors and chairman of its House of Delegates. One fall day (likely on an Iowa football weekend), Ed and Al journeyed together to a Foundation board meeting in Iowa City, proposed the idea to the entire board, and the Fellows program of the Iowa State Bar Foundation was born.

Being a Fellow in the Foundation is an honor, for it recognizes professional achievement, dedication to the profession and the objectives of the association, and public service and leadership. A Fellow assumes an obligation to make a $1,000 donation to the Foundation over time, and when that amount is fully paid, he/she becomes a Life Fellow with no required additional contributions. Currently, there are 47 Fellows and 259 Life Fellows.

The Fellows program received an additional boost a few years later when it was decided to send each new Life Fellow a signed 20" x 26" print of the Iowa State Law Library at the Capitol by nationally-renowned watercolorist David Coolidge, a graduate of Drake University. The prints of the beautiful watercolor continue to make nice gifts to new Life Fellows even today.

Twenty years after the creation of the Fellows program, of course, a sum of $1,000 would not go as far as it did in 1991. Contributions in excess of that sum were needed. So, in 2010, during the presidency of Judge John Lloyd of Osceola, he and Foundation board member Paul Tyler of Des Moines proposed an enhancement to the Fellows program known as the Life Fellows Giving Societies to provide gifting incentives to Life Fellows who had completed their initial $1,000 pledge. Under their proposal, which was unanimously adopted by the Board in 2012, a Life Fellow who contributes or pledges additional contributions totaling at least $800 is named a Sustaining Life Fellow (14 currently); one who contributes or pledges at least $2,000 is named a Life Patron Fellow (two currently); one who contributes or pledges at least $5,000 becomes a Life Benefactor Fellow (two currently); and

John Wheeler, director of the ISBA's Center for Law and Civic Education, addresses mock trial participants and their parents before the start of the final round of a mock trial state championship. The Center for Law and Civic Education has been a major recipient of grants from the Foundation.

one who pledges or contributes at least $10,000 is named a Life Leadership Fellow. Payments of all giving societies' pledges, which include any memorial contributions, must be completed over a period not exceeding eight years (27 currently). All Fellows receive from the Foundation a certificate commemorating their status, as well as recognition in the Foundation's Annual Reports distributed to all members of the bar.

Then, in 2012, a new capital campaign was proposed by board member Bill Scherle of Des Moines to augment the Foundation's principal fund by one million dollars through pledges of $10,000 payable $1,000 per year for 10 years, with all contributions qualifying under the Life Fellows Giving Societies program. Scherle was elected president of the Foundation for 2013-2015, and in that period steered the new capital campaign program to its adoption by the board in late 2014. To date, the capital campaign has received pledges totaling $404,000.

AWARDING GRANTS

To quantify the Foundation's progress in achieving its purposes, Chart A provides some perspective by comparing a few important numbers from the fiscal year 15 years ago to the fiscal year that ended in 2018.

Altogether, the Foundation made grants totaling $764,000 over those 15 years, $591,000 of which were to The Iowa State Bar Association.

All contributions received by the Foundation are added to its principal fund which is invested and managed by a professional investment manager and carefully monitored by the Foundation's Board of Directors at its quarterly meetings. The investment income earned on that fund and, on occasion, a portion of the fund's capital appreciation, are what are used to fund grants approved by the board of directors at those same quarterly meetings. All entities seeking grants, including the ISBA, must complete a grant application form explaining the need for and intended use of the funds.

Among the grants made over the years are: $15,000-$25,000 for the ISBA's Loan Assistance program, which assists qualified young lawyers in repaying their student loans; $45,000 per year for the ISBA's Mock Trial program that involves over 4,000 students in 250 schools across the state; $20,000 per year for the ISBA's Know Your Constitution program involving 900 students from 40-50 Iowa schools; $12,000-$15,000 per year for three years to the University of Iowa College of law for its "We the People" project; a $50,000 disaster relief grant to assist 250-300 lawyers and 59 law firms in northern Iowa in restoring their offices that had suffered severe damage from early summer tornados and floods; and a grant of $25,000 for financial assistance on behalf of the Louisiana and Mississippi Bar Associations following Hurricane Katrina.

Two of the most interesting grants by the Foundation involved "twin" 1875 law office buildings standing side by side across the street from the Guthrie County Courthouse in Guthrie Center. Both were one-story, white clapboard, two-room buildings that had been occupied continuously as law offices for 127 years. One was built that year as the law office of C.H. Taylor, the progenitor of the firm later known as Taylor & Taylor which also occupied the building. (Much later, when the firm was known as Taylor, Taylor & Feilmeyer, one of its members was none other than Dwight Dinkla, the ISBA's current long-time and esteemed executive director.) In 1980, through the support of ISBA's Young Lawyer Division and a $10,000 grant from the Foundation, the building was taken apart piece by piece and rebuilt at Living History Farms in Urbandale as a part of its 1875 town of Walnut Hill.

A second grant of $2,500, made with the support of the ISBA's Legal Heritage Committee, helped pay the cost of moving the twin building to the

CHART A		
Date recorded	**6/30/2003**	**6/30/2018**
Contributions received	$47,798	$70,674
Investment income	$36,286	$130,990
Grants awarded - ISBA	$36,514	$52,500
Grants awarded – non-ISBA	$10,000	$24,175
Pledges receivable	$47,367	$180,076
Value of invested principal fund	**$1,257,776**	**$2,157,834**

Guthrie County Historical Village complex on the southwest side of Panora.

But perhaps the brightest star in the Foundation's glittering galaxy of grants was the support it provided to the bar association in 2007-2008, when the ISBA acquired an 1880 abandoned freight warehouse in Des Moines' East Village to remodel into its present headquarters building. Through the leadership of J.C. Salvo of Harlan, it was the Foundation that organized and conducted the "Raise the Bar" fundraising campaign that generated $1.9 million in donations to help finance that acquisition and refurbishing. It was done through a series of three grants to fund programs to be conducted from the refurbished building, including $680,000 to endow the ISBA's Continuing Legal Education Center, made possible in large part by a $250,000 gift from Orville Bloethe of Victor; $112,000 for the ISBA's Center for Law and Civic Education as the home of the ISBA's Mock Trial and Know Your Constitution projects; and $34,000 for the ISBA's Find-A-Lawyer program, formerly the Lawyer Referral Service.

