



THE IOWA LAWYER

April 2020 V 80 N3



COVID-19





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THE IOWA STATE BAR ASSOCIATION**

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

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ABOUT THE COVER

This special edition of The Iowa Lawyer is focused almost entirely on COVID-19. The information inside aims to provide timely and helpful resources to ISBA members. President Bill Boyd summarizes everything the ISBA is doing for you and your firm during this critical time on **page 5 and 6**.

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HOW COVID-19 IS IMPACTING THE ISBA

In response to the developing situation surrounding COVID-19, the ISBA decided to close the ISBA Headquarters Building in Des Moines until at least May 4. All inquiries should be directed to isba@iowabar.org or **515-243-3179**. The ISBA will reassess this closure continuously to determine if extensions are needed.

All ISBA meetings and CLEs will be offered as live webinars through at least May 4. Additionally, the 2020 Bench-Bar Conference in Sioux City scheduled for May will be postponed to a yet-to-be-determined date.

ISBA leadership continues to evaluate the situation and will determine the status of future events in the coming weeks. For the most up-to-date information, please visit the iowabar.org homepage or The Iowa State Bar Association Facebook page.

SERVE ON THE FRONT LINES BY HELPING IOWANS NAVIGATE THE COVID-19 DISASTER

In partnership with Iowa Legal Aid, The Iowa State Bar Association and Polk County VLP are stepping up to create a hotline to help Iowans with legal issues related to the COVID-19 pandemic.

The hotline will focus on helping Iowans with issues such as evictions, foreclosures, domestic violence, child custody, employment, taxes, business issues and more.

Attorneys from a broad range of practice areas are needed to assist in this effort. If you are interested in taking cases pro bono that arise from this hotline, please contact ISBA Director of Innovation and Outreach Virginia Sipes at vsipes@iowabar.org.

Please indicate your practice areas in the email. A video training offered by Iowa Legal Aid will be provided to you.

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President's Letter

Dear Members,

The past few weeks have created enormous challenges for all of us and our communities. The Iowa State Bar Association has been working hard to ensure that during the COVID-19 crisis we are supporting our members in their service to clients, the courts and their communities. Below is an update on the ISBA's work during this time.

SUPPORT OF MEMBERS IN SERVICE TO THEIR CLIENTS

Given this pandemic and the various directives issued by Gov. Reynolds, we realize that the practice of law needs to fundamentally change. We must do so quickly – it is not business as usual. It is no longer possible to continue to regularly go into the office to work and have in-person meetings with clients. Working remotely is now a necessity during this period.

To help our members transition to a remote office setting, the ISBA is developing various webinars, the first of which took place on Tuesday, March 24. The speakers for this webinar were Nick Critelli, the chair of the ISBA Ethics and Practice Guidelines Committee, Tre Critelli from the Office of Professional Responsibility, Christy Cronin from the ISBA, attorney Brooke Trent and Joseph Peiffer, Ag & Business Legal Strategies. They provided advice on how to adjust to a remote legal practice to 1,000 attendees. The recording of that webinar is available at: iowabar.org/COVIDwebinars. More programming has followed and continues to be planned.

REMOTE NOTARIZATION AND WITNESSING

Many of our members have clients who need to have important time-sensitive documents executed, including wills, trusts, powers of attorney, real estate documents and contracts. Some of these clients may be in nursing homes and hospitals, where it is currently impossible to meet with them in person. The ISBA was in communication with both Gov. Reynolds' office and the Iowa Judicial

Branch, in conjunction with the Iowa Academy of Trust and Estate Counsel, on these issues. The Probate, Trust & Estate Planning Law Section provided valuable input on the issue. In the emergency proclamation issued on March 22, Gov. Reynolds addressed remote notaries and witnessing (<https://governor.iowa.gov/press-release/gov-reynolds-signs-new-proclamation-continuing-state-public-health-emergency>).

ESSENTIAL SERVICES

We do not know what will happen in Iowa in the future days. Other states have issued "Shelter in Place" orders that place significant restrictions on businesses but provide certain exceptions to allow for essential services. In response to the crisis, law firms around the state have arranged to have their work force work remotely to the maximum extent possible. Still, there are some matters that require law firms to have personnel at their offices in order to provide critical law services. The ISBA has submitted a letter to Gov. Reynolds requesting that legal services be included on the list of essential services in the event of a Shelter in Place order in Iowa.

COUNTY RECORDER FILINGS

The ISBA became aware that county recorder offices around the state were starting to close their offices for real estate filings. This closure created significant issues for real estate transactions. The ISBA has been working with Iowa Title Guaranty and the Iowa Land Title Association to advocate for relief to allow for real estate filings to continue. In a March 21 memorandum to county auditors, recorders and treasurers, Gov. Reynolds strongly encouraged that the offices and full range of vital services provided by these offices be open and accessible to Iowans.

ISBA COVID-19 RESOURCE WEBPAGE

The ISBA is seeking to keep you fully informed of developments relating to the COVID-19 situation. The ISBA webpage has links to important information that

we hope is helpful to our members. Please visit iowabar.org/COVIDResources to see the latest information.

CLE OFFERINGS

The ISBA will continue its CLE offerings exclusively via remote access at least through the end of April.

JUDICIAL BRANCH

The Iowa Judicial Branch has significantly curtailed activities including postponing civil and criminal trials. The ISBA website maintains a list of all of the Judicial Branch COVID-19 situation directives. We also will keep you updated on any judicial developments as they occur.

OUR COMMUNITIES

Access to Justice is a fundamental right of all Iowans and the COVID-19 crisis has created unexpected challenges. Iowans need help in navigating through this unexplored legal landscape and its emerging legal issues. We are working with Iowa Legal Aid and the Polk County Bar Association Volunteer Lawyers Project to have Iowa lawyers from around the state respond to questions from Iowans through a COVID-19 legal hotline.

The ISBA also sponsors Free Legal Answers (<https://iowa.freelegalanswers.org/>), which makes available opportunities to provide from your computer short-term, pro bono legal services. Participants can go to the website and pick questions they feel comfortable answering and submit responses through the website. Please check out the site.

We continue striving to support our members. More information is included on the following page. Please let me know if you have any suggestions on what else the ISBA should be doing during this challenging time. We hope everyone is staying safe and healthy.



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THE ISBA IS HERE TO HELP YOU DURING THE COVID-19 PANDEMIC

REMOTE CLEs

The ISBA has switched to all remote CLEs and meetings, so you can stay up to date on the latest developments in your practice area from the safety of your home.

MENTAL HEALTH SUPPORT


The ISBA's Lawyers Assistance Program is at the ready to assist you during this time of crisis. Visit iowalap.org for more information. Mental health resources can also be found at iowabar.org/COVIDResources.

LATEST INFORMATION ON COURT SERVICE CHANGES

The ISBA has been sending out regular communications related to changes in court services and access on behalf of the Iowa Judicial Branch and the Northern and Southern Districts of Iowa.

FREE INFORMATIONAL WEBINARS

The ISBA is producing free informational webinar content related to COVID-19. Upcoming webinars can be found at iowabar.org/events. Recorded webinars can be found at iowabar.org/COVIDwebinars. Topic examples include:



HINTS AND TIPS ON PRACTICING REMOTELY
PRACTICING LAW IN THE SHADOW OF COVID-19
HOW TO STAY CYBERSECURE WHILE WORKING FROM HOME
PRACTICAL STEPS TO MAKE YOUR FIRM PROFITABLE AND EFFICIENT (...AND REMOTE)
ASSISTING FAMILY LAW CLIENTS WITH COVID-19 RELATED ISSUES
CLIENT RELATIONS AND LAW FIRM FINANCES
CORONAVIRUS CONSIDERATIONS FOR LITIGATORS

PRO BONO ASSISTANCE

The ISBA has partnered with Iowa Legal Aid and the Polk County VLP to provide a public hotline and recruit volunteer attorneys to assist pro bono with legal matters related to COVID-19. The hotline phone number is **1-800-332-0419**.

INFORMATION FOR THE PUBLIC

The ISBA has provided access to dozens of free legal guides and videos on its public website IowaFindALawyer.com to help members of the public navigate the various legal issues occurring during this time.

TEXT GUIDES AND RESOURCES

One hundred-plus guides and articles are posted to the website iowabar.org/COVIDResources, with more being added daily. They cover a broad range of topics which are categorized for viewing ease.

DIRECT CHANNEL TO LAWMAKERS AND STATE OFFICIALS

The ISBA has been in direct contact with the Governor's Office, Secretary of State and other lawmakers and elected officials to be the voice for Iowa lawyers as they navigate new legislation and state directives.

CYBERSECURITY SUPPORT

The ISBA has authorized a three-month trial period of Trustifi email encryption while you work from home, to help you and your firm better prevent phishing attacks. Cybersecurity tips and resources can also be found at iowabar.org/COVIDResources.

WHAT ARE COMPANIES' **LEGAL** **OBLIGATIONS** AROUND CORONAVIRUS?

By Peter Susser
and Tahl Tyson

With the rapid global spread of coronavirus, companies should focus first and foremost on employee safety. And as they're reviewing their strategies, policies and procedures, many leaders are specifically wondering about their legal risk. Not having adequate communicable-illness policies and response plans could expose them to a laundry list of HR-related legal concerns.

Most countries have laws designed to protect employees from physical harm at work. In the United States, employees are protected under the Occupational Safety and Health Act, so if an employee becomes infected at work, in some circumstances the employer may face penalties. Unprepared employers may be exposed to lawsuits related to workers' compensation, invasion of privacy, discrimination, unfair labor practice and negligence.

The good news is that with careful attention to employee safety and legal preparedness, employers can minimize employees' risk of infection and their own legal risks. Following are eight steps companies should take to these ends. The value of these efforts, of course, is relevant to any life-threatening infectious disease, not just coronavirus.

STAY INFORMED

Start by identifying authoritative sources of public health guidance on the epidemic, and stay up to date on officially recommended and mandated actions in the applicable jurisdictions. These sources include The Centers for Disease Control and Prevention, The World Health Organization, The European Center for Disease Prevention and Control and country-specific public health guidance.

This official guidance should serve as the foundation for organizational decisions about health- and legal-risk mitigation. Being able to demonstrate corporate policy alignment with official recommendations can be an important legal safeguard in cases where the company's infection-control efforts are challenged.

INTENSIFY COMMUNICATIONS AND HYGIENE

For legal and practical reasons, companies need to be able to show that they have given employees accurate information about ways to prevent the spread of infection — and that they have provided people with the means to act on that information. Thus, organizations should educate employees, in advance of any workplace infection, about modes of transmission and symptoms by sharing specific public health guidelines and, more broadly, directing staff to the official sources of information on which the organization will rely.

In addition, employers must implement

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measures to reduce the risk of workplace transmission. For example, public health guidance for reducing transmission includes ensuring that employees have easy access to hand-washing facilities and/or hand sanitizers and that public surfaces such as counters, doorknobs and elevator buttons are regularly disinfected. Employers may also consider changes to reduce overcrowding, such as facilitating remote work, shift work and perhaps physical layout changes. Such measures may help protect workers from infection and help protect organizations from liability.

Employers should also instruct staff to inform management if they have been exposed to the virus or show symptoms of infection, or if they, or a member of their households, have particular vulnerabilities such as a weakened immune system that may require enhanced protections from infection. Further, staff with symptoms of infection should be sent home or instructed to stay home, and visitors who have been exposed or who have symptoms should be excluded from the workplace. Failure to provide this guidance can potentially expose a company to liability should employees become infected in the workplace and it can be shown that management had not communicated about this policy. (Although disability discrimination laws protect employees with covered health conditions, limitations can generally be imposed if there's a direct threat to the health or safety of others.)

CONSIDER RESTRICTIONS ON RETURNING TO WORK

While employers risk discrimination claims if they base decisions to restrict

employees from work on grounds of race or national origin, they can impose reasonable, fact-based restrictions if there is a direct threat to the health or safety of others. An employer can judge, by applying official guidelines or with input from a medical consultant, whether and when an employee who has been ill or who has potentially been exposed can safely return to work. Written policies should be explicit about when employees with potentially transmissible conditions will and will not be allowed back, and relevant communications should be documented.

