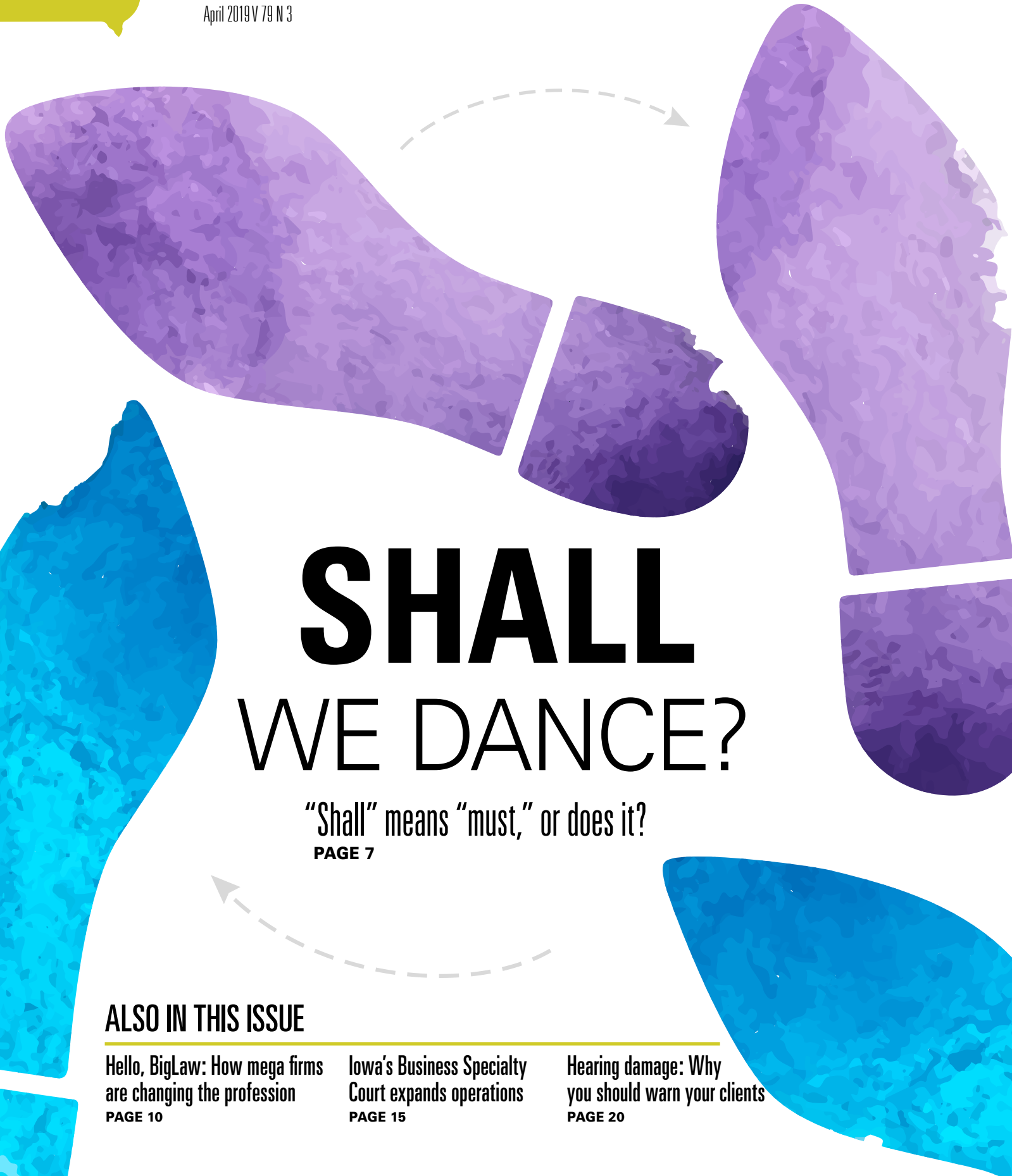




THE IOWA LAWYER

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SHALL WE DANCE?

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THE TINKER CASE & DAN JOHNSTON

TOM LEVIS, PRESIDENT

This year marks the 50th anniversary of *Tinker v. Des Moines Independent Community School District*. Fifty years later, there is still interest in this historic decision. Recently it has been used to successfully defend the rights of students to wear anti-abortion armbands, pro LGBT t-shirts and shirts critical of political figures. It was recently recalled by student marchers pushing for tougher gun laws. “Just like *Tinker v. Des Moines*, we are going to change the law,” protester Emma Gonzalez said after the Feb. 14, 2018 shootings in Parkland, Florida.

Yes, *Tinker* is alive and well. But, in case your memory needs a little refresher, the *Tinker* case began in 1965 when the Des Moines School District suspended several students, including siblings John and Mary Beth Tinker, for wearing black armbands to school. The students wore the black armbands to protest the Vietnam war. On Feb. 24, 1969, in a 7-2 decision written by Justice Abe Fortas, the United States Supreme Court declared that the school suspensions violated the students’ First Amendment right to freedom of speech. Writing for the court, Justice Fortas declared that the Des Moines students did not shed their constitutional rights to freedom of speech when they entered the school-house gate.

The *Tinker* case was hotly debated in the 1960’s and for many years following. At the time the Tinkers were suspended, Des Moines

School Board President, Ora Niffeneger, defended the suspensions as a “disciplinary measure,” noting that “our country’s leaders have decided on a course of action and we should support them.”

Justice Hugo Black said in his *Tinker* dissent:

“One does not need to be a prophet or the son of a prophet to know that, after the Court’s holding today, some students in Iowa schools—and, indeed, in all schools—will be ready, able, and willing to defy their teachers on practically all orders.”

I was in high school when the *Tinker* decision was handed down. As a result of the *Tinker* decision, my high school decided to protest the school’s policy on student hair length and dress code. We wore t-shirts to school complaining about the rules. No one got in trouble and the school board removed the policy on hair length and agreed to end the dress code. We won! Not quite the same as protesting the Vietnam War, but my fellow high school students used *Tinker* to change school policy!

I like to talk about the *Tinker* case not because of what happened in my high school but because I eventually got to know John Tinker and his lawyer, Dan Johnston. I met John Tinker about 10 years ago when John and his family were living, ironically, in an old school house. We were having problems with our furnace and one of my clients recommended that I contact John Tinker to fix the problem. The client told me that John was brilliant and could fix anything. I contacted John and when he arrived at the house, I asked him if he was related to the famous Supreme Court *Tinkers*. Indeed, he was. John and I spent the next two hours in my basement next to my malfunctioning furnace talking about the *Tinker* case. I don’t think John touched my furnace that day, but I didn’t care. I was talking to history!

I learned from John that when he and his sister wore the black armbands to school, his sister, Mary Beth, was a

13-year-old student at Warren Harding Junior High and John was a 16-year-old sophomore at North High. John admitted that despite their young age, he and his sister were not new to protesting. You see, John and Mary Beth’s father, Leonard Tinker, was a Methodist minister who believed that faith should be put into action. Rev. Tinker and his wife, Lorena, had been active in many demonstrations in the 1950’s and 60’s and raised their children to have a passion for human rights and racial equality. Once, in 1957, while the Tinkers lived in Atlantic, Rev. Tinker learned that the only black family in town was not allowed to swim in the public pool. He and his wife organized the church youth group to protest the swimming pool ban. The press made a big deal out of the protest, but the Atlantic church was not so thrilled with their minister’s newfound fame. Rev. Tinker was let go. The Tinkers moved to Des Moines where both Rev. Tinker and Lorena continued to be active in civil rights. But, like in Atlantic, their protests frequently angered employers. Leonard eventually lost his job as a Methodist minister and Lorena lost several teaching jobs. By the time John and Mary Beth wore their black armbands to school, the family was struggling financially, but was undeterred in their passion for human rights.

After John and his sister were suspended from school, they were delighted to learn that the ACLU would represent them in a federal case contesting the school suspensions, but both were surprised to learn that their assigned ACLU lawyer would be a 27-year-old recent Drake law graduate named Dan Johnston. Dan had been out of law school less than a year and had little experience in court. To top it off, Dan’s opponent was Allan Herrick, a senior partner in a major Des Moines law firm. However, by the time the case made it to the United States Supreme Court, the Tinkers knew the ACLU had chosen wisely. Over the years, the Tin-



Mary Beth & John Tinker

kers watched as Dan Johnston went toe to toe with the more experienced Allen Herrick. They saw the passion Dan exhibited for their cause and the brilliance of his legal arguments. By the time the case reached the highest court in the land, the Tinkers knew they had a superb lawyer. Yet, when Dan stood at the well of the United States Supreme Court to argue John and Mary Beth's case, he was only 30 years of age!

I got to know Dan Johnston in 1977 when Dan was appointed by the Polk County Board of Supervisors to be the new Polk County Attorney. Dan's predecessor was Ray Fenton, a county attorney known for his skills in the courtroom. If there was a big murder case to try, Ray Fenton was the lawyer to prosecute it. As such, local law enforcement and county attorney staff held Ray Fenton in high regard. So, when Dan Johnston was appointed to replace Ray Fenton, many lawyers and law officers in the Des Moines area believed the board of supervisors had made a big mistake. After all, Dan had been an ACLU lawyer who had represented the Tinkers, the Black Panthers and those crazy Grinnell college students who raced naked through the campus library. Dan had no experience prosecuting criminals and little experience as a trial lawyer.