FOUNDATION'S FUTURE DEPENDS ON IOWA LAWYERS

This retrospective on the Foundation's history may serve as a record of its efforts over 75 years to meet the objectives set forth by its founders. But even now, the Foundation must be mindful of the limitations of its finances as well as its charter. And therein lies its greatest challenge, for there are still occasions when its income is not sufficient to fund all the worthy grant applications. To the extent it has been able to assist in meeting the needs of the bar association and other organizations with similar objectives of promoting justice and the law, it has always been and likely always will be only through the generosity of Iowa lawyers. And whether it be the Mock Trial or Know Your Constitution participants who become better-educated citizens (and those who become lawyers) or the elegant ISBA headquarters edifice serving the profession, those lawyers are entitled to share in the Foundation's pride for its support.

It is fitting, then, to close with words written 75 years ago by ISBA president Wayne G. Cook at the time of the Foundation's creation that remain as true today as they were then. President Cook insisted that we can:

"Assure everyone asked to contribute that the income which his contribution makes possible will be used for such purposes as the organized Bar feels to be most important at the moment, not only this year or next, but forever …I feel sure we will get behind the movement and hasten the day when the endowment of the Foundation will be sufficient to make the voice of the Bar heard throughout the land."

I hope all of you will join me in wishing the Foundation a Happy Diamond Jubilee Anniversary and, better yet, by sending it a substantial pledge marked "Happy Anniversary."

Visit iowabar.org/isbafoundation

A grant from the Foundation paid to have this twin 1875 Guthrie Count law office dismantled and re-constructed at Living History Farms in Urbandale.

Retired Des Moines Attorney, **Bruce Graves**, is a former president of the ISBA and a former director of the Iowa State Bar Foundation. He was an integral part of the Raise the Bar campaign that raised money for the purchase and remodeling of the bar's current headquarters.

IT IS TIME TO JOIN A SECTION COUNCIL OR COMMITTEE

Bill Boyd

The sections and committees of The Iowa State Bar Association are a vital part of the success of our association. It is through them that we are able to conduct the activities and provide the services that are important to our members and community. Councils and committees also help set the direction of the association's future. We could not provide a broad range of CLEs or advance important legislation in our state without these groups.

My main involvement with the ISBA has been through various committees and section councils. I have found them to be very rewarding. They serve as a great way to meet and work with colleagues around the state and to expand knowledge in an area.

For ISBA members who have not been actively involved in ISBA activities, serving on a section council or a committee is a way to become involved in the leadership of the association and advance and shape the future of the ISBA.

The current sections and committees are listed on this page. Unfortunately, there aren't enough openings to appoint everyone who applies. But don't let that stop you from applying. You may be just the person needed for a particular committee or section.

Please go to **www.iowabar.org/2019SignUp** to submit an online application for up to three section councils or committees. Remember, though, that you must be a member of a section to apply for a section council position.

Each application will be evaluated. We will announce appointments in the spring. They will become effective by the annual meeting in June 2019.

Thank you,
Bill Boyd, *ISBA President-Elect*

SECTIONS
Administrative Law
Agricultural Law
Alternative Dispute Resolution
Business Law
Commercial and Bankruptcy Law
Construction Law
Corporate Counsel Law
Criminal Law
eCommerce
Elder Law
Environmental and Natural Resources Law
Family and Juvenile Law
Solo and Small Firm
Government Practice
Health Law
Intellectual Property Law
International Law
Labor and Employment Law
Litigation
Probate, Trust & Estate Planning Law
Real Estate and Title Law
Taxation
Trade Regulation
Workers' Compensation

COMMITTEES
Access to Justice
American Citizenship
Annual Meeting
Appellate Practice
Bench Bar Conference
Diversity & Inclusiveness
Ethics & Practice Guidelines
Federal Practice
Iowa Jury Instructions
Judicial Administration
Law Practice Management
Lawyers Helping Lawyers
Legal Forms
Membership
Military and Veterans Affairs
Public Relations
Rural Practice

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KUDOS

Michel Nelson, senior vice president/fiduciary counsel trust services & investment management at Iowa Savings Bank, for being named a Fellow of the American College of Trust and Estate Counsel (ACTEC) by its Board of Regents in Washington, D.C. on Oct. 28. Nelson came to Iowa Savings Bank in 1999 from private practice in Minnesota. He personally developed the trust department for Iowa Savings Bank. ACTEC Fellows are nominated by their peers, and Mike's nomination was supported by attorneys across Iowa.

Cindy Moser, partner at Heidman Law Firm, P.L.L.C., in Sioux City for being awarded the Richard S. Arnold Award for Distinguished Service by the Eighth Circuit Bar Association. Throughout her career, Moser has been actively involved in The Iowa State Bar Association, serving on its Board of Governors, numerous committees and task forces, and even as its president from 2012-2013. She also served on the Iowa State Bar Foundation Board of Directors for nine years and as president of the Iowa State Bar Foundation Fellows organization. In both 2015 and 2017, Senators Charles Grassley and Joni Ernst selected Moser to serve as chair of a review panel formed to screen candidates and make recommendations to fill a total of three federal district court vacancies in Iowa.

Anjela Shutts, partner at the Whitfield & Eddy Law Firm in Des Moines, for being selected as a 2018 recipient of the Luther College Distinguished Service Award. Shutts earned a Bachelor of Arts in political science from Luther in 1993 and graduated from Drake University Law School in Des Moines in 1996. Shutts continues to remain active in the Luther community. She was awarded the Jenson Medal, presented annually to the outstanding senior, and continues to volunteer at many Luther alumni events in the Des Moines area. She and her husband, Peter Kitundu, are members of the President's Council. Earlier this year, Shutts was named to the Luther Board of Regents.

Deborah Tharnish, an attorney with Davis Brown Law in Des Moines, for being awarded the Alumni Medal from the Iowa State University Alumni Association. The Iowa State University Alumni Association established this award in 1948 to recognize ISU alumni for long loyal service to the university through alumni-related activities. Today Tharnish is active with the ISU Alumni Association's Circle of Former Leaders and Leadership Guild; she and her husband, Nicholas Roby, co-chaired the Association's 2015 Cardinal & Gold Gala fundraising event.