BE MINDFUL OF AN EMPLOYER'S DUTY OF CARE

Most countries have laws designed to protect employees from physical harm at work. For multinational employers and those with mobile employees, it is important to identify the applicable country laws (which may be more than those of a single jurisdiction in some cases), as one size will not fit all.

In the United States, employees are protected under the Occupational Safety and Health Act (OSH Act). Section 5(a)(1) of the OSH Act is the general duty clause, which requires employers to provide their employees with a workplace "free from recognized hazards ... likely to cause death or serious physical harm." The federal Occupational Safety and Health Administration (OSHA) can cite employers for violating the general duty clause if there is a recognized hazard and they do not take reasonable steps to prevent or abate the hazard. However, OSHA citations can only be based on standards, regulations or the general duty clause.

State-mandated workers' compensation programs, and a separate program for federal workers, provide benefits to eligible employees who suffer job-related injuries and illnesses (these vary state by state). As a rule, where the harm arises out of and in the course of employment, employees are limited to the prescribed workers' compensation benefits and cannot recover damages for pain and suffering or mental anguish. Some states allow additional awards — beyond normal workers' compensation awards — when injury results from an employer's "willful" or "intentional" act, which might include failure to provide appropriate protections.

Businesses also have to consider liability to third parties, such as customers, which may not be so limited. For example, a restaurant employee infected on the job will only be entitled to workers' compensation, but theoretically the patrons they may infect could seek greater damages.

EVALUATE LEAVE AND PAY

Employers should analyze their legal obligations to provide employees with leave in the event of sickness or disability and evaluate whether their policies need to be adjusted in the current circumstances. In the U.S., the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and state workers' compensation laws will apply, as well as any contract and policy language. Exclusions from insurance policies should be identified — for example, many travel insurance policies exclude pandemics.

Drawing on this analysis, companies should consider under which circumstances they would want to extend or expand benefits and protections, and they should evaluate their level of income protection for employees on leave, perhaps adjusting benefits plans for employees who exceed their sick-day allotment in order to support sick employees who must stay home.

It is important to look beyond the immediate legal requirements to the broader business and legal implications. For example, a business may not be legally required to pay an employee during a period it bars him or her from the workplace because that individual was on personal travel to a place where transmission was occurring. However, choosing not to do so makes it more



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likely that they prematurely return to work, thereby infecting other staff, risking business continuity, legal liability from third parties such as customers, and contributing to an increase in infections.

ALLEVIATE STRESS AND ANXIETY

Stress and anxiety related to coronavirus infection could also become a legal concern. The legal standards will vary by jurisdiction. For example, employers in the United Kingdom have a duty to assess the risk of stress-related, ill health arising from work activities, and they are required to take reasonable measures to control such risks. In some cases, this may mean taking steps beyond the minimum if doing so is not unduly burdensome to the employer and mitigates the psychological burden on the employee. For example, rather than terminating the employee for refusing to come to the office due to fear of contagion, even though all officially recommended precautions have been taken, an employer might be more flexible in allowing time off or remote working arrangements. Such steps can help U.K. employers avoid claims of unfair dismissal.

Employers should be aware that mental health conditions such as germophobia may be protected as a disability under laws such as the Americans with Disabilities Act and require that employers take a modified approach pursuant to reasonable accommodation requirements.

PROTECT PRIVACY

Employers should understand which personal health data an employee might be obligated to disclose if he or she becomes infected or is at high risk for infection — likely, anything that could interfere with the employee's ability to perform the essential functions of the job, or that could increase the risk to coworkers or third parties through workplace contact. Failure to understand the legal obligations in relation to such data could expose the company to breach of privacy claims.

Fortunately, even rigorous privacy rules allow employers to disclose employees' protected health information to authorities for public health purposes. That said, all such data must be handled within the organization's data privacy protection framework, and if such data is being transmitted from the European Union to

the United States, care should be taken to do so in compliance with the General Data Protection Regulation (GDPR).

PLAN FOR A WORST-CASE SCENARIO

Contingency planning may include, for example, temporary succession planning for key decision-makers, and understanding and preparing in advance for the legal requirements in cases of furloughs and layoffs. Many jurisdictions require more formal procedures and notifications for layoffs above a certain number of employees. A failure to comply can have severe penalties for employers and even personal liability in some cases for their leadership. Planning ahead in order to stay compliant is an important part of an organization's resilience program.

This article first appeared in Harvard Business Review on March 4, 2020. It can be found online at: <https://hbr.org/2020/03/what-are-companies-legal-obligations-around-coronavirus>



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HOW TO STAY CYBERSECURE

WHILE WORKING FROM HOME



By Megan Howard,
Pratum Director of Security Services

As the United States works to flatten the curve and slow the spread of COVID-19, much of the American workforce is being sent home from the office. This presents some technical and security challenges for business owners looking to protect staff's health and the well-being of the organization. If you are preparing to send your employees home in response to coronavirus, there are a few things you need to prepare before making your business remote.

SET A SECURITY POLICY

Before sending your staff home, make sure you have a security policy in place for remote work. Employees may not be aware of the security measures they should follow, or how to safely conduct business from home. For many, this is the first time their jobs have been done remotely. Creating written-out guidelines helps educate your staff, while keeping your company safe. This way everyone will be on the same page and will hopefully lessen any confusion.

NIST (National Institute of Standards and Technology) has guidance on

what to include in a policy/standard for any organization choosing to use telecommunication. There are also cybersecurity threats listed for everyone working remotely to be aware of. You can find their recommendations under the NIST publications, titled "*Guide to Enterprise Telework, Remote Access, and Bring Your Own Device (BYOD) Security*." (<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-46r2.pdf>)

ESTABLISH A SECURE CONNECTION

While your employees are working remotely, you should provide secure connectivity to corporate resources. Organizations that have never allowed for remote work will need to make resources available that were only accessible internally before now. There are a few ways you can help ensure the security of your network, while staying connected.

- 1 Utilize a VPN (Virtual Private Network). A VPN will help establish a secure connection between the office and employees who are working from home.

- 2 Think through what limitations on VPN usage may exist. This will help ensure it can support the number of employees needing to connect.

- 3 Use MFA (Multi-Factor Authentication) on the VPN and any remote connections. This adds an extra layer of security by requiring additional information to access the VPN. Implement this sort of security layer anywhere you can.

- 4 Keep all VPNs and network infrastructure devices up to date on patches. The Department of Homeland Security CISA website has some guidance on VPN security. This includes advice on how to keep VPNs updated and which cyber threats to look out for. (<https://www.us-cert.gov/ncas/alerts/aa20-073a>)

ADDRESS WIFI RISKS

At-home networks are typically not as secure as corporate networks. While working at home your employees probably have several devices connected to the same WIFI as well. This can cause security risks when opened to personal devices, home appliances and more. Company-provided hotspot connections may be an option for some organizations.

You should also consider the speed of your employees' home internet connections. They may not have the bandwidth to support their entire family now working from home, or children using devices to stream video on the same WIFI. This isn't necessarily a security concern, but it may have an impact on employee productivity.

PREPARE FOR UPDATES

While your employees are away from the office, they may need to connect back to the company network in order to get certain updates. That can include OS, anti-virus and vulnerability scanning.

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Depending on your process for updates, you may need to let your staff know a certain time of day this can be done so they can be sure their devices are on and ready for the necessary maintenance.

EDUCATE YOUR EMPLOYEES

Cybercriminals know how to take advantage of hot topics. There have already been scams targeting people looking for more information on COVID-19. During times of fear, people are more susceptible to these sorts of scams. Employees can also feel more relaxed in their home, which could mean they're more comfortable opening suspicious emails.

Remind your staff to stay vigilant. Educate them on the importance of checking sources before clicking on links and never sending money to anyone without verifying the recipient. That may mean an extra phone call, instead of walking down the hall.

If you're working from home, you may not consider the dangers of leaving your computer unlocked. If you have children, pets, spouses or roommates wandering around, they may unknowingly

click on something that causes issues. Having a cat or toddler accidentally delete important files while you walk away from an unprotected device could be bad news. Instead, just follow the same practices you should be doing at the office by locking your computer any time you need to step away.

While it may be tempting to use your favorite computer or tablet when working from home or other remote locations, it's not the best security practice. If you work for an organization with a diligent IT staff, they will be continually updating software and security measures on your company devices and networks. The same cannot always be said about your personal devices. You may not follow the same strict protocols as professional technical staff would. You also may not be able to afford the same level of technical controls that your company can. By connecting a personal device to private information, you are potentially putting your company at risk.

ENSURE YOUR INCIDENT RESPONSE PLAN IS READY

Your Incident Response Plan is always a crucial part of your business. Now is the perfect time to make sure it is up to date and you know how to enact it remotely. If a cyber incident occurs, do you have the ability to investigate and mitigate the threat from outside the office? Start working on the answers to these questions as soon as possible, if you haven't already.

Having a security plan in place, educating your staff and being prepared for possible threats will make this time of uncertainty more secure and manageable for your business. If you have questions about any of these recommendations, Pratum is an Iowa-based cybersecurity firm ready to help improve your security posture. You can find more information on our services at www.pratum.com.



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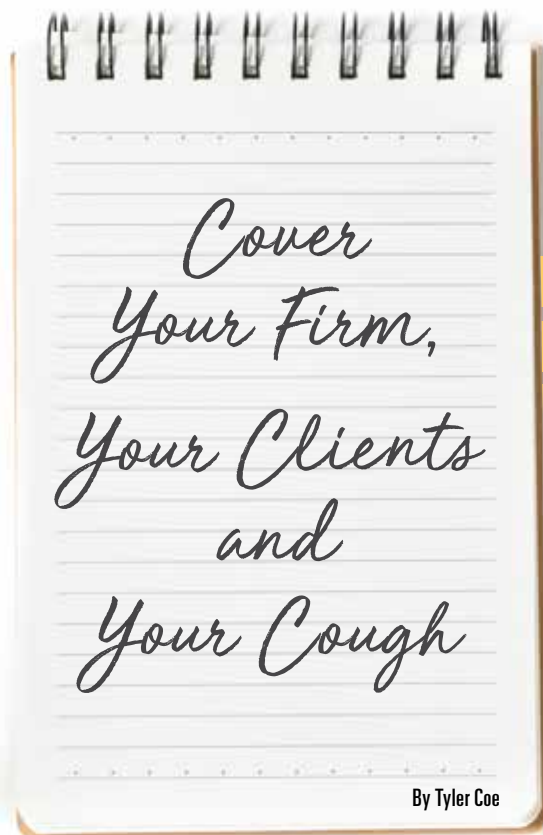


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Phone lines steadily ring. E-mails flow into inboxes. Faxes – yes, faxes – transmit into firms. All these communication forms largely revolve around one topic: the Coronavirus Disease of 2019 (COVID-19). In the area of family law, clients face a new reality not even the most experienced family law attorneys accounted for in custody stipulations. This is why we as lawyers must now truly demonstrate our effectiveness as advocates, negotiators and problem solvers. Our clients need us to take decisive action and provide real-life guidance on how best families should deal with life during COVID-19. This article provides you with fresh ideas regarding law firm operations, a reminder of the most important document in family law cases and procedures for handling telephonic and video court hearings. As Iowa lawyers, we are in this together.

THRIVING WHILE YOU WORK REMOTELY

Generally, I only like change in my life when I am the creator and dictator of the change. In those instances, change is great! Here, during COVID-19,

embrace change from the outset. Seek advice and ideas from colleagues and staff members knowing that advice and those ideas will likely make you uncomfortable. Often, those ideas will seem wildly different from how you currently handle matters, but the staff ideas will likely allow you to increase efficiency. Seriously consider each idea everyone in your firm – and this article – provides. If you remain in a static position unwilling to change, your chances of success during COVID-19 will dwindle.

For many attorneys and law firms, the idea of working outside the office for an extended period is daunting. In 2018, over 26 million Americans (about 16 percent of the total workforce) worked remotely. (Zara Greenbaum, The future of remote work, Monitor on Psychology (October 2019), <http://www.apa.org/monitor/2019/10/cover-remote-work>.)