Like the ACLU when it assigned the Tinker case to Dan, the Polk County Board of Supervisors knew exactly what they were doing. They recognized that the office had plenty of good trial lawyers. What the office needed was a visionary leader who would professionalize a growing and complex office. The board was right! Dan wasted no time in his new job. Dan immediately reorganized the county attorney's office. He created an Intake and Screening Bureau where assistant county attorneys were assigned to advise the police on the filing of criminal charges. No longer were the police saddled with deciding how to charge criminal defendants. With the Intake and Screening Bureau, there would be as assistant county attorney advising and assisting the police on every case. Law enforcement loved Dan's idea. Dan also organized the county attorney's

office into divisions such as the civil division, the trial division, the juvenile division and the major offense bureau. He created an office policy manual for everyone in the county attorney's office. This policy manual advised assistant county attorneys on what they could and could not do when prosecuting cases. It brought consistency to the resolution of criminal cases. Prosecutors and defense lawyers loved the manual because it gave them an idea of what kind of deals could be made.

Dan also created a neighborhood mediation program to resolve minor neighborhood disputes. If a neighbor's dog barked all night, instead of arresting the dog owner and charging him or her with disturbing the peace, the neighbors would meet with a trained mediator who usually resolved the matter. This allowed the county attorney's office and the courts to focus on more serious matters. Staff appreciated the neighborhood mediation program as did the police and the judges.

Dan created an OWI diversion program that allowed people arrested for first time OWI to participate in a two-day educational program. He recognized that prosecuting and incarcerating first-time OWI offenders was not solving the ever-increasing drinking and driving problem. Dan was convinced that drunk driving was more of a social problem than a criminal problem. Today, most prosecutors agree. Dan created the Polk County Pretrial Release program. In Dan's mind, not every defendant needed to post bail, especially for nonviolent offenses. The

pretrial release program was designed to evaluate defendants charged with crimes and determine if they could be released on their own recognizance. Dan's program is the model for similar programs all over the country.

Dan established a separate juvenile division in the county attorney's office. He was convinced that 85 percent of juvenile offenders were worth saving. Under his plan, the juvenile division would be established to help save the kids worth saving and prosecute those that were not. Like all of Dan's ideas, the creation of a juvenile division focused on saving kids was very forward thinking.

I spoke to Jim Smith, a lawyer who worked with Dan and later replaced Dan as the Polk County Attorney. Jim told me that Dan had this unique ability to see all pieces of the criminal justice system and how they interacted with one another. For instance, Dan recognized that his prosecutors had incredible discretion in charging defendants. How this discretion was exercised would affect the police, the prosecution, the courts, the jail and the parole and probation staff. For instance, if a defendant was charged with four separate crimes as opposed to one, that simple discretionary decision would likely have an impact on the defendant's pretrial release, the crowding in the jail, the length of time for prosecuting the case, how the case might be settled, the judge's sentence and how long a convicted defendant might be on probation or parole. Jim Smith told me that Dan's ability to see



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how each piece of the criminal justice system interacted with the others was why Dan was so brilliant.

For the first time in Polk County history, Dan created and provided the board of supervisors with an annual report of the activities and statistics of his office. This report provided statistics on things like convictions and acquittals as well as statistics on the OWI diversion program, the pretrial release program, the juvenile programs and the neighborhood mediation program. The report was shared with the public. As Jim Smith told me, Dan was a huge believer in the importance of accountability and transparency.

Dan retired from the county attorney's office in 1985. He occupied the Polk County Attorney's Office for

only eight years, but, by all accounts, he made the system better for everyone, including the county attorney's office, the police, the lawyers, the courts, the defendants, the jails and the public.

After retiring, Dan practiced law in New York City for several years and later served as General Counsel for the Criminal Justice Subcommittee of the U.S. House of Representatives in Washington, D.C. But Des Moines was always his home. He kept his house in Des Moines and frequently wrote articles for the Des Moines Register. In 2012, Dan moved back to his home in Des Moines and practiced law with the firm of Glazebrook and Moe. He died in 2016 at the age of 78.

Dan Johnston was born in Montezuma, in 1938. He grew up in Marshalltown. During his life, Dan was a lawyer for the ACLU, an assistant attorney general, a lawyer-legislator in the Iowa House, the Polk County Attorney, a democratic candidate for governor, a private practicing lawyer

in New York City, the General Counsel for the Criminal Justice Subcommittee of the U.S. House Judiciary Committee and a private practicing lawyer in Des Moines.

Dan was also the lawyer for the Tinkers.



Dan Johnston



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CLE Calendar

April 25

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(Live Webinar)

April 30

The Mechanics of Iowa's Mechanics' Lien Law
(Live Webinar)

May 7

Employment Handbook Basics
(Live Webinar)

May 8

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May 10

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SHALL WE DANCE? YES, WE SHALL

“SHALL” MEANS “MUST,” OR DOES IT?

By Timothy S. Eckley

We can all agree that precision writing is paramount in legal documents, rules and statutes.

When it comes to understanding and using “shall,” however, there is often misunderstanding and misuse.

The word “shall” is an archaic, slippery nuisance. It can be at the same time powerfully precise, wonderfully malleable and frustratingly ambiguous. Drafters often use it inconsistently in the same document or within the same sentence. It is rarely used in spoken language but is curiously snugly at home in legal writing. Yet many grammarians advocate its total abolition from legal writing.

Bryan Garner, editor in chief of Black’s Law Dictionary and a leading expert on English usage, has long argued this. In its 10th edition, Black’s offers five distinct meanings for “shall”: **shall**, vb. (bef. 12c)

1. Has a duty to; more broadly, is required to <the requester shall send notice> <notice shall be sent> [This is the mandatory sense that drafters typically intend and that courts typically uphold].
 2. Should (as often interpreted by courts) <all claimants shall request mediation>.
 3. May <no person shall enter the building without first signing the roster>. [When a negative word such as not or no precedes shall, it often means may. What is being negated is permission, not a requirement].
 4. Will (as a future tense verb) <the corporation shall then have a period of 30 days to object>.
 5. Is entitled to <the secretary shall be reimbursed for all expenses. [Only sense 1 is acceptable under strict standards of drafting.]
- Primary vernacular usage attributes

“shall” as a word of command or authority meaning “must” or “is required to.” But the inherent inscrutability of “shall” and its tiring universality in contracts, statutes and court rules (712 appearances in the Iowa Rules of Civil Procedure; 495 appearances in the Iowa Rules of Criminal Procedure; 331 appearances in the Iowa Rules of Appellate Procedure) results in frequent questions debating exactly how to interpret the word. “Words and Phrases” contains more than 1,500 entries interpreting the word “shall” and phrases using “shall.” Plain English advocates also recommend against using the word at all. “Shall” is the epitome of legalese.

For such reasons, the federal rules restyling project painstakingly excised “shall” from the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, Federal Rules of Evidence and Federal Rules of Appellate Proce-

ture, and instead adopted “must” to mean “is required to.”

In 2016, the Iowa Supreme Court approved a restyled version of the Iowa Rules of Evidence, which included removal of all instances of “shall.” Similarly, the Office of Professional Regulation chapters in Division III of the Iowa Court Rules are now liberated from “shall” as part of a December 2017 revamp of those chapters, with the exception of the chapter 32 Rules of Professional Conduct and chapter 33 Standards for Professional Conduct, which adhere to prevailing model rules.

Often, “shall” serves as little more than a *cheville*, a word whose only function is to fill a metrical gap in or to balance a sentence. In the following examples, “shall” can be safely removed with no change in the sentence’s meaning but with added clarity:

- “The rules in this chapter ~~shall~~ govern the practice and procedure in all courts of the state, except where they expressly provide otherwise or statutes not affected hereby provide different procedure in particular courts or cases.” – Iowa R. Civ. P. 1.101.
- “The warrant ~~shall~~ (must?) be signed by the judge or clerk; it ~~shall~~ describe the offense charged in the indictment, and it ~~shall~~ command that the defendant ~~shall~~ be arrested and brought before the court.” – Iowa R. Crim. P. 2.7(2)(a).
- “In the event of any conflict

between these standards and a rule of professional conduct, the requirements of the rule ~~shall~~ take precedence.” – Preamble: Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court.

There is risk in rote substitution of “must” for “shall.” The characteristic opacity of “shall” requires contextual study. It could be that the drafter intended “shall” as an ambiguity or meant it to confer discretion upon the person acting under or interpreting the rule. Or the drafter did intend “shall” to mean “must,” but perhaps not always.

Good drafting releases the reader from detective work and charts a path of lucidity without latent traps of misinterpretation. A word used once in one way should rarely be used again in another way in the same sentence or document.

THE IOWA CODE AND “SHALL”

The Iowa Code acknowledges gradation in the meaning of “shall,” stating that it “imposes a duty,” meaning that “shall” must mean something other than “must,” which the code states means “a requirement.”

Iowa code section 4.1:30. *Shall, must, and may.* Unless otherwise specifically provided by the general assembly, whenever the following words are used in a statute enacted after July 1, 1971, their meaning and application shall be:

- a. The word “*shall*” imposes a duty.

b. The word “*must*” states a requirement.

c. The word “*may*” confers a power.

One might assume that the code’s use of “shall” in section 4.1 in the phrase “their meaning and application shall be” is in the future sense of “will,” despite the definition “imposes a duty” that immediately follows. Brief perusal of the Iowa Code reveals the futility of limiting the meaning of “shall” to “imposes a duty.”

For example, the first paragraph of Iowa Code section 602.10104, addressing bar admission examinations, includes six sentences and eight instances of “shall.” Perhaps three of the eight uses are consistent with the Iowa Code definition of “shall” as “imposes a duty.” Inserted in the first paragraph of section 602.10104 below are possible Black’s dictionary meanings for each “shall” based on context within the sentence:

“Every applicant **shall** (should, may, will, is entitled to) be examined by the board concerning the applicant’s learning and skill in the law. The sufficiency of the education of the applicant may be determined by written examination or in such other manner as the board **shall** (has a duty to or is required to, should, may, will, is entitled to) prescribe. The board **shall** (has a duty to or is required to, should, will) hold at least one meeting each year at the seat of government. Examinations **shall** (should, may, will) be given as often as deemed necessary as determined by the court, but **shall** (should, may, will) be conducted at least one time per year. All examinations in theory **shall** (are required to, should, may, will) be in writing and the identity of the person taking the examination **shall** (is required to, should, may, will) be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination **shall** (is required to, should, may, will) also be concealed as far as possible.”