Kevin Reynolds, an attorney at the Whitfield & Eddy Law Firm in Des Moines, for being awarded the Exceptional Performance Citation for 2017–2018 from The Defense Research Institute (DRI). The award recognizes him "for having supported and improved the standards and education of the defense bar, and for having contributed to the improvement of the administration of justice in the public interest." He is the Immediate Past President of Iowa Defense Counsel Association (IDCA).

TRANSITIONS


WARREN


SIMON


NORDEN


CAPELLUPO


BERENSTEIN


KEELY


HUISKAMP


HOLTERHAUS


SMITH

Kolby Paige Warren and **Kate Simon** have joined McCormally & Cosgrove in Des Moines as associates.

Warren earned her J.D. from Drake University Law School in 2018 and was admitted to the Iowa Bar in September 2018. While in law school, she worked for Lipman Law Firm, P.C., and in the Drake Legal Clinic's Middleton Center for Children's Rights. She maintains a general practice, including civil litigation, family law and as a guardian ad litem.

Simon earned her J.D. from Drake University School of Law in May of 2018. She maintains a general practice that includes litigation and transactional work in the areas of family law, business law, criminal law and personal injury.

Austin P. Norden has joined Viner Law Firm PC in Cedar Rapids as an associate. He obtained his J.D. from the University of Iowa College of Law in 2018. Austin is admitted to practice in Iowa and his practice consists of juvenile law, family law and criminal defense.

J. Nick Capellupo has been named a shareholder at Viner Law Firm PC in Cedar Rapids. He received his J.D. from Drake University Law School and has been with the firm since 2016. His practice focuses on trial-oriented family law and criminal defense.

Alex Berenstein, **Sarah H. Keely**, **Katherine Huiskamp** and **Tara Holterhaus** have joined Goosmann Law firm.

Berenstein joined the Sioux City office. He received his J.D. from the University of Iowa College of Law. His practice focuses on real estate and transactional law, including identifing transactional problems before they arise.

Keely also joined the Sioux City office. She received her J.D. from the University of Iowa College of Law. She is a litigation attorney who works to create opportunities out of disputes.

Huiskamp joined the Omaha office. She received her J.D. from Creighton University. She focuses on banking and transactional law and assists her clients with their business needs.

Holterhaus joined the Omaha office. She received her J.D. from University of Nebraska College of Law. She is a litigation attorney who helps individuals and businesses resolve disputes.

Patrick D. Smith has joined Fredrikson & Byron as a shareholder. He received his J.D. from the University of Iowa College of Law and is licensed in the Northern and Southern Districts of Iowa as well as the 8th Circuit Court of Appeals. Smith represents public and private sector employers in a broad spectrum of employment and labor matters, both inside and outside the courtroom.


ROGERS


TIMMER


JUDKINS


MCCARTY


CARLSON


BORLAND


TALMADGE


KOOKER

Kale B. Rogers has joined Peters Law Firm, PC in Council Bluffs as an associate. He previously worked as an intern for the firm and received his J.D. from Creighton University Law School. His practice focuses on estate planning, wills, trust, probate, real estate, tax planning, family law and business law.

Brooke Timmer, **Whitney Judkins**, **Emily McCarty**, **Katie Ervin Carlson** and **Nate Borland** have joined **Timmer** & **Judkins**, P.L.L.C. in West Des Moines.

Timmer is a partner at the firm and is admitted to practice in the Northern and Southern Districts of Iowa as well as the Eighth Circuit Court of Appeals.

Judkins is a partner at the firm and is admitted to practice in the Northern and Southern Districts of Iowa as well as the Eighth Circuit Court of Appeals.

McCarty is an attorney at the firm and helps lead the firm's appellate practice. She also serves on the Iowa Association for Justice's Amicus Committee.

Carlson is an attorney at the firm and in 2018 was selected for inclusion in The Best Lawyers in America.

Borland is an attorney at the firm and oversees the firm's technology and electronic discovery strategies.

Daniela Talmadge recently joined the Davis Brown Law Firm as an associate attorney in the litigation division. She received her J.D. from the University of Iowa College of Law. Talmadge has a broad litigation practice including a focus on immigration work.

Nathan M. Kooker has joined the Lynch Dallas, P.C., law firm in Cedar Rapids as an associate. He received his J.D. from the University of Iowa College of Law in 2018. Kooker's practice will focus on business, commercial, employment and municipal litigation matters.

DID YOU MISS THE 2018 BENCH-BAR CONFERENCE?

By Nick Gral

Two hundred and sixteen lawyers, judges and law clerks walk into a conference room in Waterloo, Iowa...

While this may seem like the start of a witty remark, there is nothing fictitious about this setup. On May 9, 2018, approximately 152 lawyers, 40 judges and 24 law clerks from around Iowa gathered at the newly-opened Marriott Hotel in Waterloo for the biennial Bench-Bar Conference.

HISTORY OF BENCH-BAR

First organized in 1988, the Bench-Bar Conference started with the realization that problems or concerns—no matter how small—may fester and become destructive, if ignored. Up until that point, there existed no recognized or approved way for attorneys to approach the bench with their various concerns. Moreover, platforms were lacking for judges to have open dialogue with attorneys about their own perceived shortcomings between the bench and bar. Thus, there was a desire to mend these deficiencies in order to preserve Iowa's historically cordial relationship amongst the judiciary and its officers.

David Funkhouser was one of Bench-Bar's pioneer leaders. From the onset of the first conference in 1988, Funkhouser emphasized to participants that they were not in attendance to discuss a particular judge, lawyer or court decision. Rather, the purpose was to engage in candid, robust discussions aimed at identifying problems and seeking solutions regarding access to, and administration of, our justice system. By doing so, Bench-Bar would manifest a mutual desire to avoid a breakdown between the bench and bar, ensuring its longevity.

Since that time, Bench-Bar has continually brought together members of the bench and bar from across Iowa, harmoniously strengthening the state's legal community and diminishing the divide that too often exists in our profession. Attendance in Bench-Bar's early years averaged between 100 and 120 attorneys and judges, but has continually grown since its inception.

> "In order for there to be parity in the legal profession, women must not only come to the table, but come to every table. Bench-Bar allows female attorneys from around the state to be heard and address their opinions on pressing matters facing the legal community."
>
> **- Anjie Shutts**

Traditionally held in Lake Okoboji, it was not until 2008 that the conference chose to diversify its venue. Thereafter, Bench-Bar expanded to other parts of the state including Riverside, Davenport, Dubuque, the Amana Colonies and most recently Waterloo. Critical to each conference's success is the consistent local support of the host city's bench and bar.