While most Iowa firms are slow to embrace full-time remote work capabilities, COVID-19 demonstrates the need to rethink traditional wisdom of working together in one physical location. With the right mindset and tools, your law firm has a true opportunity to thrive.

The very first step is to evaluate your individual and law firm needs. Think about what you do on a regular day and what your staff members do on a regular day. For a lot of us, this is not always easy. Trusted non-lawyer staff members make our lives easier and run efficiently. Speak with your attorneys and staff members. Ask them what they do each day. Turn their feedback into a to-do list so you can assess what technology each person requires. This will include laptops, traditional or cloud-based software for file access and accounting, internet connectivity, telephone access and mail delivery. Close attention to these needs will pay dividends in the long run, as none of us wish to miss a deadline or client call because we failed to think through our firm's basic needs.

Once you know your own needs, your staff's needs and your firm's needs, you are ready for the next step to success. Send every member of your firm an e-mail with clear and detailed instructions for moving forward. (Teresa Matich, How to Work Remotely as a Lawyer: A Guide, Clio Blog, <http://www.clio.com/blog/working-remotely-a-lawyer>.)

Whether it is a single e-mail to the entire firm or individual e-mails to teams, the e-mail must set exact parameters for remote work. These details must include how your firm will communicate with the outside world, what technology the firm will utilize, hours everyone should begin working and if it is okay to ever enter the physical law firm building and for what purposes. (See *id.*) No detail is too great, but every absence of a detail is simply a barrier to your firm's achievements.

Working remotely or from our offices, clients want to find us. One of the most stressful parts of being a family law litigant is not knowing how to reach attorneys. Some of us perform better with written communications such as e-mails. Others prefer in-person meetings through every step of each case. This is why we must provide clear information regarding whether we are working in-office or remote, how we will communicate with clients and when we will be available. (See *id.*) A simple e-mail to existing clients regarding the aforementioned actions provides clients with the comfort of continuity no matter the circumstances. For potential clients, a voicemail greeting regarding the same information works wonders. Since a lot of potential clients hear about us and then review our websites, you should also provide a short notice with the same information you provide to existing clients.

Family law clients often enjoy face-to-face meetings. This allows for clear communication. E-mails seem informal, calls do not allow clients to gauge the seriousness of our demeanors and letters sent through the mail are almost a relic of the past. We should seriously consider the use of virtual meetings using cameras. Some of the most productive meetings I have involve looking my clients in the eyes so I can provide instant feedback to their questions and concerns. Smart phones, laptops, tablets and other devices routinely have built-in cameras, microphones and speakers. While I do not suggest we provide personal cellular telephone numbers to all clients, I do suggest we utilize existing technology. Just last week fellow lawyers and clients all contacted me through GoToMeeting and Zoom. This allowed for instant communication, satisfied our desires to see each other in real-time and kept conversations productive. My rescue dog Lyla even made several appearances when my meetings did not conflict with her naptimes.

TOUGH QUESTIONS DURING TOUGH TIMES

Lawyers spend hours crafting the perfect template for future family law clients. If you ask me whether we should use your stipulation or my stipulation, you know the answer. Even with these beautifully crafted stipulations, we clearly failed to account for national health concerns. That leaves us working with what we have, which is actually a lot.

Over the last month, clients called with questions. Some asked what to do when a parent absconded with the minor children during the early days of COVID-19. Others wondered if they could withhold the children because their former spouse claimed COVID-19 was no worse than the flu. Some clients feared the judicial system would close entirely. To clients, these are not excessive worries, but serious concerns.

Remind your clients the most powerful antidote to a disobedient parent is their decree of dissolution of marriage. This is the most important document governing all parties' behavior. Each decree has – or should have! – specific times when each parent maintains custody of the children. The times include weekdays, weekends, holidays when school is or is not in session, et cetera. Further, these decrees establish child support, spousal support and reimbursement provisions. To aid clients in this time of crisis, read through the decree with them. Sometimes our writings prevent non-lawyers from fully understanding what an existing decree means. Clarity now is key to keeping our clients and their families calm.

MAY IT PLEASE THE COURT

Iowa Supreme Court Chief Justice Susan Christensen entered clear orders regarding the operation of the courts during COVID-19. In what gave me a sigh of relief were her words, "The Iowa Judicial Branch remains committed to conducting business as necessary during these times of crisis." (Iowa Supreme Court Chief Justice Susan Christensen. Order, In the Matter of Ongoing Provisions For Coronavirus/COVID-19 Impact On Court Services, March 17, 2020.) There is nothing quite like continuity and comfort during a time of need. For family law attorneys, our court system remains committed.

At the time I wrote this article, I participated in three telephonic hearings in district court. The court staff members, judges and opposing counsel

made each hearing run smoothly, efficiently and without panic. I am impressed by the quick adaption of our courts from in-person hearings to telephonic hearings where lawyers have a penchant for talking over each other.

For these telephonic and video hearings to remain successful, preparation is key. Absent a court order with deadlines, you should coordinate with opposing counsel regarding when you will both file exhibits. Best practice entails doing so before the day of the hearing so the court has ample opportunity to review potential exhibits. Test your communication methods before the hearing. The day before my first multi-line telephonic hearing, I kindly asked my younger siblings to see if I really knew how to use the multi-conference phone system. Of course, they heckled me just to be sure I was ready for the judge. Next, remind your clients to wait a few seconds before speaking during questioning and practice with them over the phone before the actual hearing. Do your practice run-through with exhibits to avoid unnecessary delays. These pre-hearing steps will save you time and stress during the actual hearing.

LAST WORDS

Give your clients, the court, your staff and yourself some slack. Not every step you take will be successful. The only thing you can do now is prepare your firm's plans and immediately implement each plan knowing those plans will require changes. Remember this: We are Iowa lawyers. We are in this together.



Tyler Coe is an attorney with Whitfield & Eddy Law in Des Moines. His practices includes divorce and family law matters regarding mid-to-high asset property disputes in divorces and high-conflict child custody cases. When Coe is not in the office, he spends his time doting over Lyla his Beagle. If you find this article helpful or wish to discuss the topics, contact Coe at coe@whitfieldlaw.com or 515-246-5523.

COVID-19: KEEPING YOUR JOB WHILE KEEPING OTHERS (AND YOURSELF) SAFE

by Amy Beck

C OVID-19 is here, and we've seen just a glimpse of how life will change in the coming weeks and months. March Madness, St. Patrick's Day Parades, concerts and schools have been canceled. Although difficult, these are steps in the right direction to limit the spread of a virus that could cripple our healthcare system and put our loved ones at risk.

Many employers have taken preventative steps, instructing employees to work from home or closing for the time being. However, many other employers are expecting their workers to arrive for their shifts as normal. If you're one of the people in the second group, you're likely wondering what options you have available if you or a loved one is diagnosed with COVID-19.

ARE YOU DISABLED?

If so, you don't need to wait until a positive test result. You can be preemptive. If you have a disability like diabetes, heart disease or lung disease, CDC guidance indicates that you will be at a greater risk if you contract COVID-19. Under state and federal law, you have the right to request a reasonable accommodation. Again, you do not have to wait until you contract the virus to make this request. A reasonable accommodation may be working remotely or taking medical leave to self-quarantine. You should express your concerns to your employer. Once

your employer is aware of your disability, it has a duty to work with you to find a solution. Be prepared to provide a doctor's note outlining your condition and be ready to discuss potential solutions.

DO YOU QUALIFY FOR FMLA LEAVE?

A coronavirus diagnosis for you or a family member may make you eligible for FMLA leave. To qualify for FMLA leave, you or a family member that you are caring for must have a "serious health condition." The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves either: (1) inpatient care in a hospital, hospice or residential medical care facility; or (2) continuing treatment by a health care provider. Under the current regulations, COVID-19 may not always qualify for FMLA leave, but we will provide updates as they become available from the Department of Labor (the federal agency that provides guidance for laws like the FMLA).

WERE YOU SENT HOME BECAUSE YOUR EMPLOYER BELIEVED YOU MAY HAVE CONTRACTED COVID-19?

COVID-19 alone likely does not constitute a disability under state or federal law. However, even if it did, your employer may be able to claim that it believed that you were a "direct threat"

to others. Direct threat defense is a narrow exception to the general rule that employers may not discriminate based on disability. An employer's determination that an employee poses a direct threat cannot be based on fears, misconceptions or stereotypes about the employee's disability. When relying on the direct threat defense, the employer must make a reasonable medical judgment, relying on the most current medical knowledge and the best available objective evidence. The factors an employer should consider are: (1) duration of the risk; (2) the nature and severity of the potential harm; (3) how likely it is the potential harm will occur; and (4) how imminent the potential harm is. Given the nature of COVID-19, there is a chance that a court would find for an employer that a direct threat exists.

To avoid this, be open with your employer and share if you've received a negative test result. If you or a family member has received a positive test result, ask your employer if you are eligible for FMLA leave.

WILL I BE PAID IF MY EMPLOYER CEASES OPERATIONS DURING THE COVID-19 OUTBREAK OR IF I MISS WORK DUE TO AN INFECTION?

This is a scary situation, and we wish that we had a clear answer—but we don't. The situation depends on many factors, such as union contracts and what kind of benefits your job offers you. If you do not have paid leave, you may be able to apply for unemployment or short-term disability.

If you believe your rights have been violated, you should speak to an attorney to know what your rights are.

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FIGHT COVID-19

TIPS FOR SUPPORTING NONPROFITS PROVIDING CRITICAL AID

By Gordon Fischer and Mackensie Graham

As COVID-19 has spread across the state of Iowa and people are practicing social distancing and quarantining, there is no doubt the social fabric of our communities has been altered. Normally busy streets are silent, people are facing layoffs across industries, the healthcare system is stressed to its limits and nonprofits—particularly those engaged in providing social services—are having to make incredibly difficult decisions. These pressures and disruptions are challenging nonprofits' typical way of operating when “business as usual” is not possible for the foreseeable future.

An overwhelming demand for services has intersected with nonprofits having to cancel fundraising campaigns and events that underwrite the services they provide. The recent influx of people from all demographic groups who are facing food insecurity and seeking medical services has stressed the capacity of many nonprofit budgets that are not equipped to expand services.

When it comes to supporting nonprofits at this unique time, it's not easy to know where to start; there are some important best practices to keep in mind for your own charitable giving and in advising clients who are seeking guidance.

1 DOUBLE-CHECK THE ORGANIZATION'S STATUS

Even with the heightened standard deduction, the federal income tax charitable deduction still matters to many donors. Before the donation is made, confirm the organization is a qualified charitable one. The IRS' Tax Exempt Organization Search online tool is useful for this.

2 KNOW THE CARES ACT

The “Coronavirus Aid, Relief, and Economic Security” (CARES) Act aims to encourage charitable giving by revisiting tax

incentives. Under this Act, deductions on individuals' cash gifts to public charities that had previously been limited to 60 percent of adjusted gross income (AGI) has been suspended for the tax year—effectively raising deductions to 100 percent of AGI. (Gifts to donor-advised funds, supporting organizations and private foundations do not qualify for the heightened deduction.) Taxpayers who take the standard deduction are permitted to deduct an additional \$300 for cash contributions to nonprofits. For corporations, the deduction for charitable gifts increased from 10 to 25 percent of taxable income. The Act also increased deductions on food contributions from 15 to 25 percent. Additionally, the CARES Act includes three distinct loan programs that charitable nonprofits can apply for.

3 CONSIDER DIFFERENT ASSETS THAN CASH

When we talk about philanthropy, the first impulse tends to be writing a check, but there are many different tax-wise strategies that can take advantage of your most valuable assets to benefit a nonprofit. Assets like bonds and farmland, among many others, can make for a not-so-obvious yet still tax-smart donation. Check with the intended beneficiary organization and confirm that it is ready and able to administratively handle this type of gift. For gifts of long-term capital gain property (generally speaking, property owned for more than a year), the donor can generally claim a federal income tax charitable deduction for the fair market value of the property at the time of the donation.