If the reader is curious, a search of the six Iowa Code volumes on the Iowa Legislature website reveals a whopping and monotonous 91,928 instances of the word “shall.”

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THE COURTS AND “SHALL”

Courts have long interpreted “shall” to have meanings different from “must.” More than a century ago, the Iowa Supreme Court waded into the idiomatic currents and eddies encircling “shall”:

“Sometimes courts are justified in interpreting the word “shall” as “may,” but, when used in a statute directing that a public body do certain acts, it is manifest that the word is to be construed as mandatory and not permissive. The uniform rule seems to be that the word “shall,” when addressed to public officials, is mandatory and excludes the idea of discretion.” – *City of Newton v. Board of Supervisors*, 112 N.W. 167, 168 (Iowa 1907) (emphasis added) (citations omitted).

The Iowa Supreme Court interpreted “shall” in 1918 with the following:

“The word “shall” appearing in statutes is generally construed to be mandatory. Where no right or benefit depends on its imperative use, it may and often is treated as synonymous with ‘may.’” – *Vale v. Superintendent of Banking*, 168 N.W. 281, 283 (Iowa 1918).

More recently, however, in *State v. Klawonn*, 609 N.W.2d 515 (Iowa 2000), the Iowa Supreme Court stated as follows:

“The word “may” can be interpreted to mean “shall” where the context evidences such intent. However, while the rule may work one way, it does not work the other. The word “may” can mean “shall,” but the word “shall” does not mean “may.” The legislature made this clear in drafting the Iowa Code when it said use of ‘shall’ imposes a duty;” while “ ‘may’ confers a power. Additionally, we have interpreted ‘shall’ in a statute to create a mandatory duty. – *Id.* at 521-522.

In *Iowa Supreme Court Disciplinary Bd. v. Attorney Doe*, 888 N.W.2d 248, 252-253 (2016), the court again noted the “inherent ambiguity in the word” and that “shall” “may indicate a mandatory or permissive rule.”

The United States Supreme Court has also long grappled with the meaning of “shall.” In *Gutiérrez de Martínez v. Lamagno*, 515 U.S. 417 (1995), Justice Ginsburg writing for the majority noted:

“Though ‘shall’ generally means ‘must,’ legal writers sometimes use, or misuse, ‘shall’ to mean ‘should,’ ‘will,’ or even ‘may.’” See *D. Mellinkoff, Mellinkoff’s Dictionary of American Legal Usage* 402–403 (1992)) (“shall” and “may” are “frequently treated as synonyms” and their meaning depends on context); See also *B. Garner, Dictionary of Modern Legal Usage* 939 (2d ed. 1995) (“Courts in virtually every English-speaking jurisdiction have held—by necessity—that shall means may in some contexts, and vice versa”). *Id.* at 432-433 n.9.

“SHALL WE DANCE?” “YES, WE SHALL.”

In context, perhaps the most common meaning of “shall” in the sentences “Shall we dance? Yes we shall” is “should,” as in “Should we dance?” and “Yes, we should.” But what if the music playing was the favorite song of the dancing partners from their first date 30 years ago? “Shall” could mean, “Yes, we must!” Or it could be reluctantly obligatory as in “‘Yes, we shall,’ she said with a sigh.”

Depending on how things are going in the relationship, “Shall we dance?” could mean “has a duty to” dance or “is required to” dance. If the band plays a song the dancing partners do not care for, but the bride and groom emphatically insist the partners get up and dance, “shall” could take on a sense of duty, resignation, obligation or fait accompli.

If our dancing partners feel trapped in an inane conversation with another couple at the table, then perhaps the “Yes, we shall” becomes “Yes, we (really, wink-wink) must.”

If the band is warming up and announces a song before beginning to play it, or the couple is deciding whether the band’s music is danceable for them, or the beginning chords of our dancing partners’ favorite song are strummed, the “shall” may become “will.”

IF YOU MUST

In sum, it is best to avoid “shall” altogether by replacing it with “may,” “must,” “should,” “will,” or some other more precise contextual alternative. If “shall” must be used, it should be limited to imposition of a duty on a subject that is capable of carrying out the duty.



Timothy S. Eckley is Assistant Counsel to the Chief Justice of the Iowa Supreme Court. He is a graduate of the University of Iowa College of Law where he was managing editor of the Iowa Law Review. He served as judicial law clerk for the Honorable Charles R. Wolle at both the Iowa Supreme Court and the United States District Court for the Southern District of Iowa. Eckley engaged in private practice for approximately 15 years in Des Moines before spending four years as staff attorney and publications associate with the American Judicature Society. He has been working with the Iowa Supreme Court since 2010.



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A PROFESSION ON EDGE

By Wood R. Foster, Jr. **PART TWO: HELLO, BIGLAW**

While a handful of Minnesota's largest firms have planted their flags in Des Moines, it's pretty safe to assume that most Iowa lawyers – at least for the foreseeable future – will primarily observe the remarkable phenomenon known as BigLaw from a safe distance. Indeed, BigLaw will be a spectator sport for about 90 percent of America's lawyers for a long time to come.

In just a few short years, BigLaw has abruptly changed the horizon for the legal profession as a whole. Historic barriers have toppled in a handful of years. Love it or fear it, BigLaw is here to stay. Iowa lawyers will at least be curious, if not very directly impacted, by this sudden change in the legal landscape.

"BigLaw" has no single definition. It can mean the largest 50 or 100 firms nationally or internationally, either by revenue or by lawyer count. One of the earliest definitions I found is from 2005: "BigLaw: a collection of huge law firms in major cities where thousands of ivy leaguers and honor students

make six-figure salaries straight out of law school. They usually quit after a couple of years of virtual slavery, but if they stay in the game, they end up running the country."¹

And while a long-term and very wide gap is opening between BigLaw lawyers and all the rest of us, I think it's important that "the rest of us" recognize some of the implications of the dramatic changes occurring in the upper tiers of our profession.

Indeed, it's hardly daring to float the suggestion that the size, shape, markets, pricing and subject matter of BigLaw will diverge more and more from traditional practices as it forges ahead. BigLaw is still very much in its formative years.

In 1988, Chicago's Baker & McKenzie became the first law firm in the world with over 1,000 lawyers. As I write this, it is closing in on (if it has not already exceeded) 4,500 lawyers worldwide.²

The largest firm in the world by headcount, known simply as Dentons (the product of a 2013 merger of British, Canadian and French firms),

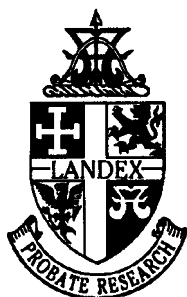
currently numbers more than **7,700** lawyers in **136** offices in more than **50** countries. *That's more lawyers than currently practice in Iowa!*

A few additional numbers quickly reveal what BigLaw is all about; any more than these would just depress you:

- The combined annual 2015 revenues of the world's 200 largest firms exceeded \$100 billion.
- Of the largest 200, 144 are U.S. firms. Others: U.K. (31); Asia (9); Europe (9); and Canada (7). These 200 firms practice law from offices in 573 cities in 94 countries.
- Chicago's Kirkland & Ellis leads in profits-per-lawyer (\$1.585 million per lawyer).
- The average top-200 firm employs 830 lawyers (314 are partners) and garners annual revenues of \$1.77 million per partner.
- The largest number of U.S. BigLaw firms are in New York (with 51), California (38) Pennsylvania (23), Illinois (22) and DC (21).

Pretty clearly, the BigLaw phenomenon raises many questions that have never been mainstream issues for the U.S. legal profession. In the age of BigLaw, we are no longer talking only about the traditional practice of law as we learned it in law school. We're talking about unexplored issues raised by American lawyers directly engaging—and partnering—with lawyers engaged in different (sometimes very different) legal systems, different levels and quality of legal education, different ethical/oversight systems and different financial restrictions.

Iowa—like every other state—has its own rules, ethics oversight, unauthorized practice laws and so on. Collectively our states' own (very



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different) systems and rules are very different from those of other countries. For example: law firms in England and Canada are allowed to commingle legal services with other services, such as accounting and business consulting. “Multi-disciplinary practice,” as this is generally called, has been considered in some U.S. states, but adopted in none.

And yet U.S. firms are now closely aligned and engaging directly with foreign partners/affiliates all over the world. No one seems troubled by this. Centuries of practice standards and rules that stopped at state lines are being blurred; they are simply being ignored! This may or may not be a good thing, but few seem to be giving it much thought at all.

Indeed, the exact legal arrangements between U.S. BigLaw firms and their foreign partners are largely opaque. Most are probably structured as Swiss “Vereins,” which allow separate profit pools and related tax, accounting and compensation systems, but allow strategy, branding, IT and other core functions to be shared.

The questions raised by the BigLaw phenomenon are myriad; answers are uniformly speculative. Can it be long before U.S. BigLaw clamors for the right to play by the same rules that govern its foreign partners and competitors? And if they do want to change the rules, who’s going to make those decisions?

On the other hand, it may simply be that BigLaw has already accomplished an end-run that effectively moots inconvenient obstacles.

Keep your eye on BigLaw. It’s getting bigger...