Contrary to standard bar association events, the Bench-Bar Conference is informal. Suits are taboo, ties nonexistent, and a first-name policy is strictly enforced with no exception even for Chief Justice Cady, who takes on his alternate, lesser-known persona, "Mark."

BENCH-BAR CONFERENCE 2018

While this year's conference was certainly not the first of its kind, it was far and away the largest. Notably, the total number of participants increased in 2018 by 48 attendees—roughly a 23 percent growth since 2016. A testament to the legal community's ongoing devotion to active improvement, participants were eager not only to converse, but also to tackle pressing issues facing the Iowa bar and the state's judicial branch as a whole.

A different theme encompasses each Bench-Bar Conference. "In This Together" was this year's overarching message, dedicated to the problems that the community of lawyers and judges in Iowa face with the increased fiscal burdens placed on the judicial branch. Moreover, this theme emphasized building coalitions with those outside of the judicial circuit and improving internal relationships among the bench and bar.

In order to address these concerns and build consensus, attendees were divided into small groups for break out strategy sessions. The end result was an agreement that Iowa's courts should not take a reactive approach to fiscal or even technological curveballs. Instead, emphasis must be placed on being proactive in order to streamline judicial processes and use innovative techniques to combat financial shortcomings.

Coalitions were also suggested as a means for promoting and generating interest in the judicial branch. These committees would be comprised of not only legal professionals, but also businesses, schools and other community groups with hopes of creating a partnership. In turn, the focus would be on increased public education regarding the court and its accessibility, the importance of the funds necessary to run the judiciary efficiently and bridging the gap between the court and public.

"The 2018 Bench-Bar Conference truly illustrated the collegiality of the Iowa Bar. Not only is this energizing, but something for which I am immensely proud!"

- Tyler Coe

Presentations and panelists additionally provided insight into this year's Bench-Bar theme. One such panel, moderated by Justice David Baker, highlighted building relationships and emphasized an adherence to our standards of professional conduct. A complementary presentation by Justice Edward Mansfield and Judge Mary Tabor focused on professional ethics and innovative thoughts on improving annual requirements. In total, attendees earned 8.25 state CLE hours, which included 1 hour of ethics and 3.5 federal hours.

FUN AND GAMES

Although this year's conference addressed serious concerns, ample extracurricular activities provided welcome relief from the daily grind judges and attorneys consistently face. On Wednesday evening, the Iowa Court of Appeals sponsored a networking and cocktail reception at the John Deere Museum, which displays historical artifacts and machines throughout John Deere's 181-year history. This was followed by the nightly hospitality suite, where attendees were able to converse with fellow judges and attorneys in a relaxed, congenial setting.

"Having seen the legal profession from the eyes of a law clerk and practicing attorney, I've found that judges and practitioners are more alike than different. Both continually aim to improve their craft. Bench-Bar is one opportunity to do so, but in a relaxed, lighthearted environment."

- Alexis Warner

The next day, participants chose from a host of unique activities in the surrounding Waterloo community. Whether golfing, biking local trails or hitting the tennis court, there were numerous opportunities to enjoy the unseasonably warm spring weather. Alternatively, attendees were able to drink a glass of wine and paint their pets with the help of 515 Wine with Design at the neighboring SingleSpeed Brewing Company bar and restaurant.

Finally, Thursday evening brought the Iowa Supreme Court Reception & Banquet with guest speaker and Luther College graduate Arne Sorenson. As the President and Chief Executive Officer of Marriott International, Inc., Arne shared his experience in Iowa and how his time in this state has influenced him throughout his noteworthy career.

FINAL THOUGHT

As practitioners, we understand that the legal profession is inherently adversarial. At times, this notion can cloud the sense of collegiality in our field, distracting from our common goal of consistently improving Iowa's legal community. However, Bench-Bar provides a platform for judges and attorneys alike to focus not on victories and defeats, but on our joint passion for the judiciary and overarching legal profession. Bench-Bar serves as a refreshing reminder that we must not lose sight of who we are as Iowa judges and attorneys, the newfound heights to which we want to take this state's judiciary and how we want to get there. By pausing and acknowledging these endeavors, we see that we truly are "In This Together."

We greatly look forward to seeing attendees at the 2020 Bench-Bar Conference, tentatively scheduled in Sioux City. All locales across Iowa are encouraged to make a bid for hosting a Bench-Bar in the years to come.

A second-year associate, Gral practices in Whitfield & Eddy's litigation department in a host of legal arenas, including dramshop defense, products liability, transportation, and other civil defense matters.

The attire for the Bench-Bar conference is casual, with no exceptions even for Chief Justice Mark Cady, who had his tie clipped in a show of commitment to the casual environment.

Attendees listen to one of many seminars for which they could earn 8.25 state CLE hours, which included 1 hour of ethics and 3.5 federal hours.

The Supreme Court reception included guest speaker Arne Sorenson, the President and Chief Executive Officer of Marriott International, Inc.

A networking and cocktail reception was held at the John Deere Museum, which displays historical artifacts from the company's history.

Attendees drink wine and paint their pets with the help of 515 Wine with Design at the neighboring SingleSpeed Brewing Company.

CLE Calendar

iowabar.org/calendar

December 19

A Mind is a Terrible Thing to Change: Effective Opening Statements (Live Webinar)
12 - 1 PM

Speaker: Matthew McDermott, Belin McCormick PC
CLE Credit: 1 state hour
Sponsored by The Iowa State Bar Association Litigation Section

www.iowabar.org/event/OpeningStatements

December 20

Lawyer Wellness (Live Webinar)
12 - 1 PM

Speaker: Hugh Grady, Iowa Lawyers Assistance Program (ILAP), Director
CLE Credit: 1 state hour

www.iowabar.org/event/LawyerWellness

December 27

Latest in Trade Secret Litigation (Live Webinar)
12 - 1 PM

Speaker: Bryan O'Neil, Dickinson Mackaman Tyler & Hagen PC
CLE Credit: 1 state hour
Sponsored by The Iowa State Bar Association Corporate Counsel Section

www.iowabar.org/event/TradeSecret

December 31

Confidentiality: A Review of the Rules and Cases (In-person or Live Webinar)
12 - 1 PM
In-person attendance will take place at the ISBA Building in Des Moines

Speaker: Tim Gartin, Hastings Gartin & Boettger LLP
CLE Credit: 1 state hour which includes 1 ethics hour

www.iowabar.org/event/Confidentiality

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Name: _____ **Member #:** _____ **Phone #:** _____

Address: _____ **City, State, Zip:** _____

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ISBA CLE Season Pass Cost: $600

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Cardholder Signature: _____

The term of the pass will begin when emailed, faxed or postmarked to the ISBA office in Des Moines.