Another tool that can be advantageous is the IRA charitable rollover. Individuals 70½ years and older can elect to make a direct transfer of up to \$100,000 per year (\$200,000 for married couples) from an individual retirement account to a public charity. This allows

the IRA owner/donor to fulfill required minimum distributions without having to include the transfers as income with regard to federal and Iowa taxes.

4 SUPPLY WHAT'S NEEDED

If you are donating tangible goods, again, check with the intended charitable organization. Storage space may be limited, and assessments of need will drive requests.

5 KEEP RECORDS

For both monetary and in-kind donations, keep receipts and other documentation, such as acknowledgments from recipient organizations.

6 AVOID SCAMS

Sidestep scams by quickly hanging up on suspicious robo-calls about COVID-19 and don't download or click links in emails from contacts you don't know. Also, be alert to pleas for donations from individuals seeking wire transfers, gift cards or cash. (Also keep in mind personal solicitations from individuals, rather than qualified charities, will not be deductible on income taxes). Some qualified charitable organizations may choose to use crowdfunding websites but, again, be sure to double check the organization's legitimacy.

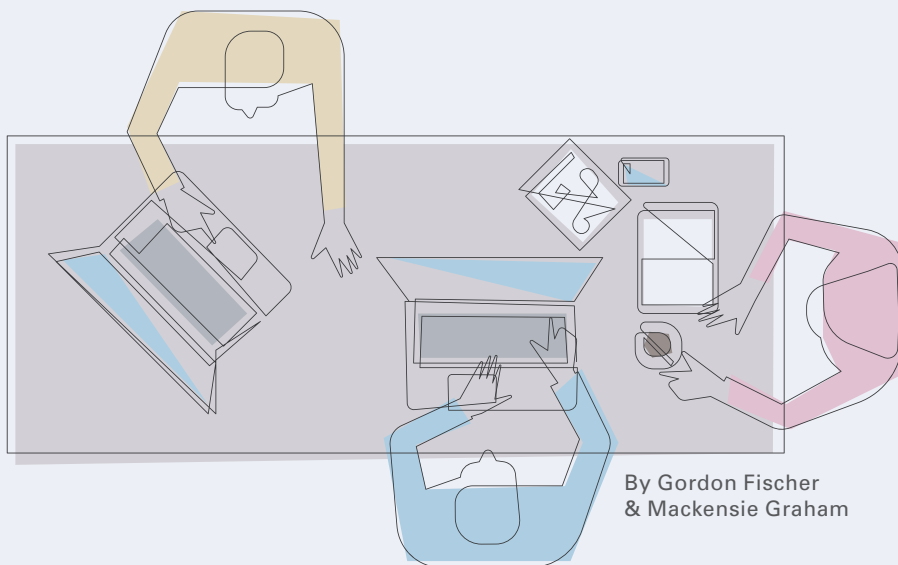
7 BEYOND STATE BORDERS

If you would like to assist beyond America's borders, check out Charity Navigator's website, which features an updated list of highly rated, vetted nonprofits providing medical services, relief supplies and funding to the global community.

If you're healthy and able, now is the time to step up and help local, state and national organizations provide vulnerable populations with essential services.

PEACE OF MIND

ESTATE PLANNING DURING COVID-19



By Gordon Fischer
& Mackensie Graham

C OVID-19 has forced Iowans to alter how we work and interact with one another. It has also pushed us deeper—it has made us consider the sanctity of life and health, the power of quality medical care and the importance of social connections.

When so much of our daily lives and futures seem out of our hands, estate planning can play a role in giving Iowans a meaningful choice over processes and outcomes. Estate planning can also offer a sense of peace of mind—a semblance of control over the future in the face of overwhelming uncertainty.

That said, COVID-19 does present some twists in the estate planning process that both lawyers and clients need to be aware of. When counseling clients to make an estate plan during this pandemic, Iowa attorneys across practice areas should be aware of the following considerations in drafting and executing trust and estate documentation.

START WITH THE BASICS

As Iowans turn their attention to the health and wellness of themselves and

their families, basic estate planning documents like a will, health care power of attorney and financial power of attorney are critically important. Regardless of wealth or family situation, everyone can benefit from a proper estate plan.

Because not all of us regularly work with estate documents—and it has probably been a while since you studied for the Bar exam—let's do a quick refresher:

- ♦ **Last will and testament** – A will records the testator's intent regarding disposition of estate in the event of death. At its most basic, a will distributes both personal and real property to a designated beneficiary(-ies).
- ♦ **Financial power of attorney** – A financial power of attorney designates an agent to access the principal's finances, and manage them accordingly and in the principal's best interest in the case of incapacity. (At death, any power of the agent is automatically revoked).
- ♦ **Health care power of attorney** – A health care power of attorney designates an agent to make health

care decisions in the principal's best interests in case of incapacity. Considering both the rapid spread and potentially severe symptoms and mortality rate of COVID-19, this is an essential document to put on file with a primary care physician/hospital.

Clients with children under age 18 can include a nomination of guardian(s) in their will as well as a testamentary trust.

- ♦ **Nomination of guardian** – Testators with minor children should name at least one guardian and preferably a successor as well. By naming a guardian, parents can ensure as smooth a transition as is possible for their kids if something were to happen. Doing so mitigates a worst-case scenario of surviving family members fighting and litigating over who should be the proper caregiver for children. Remember, just as in other areas of law, mere oral agreements, without more evidence of support, are insufficient by themselves in court.
- ♦ **Testamentary trust** – This is an incredibly useful provision that can ensure minor children will be provided and cared for in the event something happens to the parent(s)/current caregiver(s). A trustee, named to oversee the testamentary trust, can distribute funds from the estate for essentials like healthcare, education, maintenance and support. Additionally, a testamentary trust can state at what ages and percentage of the trust fund the beneficiary child will inherit funds. For example, the testator may decide the child should receive one-third of the estate at age 21 and the remainder at 35.

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FLEXIBILITY WITH FORMALITIES DURING COVID-19

At present many people have concerns—and rightly so—about having a group of people in a room at the same time who are needed to execute an estate plan. For a will to be held valid, it must be executed properly, namely the will must be:

- ♦ in writing;
- ♦ signed by the testator (or, in some situations, signed in the testator's name by another individual at the testator's direction and in their presence);
- ♦ witnessed by two independent (not interested) people;¹ and
- ♦ notarized.

Iowa has not yet adopted or passed a version of the Uniform Electronic Wills Act,² which permits individuals to execute a will digitally and allows the probate courts to recognize such documents as valid. Only four states—Nevada, Indiana, Florida and Arizona—have passed such legislation.³ Additionally, Iowa does not generally recognize holographic wills—a document intended as a will and written entirely or in material portions in a testator's handwriting. The exception is under the foreign wills provision where a holographic will is permissible if it was legally drafted in another state where such wills are valid.

Gov. Reynolds issued a proclamation on March 22 that continued the State Public Health Emergency Declaration.⁴ This was a step in the right direction toward encouraging estate plan executions during social distancing and quarantining, as the proclamation instituted a number of suspensions for in-person requirements. The governor temporarily suspended the in-person appearance requirements to execute a financial power of attorney,⁵ health care power of attorney,⁶ and will or codicil.⁷ This means the physical presence of parties like a “testator, settlor, principal, witness, or other person” is not required so long as such parties (especially witnesses) “can see and hear the acts by electronic means, such as video conference, Skype, Facetime, Zoom, or other means, whether or not recorded.”⁸ Additionally, powers of attorney, which do not have to be notarized if two witnesses are present, can be executed over video.

Wills must still be notarized, and the governor's proclamation stated that notaries must conform with guidance issued by the Iowa Secretary of State (ISOS).⁹ The ISOS-issued guidance requires notaries to:

- ♦ Register with the Secretary of State's office at sos.iowa.gov/remotenotary.
- ♦ Select a third-party vendor, like DocVerify, eNotaryDox by Signix or Notarize (among others) that offers e-signing capabilities, identity-proofing technology and storage of notarial act records.
- ♦ Record each notarial act and retain the recording. The recording needs to be able to ensure compliance, so clear audio and high-resolution video is critical.

FINANCIAL UPS AND DOWNS

Financial markets have been a roller coaster resulting in many people losing investments in stocks and retirement accounts. This could mean that the wealth transfer strategies an estate planner and/or financial advisor might have recommended pre-pandemic are no longer relevant or wise.

The upside of these kinds of numerical nosedives is that low interest rates and depressed assets could actually make this an advantageous time to transfer certain assets to intended beneficiaries. Estate planning tools like a Grantor Retained Annuity Trusts (GRAT) and Charitable Lead Annuity Trust (CLAT). Both trust options could be structured to pass assets to beneficiaries transfer tax-free.

Grantor Retained Annuity Trust (GRAT)

At its most basic, a GRAT allows the grantor to place assets in a trust while retaining a right in the assets to receive a fixed income stream for a certain term; when the term is up, the asset balance passes to the trust's beneficiaries. The equation for determining value on that final asset transfer is based on the retained income stream and assumed rate of return on the assets, which is determined by the IRS and currently (as of March) sits at 1.8 percent.¹⁰ Thus, any assets in the trust at the end of the trust term will pass to the beneficiaries transfer tax free if a grantor retains a right to income from the trust that is equivalent to the values of the contributed assets plus the 1.8 percent return rate.

Charitable Lead Annuity Trust (CLAT)

For a grantor who wants to support a qualified charitable organization, a CLAT may be a worthwhile tax-wise strategy. A CLAT is quite similar to the GRAT, but instead of the grantor receiving the income stream for a defined term, a designated charity does. If this is structured in the right way, the value gift passing to the ultimate beneficiaries can do so transfer tax free as it is based on the assets' value when the CLAT was funded, less the value of the charity's income stream.

Intra-Family Transfers

Lending or selling of assets to family member beneficiaries can take advantage of low interest rates. To be an effective strategy, such “assets only need to appreciate at a rate greater than the interest rate charged.”¹¹ Strategies for intra-family transactions should maximize on the assumption that once asset values eventually rebound, all appreciation will be considered outside

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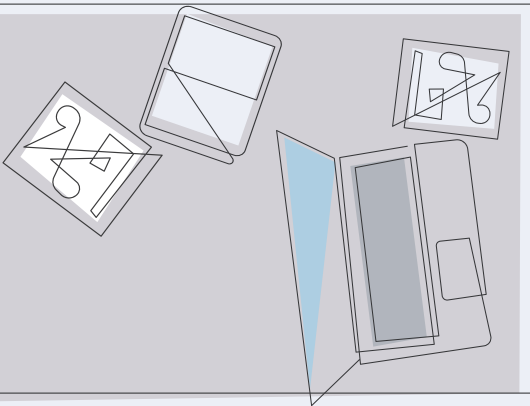


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the parameters of the taxable estate. For recipient family members, the amount of appreciation above the charged interest rate passes transfer tax free.

WE'RE ALL IN THIS TOGETHER

At a time when COVID-19 has thrown so much of the established habits and rhythms of daily life into disarray, focusing on things that we can control can provide relief. Encouraging friends, neighbors, family and clients to start or update their estate planning documents is a place to start.



FOOTNOTES

1. See Iowa Code § 633.279 (providing that the signing is witnessed "by two competent persons who signed as witnesses in the presence of the testator and in the presence of each other[;] . . .").
2. See Bob Carlson, *Electronic Wills Are Coming*, FORBES (Nov. 29, 2019, 7:30 AM), <https://www.forbes.com/sites/bobcarlson/2019/11/29/electronic-wills-are-coming/#3f183b4a3abe>.
3. Janice L. Davies & S. Blaydes Moore, *Electronic Wills: The Future Has Arrived — Are You Ready?*, 39 THE WILL & THE WAY 1 (Dec. 2019), <https://www.ncbar.org/media/987263/epdecember2019-article-1.pdf>.
4. Gov. Reynolds Signs New Proclamation Continuing State Public Health Emergency Declaration, OFF. OF THE GOVERNOR OF IOWA (Mar. 22, 2020, 4:05 PM), <https://governor.iowa.gov/press-release/gov-reynolds-signs-new-proclamation-continuing-state-public-health-emergency>.