REAL LAW: YOUR PRACTICE AND MINE

BigLaw attracts a lot of attention these days, but my own sense is that the general public is still largely unaware of BigLaw. It’s the rest of us that most Americans envision when they think



about lawyers in general. What “the rest of us” do, and how well we do it, is still—for most people—the public face of the legal profession.

Roughly 20 percent of lawyers are in general practice outside of what we might think of as “mainstream practice,” but they play obvious—and sometimes underappreciated—roles in our profession. I’m talking about government attorneys (including judges), many of whom interact with the public every single day, and in-house lawyers, whose roles are generally less visible to the public. We don’t need surveys to tell us about their roles or their importance to the profession; as to the public sector, we know that they are uniformly undercompensated, and always have been. What little information we get as to compensation of in-house counsel tells us that demand for quality at the top of in-house staff has driven general counsel compensation to dramatic new highs, more comparable to BigLaw salaries than to other sectors.

By “mainstream practice” standards, small and solo practices are still the meat and potatoes of our profession. They serve the needs of countless towns, regional centers, city neighborhoods and individuals with personal injury and criminal problems. As a matter of both history and self-image, solos constitute the profession’s modern equivalent of the celebrated “yeoman farmers” of yore, whose self-sufficiency provided much of the economic and philosophical foundation of our young nation. Think no further than Alexander Hamilton, James Madison and Abraham Lincoln for exemplars of lawyers whose intelligence, verbal skills and perseverance still inspire modern lawyers. This down-to-earth category, I suggest, represents the “real” public face of our profession.

Lawyers practicing alone made up almost half the nation’s lawyer popula-

tion not so very long ago, according to twentieth century ABA demographics. Today, state bar surveys uniformly suggest a substantially lower percentage.

Twenty-three percent of Iowa lawyers practice solo, but fully 59 percent of you practice in firms of five lawyers or less.³ Without exhaustive analysis, I think it’s safe to conclude that these small group practices are more common in Iowa than in most states. On the other hand—and a bit counterintuitively—more than half of all Iowa lawyers practice in communities of 100,000 or more.⁴ That one has me scratching my head.

Sole practitioners may or may not find themselves at a disadvantage relative to lawyers in firms. A 2010 study by University of Tennessee Law School Professor Benjamin Barton, who reviewed literally hundreds of thousands of sole practitioner tax returns from all over the U.S., concluded that “... [T] he average solo practitioner earned

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\$46,560 in 2010.”⁵ This figure, he emphasized, was the average amount earned by 354,000 sole practitioners!

I have always had a hard time with Barton’s conclusion. If he is correct, then huge numbers of solos had to have earned far less than \$42,000, because we know empirically that many solos make more—sometimes much more than that. My skepticism also rests on the fact that every state bar survey I have seen posits average solo income well above \$42,000. I didn’t find a specific figure for solos in Iowa, but other state bar surveys uniformly suggest that solos working from an office (as opposed to working from home, which often suggests juggling practice with family responsibilities) report median incomes of between \$75,000 and \$100,000 annually.

As a practical matter, solos face disadvantages not faced by all lawyers. Professor Barton (in the same article) seems “right on” in suggesting that sole

practitioners currently bear the primary brunt of competition from emerging—and growing—online providers of legal services such as LegalZoom and Rocket Lawyer and other websites that purport to offer free or cut-rate legal advice.⁶

From my vantage point, solo and small-firm lawyers find themselves dealing with a trifecta of (1) low-cost, automated solutions to various basic legal needs, (2) ever-rising client expectations, and (3) a client base that is struggling with stagnating real incomes. These pressures are met with emerging strategies like “unbundled” legal services, “alternative billing practices,” and “limited-scope representation.” Each such strategy reflects small-practice lawyers’ attempts to address ever-mounting pressures of technology and a clientele that is no longer able (or at least less willing) to pay traditional hourly rates.

The gap between sole practice and BigLaw will undoubtedly continue to grow, but I have little doubt that few in solo or small practices would gladly trade places with their BigLaw contemporaries. We can probably all agree that the ways each group experiences the overall sense of being part of a common profession are less and less rooted in common experiences at the day-to-day practice level.

...Which brings us back to our ultimate (and increasingly our only) commonality: the profession itself.

PROGNOSIS AND A PROMISE

My article (part one was published in the March issue) has focused on the rapid and challenging changes confronting us. At this point (as I warned you I would) I want to revisit the very concept of “profession” as it applies to what we do—and give you reasons to refocus on the profession itself in its broadest context. Let’s start with the relationship between bar associations and the legal profession in the broadest sense.

Bar associations perform two core sets of functions. One set is “practice-facing”—the ways the organized bar helps us improve our practices, keep up with technology, market ourselves and stay up-to-date on technology and practice-related matters. The

second, currently less prominent set, is “profession-facing”—more abstract, less immediate and much harder to define, but likewise a (or perhaps the) core responsibility of the organized bar.

Most of what we read today about “The Future of the Legal Profession” turns out instead to be about the future of the business of law. And there are huge differences between the two. The organized bar offers more and more CLEs to educate lawyers on specific practice specialties, technology, marketing, cost controls and so on. It’s all about practice, rarely about profession.

The current pace of change and the ever-growing need to specialize moves all of us further away from the core functions of thinking and acting as members of a profession and closer to thinking and acting as specialists in increasingly narrow practice spaces.

Dictionary definitions of “profession” are necessarily general and therefore bland. To me, a full definition of the legal profession would generally convey that lawyers have bound themselves to a special duty to the law itself, a duty that entwines us in:

- The very notion of a society fundamentally premised on “the rule of law;”
- The ways laws are shaped, enacted, enforced and challenged;
- The way law informs our systems of government;
- The way law is recorded and taught;
- The ways (and the integrity with which) law is practiced, both privately and publicly; and
- The fundamental importance of earning—and deserving—the trust and respect of the public.

And it is in this undeniably impractical context that I ask you to think about—and engage with—our profession. No matter where, what or how we practice, every one of us, at some level, understands that we have a duty of some sort to the profession that goes beyond the day-to-day practice.

My thought: Whatever we can do in the name of “profession,” we can only do it together. What our bar associations are doing right now (I think you’ll agree) is directed more and more at helping us succeed in our day-to-day

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practices, and less and less at exploring and strengthening our fundamental role(s) in society. And please don't misinterpret me here: Our bar associations do exactly what we ask them to do because, quite literally, they are us!

Not so many decades ago, bar associations concerned themselves not only with their members' practices, but with core issues that do not change nearly as quickly as practice-facing issues:

- Assuring the quality, integrity and adequate funding of our court systems, and safeguarding the integrity of the processes by which judges are selected;
- Devising and supporting systems to assure adequate counsel for those who cannot afford counsel;
- Assuring that proposed changes in important laws are widely reviewed;
- Enforcing and improving the ethical and professional standards to which we have bound ourselves;

- Maintaining high standards for law schools and continuing legal education; and

- Addressing bias of all kinds in legal institutions, and improving diversity and inclusiveness in our profession.

As recently as the early 1970s, with minor exceptions, a lawyer had (at most) three options for bar membership: a local, a state and/or a national association. Today, dozens of specialty bar organizations are proliferating. And as they proliferate, state bar participation suffers.

My pitch boils down to this: Please make a conscious attempt to put the needs of your profession on a par with the needs of your practice. There are many, many ways to get involved; a re-commitment to the profession itself will almost certainly enhance—not impinge on—your livelihood.

If you make this commitment, I am certain of this: You won't regret it.

FOOTNOTES

1. Urban Dictionary, <http://www.urbandictionary.com/define.php?term=biglaw&defid=1426137>
2. BigLaw statistics are not current and change constantly due to delayed release of information on size, revenue, etc. I have relied on Wikipedia (https://en.wikipedia.org/wiki/List_of_largest_law_firms_by_revenue; https://en.wikipedia.org/wiki/List_of_largest_United_States-based_law_firms) and ILRG (<https://www.ilrg.com/nlj250>), as well as firm websites.
3. ISBA 2015 Salary and Economic Survey, p. 35
4. *id.*, p.33
5. Benjamin Barton, *Glass Half Full: The Decline and Rebirth of the Legal Profession* (Oxford University Press 2015), pp. 5-7
6. *id.*



Wood R. Foster, Jr. practiced law in Minneapolis from 1968 through 2013, most of it as a litigator with the Siegel Brill firm. He served as 1999 president of the Minnesota State Bar Association and spearheaded the preparation of a 400-page history of the practice of law in Minnesota from 1849 to 1999. In 2017, he was awarded the MSBA's Lifetime Achievement Award.



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Here are five things you should consider before referring your client to a financial advisor:

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2. ARE THEY A FIDUCIARY?

If the financial advisor is not a fiduciary, they may not act in the best interest of your client. This could be considered a deal breaker.

3. WHAT ARE THEIR CREDENTIALS AND EXPERIENCE?

At the minimum, you will want to ensure they are qualified to provide financial advice. A CFP® is

the gold standard. In addition to credentials, ask about client retention. This will provide insight into how satisfied their clients may be.

4. WHAT IS THEIR NICHE MARKET?

Understand who would be a good fit for the financial advisor. There is nothing more frustrating to a client than being referred somewhere that is not set up to help them.

5. DO YOU UNDERSTAND THEIR PROCESS AND INVESTMENT PHILOSOPHY?

Knowing how a financial advisor operates will help you understand how your client will be treated. Ask if you can go through a sample process with the financial advisor to better understand their process and what types of clients could be a good fit.

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IOWA'S BUSINESS SPECIALTY COURT SYSTEM

By David Denison

The Iowa Supreme Court is committed to making Iowa's system of justice the best, most advanced and most responsive court system in the nation. One step toward meeting this goal is the Iowa Business Specialty Court.