Return registration form to: ISBA CLE, 625 E. Court Ave., Des Moines, IA 50309 or fax (515) 243-2511
Questions: Phone (515) 697-7874 or e-mail cle@iowabar.org

INVESTMENT PORTFOLIOS: GOOD VS. BAD – PART II

By Gail E. Boliver

INAPPROPRIATE (UNSUITABLE) FINANCIAL PORTFOLIOS

In Part I (in the November issue of The Iowa Lawyer), the fundamentals of constructing a financial portfolio were reviewed. The focus of the creation of a financial portfolio is the investor's investment objectives balanced by his or her risk tolerance. Sometimes a portfolio is improperly constructed.

Financial loss does not necessarily mean a portfolio was inappropriate. The recession of 2008-2009 produced a drop in the Dow Jones from 14,164 in October of 2007 to 6,500 in March of 2009 compared with 24,688 as of this writing (Oct. 26). The security products held in a portfolio through this time period could have been appropriate (suitable) despite losses.[1] However, a portfolio created with inappropriate products could have been wiped out during this period.

This article will discuss various products and their misuse/abuse and strategies which likely resulted in a preventable loss to an investor. Strategies addressed include unsuitable asset allocations including improper diversification. Products addressed include private placements (Regulation D Offerings), variable or equity indexed annuities, and structured products.

PRIVATE PLACEMENTS – REGULATION D OFFERINGS

Regulation D (commonly referred to as "Reg D") securities products are sometimes referred to as "alternative investments." They are alternatives to securities offered under the Securities and Exchange Acts. Listed securities require extensive disclosure filings and continuous reporting on the financial status of the company. Regulation D was created to assist small companies in raising investment capital without the cost or supervision of the SEC. Reg D products are offered by the most sophisticated and largest of the U.S. brokerage firms to some of the smallest broker-dealers.

FINRA (Financial Industry Regulatory Authority) requires broker-dealers selling private placements to conduct "due diligence" investigations of each Reg D business prior to offering the product to investors. The sophistication of the "due diligence" process varies with the experience, expertise and resources committed to the process. The typical investor has almost no understanding of the due diligence process but relies upon the reputation or trust they have in the broker and/or broker-dealer to properly carry out FINRA-required investigations. Example: A broker-dealer may assume a very high profitability of a company many years in the future even though it's currently unprofitable. That would permit the broker-dealer to offer the product to investors with the suggestion of profitability.

Private placements are sold through broker-dealers and their brokers to investors after obtaining many signatures on two types of disclosure documents: 1) Private Placement Memorandum ("PPM") and 2) Subscription Agreement ("SA"). The PPM is essentially a look at, or description of, the proposed business. It contains an overwhelming amount of information, including financial information. If investors don't understand a balance sheet, income statement and cash-flow statement they may not understand the significance of the financial data.

FINRA is very clear that mere "disclosure" is not adequate to fulfill the suitability rule. In addition, an overly eager broker or broker-dealer may make oral representations which contradict the PPM or SA. For example, I had a broker testify at a deposition that the PPM that said it was "speculative" was false and that language was just a "legal requirement"!

These products generally have very high fees. Broker-dealers typically receive due diligence and other fees to sell these products. Disclosure is not sufficient under FINRA cases and rules. See Matter of James B. Chase, S.E.C. Admin. Proc. File No. 3-10586 and Notice to Members 03-71.

A typical PPM will open with a statement that says the product is high-risk or speculative and warns that an investor could lose all of his/her money in the investment. Why buy? Private placements are usually sold, not bought.

Prior to sale, a broker must obtain the investor's signature on a "subscription agreement" which is an extensive document created by the issuer. It is initialed and signed by the investor. It contains a statement that says the investor has received a copy of the PPM and understands it. Likely, this is not accurate.

Depending on an investor's risk tolerance, a small portion of a portfolio (0 – 10 percent) could include a highly speculative component. There are regulatory limits on the types of investors who can invest (accredited investor) as well as limits on the percent of these products in a portfolio. Excessive amounts of these products, or any at all, may make the portfolio unsuitable. Some of these products may be highly successful, but, due diligence is

a key. See Mosher, et al. v. DeWaay, et al., 2015WL1331633; 863 N.W.2d 301 (Iowa App. 2015 Table). In this case, the broker-dealer sold over 200 private placements with a failure rate of nearly 100 percent resulting in an attempted class action against the broker-dealer for its failure to complete adequate due diligence (among other claims).

VARIABLE OR EQUITY INDEXED ANNUITIES

Billions of dollars of these products are sold annually. A high percentage of sales are from "roll-overs." A roll-over is completed when one annuity replaces another. Each annuity typically has a "surrender fee" which is assessed against the investor for anywhere from 5 – 15 years on a declining scale. If the policy is surrendered in year one, the policy would assess a 5 – 15 percent surrender fee.

These annuities are very complex products. For example, a variable annuity will have a life insurance component, investment portion section and an administrative expense charge section (and additional riders). Coincidentally, or maybe not, the surrender fee is nearly identical to the commission charged on the sale. The commission is typically not disclosed because the investor's account is not charged for the fee unless it is surrendered. Thus, the salesperson will wait until the surrender period has expired and then "roll-over" the product for a new, "better" annuity which generates a new commission.

Annuities are expensive products that are to be held for a long time (20 years or more). See Toolson, Richard B., Wright, Ron G. "TRA '97 Narrows Situations When Variable Annuities Make Sense" Journal of Taxation of Investments, Summer 1998.

Most investors don't need life insurance so that expense and component is unnecessary. However, life insurance becomes the basis for the annuity to commit to returning the entire amount invested despite a major market decline (e.g. 2008-2009).

Variable annuities are securities subject to SEC/FINRA supervision. Equity Indexed Annuities (EIA's) are not subject to such oversight. (Iowa Senator Tom Harkin placed a last-minute exclusion in a bill which excludes EIA's from SEC supervision).