5. Iowa Code § 633B.105.
6. Iowa Code § 144B.3.
7. Iowa Code § 633.279.
8. OFF. OF THE GOVERNOR OF IOWA, *supra* note 5.
9. Paul D. Pate, *In-Person Notarization Requirement Waiver Guidance*, OFF. OF THE IOWA SECRETARY OF ST. (Mar. 2020), https://cdn.ymaws.com/www.iowabar.org/resource/resmgr/coronavirus_resources/Remote_Notary_Guidance_-_fin.pdf.
10. Section 7520 Interest Rates, IRS (Mar. 18, 2020), <https://www.irs.gov/businesses/small-businesses-self-employed/section-7520-interest-rates>.
11. Mildred Gomez, *Impact of COVID-19 on Estate Planning*, NAT'L L. REV. (Mar. 13, 2020), <https://www.natlawreview.com/article/impact-covid-19-estate-planning>.



Gordon Fischer is an Iowa attorney with more than 20 years of experience, focused on estate planning, charitable giving and nonprofit formation/compliance. His firm's mission is to promote and maximize charitable giving in Iowa. He welcomes discussion on every aspect of charitable giving, including strategic estate planning. He can be contacted at gordon@gordonfischerlawfirm.com and his cell phone is 515-371-6077.

Mackensie Graham is a law clerk at Gordon Fischer Law Firm and in her second year at the University of Iowa College of Law. She's an Iowa native, graduate of Drake University and holds a master's degree in public policy. She may be contacted at mackensie@gordonfischerlawfirm.com.



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MANAGING ANXIETY & STRESS IN THE WORLD OF COVID-19 (Information from the CDC)

PERSONAL HEALTH RESILIENCE

A person's "resilience" is their ability to bounce back from a difficult or life-changing event—like the diagnosis of chronic disease or the impacts of a natural disaster. People—and communities they are a part of—are better able to withstand, adapt to and recover from adversity when they make healthy choices, like the decision to prepare for emergencies.

When enough healthy, socially-connected and prepared people come together, they form a community that is often better able to withstand, manage and recover from disasters.

The outbreak of coronavirus disease 2019 (COVID-19) may be stressful for people. Fear and anxiety about a disease can be overwhelming and cause strong emotions in adults and children. Coping with stress will make you, the people you care about and your community stronger.

Everyone reacts differently to stressful situations. How you respond to the outbreak can depend on your background, the things that make you different from other people and the community you live in.

People who may respond more strongly to the stress of a crisis include:

- Older people and people with chronic diseases who are at

higher risk for COVID-19

- Children and teens
- People who are helping with the response to COVID-19, like doctors and other health care providers, or first responders
- People who have mental health conditions including problems with substance use

Stress during an infectious disease outbreak can include:

- Fear and worry about your own health and the health of your loved ones
- Difficulty concentrating
- Worsening of chronic health problems
- Increased use of alcohol,

tobacco or other drugs

- Feelings of numbness, disbelief, anxiety or fear
- Changes in appetite, energy and activity levels
- Difficulty sleeping or nightmares and upsetting thoughts and images
- Physical reactions, such as headaches, body pains, stomach problems and skin rashes
- Anger or short-temper

Things you can do to support yourself:

- Take breaks from watching, reading or listening to news stories, including social media. Hearing about the pandemic repeatedly can be upsetting.
- Take care of your body. Take deep breaths, stretch or meditate. Try to

SMART FOR YOUR CLIENTS

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IowaCommunityFoundations.org

eat healthy, well-balanced meals, exercise regularly, get plenty of sleep and avoid alcohol and drugs.

- Make time to unwind. Try to do some other activities you enjoy.
- Connect with others. Talk with people you trust about your concerns and how you are feeling.

Taking care of yourself, your friends and your family can help you cope with stress. Helping others cope with their stress can also make your community stronger.

Sharing the facts about COVID-19 and understanding the actual risk to yourself and people you care about can make an outbreak less stressful. When you share accurate information about COVID-19 you can help make people feel less stressed and allow you to connect with them.

People with preexisting mental health conditions should continue with their treatment and be aware of new or worsening symptoms.

If you, or someone you care about, is feeling overwhelmed with emotions like sadness, depression or anxiety, or you feel like you want to harm yourself or others call:

- 911
- Substance Abuse and Mental Health Services Administration's (SAMHSA's) Disaster Distress Helpline: 1-800-985-5990 or text TalkWithUs to 66746. (TTY 1-800-846-8517)
- The Iowa Lawyer's Assistance Program at 515-277-3817 or help@iowalap.org.

A MESSAGE FROM DAN MOORE, THE PRESIDENT OF THE IOWA LAWYERS ASSISTANCE PROGRAM (ILAP) BOARD OF DIRECTORS

Please know that the Iowa Lawyers Assistance Program (ILAP) has always been, and at this time in the world-wide crisis that we have not experienced before, is now ready, willing and able to offer our help to Iowa lawyers, judges and law students who may be struggling. The following members of the Board of Directors offer to share their experience, strength and hope with others. This service is in addition to contacting our ILAP Director Hugh Grady. Please remember that all communications are confidential.

THE ILAP BOARD OF DIRECTORS CONSISTS OF:

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Hugh Grady, Director | hugh@iowalap.org | (800) 243-1533

WELLNESS CORNER

EMOTIONAL WELLNESS

This area of emotional well-being includes awareness, understanding and acceptance of your emotions and your ability to manage them through challenges and change.

RESILIENCE

Resilience is our ability to bounce back from adversity in a healthy way. Resilience comes from a collection of personal competencies which we can change and develop.

Examples are effective problem-solving, flexible thinking, optimism, impulse control, social support, empathy and faith/spirituality.

OPTIMISTIC EXPLANATORY STYLE

This is a behavior where a person takes an adverse event and puts it in a rational context rather than

engaging in catastrophic thinking. A way to improve this behavior is to monitor and dispute your automatic negative self-talk.

REFRAME NEGATIVE SELF-TALK

A process to find a positive view of adverse events or ideas you dislike. (1) Describe your situation. (2) Identify your personal ability to cope with the event. (3) Write a redemptive narrative why a tough event can, with the passage of time, also be something positive.

TIPS TO TRY

Activate your senses

- Stargaze, walk through a park, listen to the birds
- Smell pleasant aromas, feel the ground under your feet
- Connect with supportive people
- Participate in an experience with a trusted friend

- Go for a walk or bike ride with a family member and no agenda

Control impulses

- Delay action to allow time to think about consequences and alternatives
- Ask for time to decide or to respond

Let yourself feel

- Give yourself permission to feel emotion without apology
- Allow yourself to walk away from a situation that is emotionally harmful to you

The information for this monthly column is provided by the ISBA Well-Being Committee and the YLD Wellness Committee. Additional resources can be found on iowabar.org/wellbeing

Connect with us:

#isbawellness

Technology has done wonders to increase a law firm's productivity and accessibility. Attorneys may be able to do more work in less time than ever before. Gone are the days of snail mail and paper files – electronic communications and computerized files are now becoming the norm.

However, with innovation comes a potential downside: clients want answers yesterday and expect attorneys to be available 24/7. With these expectations, many lawyers give their clients their cell phone numbers and allow their clients to call or text them at any time.

We caution that these communication methods may pose a substantial exposure for the attorney. Continue reading for some risk management considerations and suggestions.

IMMEDIACY

According to internet studies, over 6 billion text messages are sent in the United States each day. Further, 95 percent of texts are read within three minutes, with an average response time of 90 seconds. Given these statistics, it is no wonder clients expect an almost instantaneous answer. However, providing an appropriate response to many of the questions a client may have will require investigation and research. Further, the client may have a compound question that cannot be adequately addressed in a text message.

It is human nature to want to help people and to answer their questions. Do not give in to the temptation to guess or provide an incomplete answer. A more optimal response would be along the lines of, "This is a complex issue. After I have some time to review, I will call you to discuss. While I am always happy to hear from you, let's try to keep text messaging limited to non-substantive issues." Even a brief: "Received. I will call you to discuss" would be acceptable. With these responses, the client knows that you got his/her message and will be communicating further.

Even better, consider telling your client at the inception of the engagement that text messaging cannot be used for substantive discussions. This stipulation can even be incorporated into the firm's engagement letters so there is no question

TEXTING

WHILE

LAWYERING

TIPS TO PROTECT YOURSELF FROM POTENTIAL PITFALLS

By Ellen A. McCarthy,
JD, CPCU, RPLU

later on. If you limit text messaging to scheduling and non-critical issues, you will reduce the expectation that you will provide legal advice immediately.

PRESERVATION

As with any other correspondence, electronic communications need to be memorialized. If a client later requests a copy of his/her file, or if a legal malpractice claim is made, text messages must be produced. Getting the texts from your phone carrier may not be an option – cellular service providers typically have a limited retention period to retrieve text message content.

Given these restrictions, it is imperative that the attorney have a procedure in place to keep a record of all text messages. While screen capturing a text message and saving to the client file may be an option, this method can be cumbersome.

Fortunately, applications are now available that make it easy to transfer texts to a law firm's computer. If a law firm authorizes its attorneys to text with clients, there should be a method in place to preserve the exchanges. Otherwise, the firm could risk a spoliation claim for destroying evidence being made by a disgruntled client at a later date.

SECURITY

Standard texting software may not have adequate security features, making communications susceptible to attack by hackers. Firms must ensure that a text platform has sufficient encryption to protect the confidentiality of client information.

Moreover, even if the law firm has a stellar security system, the client may not, which could still expose communications to an unauthorized third party. Further, if the phone allows message notifications to appear on the lock screen, attorney-client privilege breaches could occur; imagine leaving your phone on a table at a dinner party and having a client's text message with confidential information pop up on your lock screen for all to see. Consider disabling text notifications from appearing without a password first being entered.

Texting While Lawyering continued on next page.

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KUDOS

Two ISBA members appeared on the Des Moines Business Record's 21st annual list of Forty Under 40 honorees:

Abhay Nadipuram, VP, Government Relations and Legal Counsel, *Iowa Hospital Association*

Miriam Van Heukelem, Attorney/Shareholder, *Ahlers & Cooney*

Each of the honorees were profiled in the March 20 edition of the Business Record.



DRAKE LAW SCHOOL NATIONAL MOOT COURT TEAM TAKES THIRD IN THE NATION AT FINALS

Drake Law School, represented by the team of Lauren Calef (3L), Rachel Soderstrum (3L) and Logan Brundage (2L), tied for third in the nation and finished in the 'Final Four' of the 70th Annual National Moot Court Competition hosted at the New York City Bar in New York City in February. A total of 159 teams from 117 schools participated.

*Texting While Lawyering
continued from previous page.*

PROFESSIONALISM

Although the use of text lingo has become commonplace, attorneys should think twice before using abbreviations and emoticons in their communications. Such usage may be perceived to be unprofessional and/or subject to misinterpretation.

Moreover, joking and sarcasm are not always readily discernible in a text message. We have seen cases in which attorneys have mixed personal and business communications together in a less-than-business-like tone. A lawyer who curses or uses slang may have his or her competence and professionalism questioned. Take a look at your last text message with your client – is it professional in tone? Would you be comfortable having this text message blown up as an exhibit for a jury?

CONCLUSION

We recognize that texting is a preferred communication method that is a mainstay in our society. The above recommendations should not be construed as a call to cease all electronic messaging with clients. It is widely acceptable for lawyers to set up appointments, confirm court times and respond to non-substantive questions via text.

However, we remind attorneys to make sure such messages are properly encrypted and preserved. Further, we encourage lawyers to maintain a high level of professionalism in all of their client communications regardless of the medium. If a malpractice claim were ever asserted, the plaintiff's counsel will be combing through your files looking for ways to make you look incompetent and unprofessional. Do not let a misguided text message give them ammunition.



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Ellen McCarthy is the leader of Client Operations and Risk Management for Swiss Re, a partner of Lockton Affinity, which is endorsed by the ISBA for professional liability insurance.

Board of Governors Spring Quarterly Meeting

During the spring, virtual ISBA Board of Governors quarterly meeting, the BOG nominated new 2020-2021 ISBA officers, acted on committee recommendations and heard reports on key issues impacting ISBA members, the Iowa Judicial Branch and communities across the state.