On Dec. 21, 2012, the Iowa Supreme Court formalized a three-year pilot project by supervisory order and a memorandum of operation setting forth the parameters of the project. Establishment of the pilot project arose from recommendations of the 84-member Iowa Civil Justice Reform Task Force, which carefully studied proven innovations successfully implemented in other jurisdictions. The Iowa Business Specialty Court accepts a broad range of complex commercial cases with \$200,000 or more in dispute, and that meet one or more subject matter criteria.

Initially, the business court required that all parties voluntarily consent to transfer a case to the court's docket. However, in January 2019, in order to facilitate the transfer of cases to the business court, the supreme court added an additional process where any party may move to transfer a case to the business court. A motion to transfer may even now be filed with the petition. The benefits of the business court are best realized when a case is transferred earlier rather than later. Additionally, if any party is not satisfied with the business court, there is a procedure that allows the party to move to transfer the case back to the normal case docket.

The supreme court fully supports the business court and hopes more Iowa businesses will transfer their cases to the business court's docket. In his 2019 Condition of the Judiciary, Chief Justice Mark Cady had the following to say with respect to the business court:

"We are committed to providing a dedicated court with specially trained judges who operate in ways that are compatible with the needs of business-

es. Today, I am pleased to announce we have expanded the operation of our business courts so they will be available to more businesses. Since its inception five years ago, the business court program has been under the steady oversight of Justice Daryl Hecht. With his retirement from the supreme court last month, I am pleased Justice Thomas Waterman will now oversee the program. Expanding the business court to more businesses is just the next step. We are committed to exploring other ways to enhance the value of the business courts, especially to farmers and other ag-based businesses. We want a top-notch specialty court that contributes to a flourishing economy by working with Iowa's businesses to resolve their disputes efficiently and fairly."

Currently, there are three judges

serving on the business court: Judge Lawrence P. McLellan of Des Moines, Judge Sean W. McPartland of Cedar Rapids and Judge John D. Telleen of Davenport. The supreme court, with assistance from state court administration, selected these three outstanding judges to preside over the business court. The selection was based on the judges' educational background, judicial and trial practice experience in complex commercial cases and personal interest in the project.

The supreme court has directed the judges to be innovative in case management practices and in tailoring discovery to meet the needs of the parties. The business court allows the judicial branch to test pioneering trial techniques and creative use of technology for possible implementation of successful strategies across Iowa's

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court system. Cases will be heard in the county where they are properly filed, but it is anticipated that the latest advancements in electronic communication will permit a faster, more efficient process for the resolution of complex business cases.

With respect to the business court, Judge Telleen stated:

“Business disputes often hinder major decisions that need to be made by management...Business courts offer the opportunity to be sensitive to the need for speed in certain cases. I believe comprehensive case management conferences, scheduled with counsel and the parties soon after the suit is filed, will be very productive and shorten the time to trial or other resolution. Additionally, if there are legal issues that may simplify or further resolution of the case, we should explore resolving those early in the process.”

Successful business court programs in other states have created bodies of

court rulings promoting consistency and predictability for businesses and attorneys to better assess the potential outcome of litigation. The Iowa Judicial Branch has also been making available selected rulings and orders from the business court on the business court’s webpage at: <https://www.iowacourts.gov/iowa-courts/district-court/iowa-business-specialty-court/rulings-and-orders/>.

There are many benefits realized with utilization of the business court. Businesses and attorneys benefit from having judges assigned to their cases who have particular experience and expertise in business litigation, resulting in enhanced consistency, predictability and accuracy of decisions with respect to complex business cases. This allows businesses and attorneys to better assess the potential outcome of litigation and potential business decisions. Another benefit is a faster and more cost-effective resolution of complex

business cases. Finally, participation in the business court will help incubate innovative court practices that may be applied generally across the justice system, benefitting businesses and attorneys in other types of cases.

For more information about the business court, as well as the amended memorandum of operation and transfer forms, please visit the Iowa Judicial Branch Business Specialty Court webpage at: <https://www.iowacourts.gov/iowa-courts/district-court/iowa-business-specialty-court/>.



David Denison is a staff attorney for the Iowa Supreme Court. He can be reached at david.denison@iowacourts.gov.

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By Gordon Fischer & Mackensie Graham

APRIL SHOWERS BRING...CHARITABLE GIVING STRATEGIES UNDER THE REVISED TAX LAW

When we think about April, it is all good things like flowers, Earth Day, baby animals, the start of baseball season...but then there is that annual, inevitable rain cloud (or rainbow if you're a CPA), figuring out and filing taxes.

2018 marked the first year of the new provisions under the federal Tax Cuts and Jobs Act (TCJA) and it is important to acknowledge the legislation has had an enormous impact on charitable giving. It's especially important for Iowa lawyers to understand these changes. After all, Iowa lawyers are disproportionately involved in all aspects of philanthropy, as inspired nonprofit founders, leaders on the board of directors, dedicated volunteers and generous givers (and sometimes filling multiple roles at the same time!). Attorneys also play an essential role in advising clients on smart giving... or at least pointing clients in the right direction toward helpful resources and people who can counsel them.

FEDERAL INCOME TAX STANDARD DEDUCTION

Don't worry, this article won't drag you through a full course on tax law, but one of the essentials you need to know is the federal income tax standard deduction about doubled. The deduction for single filers is now \$12,000 (up from \$6,350 in 2017), \$24,000 for married joint-filers (up from \$12,700) and \$18,000 for those who qualify to file as "head of household."

In reality, this means the number of households exceeding the standard deduction and claiming the itemized deduction (including charitable donations) will be reduced from 37 million to approximately 16 million, according to the Urban-Brookings Tax Policy Center.

EVOLVE & ADOPT

The increased standard deduction presents obvious challenges for nonprofits and the donors who fund them, as the charitable deduction incentive many nonprofits used to tout does not have the same selling power

to prospective donors. But we can also look at this as a moment for opportunity where nonprofits can and should adapt through employing creative strategies and clearly communicating new options to benefactors.

DONATION BUNCHING

One major option available to charitable donors is to "bunch" donations. With bunching, a donor makes a large gift one year so that it exceeds the standard deduction, and then a smaller gift the next year to balance it out. Depending on charitable giving capacity and goals, this means you could alternate the larger and smaller donation(s) every other year or every few years.

By way of example, let's say for the past few tax years Debbie Donor normally gave about \$5,000 to charities annually. To gain a tax incentive, she would want to consider accelerating two years' worth of donations into one year. She's giving the same amount she planned to give over the two years, but strategically donates in a way that maximizes her potential itemized tax benefits one year, and then takes the standard deduction the next.

DO GOOD THROUGH DONOR-ADVISED FUNDS

DAFs offer a unique level of flexibility. Donors who open a DAF may immediately claim the full donation amount as a federal income tax charitable deduction. But DAF owners can recommend a grant from the DAF to any qualified nonprofit, at any time, over multiple years.

RETIRE LIKE A BOSS

Beyond bunching, the IRA charitable rollover allows donors older than 70½ to make direct distributions of up to \$100,000 from their IRA each year to any qualified charity. The donation is not treated as taxable income and, moreover, counts toward the donor's required minimum distribution for that year. And, there is an even simpler way for donors to help favorite charities with retirement assets – just contact the account holder and name favorite nonprofit(s) as beneficiary(ies) of the

retirement benefit plan. (For more on retirement benefit plans and charitable giving, see our article, "Retire with Reason: How retirement benefit plans fit with charitable giving," in the *Iowa Lawyer* September 2018 issue).

IOWA SPECIFIC

Don't forget that while the federal income tax standard deduction may have radically changed, Iowa's did not. The state's 2018 standard deductions are \$2,030 for individuals (single or married filing separately) and \$5,000 for other taxpayers.

Also, Iowa still has the Endow Iowa Tax Credit program, which allows donors a 25 percent state tax credit for eligible donations. For more, see <https://www.gordonfischerlawfirm.com/some-things-bear-repeating-the-endow-iowa-tax-credit-program/>

Attorneys involved with nonprofits will continue to play an integral role in educating and encouraging donors on methods of maximizing charitable gifts under the TCJA. What first appeared to be an immense hurdle to charitable giving, could actually be seen as an opportunity to promote lesser-known ways to help fund the nonprofits that make such huge differences in our shared communities.



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 strategic planned giving. He can be contacted at gordon@gordonfischerlawfirm.com and 515-371-6077.



Mackensie Graham works as a law clerk at Gordon Fischer Law Firm and is currently a student 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.

IN MEMORIAM

Thomas E. Murphy, 97, of Sumner died March 19. Murphy was born in Sumner in 1921. He served in the U.S. Army in the European Theater during World War II, earning three Bronze Stars and a Purple Heart. He then received his J.D. from the University of Michigan. He practiced in Des Moines for a brief period, before returning to Sumner to work with his father, J.P., at his law practice. He continued to practice law in Sumner for an additional 30-plus years.

Bradley J. Crosson, 57, of Bettendorf died Jan. 8. Crosson was born in 1961 in Oskaloosa. He received his J.D. from Creighton School of Law. He then began a 31-year distinguished career as an acquisition attorney for the Department of the Army on the Rock Island Arsenal, retiring Dec. 31.

James L. 'Jim' Robertson, 82, of La Porte City died March 3. Robertson was born in Waterloo in 1936. He received his J.D. from the University of Iowa College of Law. Robertson joined his father in his practice in 1959, and their partnership continued until 1986 when L.J. passed away. Jim then practiced alone until his retirement in December 2015.

Charles (Chuck) E. Miller, 73 of Bettendorf, died Jan. 16. Miller was born in Knoxville. He served in the U.S. Navy aboard the U.S.S. York County for three years and in the U.S. Navy Reserve, retiring with the rank of Commander after 20 years. After completing his active duty service, Miller received his J.D., with distinction, from the University of Iowa College of Law in 1973 and practiced law for 37 years in Davenport at the Lane & Waterman LLP firm.