Annuities can be properly used in a financial portfolio especially for seniors looking for a guaranteed retirement income. For such a guarantee, the annuity will require the investor to select from several pay options including monthly payments for life and a surrender of the proceeds at life's end. This could be a very short time period – no guarantees.

Misuse or abuse of the product occurs when the product is frequently 'rolled-over' or sold. An overly aggressive sales person will sell the product

and repurchase within three years and suggest the new policy has a "bonus" feature that will offset the surrender fee. However, the sales person does not disclose that the "bonus" has a long vesting – maybe 10 years. Nebraska has a statute that makes a purchase/sale within three years inappropriate (unsuitable) unless there is a justification. See Nebraska Revised Statute (NRS) 44-8101 et seq. The extra aggressive sales person will sell an annuity, take a 10 percent "free withdrawal" and reinvest in another annuity to maximize his/her commissions. See Wall Street Journal article "Annuities Soar After A Rule's Demise," B-1, October 29, 2018.

STRUCTURED PRODUCTS

Core investments include stocks, bonds or cash. Securities products that are linked to indexes are created by "Wall Street" firms (investment banks). Historically, these products have earned names of PERCS (preferred equity redemption cumulative stock), PRIDES, DECS and others. A PERCS at maturity pays the smaller of the value of a share of Citicorp stock and $20.28. The payout was the same as purchasing Citicorp at its current price and selling a three-year (maturity) out-of-the money call option for a $20.28 strike price. After 1992, derivations were known as reverse convertibles.

As time moved on, investment banks created securities with links to unrelated publicly traded companies. PERCS were linked to the underlying company. This permitted a higher sales volume through a broker-dealer sales network.

In October of 2015, the SEC settled charges against UBS concerning its VIO currency Index determining that UBS failed to disclose its application of a bid-ask spread trading cost when rebalancing the currencies in its proprietary index. See SEC press release on the UBS VIO Currency Index settlement at www.sec.gov/news/press release/2015-238, and its order instituting proceedings at http://www.sec.gov/litigation/admin/2015/33-9961.pdf.

Bank of America, JPMorgan and others have sold securities products with highly sophisticated links requiring complex mathematical formulas to accurately value.

A recent example was the LJM Preservation and Growth Fund (LJMIX), "the Fund." In February of 2018, the Dow incurred significant (1000) point swings. The Fund lost 80 percent of its value in two days. Contrary to its name, the Fund held significant uncovered option positions which were neither capital preservation nor growth. The Fund has maintained the loss.

SUITABILITY ISSUES

The largest category of problem portfolios come under the title "unsuitable." Typically, the unsuitability is directly related to a misapplication of the principles of asset allocation, risk tolerance and diversification. A basic unsuitable strategy for a growth portfolio with moderate risk involves the sale of a single stock with a high-risk profile usually found with a start-up company with high risk financial fundamentals. This start-up has a weak balance sheet and a low performance income statement with deteriorating company financials. An unsuitable strategy could also involve a single, low-rated (under BBB) bond. These are typically associated with a teaser sales pitch: "I'll show you how good I am if you invest with me on this product."

Variable annuities are frequently sold for retirement purposes and depend on proper selection of the underlying assets (mutual fund choices). If the underlying funds are excessively traded and lock in losses, the annuity may not be able to sustain the withdrawal rate, fail much earlier than the projected time period and fail to provide the promised retirement income.

Private Placements (PP's) are typically highly speculative. If a portfolio consists of a high percentage of PP's, failure of the portfolio is nearly certain if the underlying company or industry fails (e.g. real estate collapse in the 2008-2009 recession). These products can be time bombs sold years before the ultimate collapse due to poor management, excessive leverage, debt, fees and other controllable issues.

Assume an investor is nearing retirement and has an investment objective of income and growth with a moderate risk tolerance. An asset allocation of 90 percent stocks (many of which are high-risk) would likely be successful in the short-term, but explode when the nearly inevitable downturn of the stock market occurs. Market downturns are common and frequent (e.g. 1973-1974, 1987, 2000-2001, 2008-2009 and more…) Older investors would not have the time to 'ride out' the downturn and recover their losses.

A related issue, although not directly a suitability issue, is a broker-dealer's and broker's responsibility for elder abuse. Relatives can take advantage of mentally diminished seniors so FINRA has published guidance addressing the responsibility of securities industry firms and brokers to monitor for possible abuse. A firm can stop trading in an account when it reasonably suspects elder abuse. A firm/broker can be liable to an investor or an investor's estate should the firm not take appropriate

action to prevent elder financial abuse when it should have been aware of misconduct (e.g. a spouse using a power of attorney and dramatically changing the withdrawal rate on an account). See FINRA Regulatory Notice 07-43.

Excessive fees can also be a problem for a product or portfolio. In PP's, the underlying company may charge excessive sales fees which result in as little as 83 percent of the invested dollars getting to the investment (business).

Also, a broker may charge excessive fees (and margin the account to enhance fees) which lowers portfolio performance. The Vanguard mutual fund family focuses on low fees.

CONCLUSION

Some people's financial portfolios are many times the value of their homes and is the result of planning, sacrifice and hard work. Its proper management should take these factors into consideration when assisting with defining the portfolio asset allocation and risk tolerance. An individual's life's work can be wiped out by unsuitable portfolio management. The usual "explanation" or defense to portfolio mismanagement is "it's the fault of the market" or, "it's what the investor wanted." Neither of these claims is legitimate.

Investors who believe they may have a claim against their brokers and/or brokerage firms cannot sue them in court. They are forced to file their claim in arbitration through FINRA. In this forced arbitration, a firm requires an investor to submit any dispute that may arise to binding arbitration as a condition of buying a product or service. The investor is required to waive his or her right to sue, or to appeal. Arbitration is mandatory, and the arbitrator's decision is final and binding. Nearly all investment agreements require FINRA arbitration (for investment advisors it may be AAA or Court). FINRA is an industry forum and the arbitrators are trained and paid by FINRA. The system has serious flaws but the investment agreements requiring arbitration have been upheld by courts since the mid 1980's.

A case analysis should be performed carefully by the attorney to determine whether the investor has potential claims.

1.This article will address issues of a general financial portfolio constructed by the recommendations of a registered representative; not an investment advisor nor an ERISA portfolio. The registered representative (a/k/a "broker") is required to comply with industry rules created by the Securities and Exchange Commission (SEC) and FINRA.