ACTIONS

- Approved the nomination of new 2020-2021 ISBA officers: Angela Shutts – President-elect, Hon. Henry Hamilton III – Vice President and David L. Brown – ABA Delegate candidate.
- Approved Guardianship and Conservatorship forms submitted by the ISBA Legal Forms Committee including Notice of Filing Petition – not to respondent, Notice of Hearing to Required Parties, Notice to Adult Respondent of Filing of Petition and Notice to Registrant.
- Approval of the ISBA BOG Member Services/Benefits Small Group's recommendation to add Supporting and Cornerstone Membership Categories.

REPORTS

President's Report - *President Bill Boyd*

ISBA President Bill Boyd reported on the ISBA's work to ensure that during the COVID-19 crisis the ISBA is supporting members in their service to clients, the courts and their communities. President Boyd's report is summarized on page 5 in his President's Letter.

ISBA Executive Director's Report –

ISBA Executive Director Dwight Dinkla and Assistant Executive Director Harry Shipley

ISBA Executive Director Dwight Dinkla provided an update on the ISBA's response to the developing situation surrounding COVID-19 and actions taken to protect the health and safety of ISBA members, guests, staff and communities, and to help ISBA members transition to remote office settings. More information on these actions can be found on pages 4 and 6.

Assistant Executive Director Harry Shipley provided a report on renovations underway at the ISBA

headquarters due to a water pipe burst in February. ISBA Ways & Means Committee Chair Eric Turner reported on the financial condition of the ISBA and on membership statistics.

YLD President's Report -

YLD President Abhay Nadipuram

YLD President Abhay Nadipuram reported on the ISBA YLD Executive Council meeting in March and provided highlights of the YLD committees' activities currently underway. The YLD Diversity Committee is working with legal employers in Iowa to help them focus more on diversity-related goals. The YLD Parental Leave Task Force is working to identify short-term disability policies that may be available through the ISBA. The YLD Mock Trial Committee is recruiting new members. Nadipuram commended YLD ABA Delegate Kay Oskvig for her work with the ABA House of Delegates.

The YLD continues to lead efforts to address the growing problem of student debt in partnership with a nonprofit, Law School Transparency. YLD members presented on the Blue Sky Initiative at the National Council of Bar Presidents' meeting in Austin, Texas, in February. The ISBA YLD and Law School Transparency are working to reduce the cost of a legal education, create new standards that push schools to better prepare law school graduates and influence regulatory change through the ABA accreditation process. The two groups recently published their first report.

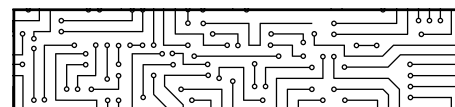
Legislative Report

ISBA Legislative Counsel Jim Carney provided a status update on the ISBA's affirmative legislative program including the Model Business Corporation Act. The Probate Court Costs bill, Senate File 604, passed the Senate, was unanimously approved in the House Ways & Means Committee, and only needs an amendment providing the effective date of the bill to be Jan. 1, 2021. It was then sent to the Senate for concurrence. Another key issue is opposition to Senate File 2338 - Caps on Recoveries in medical malpractice cases.

Carney reported that the legislators are now going through a process of trying to determine what their

absolute top priorities are in terms of the passage of subject matter legislation. An updated chart with the status of the 2020 ISBA Affirmative Legislative program can be found the next page.

ISBA Assistant Legislative Counsel Doug Struyk provided an update on the FY2020 budget after the March Revenue Estimating Conference meeting. Struyk reported that the members of the REC were reluctant to make major changes to their previous predictions based on current world events. He said that the state is expected to post a \$540.4 million surplus at the end of FY2020, absent any supplemental appropriations this coming session. This surplus would take the state's reserve funds to \$784 million or approximately 10 percent of the state's budget, as required by the Economic Emergency Fund and Cash Reserve Fund.



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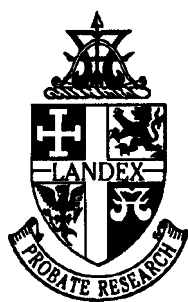
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EDITOR'S NOTE: Because the Iowa Legislature paused the 2020 legislative session for 30 days due to the coronavirus pandemic, there will not be any movement on the ISBA Affirmative Agenda during that time. The chart below outlines where the ISBA's five 2020 legislative proposals stand today.

IOWA STATE BAR ASSOCIATION— 2020 Affirmative Legislative Program *(Updated 3.19.2020)*

BILL NO.	SUBJECT	DESCRIPTION	STATUS
SF 2187/ HF 2276	Business Law Uniform Protected Series Act Clean-Up	Corrective Provisions to the Uniform Protected Series Act that passed last year, that provides a comprehensive framework for the formation and operation of a protected series limited liability company. To amend the Iowa Uniform Protected Series Act (UPSA) [SF569] to add section 489.14801 that will read, "In applying and construing the Iowa Uniform Protected Series Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Protected Series Act."	Signed by Governor 3/12/20
SF 2185/ HF 2402	Business Law Registered Agent Clean-up	The proposal deals with the effective date of resignation by a registered agent of (1) a corporation and also (2) other business entities. The MBCA 4th edition makes the resignation effective "on the earlier of (1) 12:01 a.m. on the 31st day after the day on which it is filed by the secretary of state; or (2) the designation of a new registered agent for the corporation." That will change current Iowa corporate law (§490.503), which makes the resignation effective immediately upon filing by the secretary of state, but the change is consistent with current Iowa law for limited liability partnerships (§ 486A.1213) and cooperative associations (§ 499.74). It is not consistent, however, with the law for limited partnerships (§ 488.116), limited liability companies (§ 489.116), unincorporated nonprofit associations (§ 501B.11(4)), and nonprofit corporations (§ 504.503), for all of which the agent's resignation is effective immediately upon filing by the Secretary of State.	Passed unanimously of the House floor on 3/3/20. Read first time and attached to companion in the Senate. Currently on Senate unfinished business.
HSB 20/ SF 604	Probate & Trust Law Calculation of Probate Court Costs	Iowa Code §633.31 is currently being applied inconsistently throughout the state. There are now several district court cases declaring the clerks in at least six counties to be calculating court fees inappropriately. The bill addresses how the clerk of probate court determines and collects charges in connection with services provided in probate matters. Excludes from the determination of court fees property over which the court lacks probate jurisdiction and for which the clerk renders no services.	HSB 20: Subcommittee recommends passage 2019 Session SF 604: SF 604 Passed House Ways & Means Committee on 3/12/20
SSB 3038 HF 2453 & HF 2564	Probate & Trust Law Family Law Guardianship & Conservatorship Update	Proposed changes to HF 610 & HF 591 to "fix" technical errors and substantive issues with the legislation that passed last year.	SSB 3038: Funneled HF 2453: On House Daily Debate Calendar Awaiting Amendment HF 2564: On House Daily Debate Calendar: incorporates the ISBA changes for the Adult Guardianships and Conservatorships
SF 2339/ HF 2357	Business Law Uniform Model Corporations Act	Along with thirty-three other States and the District of Columbia, Iowa has generally followed the Model Business Corporation Act in enacting the law governing business corporations. It is substantively sound and well drafted, and it offers benefits to Iowa courts, practitioners, and businesses on account of its widespread adoption, court interpretations (although non-binding), and useful Official Comments. In December 2016 the ABA Corporate Laws Committee published a 4 th Edition of the MBCA. The 4 th Edition amends the MBCA in various substantive ways. It also represents in part a restatement of the MBCA to include amendments approved since publication of the 3 rd Edition; and in recognition of continuing developments in the law, the 4 th Edition integrates the MBCA with the law governing unincorporated business associations such as LLCs. Finally, some changes were made simply to improve clarity.	Senate: On Senate Calendar House: Passed Judiciary referred to House Ways & Means. A House Ways & Means subcommittee of Representatives Hagenow, Holt, and Wolfe met on 3/9/20.



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In addition to the above legislative proposals, The Iowa State Bar Association supports the following positions as a part of its 2020 Affirmative Legislative Program:

- Full funding of indigent defense and adoption of legislation providing for \$5 per hour increase with an automatic cost of living increase in indigent defense fees.
- Full funding of the judicial branch.
- Full funding for legal services.
- Full funding of the IA Secretary of State's Office as requested by IA Secretary of State Paul Pate.
- Full funding for Office of the Public Guardian to protect the interests of Iowans who have no one else to manage their financial and health care needs.
- Child abuse prevention and treatment efforts and funding for child abuse prevention and treatment.
- Opposition to the legalization of title insurance.
- Opposition to absolute immunity legislation.

Force Majeure Clauses and Contractual Nonperformance as a Result of COVID-19

By Eric R. Tubbs

In light of the novel Coronavirus (COVID-19), companies should assess their existing contracts to determine whether they contain a force majeure clause that may excuse or delay a party's nonperformance under the contract.

This includes not just companies that have been or may be affected by the pandemic directly, but also those affected indirectly as a result of the evolving federal, state and local governmental actions taken in response to the COVID-19 pandemic.

Does the COVID-19 pandemic constitute a force majeure event?

Force majeure is a contractual defense that permits a party to excuse or delay its contractual obligations if certain extreme and unforeseeable circumstances beyond the control of the party prevent its performance. What types of events constitute force majeure depend on the specific language included in the force majeure provision itself.

Because the WHO has classified COVID-19 as a global pandemic, COVID-19 may qualify as a force majeure event if the force majeure provision specifically calls out a "pandemic" or "epidemic" in the list of specific force majeure events. Additionally, if a company is unable to perform its contractual obligations due to a governmental action or order (such as a "shelter-in-place" order) this too may qualify as a force majeure event if the list of force majeure events includes "governmental actions or orders."

In the event the pertinent force majeure provision does not include these specific circumstances as force majeure events, the force majeure provision may include more general "catch-all" provisions such as "acts of God" or "acts beyond the reasonable control of the parties" that a party could try to assert to excuse or delay its performance under the contract, although there is currently a lack of case law as to whether COVID-19 would constitute a force majeure event under these broader provisions.

Other factors to consider in deciding whether to claim a force majeure event

In addition to determining whether the COVID-19 pandemic would constitute a force majeure event under the pertinent contract, there are additional factors the nonperforming party should consider, such as:

- Determining whether the force majeure event has made the nonperforming party's obligations impossible or extremely difficult to perform – courts typically refuse to excuse a party's performance under force majeure if the event merely increased a party's expenses or made it more difficult for a party to perform under the contract;
- Using best efforts to comply with all procedural requirements in the force majeure provision (such as delivering notice to the other party), as some contracts may make following such procedures a condition to claiming a force majeure, and courts may determine the nonperforming party may not rely on the force majeure clause if the procedural requirements were not followed;
- Showing that it has taken steps to avoid or mitigate the force majeure event (such as trying to find alternative means to perform its contractual obligations); and
- Considering the consequences of relying upon a force majeure clause (for example, if declaring a force majeure would permit the other party to terminate the agreement if the force majeure event is not resolved within a certain time period).

What if the pertinent contract does not include a force majeure provision?

Even if the applicable contract does not include a force majeure clause, there may be other provisions in the contract (such as dispute resolution or mutual cooperation provisions) or other legal doctrines (such as frustration of purpose, impossibility of performance or commercial impracticability) that may apply to excuse a party's nonperformance.

Obviously, each contract is unique and specific facts may dictate an outcome. Hopefully this general discussion is helpful, but it is not intended to serve as legal advice to be relied upon. If you have any questions or need assistance regarding force majeure provisions in your contracts or any other contractual or legal doctrines that could excuse a party's nonperformance due to the COVID-19 pandemic, please contact the author at etubbs@nyemaster.com.



Eric Tubbs is a member of Nyemaster Goode's Business, Finance and Real Estate Department, specializing in a broad range of corporate transactional matters, including commercial contracts, mergers and acquisitions, securities issuances, corporate governance matters, and general representation of business organizations.