LETTER TO THE EDITOR: MICHAEL HUSTON'S PASSING

The Iowa Lawyers Assistance Program (ILAP) and the Lawyers Helping Lawyers Committee of the ISBA have lost a great friend in Michael L. Huston, who passed on November 20, 2018. Attorney Huston helped many Iowa lawyers and could always be counted on to do so. We extend our condolences to his family.

Dan A. Moore

*President of ILAP and Chair of Lawyers Helping Lawyers Committee
ISBA Past President 2008-2009*



Michael Huston

In brief

2019 ISBA ANNUAL MEETING SCHEDULED FOR JUNE 10-12

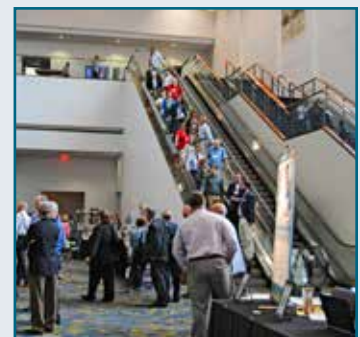
Iowa's largest legal convention, the ISBA Annual Meeting, is scheduled to take place June 10-12 in Des Moines. As in past years, the event will take place at the Iowa Events Center, offering ample space for CLE programming, exhibitors, social events, committee/section meetings and more.

The annual meeting will employ a track system for all three days of CLE programming with sessions designed to meet the needs of all practitioners. This year's educational tracks include: probate, family law, case law, elder law, real estate, commercial and bankruptcy law, litigation, access to justice and two plenary tracks.

In addition to the plethora of educational sessions scheduled, organizers have included a variety of social activities to encourage camaraderie among Iowa's legal professionals. Event highlights include the ever-popular Young Lawyers Division social event and the ISBA Awards Gala. Other scheduled experiences include the law school events for Creighton, Drake and the University of Iowa, the Joint Presidents' Reception and a host of additional intriguing activities.

Joining the ISBA once again for the annual meeting will be the Iowa Judges Conference, further making the convention a must-attend for all of Iowa's legal community.

Stay tuned for updates. You can read more on page 19.





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Commercial and Bankruptcy Law | Litigation | Plenary

PRESENTATION HIGHLIGHTS:

A Tool for Modern Litigation: Mastering the Challenge

Merril Hirsh, Merrill Hirsh PLLC; Hon. Annette Scieszinski, Senior Judge, District 8A; and
Hon. Michael Shubatt, District Court Judge, 1A

Human Trafficking Issues

Luis deBaca, Fmr. Director, Department of Justice's Office of Sex Offender Sentencing,
Monitoring, Apprehending, Registering, and Tracking

SOCIAL ACTIVITIES:

Joint Presidents' Reception | Young Lawyers Division Social Event | ISBA Awards Gala
Iowa Supreme Court Luncheon | Painting Class | Cooking Demonstration | Yoga
Law School Events (Creighton, Drake and Iowa)



By Marc Harding

HEARING DAMAGE & CLAIMS

Excessive noise causing hearing loss and tinnitus has been the subject of increasing concern in the courts and the media especially in workman's compensation claims. Even brief exposure can cause hearing damage when decibel levels are high.

We need to look at alerting our clients and ourselves to the possible consequences. The damage can be serious and, while hidden, hearing loss and tinnitus (a constant ringing sound, sometimes accompanied by increased sensitivity to normal sounds) can be a lifelong disability. And it can affect anyone.

One person who was affected by tinnitus was Ernie Wilcke, who practiced law for 64 of his 92 years, and was practicing law in his Spirit Lake office the week before he died. Despite a long and fruitful career, Ernie suffered from this truly silent and little-noticed handicap.

You may remember from an earlier story about him in *The Iowa Lawyer* (June 2017) that Ernie and his band of brothers, marines of the greatest generation, intent on rooting out Japanese troops on islands like Iwo Jima, fired 16-inch shells. They all had ringing in their ears for weeks afterwards and, for Ernie, permanently. Ernie and likely all of his band of brothers, suffered substantial hearing loss from that loud sound that became aggravated with age. It was only possible to partially alleviate the hearing loss with hearing aids, which presented challenges to presenting Ernie's testimony at his successful jury trial in 2017. It limited

him in the cases he could try.

You may say this is an inspiring story about a farm kid that became a successful member of the bar, but what does it have to do with me and my practice? Too often people fail to realize dangers that are easily preventable.

Often lawyers are advisors to local, municipal, county, state and national groups of various types, both governmental and private. During World War II, we didn't have the knowledge we do now. The military now takes active steps to avoid the injuries that were inflicted on Ernie and his band of brothers.

As lawyers, we have the opportunity to advise that preventive and educational measures be taken. Many people are unaware of the danger and damage that can come from excessive noise levels in everyday life, including workplaces, sports events and concerts.

The risk from workplace noise can be lessened with responsible use of ear protectors. But hearing loss, tinnitus and hyperacusis can also take place within a few minutes at a concert or sporting event in which the decibel level is too high for the size and acoustics of the space. This can be prevented or minimized by pre-concert decibel level checks done in conjunction with routine equipment checks. When the event is noisy, providing earplugs for audience members is an inexpensive option that can prevent life-long damage.

The National Institutes of Health have some wise advice that follow this paragraph. You will be doing your

clients and yourself a favor if you protect them. We've learned a lot about causes and prevention since Ernie permanently damaged his hearing fighting to win World War II. We need to read and follow the advice from the National Institutes to fight and win the war to protect our hearing, that of our families, and that of our clients and their employees. We suggest that you read and follow it.

NOISE-INDUCED HEARING LOSS (NIHL)

Every day, we experience sound in our environment, such as the sounds from television and radio, household appliances and traffic. Normally, these sounds are at safe levels that don't damage our hearing. But sounds can be harmful when they are too loud, even for a brief time, or when they are both loud and long-lasting. These sounds can damage sensitive structures in the inner ear and cause noise-induced hearing loss.

NIHL can also be caused by extremely loud bursts of sound, such as gunshots or explosions, which can rupture the eardrum or damage the bones in the middle ear. This kind of NIHL can be immediate and permanent. Loud noise exposure can also cause tinnitus—a ringing, buzzing or roaring in the ears or head.

However, one thing is certain: noise-induced hearing loss is something you can prevent.

WHO IS AFFECTED BY NIHL?

Exposure to harmful noise can happen at any age. People of all ages, including children, teens, young adults and older people, can develop NIHL. Based on a 2011-2012 CDC study involving hearing tests and interviews with participants, at least 10 million adults (six percent) in the U.S. under age 70—and perhaps as many as 40 million adults (24 percent)—have features of their hearing test that suggest hearing loss in one or both ears from exposure to loud noise. Researchers have also estimated that as many as 17 percent of teens (ages 12 to 19) have features of their hearing test suggestive of NIHL in one or both ears (Pediatrics 2011), based on data from 2005-2006.

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Recreational activities that can put you at risk for NIHL include target shooting and hunting, snowmobile riding, listening to music at high volume through earbuds or headphones, playing in a band and attending loud concerts. Harmful noises at home may come from sources including lawnmowers, leaf blowers and woodworking tools.

Sound is measured in units called decibels. Sounds of less than 75 decibels, even after long exposure, are unlikely to cause hearing loss. However, long or repeated exposure to sounds at or above 85 decibels can cause hearing loss. The louder the sound, the shorter the amount of time it takes for NIHL to happen.

Here are the average decibel ratings of some familiar sounds: The humming of a refrigerator (45 decibels); normal conversation (60 decibels); noise from heavy city traffic (85 decibels); motorcycles (95 decibels); an MP3 player at maximum volume

(105 decibels); sirens (120 decibels) and firecrackers and firearms (150 decibels).

CAN NIHL BE PREVENTED?

NIHL is the only type of hearing loss that is completely preventable. If you understand the hazards of noise and how to practice good hearing health, you can protect your hearing for life. Here's how:

- Know which noises can cause damage (those at or above 85 decibels).
- Wear earplugs or other protective devices when involved in a loud activity (activity-specific earplugs and earmuffs are available at hardware and sporting goods stores).
- If you can't reduce the noise or protect yourself from it, move away from it.
- Be alert to hazardous noises in the environment.
- Protect the ears of children who are too young to protect their own.
- Make family, friends and colleagues aware of the hazards of noise.

The NIDCD sponsors "It's a Noisy Planet. Protect Their Hearing®," a national public education campaign to increase awareness among parents of preteens about the causes and prevention of NIHL. Armed with this information, parents, teachers, school nurses and other adults can encourage children to adopt healthy hearing habits.

For more information, contact:

NIDCD Information Clearinghouse
1 Communication Avenue
Bethesda, MD 20892-3456

Toll-free voice: (800) 241-1044

Toll-free TTY: (800) 241-1055

Email: nidcdinfo@nidcd.nih.gov

NIH Publication No. 14-4233

Marc Harding is an attorney at Harding Law Firm in Des Moines. In addition to a law degree from University of Iowa, he received a Doctoral Degree in Osteopathic Medicine and Surgery at Des Moines University. He practices primarily in Personal Injury, Insurance and Malpractice cases.



Tax and Fiduciary Update

May 10

In-person or Live Webinar
www.iowabar.org/springtax

- ▶ **Iowa Department of Revenue Update**
Kraig Paulsen
- ▶ **New Fiduciary Income Tax Manual**
Brian Kane and Bruce Rehmke
- ▶ **Navigating Through the New Opportunity Zone Investment Rules**
Bruce Baker
- ▶ **Where We Stand with 199A: Unresolved Issues, Lessons Learned and Planning Opportunities**
Kristine Tidgren



SPRING QUARTERLY MEETING: ISBA BOARD OF GOVERNORS NOMINATES NEW OFFICERS, ACTS ON COMMITTEE RECOMMENDATIONS

Special thanks to **Jim Daane**, ISBA BOG, District 3B for his contribution to this report.