Gail E. Boliver, JD, MBA, MS has represented investors and brokers for more than 27 years, including over 60 arbitrations in multiple states. He practices in Marshalltown. See www.boliverlaw.com.

IN MEMORIAM

Michael Lewis Huston, 76, of Winston-Salem, North Carolina, died Nov. 20. Huston was born in Des Moines in 1942. He received his J.D. from Drake University Law School. Huston worked in private and corporate practice and retired as the general counsel of Hawkeye Security Insurance Company, a subdivision of Liberty Mutual, in 2007. He also ran for U.S. Congress in 2000.

Anne Laverty, 51, of Cedar Rapids died Nov. 22. Laverty was born in 1967 in Iowa City. She received her J.D. from the University of Iowa College of Law. She was a member of the Delta Delta Delta sorority, Phi Beta Kappa, Mortar Board and the Hawkeye Marching Band. Anne practiced law as a criminal defense and family law attorney in Cedar Rapids for 27 years.

Richard (Rick) Dunn, 56, of Eldora died April 28. Dunn was born in Eldora in 1961. He received his J.D. from Drake University Law School in 1986. After law school, Rick joined his father in the practice of law in Eldora, and practiced law in Eldora for over 30 years. He also was elected and served as Hardin County Attorney for 16 years and served as a judicial magistrate for Hardin County for eight years.

Jack Briggs, 81, of Brandon, South Dakota died Nov. 24. Briggs was born in Davenport in 1937. He served in the U.S. Marine Corps and graduated from the University of Iowa College of Law. He served as city prosecutor and assistant city attorney for the City of Des Moines. He belonged to various law associations: American Bar Association; The Iowa State Bar Association; Federation of Insurance and Corporate Counsel; American Council of Life Insurance; State Vice President for South Dakota; chairman of the State Insurance Commission; and member of the Association of Life Insurance Counsel.

Ed Failor Sr., 91, of Ankeny died Oct. 22. Failor was born in Marion in 1927. He received his J.D. from the University of Iowa College of Law. Failor was elected to serve as a municipal court judge. During his career, he also served as campaign manager for a United States Senate race; communications director for a political consulting firm in Chicago, Illinois; director of the U.S. Bureau of Mines in Washington D.C.; campaign advisor on the Committee to Re-elect the President in Washington D.C.; and director of SESA in Suitland, Maryland.

Richard Book, 64, of West Des Moines died Oct. 21.Book was born in Des Moines in 1954. He received his J.D. from the University of Iowa College of Law. He practiced for nearly 40 years with the Huber Law Firm in West Des Moines where he was a partner specializing in workers' compensation and personal injury law.

In Memory of

Ross H. Sidney

April 18, 1923—November 11, 2018

Grefe & Sidney announces the passing of its founder Ross H. Sidney.

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POSITIONS AVAILABLE

Associate Attorney - Rawlings Law Firm, Sioux City, IA - An established "AV" rated law firm in Sioux City is seeking to hire an attorney to work in the areas of business, real estate, probate and estate planning. Candidates will be organized and possess excellent writing and oral skills. We offer competitive salary, 401(k), health insurance, CLE and bar dues. Confidential inquiries, including resume, should be sent to: Kathleen Roe, 522 4th Street, Suite 300, Sioux City, IA, 51101, or to kroe@rawlings-law.com.

Corporate Counsel - Mittera Group, Des Moines, IA - Seeking an attorney to serve as corporate counsel and be a business advisor and provide practical, business-oriented legal advice and counsel, including appropriate risk assessment, to those company division(s), regions and corporate functions from time to time. To apply, visit http://careers.iowabar.org/jobs/11563763/corporate-counsel

Family law/Transactional Attorney - Ball, Kirk & Holm, P.C., Waterloo, IA - Waterloo law firm seeks an attorney with at least two years' experience in family law and other transaction work, including criminal law work. The firm provides significant support staff assistance as well as a robust advertising budget to help you grow your practice. To apply, visit http://careers.iowabar.org/jobs/11581047/family-law-transactional-attorney

Associate Attorney - Petersen Law PLLC, Council Bluffs, IA - Successful Council Bluffs law firm seeks a full-time associate attorney with 2-3 years of experience to represent clients in real estate transactions, business matters, probate cases and litigation, estate planning and many other areas of the law. To be considered for this position, you must be a highly motivated, self-starter with a strong work ethic and excellent communication skills, both verbal and written. To be considered, send cover letter, writing sample and resume to: Deborah L. Petersen, Petersen Law, 215 South Main Street, Suite 301, Council Bluffs IA 51503, deborah@petersenlawcb.com. All inquiries will be held in strict confidence.

Exchange Officer - IPE 1031, West Des Moines, IA - IPE 1031 is a leading and highly respected national provider of like-kind exchange services. We are seeking an attorney to work with taxpayers and their advisors in structuring Section 1031 exchange transactions. No experience with exchange transactions is necessary. To apply, visit http://careers.iowabar.org/jobs/11585814/exchange-officer

Business and Estate Planning Attorney - Crary Huff Law Firm, Sioux City, IA - Crary Huff Law Firm is seeking an experienced business and estate planning attorney for its office located in Sioux City. Candidates should have at least two years of legal practice. Experience with estate planning, corporate law and real estate transactions is preferred. Applicants should have a strong work ethic and favor a collaborative team-oriented approach to the practice. Iowa bar admission required. All applications will be handled confidentially. Send resume and cover letter to Crary Huff Law Firm, Attention Mick Connealy, Personnel Partner, PO Box 27, Sioux City, IA 51102 or mconnealy@craryhuff.com. Equal Opportunity Employer.