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TRANSITIONS



GREEN

Jenna Green has been promoted to shareholder at Hupy and Abraham in Des Moines. She joined Hupy and Abraham in 2015 as an associate attorney and will be the firm's seventh shareholder and the first woman shareholder. She will continue to represent Hupy and Abraham's clients in various personal injury areas.



GILLILAND

John R. Gilliland, a financial advisor and portfolio manager at Morgan Stanley in Des Moines, has been promoted to associate vice president. Gilliland, who has been with Morgan Stanley Wealth Management since 2012, holds a bachelor's degree from Cornell College and J.D. from Creighton University.



DRURY

Jamey Drury has joined the Goosmann Law Firm at the Sioux City location. He is a business, trial and employment attorney. Bringing over 20 years of legal experience to the firm, Drury helps executives, business leaders and in-house counsel find cost-effective resolutions to extinguish their companies' legal problems.



BRAHN

Billi Brahn was promoted to director of trust and wealth management at Iowa State Bank in Des Moines. As director, she is responsible for the performance and strategic direction of the Trust and Wealth Management division. Brahn received her law degree from the University of Iowa College of Law and her B.A. in Actuarial Science from Northwestern College, Orange City. She is a member of the Iowa Academy of Trust and Estate Counsel, Des Moines Estate Planners and local bar associations.

John Cutler and **Gregory Taylor** have been named shareholders at Cutler Law Firm, P.C., in West Des Moines.



CUTLER

Cutler is a litigation attorney who represents individuals and businesses in business disputes, workers' compensation, personal injury and construction. He handles matters for both plaintiffs



TAYLOR

and defendants. He received his J.D. from the University of Iowa College of Law.

Taylor specializes in workers' compensation law, primarily representing employers and insurance carriers, but also claimants. He received his J.D. from the University of Iowa College of Law.



MCCONAUGHAY

Abby McConaughay joined the Trust Department at Iowa State Bank in Des Moines in October 2019. As vice president and trust officer, she works with individual and corporate clients to secure their estate and financial futures. McConaughay received her B.A. in Political Science from Creighton University and her law degree from the University of Nebraska College of Law. She received her master's degree in gerontology from the University of Nebraska at Omaha to extend her focus on working with older adults. Before moving to Des Moines, McConaughay practiced law with a concentration on elder law and estate planning in Omaha, Nebraska.

Shuttleworth & Ingersoll, P.L.C. has promoted **Megan R. Merritt** to vice president, and **William J. Daly** and **Caitlin L. Slessor** to senior vice presidents.



MERRITT

Merritt focuses on litigation. She represents individuals and business in cases before judges and juries in state and federal courts. She started with Shuttleworth & Ingersoll as an associate in September 2017 and currently serves on the firm's Recruiting Committee. She is a graduate of the University of Iowa College of Law.



DALY

Daly's practice focuses on commercial and business law, finance, securities, sales and acquisitions of businesses and business contracts. He began with the firm in 2012 after practicing in Chicago and was elected as a vice president in 2015. He is a graduate of the University of Iowa College of Law.



SLESSOR

Slessor serves as a member of the firm's board, chair of the Family Law Department and heads the Client Relations Development Committee. Her work focuses on family law, representing clients from the beginning to the end of their disputes. Slessor started with Shuttleworth & Ingersoll in June 2014 and was promoted as a vice president in January 2016. She is a graduate of the University of Iowa College of Law.

Dickinson Law has announced its newly-elected **board of directors**.



MOUNTSIE

Ron Mountsier was elected president of the firm, replacing labor and employment law attorney Jeff Krausman who served in the role since 2014. Mountsier is engaged in general practice and focuses on taxation, business and corporate law, as well as estate planning and probate matters.



PLUMMER

Amy Plummer was elected treasurer. Plummer practices primarily in the area of corporate and banking law, mergers and acquisitions, business formation, e-commerce, intellectual property and software licensing agreements.



LANDE

John Lande was elected secretary. Lande's practice includes a variety of civil litigation matters, bank regulatory issues and cybersecurity.



BRUNER

Ben Bruner and **Melissa Schilling** were both elected vice presidents.



SCHILLING

Bruner has a business-focused practice including banking and financial services, commercial finance, real estate and corporate law.

Schilling primarily represents and counsels public and private sector employers in labor and employment matters.



KRUSE

Brad Kruse became a shareholder at Dickinson Law on Jan. 1. His practice focuses on bankruptcy and creditor's rights matters, business and corporate law and banking and financial services.

IN MEMORIAM

William 'Bill' Kamps, 78, of Port Orchard, Washington, died Jan. 27. He was born in 1941 in Dubuque. He served in the U.S. Navy and received his J.D. from Northwestern University in Chicago. Kamps was an attorney with Walgren & Sexton in Bremerton, Washington, from 1970-1972 and at the Shiers Firm in Port Orchard from 1972-1990. He was appointed a Kitsap County Superior Court Judge in 1990, retiring in 2002.

Colin J. Witt, 45, of Beavertown, died Feb. 23. Witt was born in Colorado Springs, Colorado, in 1974. He received his J.D. from the University of Iowa College of Law. From 1999 to 2002, Witt served as a law clerk to Honorable Ronald E. Longstaff, U.S. District Court for the Southern District of Iowa. He then worked for the Ahlers & Cooney, P.C. Law Firm in general litigation and did federally appointed criminal defense work. He was appointed as a part-time U.S. Magistrate for Polk County in 2005. He was then appointed to serve as an Iowa Judicial District Associate Judge (Polk County) in 2006 and served full time in juvenile court.

WORD ORIGINS

for Lawyers

By Rick Autry

A VIRAL COLUMN

IF WE FOLLOW THE ROOT A QUARANTINE SHOULD LAST HOW LONG?

Now that the misfortune of a pandemic is upon us, lawyers may find themselves using infection-related words more often. One more likely to have legal ramifications is quarantine. It is an example of a word whose root meaning is plain for all to see, but only if you know where to look.

Quarantine has a set of seemingly unrelated meanings in modern and outdated English. We understand quarantine nowadays most commonly to refer to isolation of infected persons from the uninfected so as to prevent disease spread. Also familiar to modern speakers is the extended sense of this public health usage where we isolate someone or something for the purpose of preventing undesirable contact, for example, quarantining computer files that may have been compromised, or we could even say we are going to quarantine information for a period of time so that it is not released to the public. Less familiar is the common law sense of a period of time during which a widow who is entitled to a dower is supposed to be assigned her dower and has the right to occupy her deceased husband's mansion house and curtilage without charge. Other extinct meanings include the place where Jesus fasted in the desert, and the period of fasting known as Lent. But what does all this have in common? The root of the word explains all.

Here's a hint. The ultimate Indo-European sources of quarantine is made up of two parts. (Indo-European is the now-dead source of many European, As and Indic languages). First there is kwetwer- which means "four." Next there is an Indo-European stem that means "ten." Four tens is what? Put together we get the Latin root of quarantine, which is the word quadrāgintā, meaning, of course, "forty." Now we can understand. Lent is for 40 days. Christ fasted for 40 days, and in Middle English the place

of this 40-day isolation was named quarentyne. The widow's right of dower to remain in the mansion is good for 40 days. And in ancient Venice vessels suspected of carrying disease were kept in isolation for a "space of forty days" called in Italian quarantina giorni. It was from the Italian quarantina, which derives from the Latin quadrāgintā, that English got the word quarantaine describing the public health usage in the mid-17th century. Interestingly almost right away the sense of "40 days" was ignored, as one of the early mid-17th century attestations notes the actual quarantine in question was "for 30 days...contrary to the import of the word; though in the general acceptance, it signifies now the thing, not the time spent in doing it." The verb quarantine didn't appear until the 19th century. At root quarantine is a period of isolation lasting 40 days.

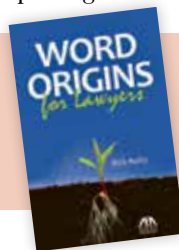
Another way to deal with infection is through inoculation. Here we again find ourselves in the Latin. The ultimate etymon of infection is the Latin verb *īficere*, meaning "to stain, tinge, dye" and also "to corrupt, spoil, taint." This Latin verb is made of *in-*, meaning "in," and the verb *facere*, "to make, to do." The literal meaning of *īficere* is "to work in, to put in," and thus the root meaning infection is "a placing within [of poison or corruption]." Weirdly, inoculation is related to "seeing" words like ocular, optic, binocular, autopsy (lit: "see for yourself") and eye. This is because the Latin etymon of inoculation is *inoculātiō* which itself was made by adding the noun-forming *-tiō* to the Latin verb *inoculāre* "to graft." And this verb *inoculāre* in turn breaks down as *in-* ("in") and *oculus* ("bud"). But *oculus* also means "eye." What's happening is that the Romans thought tree buds looked like eyes and so named them *oculus*, and Romans seem to have been partial to bud grafting, so they named the process of grafting *inoculātiō*. Then when Europeans adapted the Middle Eastern practice of introducing a pathogen in

order to induce immunity, they thought of the process as similar to grafting a bud on a tree, and so named it inoculation after the Latin word for the agricultural process. So, thank God, we aren't talking about taking injections in the eye.

Farming also comes into play in vaccine. In 1798 Edward Jenner used cowpox serum to protect against smallpox. He coined the Latin phrase *variolae vaccinae* for "cowpox" the second word being based on the Latin *vaccīnus* meaning "of or relating to cows." *Vaccīnus* itself derives from Latin *vacca* meaning "cow." In 1800, Jenner described the process of using cowpox to protect against smallpox with the word *vaccination*. It was Louis Pasteur who, in honor of Jenner, applied the term to diseases other than smallpox. So two of the most hopeful words in our current struggle are born of the farmer's field and barn.



Rick Autry is just a lawyer who happens to have a room full of dictionaries. He is also the author of *Word Origins For Lawyers* published by the ABA and available at Amazon.com. If you have corrections or suggestions, please email him at WordieLawyer@gmail.com.



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Assistant County Attorney I or II – Juvenile Division – Johnson County Attorney's Office, Iowa City, IA – Primary duties involve juvenile delinquency, child in need of assistance, termination of parental rights and civil commitments. Qualified candidates must have current admission to practice in Iowa. Additional salary information: Assistant County Attorney I range starts at \$74,290.29 annually; Assistant County Attorney II range starts at \$88,480.93 annually (classification and salary commensurate with experience – refer to web site for specifics) *To apply, visit:* <https://careers.iowabar.org/jobs/13462929/assistant-johnson-county-attorney-i-or-ii-juvenile-division>

Attorney 2 – Iowa Public Information Board, Des Moines, IA – Iowa Public Information Board seeks a full-time attorney to further state and local transparency and foster informed citizen participation through education, training, dispute resolution and enforcement activities concerning Iowa Code chapters 21 and 22. The board was created by Iowa Code chapter 23 in 2012 to provide a free, efficient way for Iowans to receive information and resolve complaints related to Iowa's open meetings and public records laws. *To apply, visit:* <https://careers.iowabar.org/jobs/13455068/attorney-2>

Assistant County Attorney I – Nobles County, Worthington, MN – Provides legal services, representation, prosecution and advice for Nobles County. **QUALIFICATIONS:** Minimum of Juris Doctor degree from accredited law school; current license to practice law in Minnesota or will obtain prior to start date. Experience preferred but not required. Valid driver's license required. Salary DOE. Nobles County offers a competitive benefits package. **APPLY TO:** Nobles County Administration Office. Visit our website at www.co.nobles.mn.us for application and to view full job description and benefit sheet.

Litigation Attorney – Telpner Peterson Law Firm LLP, Council Bluffs, IA – Seeking a litigation attorney with two or more years of experience to work in the areas of personal injury, worker's compensation and commercial litigation. The ideal candidate would have excellent research and writing skills coupled with a strong work ethic. All applications will be handled confidentially. Telpner Peterson Law Firm, L.L.P. is an AV, full-service law firm serving western Iowa and eastern Nebraska since 1952. *Please reply to:* Nicole Hughes, 25 Main Place, Suite 200, Council Bluffs, IA 51503 or nhughes@telpnerlaw.com.