During the spring ISBA Board of Governors quarterly meeting in Des Moines, the BOG nominated new 2019-2020 ISBA officers, acted on committee recommendations and heard reports on key issues impacting Iowa attorneys.

ACTIONS

- Approved Iowa Legal Aid’s resolution and confirmation of Iowa Legal Aid Board Members.
- Approved the nomination of new 2019-2020 ISBA officers, Jerry Schnurr III – President-elect,

Angela Shutts – Vice President, and ABA Delegate candidate, Jane Lorentzen.

- Approved the Scope and Correlation Committee’s recommendation to grant Iowa paralegal students access to some of the ISBA’s practice resources for educational purposes while enrolled in and attending their programs.
- Approved amendments to the ISBA Bylaws recommended by the Scope and Correlation Committee to clarify eligibility for law student membership so that any law student in good standing enrolled in an American Bar Association Accredited Law School who expresses interest in practicing law in Iowa is eligible for membership.
- Authorized carryover funding in the amount of \$25,000 that was previously approved for the Iowa Access to Justice Commission.

REPORTS

President’s Report

ISBA President Tom Levis reported on the ISBA’s activities this legislative session, especially related to the judicial nominating bill. Levis also reported on his “Table for Ten” outreach to county bar associations and local groups of lawyers across the state.

ISBA Executive Director’s Report

ISBA Executive Director Dwight Dinkla and Assistant Executive Director Harry Shipley provided a report on membership statistics, trends and recruitment efforts underway.

Shipley made a presentation on new services available to members, including Trustifi email encryption and the ISBA child support calculator. The ISBA website is being redesigned and restructured to make it more user friendly. The redesign will include a YLD resource page with more videos for YLD members. He also reported that an extensive ISBA survey will remain open through March 31 to collect data to help drive future projects and services.



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YLD President’s Report

YLD President Maggie White reported on upcoming CLEs and activities including an upcoming Diversity Committee event at Drake Law School. She reported that three “How-to” videos have been created so far for the YLD resource page that will be available on the ISBA website.

White and Kyle Fry reported that the YLD is continuing to lead efforts to address the growing problem of student debt in partnership with a nonprofit called Law School Transparency. Over the next three years, the ISBA YLD and Law School Transparency will work to reduce the cost of a legal education, convene a national summit, create new standards that push schools to better prepare law school graduates and influence regulatory change through the ABA accreditation process.

Legislative Report

ISBA Legislative Counsel Jim Carney provided a status update on the ISBA’s affirmative legislative program (page 24) and potential increases in funding for indigent defense over the next three years. ISBA Assistant Legislative Counsel Doug Struyk provided an

update on the FY2020 budget and the judicial branch funding request.

Both Matt Rousseau, the interim director of Iowa Title Guaranty, and Debi Durham, the director of Iowa Finance Authority, spoke to the BOG about various changes to the premium structure for its title services to Iowa lenders and home buyers, the Evidence of Title Bill (SF527), as well as future plans for the Iowa Finance Authority.

Reports from the Law Schools

Kevin Washburn, Dean of the UI College of Law, reported on upcoming events including former Dean Gail Agrawal’s retirement. He also updated the board on the status of possible ABA accreditation changes. Jerry Anderson, Dean of Drake Law School, reported on recent student and faculty accomplishments as well as upcoming events including Neil Hamilton’s retirement from the Agricultural Law Center.

Innovations Committee Report

Kyle Fry, the chair of the Innovations Committee, gave a presentation on the work of this newly-formed committee that included the committee’s long-term, intermediate and short-term goals that were created to identify

projects. Long-term goals include: 1) redefining what it means to “practice law”; 2) reimagining the judicial system; and 3) defining the association’s future. The committee will bring its projects to the board. Currently, it is exploring additional features for Iowa Find-A-Lawyer.

Iowa State Bar Foundation Report

Foundation President Elisabeth Reynoldson reported that the foundation approved five grant awards at its meeting March 26. Awardees include: Kids First Law Center, Friends of the Judiciary, ISBA People’s Law School, ISBA Center for Law & Civic Education and ISBA YLD Know Your Constitution.



Anjela Shutts, the newly nominated ISBA Vice President, requests funding on behalf of the Iowa Access to Justice Commission during the BOG meeting.



Debi Durham, the director of Iowa Finance Authority and the Iowa Department of Economic Development, speaks on Iowa Title Guaranty.



LawPAC Chair Tom Henderson (left) speaks with Rep. Andy McKean (center) and past ISBA President Bill Scherle (right) during the Breakfast with the Bar with legislators.



ISBA President Tom Levis addresses board members during dinner at Noce, the night before the quarterly Board of Governors meeting.

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IOWA STATE BAR ASSOCIATION — 2019 Affirmative Legislative Program (Updated 3.29.2019)

| Bill No./Subject | Bill Description | Bill Status |
|---|---|---|
| HF 723 /SF 569 Business Law <i>Uniform Protected Series Act</i> | The Uniform Protected Series Act provides a comprehensive framework for the formation and operation of a protected series limited liability company. A protected series LLC has both "horizontal" liability shields, as well as the standard "vertical" liability shield. All modern business entities provide the traditional, "vertical" shield – protecting the entity's owners (and their respective assets) from automatic, vicarious liability for the entity's debts. A series limited liability company provides "horizontal" shields – protecting each protected series (and its assets) from automatic, vicarious liability for the debts of the company and for the debts of any other protected series of the company. A horizontal shield likewise protects the series limited liability company (and its assets) from creditors of any protected series of the company. The legislation integrates the Act into Iowa's existing chapter 489 on LLCs. Repeals Iowa Code § 489.407(2)(f), viz., "Approve a merger, conversion, or domestication under Article 10.", and leave § 489.407(2) otherwise intact. Article 10 already requires unanimous consent as a default rule. | House: Unanimously passed House Judiciary Committee, read first time and placed on House Calendar. Senate: Unanimously passed Senate Floor and was immediately messaged to the House. |
| HF 324/SF 112 Probate & Trust Law <i>Certification of Trust Code Changes</i> | Amend Section 633A.4604(2) to allow any current trustee or an attorney for a current trustee to sign off on and execute certification of trust documents instead of requiring every trustee's signature. | House: Unanimously passed House Judiciary Committee, read first time and placed on House Calendar. Senate: Unanimously passed Senate Floor and was immediately messaged to the House. |
| HSB 20/SF 327 Probate & Trust Law <i>Calculation of Probate Court Costs</i> | 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. | House: Subcommittee recommended passage, awaiting full House Judiciary Committee Vote. Senate: Unanimously passed the Senate Judiciary Committee, read first time and placed on Senate Calendar. |
| HF 336/SF 158 Criminal Law <i>PCR Record</i> | Revisions to Chapter 822. Over approximately the last four years, county attorneys, defense lawyers, and the Attorney General have had significant problems obtaining access to underlying files for postconviction cases. In particular, effective postconviction litigation generally requires the underlying criminal file, as well as any prior postconviction files. Currently, the way that court clerks handle these postconviction file requests can vary widely from county to county. These inconsistent practices have resulted in attorneys and indigent defendants representing themselves pro se encountering extreme difficulty or confusion in acquiring the necessary documents for their cases. Working in collaboration with the Iowa Judicial Branch, the proposed legislation works to implement a uniform process for clerks and attorneys to follow that would resolve this confusion, for both the prosecution, the defense, and judicial branch employees. | House: Unanimously passed House Judiciary Committee, read first time and placed on the House Calendar. Senate: Unanimously passed on the Senate Floor and was immediately messaged to the House. |

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IOWA STATE BAR ASSOCIATION — 2019 Affirmative Legislative Program (Updated 3.29.2019)

| Bill No./Subject | Bill Description | Bill Status |
|--|--|--|
| SSB 1242 Probate & Trust, Family Law <i>Guardianship & Conservatorship Update</i> | Update and Revisions to Iowa's guardianship and conservatorship laws based upon the Probate Section's review of chapter 633 and the Iowa Supreme Court's Guardianship & Conservatorship Reform Task Force. | Senate: Introduced and Funneled. |
| No Bill Number Government Practice <i>ABD "Good Moral Character"</i> | Amends Iowa Code section 123.3(34)(a) definition of "Person of Good Moral Character" to clarify what to consider when determining good moral/financial standing. This is addressed in the Administrative Rules but the Government Practice Section believes this should be codified to provide better implementation and uniformity. | Working with Iowa Alcoholic Beverages Division to include the ISBA definition in their division bill covering licensing reform or by Administrative Rule. |
| HF 328/SF 152 Elder Law Section <i>Clarifying definition for Vulnerable Elder in Iowa's Elder Abuse Law</i> | This proposal amends Iowa Code section 235F.1(17), the definition of vulnerable elder. Currently, "Vulnerable elder" is defined as "a person sixty years of age or older who is unable to protect himself or herself from elder abuse as a result of age or a mental or physical condition. This proposal changes the definition of "vulnerable elder" to mean "a person sixty years of age or older who is unable to protect himself or herself from elder abuse as a result of a mental or physical condition or because of a personal circumstance which results in an increased risk of harm to the person." This change aims to clarify a Supreme Court decision that held that age alone was enough to prove that an individual is vulnerable, making every person over the age of 60 in Iowa a vulnerable adult unable to protect themselves. This change makes it clear that age alone is not enough, but must be accompanied by something more. This amendment ensures that older Iowan's autonomy in decision making is protected. | House: Unanimously passed House Judiciary Committee, read first time and placed on House Calendar. Senate: Passed full Senate Judiciary Committee with a vote of 10-4, read first time and placed on Senate Calendar. |

IN ADDITION TO THE ABOVE LEGISLATIVE PROPOSALS, THE IOWA STATE BAR ASSOCIATION SUPPORTS THE FOLLOWING POSITIONS AS A PART OF ITS 2019 AFFIRMATIVE LEGISLATIVE PROGRAM:

- Full funding of indigent defense and adoption of legislation providing for \$5.00 per hour increase with an automatic cost of living increase in indigent defense fees.
- Full funding of the Judicial Branch.
- Full funding for Legal Services.
- Full funding of the IA Secretary of State's Office as requested by IA Secretary of State Paul Pate.
- Full funding for the Office of Substitute Decision Maker 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.
 - Will monitor issues regarding lawyer abstracting under Iowa Title Guaranty.
- Opposition to absolute immunity legislation.