Associate Attorney - Shafer & Shafer Law Office, Waukon, IA - Seeking an associate with 0-5 years' experience for a well-established county seat, single-member general practice firm. Primary areas of practice include real estate, probate, taxation and business law. Applicants should possess strong communication skills and be community minded with the goal of becoming partner. Please email cover letter and resume to: Attn: William J. Shafer, shaferlaw@msn.com

Associate General Counsel/ Compliance Director - Planned Parenthood of the Heartland, Des Moines, IA - Planned Parenthood of the Heartland (PPHeartland) is currently seeking an associate general counsel/compliance director. The position is responsible for identifying, mitigating and managing legal strategies to protect and advance the mission and business of PPHeartland. Interested and qualified candidates should submit a resume and cover letter to resumes@ppheartland.org or mail to PPHeartland, Human Resources, PO Box 4557, Des Moines, IA 50305

Staff Attorney-Water Program - Iowa Environmental Council, Des Moines, IA - The staff attorney works with the Energy and Water Program Directors to ensure the adoption and implementation of appropriate rules, policies and voluntary actions to meet air and water quality standards, expand renewable energy development, and to ensure the health and safety of Iowans. The staff attorney will report to the executive director. To apply, visit http://careers.iowabar.org/jobs/11697847/staff-attorney

Associate - Telpner Peterson Law Firm LLP, Council Bluffs, IA - Seeking an attorney for the general practice of law including the areas of commercial, real estate and transactional law. All applications will be handled confidentially. Please submit a current resume which includes class rank and a current writing sample to Telpner Peterson Law Firm, 25 Main Place, Suite 200, Council Bluffs, IA, 51503 or email to: pcaruso@telpnerlaw.com. The Telpner Peterson Law Firm is an AV, full-service law firm practicing in western Iowa and eastern Nebraska since 1952.

General Practice/Litigation Attorney - Clemens, Walters, Conlon, Runde & Hiatt, LLP, Dubuque, IA - Seeking an experienced general practice/litigation attorney in a medium-sized (6 attorney) law firm. We are seeking someone to join our team who is highly motivated and a self-starter with a desire to provide an exceptional client experience. We offer a unique opportunity with a compensation formula where the rewards are directly related to the work performed. Candidates are preferred with at least five years of legal practice. Both civil and criminal litigation experience preferred. Excellent research and writing skills are required. Iowa Bar admission required. Illinois or Wisconsin Bar admission appreciated. All applications will be handled confidentially. Send resume and cover letter to Clemens, Walters, Conlon, Runde & Hiatt L.L.P., ATTN: Jennifer A. Clemens-Conlon, 2080 Southpark, Dubuque, IA 52003 or email jconlon@cwcmlaw.com

Real Estate Associate - Faegre Baker Daniels, Des Moines, IA – Seeking an associate to join the transactional real estate practice group in our Des Moines office. Faegre Baker Daniels is an AmLaw 100 firm with offices located throughout the U.S., Asia and the UK. The attorney will be involved in real estate matters throughout the country. Our ideal associate candidate would have 3+ years of experience in real estate-related law, specifically drafting and negotiating agreements, resolving title issues and coordinating

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complex multi-party closings, all relating to the sale, acquisition, leasing and financing of commercial real estate. To apply, visit http://careers.iowabar.org/jobs/11729007/real-estate-associate-des-moines

Managing Trial Attorney - Nationwide Insurance, Des Moines, IA – Seeking an attorney to lead a team of trial attorneys, paralegals, and administrative assistants to achieve the mission and strategic vision of Nationwide Trial Division. Nationwide Trial Division strives to provide superior legal services that exceed our partners' and clients' expectations of quality and value and to be considered the best insurance defense litigation firm in each community we serve. To apply, visit http://careers.iowabar.org/jobs/11739768/managing-trial-attorney

Associate Attorney – Remley, Willems, McQuillen & Voss, LLP, Anamosa, IA – Seeking an associate attorney with 0-5 years of experience for the general practice of law including the areas of estate planning and probate, real estate, business law and family law. This position offers an accelerated partnership track to the community- minded candidate with a strong attention to detail, and excellent writing and communication skills. To apply, submit cover letter and resume to Janette S. Voss, jvoss@rwmvlaw.com.

ASSOCIATE ATTORNEY – West Des Moines law firm is seeking an associate position in a litigation firm. Salary commensurate with experience, skills, and accomplishments. All inquiries will be treated as confidential. Interested persons should send cover letter, resume, and references to Jeffrey Goodman at GOODMAN LAW, P.C., 1501 42nd Street, Suite 300, West Des Moines, IA 50266. Telephone: 515-267-8600; email: jeff@golawpc.com.

SERVICES OFFERED

Mediation Services – Retired Judge Peter A. Keller of Ackworth has served as a district court judge and senior judge in District 5 for over 31 years and is also a retired Air Force Reserve JAG of 31 years. He is offering mediation services in civil, probate and family law. For information and scheduling call 515-360-7500 or email andykel38@gmail.com. Have pickup – will travel.

SPACE AVAILABLE

Downtown Practice - Downtown law practice in Clear Lake at same location for over 50 years. Main areas of practice are probate, wills and estate planning, real estate and small business entities. Owner is seeking to retire but will continue for time necessary to make an efficient transition to buyer. Price and terms are negotiable. Building is available for sale or lease; is large enough to accommodate 2-3 attorneys and staff. For more information, email Phillip Stone at pjslaw@cltel.net.

FOR SALE

Law Books – Free for the hauling, a complete set of American Jurisprudence 2d, last updated to July 1986. Please contact fred@50248.net.

PERSONAL

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

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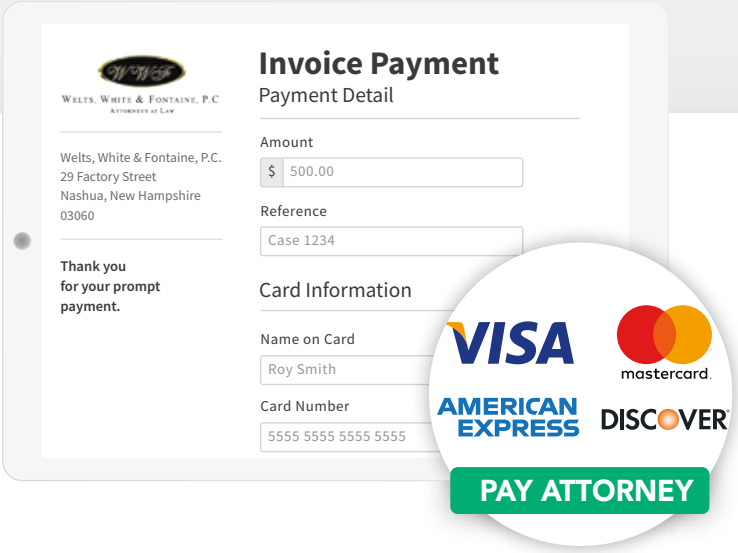

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