Associate Attorney – Foss, Kuiken, Cochran & Helling, P.C., Fairfield, IA – Foss, Kuiken, Cochran & Helling, P.C., a well-established general practice law firm in Fairfield, is looking to add the right candidate as a full-time associate attorney with the intention of fostering a long-term relationship. Our practice involves a wide range of opportunities in the areas of estate and business planning, business transactions, corporate, probate, tax, real estate, banking, civil litigation and family law. *Cover letter and resume with references requested. Please send to* lhelling@fhgclaw.com.

Staff Attorney – Davenport Community Schools Project – Iowa Legal Aid, Davenport, IA – Iowa Legal Aid is seeking an energetic and creative attorney to join our new Davenport Community Schools Project. The successful candidate will be responsible for developing and implementing the project. Building upon the considerable groundwork already laid by Iowa Legal Aid staff, the new staff attorney will help launch the opening of the onsite legal clinic and build the project to full scale. Applications are accepted on an ongoing basis. *To apply, submit letter of application (indicate geographic restrictions), resume, law school transcript (recent graduates only), recent representative writing sample, and names, addresses and phone numbers of at least three professional references to* akness@iowalaw.org.

Civil Litigation Attorney – Newbrough Law Firm LLP, Ames, IA – Newbrough Law Firm, LLP, is seeking a civil litigation attorney. Excellent research and writing skills are required and trial experience is preferred. Iowa bar admission required. The ideal candidate would also possess a strong work ethic, interpersonal skills and a dedication to serving the community. *All applications will be handled confidentially. Send resume and cover letter to Newbrough Law Firm, LLP, Attention: Nicole S. Facio, Personnel Partner, P.O. Box 847, Ames, IA 50010 or* nfacio@newbroughlaw.com.

Attorney – Gray, Stefani & Mitvalsky PLC, Cedar Rapids, IA – Gray, Stefani & Mitvalsky, PLC, is seeking an experienced attorney (mid-level associate through partner level) to join a small, well-established law firm in downtown Cedar Rapids. We are an AV-rated law firm looking to expand services in areas including business law, probate and estate planning. *To apply, visit* <https://careers.iowabar.org/jobs/13342591/attorney>

Attorney – Nyemaster Goode, P.C., Ames, IA – Nyemaster Goode, P.C., is seeking a real estate and transactional attorney with 3+ years of experience for its Ames office. The ideal candidate would possess outstanding academic credentials as well as a strong work ethic. The successful candidate will be involved in the firm's real estate and transactional matters, especially with respect to Nyemaster Goode's clients located or doing business in Ames. *Please send a cover letter and resume by postal mail to Brian J. Humke, 1416 Buckeye, Suite 200, Ames, Iowa 50010 or by email to* bjh@nyemaster.com. All inquiries will be held in confidence.

Assistant City Attorney – Litigation – City of Des Moines, Des Moines, IA – Provides professional legal representation for the City of Des Moines; works independently with minimal supervision; performs related work as required. Performs professional legal work related to the enforcement of traffic violations, other simple misdemeanors, civil infractions and general litigation. This position is subject to the Des Moines Municipal Code residency requirement which would require you to live within the limits of the City of Des Moines no later than seven months after appointment to the position and you must maintain that residency while employed in this position. *To apply, visit* <https://careers.iowabar.org/jobs/13371881/assistant-city-attorney-litigation>.

Litigation Attorney – Crary Huff Law Firm, Sioux City, IA – Crary Huff Law Firm is seeking an experienced litigation attorney for its offices located in Sioux City and Dakota Dunes, South



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Dakota. Candidates should have at least three years of practice experience, primarily in civil litigation. Excellent research and writing skills are required, and trial experience is preferred. Iowa bar admission required. All applications will be handled confidentially. *Send resume and cover letter to Crary Huff Law Firm, Attention Sabrina Saylor, Personnel Partner, PO Box 27, Sioux City, IA 51102 or ssaylor@craryhuff.com.*

SPACE AVAILABLE

Up to three office spaces available for lease.

The space has a private entrance on the backside of the building with abundant parking. Included in lease is access to three conference rooms, flex space for administrative staff, filing cabinets, office equipment, direct phone line and a receptionist. Office furniture available if desired. The space includes men's and women's bathrooms for clients and a private bathroom/shower for tenants. This is a prime West Des Moines location with easy access to I-235. *Please contact Mike for appointment 515-480-5264.*

Attorney interested in an office share arrangement. Great potential opportunity for a solo practice attorney with an established

clientele or a new attorney just out of law school. Low overhead. Nice space. Office located just east of Valley West Mall. Great location. Lots of parking. *If interested, email nphifer@walkelaw.com.*

FOR SALE

Store Front Practice – Owner of store front law practice, at same location in central Iowa for more than 50 years, is considering retirement. The office is located within 45 minutes of the Polk County Courthouse. Core practice areas include probate, real estate, estate planning, small business entities, criminal, divorce and tax preparation. Excellent opportunity for a confident, industrious, client-oriented attorney with a strong transactional background to mold a practice to suit his or her interests. All terms negotiable. *For more information please write: The Iowa State Bar Association, Code 871, 625 East Court Ave., Des Moines, 50309-1904, or email at isba@iowabar.org. Please include Code 871 on the envelope if mailing and in the subject line if emailing.*

SERVICES OFFERED

Mediation – Former Justice Michael J. Streit who served for over 27 years on the bench is offering mediation and arbitration services.

Streit was appointed as a district court judge in 1983 where he served the Fifth Judicial District. In 1996 he was appointed to the Iowa Court of Appeals and in 2001 to the Iowa Supreme Court where he served until 2010. *For information and scheduling please call 515-244-3500 or 515-247-4708.*

PERSONAL

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

Commercial & Bankruptcy Law Seminar



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May 29
8:15 AM - 4:30 PM

PRESENTATIONS

- 💰 Case Law Update
- 💰 Department of Justice Perspectives on Chapter 11 Changes
- 💰 Navigating the Dangerous Seas of Conflicts: Rule 32:1.7(b)
- 💰 Basic Securities and UCC Article
- 💰 View from the Bench: Judges Panel

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Spotlight ON Service

MELVIN O. SHAW

Coralville attorney Melvin O. Shaw practices primarily in estate planning, probate and real estate, and when he's not busy serving clients, he is giving back to his community in a variety of ways, most significantly through his church. Shaw is a member of the Bethel African Methodist Episcopal Church of Iowa City, serving as a Steward, Sunday School teacher, Men's Group Leader, and as the church treasurer and trustee.

"I am fulfilled spiritually and personally through my service to Bethel, whether it is through attendance at regular worship services, or through the giving of my time and talents," Shaw said.

Prior to 2005, Bethel had not been substantially renovated in more than 100 years. Most of the structural and interior repairs and modern upgrades were considerably costly for a small congregation of about 40 people. That's where Shaw came in. He and another member led a five-year, \$500,000 fundraising campaign to renovate and add on to the building. They obtained the needed capital and held their first service in the renovated facility on a Sunday morning in August 2010.

"Those five years were transformative for me personally and professionally. On that worship morning, I realized even more that there are times in our lives where we can and should work for someone or something where the benefit or purpose is so much greater than ourselves. In an era where more



Melvin O. Shaw

socialization is taking place virtually and where worship can be done via a smartphone app or online, it's important that we not forsake the fellowship of coming together, to work for the common good of mankind and kingdom-building," he said.

Shaw is also serving currently as president of the Board of Trustees of The Housing Fellowship (THF) in Iowa City, which is a non-profit community housing development program that provides permanent affordable rental housing at prices that are less than market-rate. THF was started approximately 30 years ago by a coalition of 18 Johnson County-area churches and other social agencies. The organization also provides first-time homebuying opportunities to people who qualify for assistance.

"I dedicate time to THF because I believe in its mission: To provide quality homes to people with limited incomes," Shaw said. "Over the years, I've been able to offer guidance to THF in real



Melvin O. Shaw, on the left, pictured during a check presentation to The Housing Fellowship, an organization for which he serves as president of the Board of Trustees.

estate litigation, homeowner's association issues, property acquisition, financing, zoning and a host of other issues."

In November 2019, Shaw was elected to the board for Inside Out Reentry Community, which serves individuals returning to the Johnson County area after incarceration. This organization focuses on life skills, employment readiness, housing, high school diploma tutoring and other services.

Shaw also serves on the ISBA Board of Governors, as a member-at-large for the ABA's General Practice Solo Division, on the Judicial Qualifications Commission and previously as president of the Johnson County Bar Association. These additional endeavors allow him to connect with other attorneys for the betterment of the profession and their communities.

"I believe that we are beginning to see the need for unity even more so as communities across the world begin to address the medical, social and other effects of the coronavirus. At times like these where there is an especially vulnerable population, lawyers should not be blind to the needs of the public-at-large. Because practicing law is a privilege, lawyers should support and propose practical solutions to societal problems that nonprofit agencies and organizations exist to ameliorate in some form. Attorneys have a form of specialized training that allows them to see, analyze and resolve problems. It seems appropriate that attorneys dedicate a portion of their time and talents for the greater public good."

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



Andrew B. Howie

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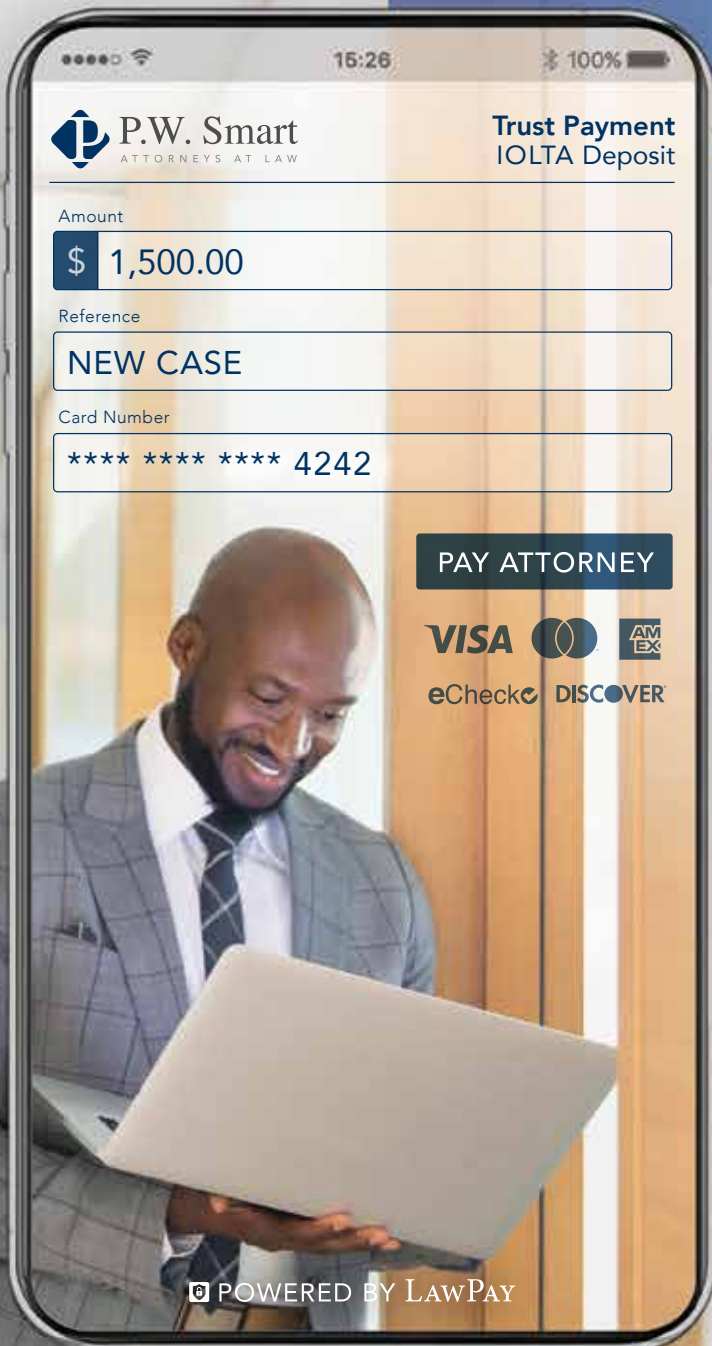
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