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TRANSITIONS



PETERSEN

Caleb Petersen has joined the firm Remley, Willems, McQuillen & Voss, L.L.P. in Anamosa. Petersen will be representing clients in the areas of probate, estate planning, will and trust litigation, family law, personal injury, criminal defense and real estate. He received his J.D. from Saint Louis University School of Law.



MANGIERI

Grace E. Mangieri has joined Lane & Waterman LLP in Davenport as an associate attorney. She received her J.D. from The John Marshall Law School. Prior to joining Lane & Waterman, Mangieri was an associate attorney at Hinshaw & Culberston LLP in Chicago, Illinois. She focuses primarily on litigation and is involved in all stages of civil litigation defense.



GRAHAM

William W. Graham and Wesley T. Graham have joined Duncan Green, P.C. in Des Moines.

Bill received his J.D. from Boston College Law School. He maintains a broad civil practice emphasizing civil trials and appeals of all types as well as general representation and advisory services for businesses, families, professional groups and nonprofits.



GRAHAM

Wes received his J.D. from the University of Minnesota Law School and is licensed to practice in Iowa, Minnesota and Wisconsin. His practice areas include civil litigation, business and real estate transactions and corporate governance.



GREVENGOED

Tyler J. Grevengoed has joined Petersen Law PLLC in Council Bluffs. He received his J.D. from Creighton University School of Law. The firm focuses on real estate, business, estate planning and probate, as well as many other areas of law.



JOHNSON

Judy D. Johnson opened her own law firm: JDJ Law Firm PLLC on April 1. The firm is located at 222 5th Ave., Suite 100, Des Moines, IA 50309, Phone: 515-505-7905, Email: judy@jdjlawfirm.com. Judy will continue to practice primarily in the areas of wills, trusts, guardianships, conservatorships, juvenile law and family law.



MILLER

Donna Miller, Jaclyn Zimmerman, and Rob Evans have recently formed the firm of Miller, Zimmerman & Evans, PLC.

Miller earned her J.D. from the University of Iowa College of Law. She practices primarily in the areas of family law, workers' compensation and toxic tort defense.



ZIMMERMAN

Zimmerman earned her J.D. from Western State University College of Law in 2009. She practices primarily in the areas of family law and appeals.

Evans earned his J.D. from Drake University Law School in 2015. He practices primarily in the area of family law.



EVANS

Cole Mayer has joined Macro & Kozlowski, LLP, in West Des Moines as an associate attorney. He received his J.D. from Drake University Law School with Honors in 2014. Mayer will practice mainly in the areas of special education law, juvenile justice, family law and criminal defense.




MAYER

Ryan Koopmans is returning to private practice at Belin McCormick, P.C. after serving as Gov. Kim Reynolds' most recent chief of staff. Koopmans will use his diverse legal background and experience both in court and the executive branch to focus on appellate and complex trial litigation and regulatory practice. Koopmans graduated with highest honors from the University of Iowa College of Law and received a B.A. in economics with the highest honors from the University of Northern Iowa.




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Deputy Director for Finance and Operations - Iowa Legal Aid, Des Moines, IA - The deputy director for finance and operations is responsible for the fiscal and administrative operations of Iowa Legal Aid, is directly accountable to the executive director and supervises and assists the fiscal manager in performing the day-to-day tasks associated with the fiscal, administrative and human resources operations of the program. In addition, the deputy director for finance and operations oversees the program's office and technology infrastructure consisting of the program's physical office spaces and digital network and hardware. To apply, visit <https://careers.iowabar.org/jobs/12042929/deputy-director-for-finance-and-operations>

Assistant Attorney General - Iowa Department of Justice - Attorney General, Des Moines, IA – Iowa Attorney General seeks attorney to represent child support recovery unit. Position located in Sioux City. Must be licensed to practice law in Iowa. Send resume/cover letter to Vicki Bahe, HR, IA Attorney General, 2nd fl., Hoover Bldg., Des Moines, IA 50319 or vicki.bahe@ag.iowa.gov, by April 15. EOE - Minorities and persons with disabilities are encouraged to apply. (Hearing and Speech Impaired - Relay Iowa 1-800-735-2942 TDD)

Term Law Clerk - U.S. District Court, Southern District of Iowa, Des Moines, IA – The United States District Court for the Southern District of Iowa is seeking a term law clerk to United States Magistrate Judge Celeste F. Bremer. Incumbent reports directly to the judge and is primarily responsible for conducting legal research, advising the judge on legal matters, preparing legal documents such as orders, memoranda, jury instructions, and draft opinions and verifying citations. This clerkship will be for up to one year, starting August of 2019. Candidates must submit: (1) a cover letter, (2) a resume, (3) writing sample, (4) law school transcript, (5) a list of references with contact information, and (6) 2 letters of recommendation. Applications submitted without all items will

not be considered. Only applicants selected for an interview will be notified. Application materials should be marked "confidential" and mailed or e-mailed to: Mindi Decker, Human Resources/Training Manager, U.S. District Court, Southern District of Iowa, P.O. Box 9344, Des Moines, IA 50306-9344, E-mail: mindi_decker@iasd.uscourts.gov.

Paralegal - Legal Hotline for Older Iowans - Iowa Legal Aid, Des Moines, IA – This paralegal position will focus primarily on intake but may include other responsibilities based on needs and capabilities. Candidates must have an associate's or bachelor's degree, or equivalent paralegal experience. A paralegal degree, equivalent coursework, or recent work experience as a paralegal is preferred but not required. To apply, visit <https://careers.iowabar.org/jobs/12091850/paralegal-legal-hotline-for-older-iowans>

Trial Attorney - Nationwide Insurance, Des Moines, IA – We are looking for a senior defense attorney to join our team. Commercial insurance defense experience is required. Must also have 1st chair trial experience and be able to manage a case from beginning to end. This is a paper-free office. The selected candidate provides legal representation for clients in matters of significant importance and/or risk. To apply, visit <https://careers.iowabar.org/jobs/12104593/trial-attorney>

KUDOS

THE ISBA CONGRATULATES THE FOLLOWING INDIVIDUALS FOR THE RECOGNITION HE/SHE HAS RECEIVED:

Howard Hagen, Shareholder Attorney with Dickinson, Mackaman, Tyler & Hagen P.C., Des Moines, for being named a 2019 Amazing Outside Director for his board service to Shazam, a Johnston, Iowa-based provider of EFT services.

Andrew B. Howie for successfully achieving board certification as a family trial law advocate and being elected as a member of the American Academy of Appellate Lawyers. Howie is a shareholder at Shindler, Anderson, Goplerud & Weese, P.C. in West Des Moines.

The new officers of the Iowa Academy of Trial Lawyers, who were named at the Academy's General Meeting on February 22:

Neven J. Mulholland, Fort Dodge - President
Sharon Soorholtz Greer, Marshalltown - Vice President
David L. Brown, Des Moines - Secretary/Treasurer

The recipients of Drake University Law School's alumni awards:

Johnny C. Taylor, Jr. - 2019 Alumni of the Year
Emiliano Lerda - 2019 Recent Alumni of the Year
Jerry Foxhoven - Distinguished Public Service Award

The award winners were honored at Drake Law School's 82nd Annual Supreme Court Celebration Banquet and Awards Ceremony.



Taylor



Lerda



Foxhoven

CLASSIFIEDS

Exchange Officer - IPE 1031, West Des Moines, IA – We are seeking an attorney to work with taxpayers and their advisors in structuring Section 1031 exchange transactions. No experience with exchange transactions is necessary. The position offers significant opportunity for professional growth for candidates with strong credentials. This is a fantastic chance for a self-motivated team player to work in a professional, entrepreneurial and collegial work environment. To apply, visit <https://careers.iowabar.org/jobs/11889394/exchange-officer>

Equity Investigator - University of Iowa, Iowa City, IA – The University of Iowa's Division of Diversity, Equity, and Inclusion is seeking an experienced attorney to join the team in the role of equity investigator within the Office of Equal Opportunity & Diversity. This individual will assist with the investigation and resolution of university complaints alleging discrimination, sexual harassment, and/or violence and will also design and evaluate educational programs relating to discrimination, sexual harassment and violence. To apply for this position, visit our website at <http://jobs.uiowa.edu/> and search for Requisition #19001790.

Senior Director, HR Policy & Administration - University of Iowa, Iowa City, IA – We are seeking an experienced professional to join our team as a senior director, HR Policy & Administration. This position will enhance the functioning of the university by providing specialized services and expertise within a defined subject matter of HR to employees, HR professionals and unit/

departmental leadership. To view a full description of the position and/or to apply, visit our website at <http://jobs.uiowa.edu/> and search for Requisition #19001775.

Attorney - Parnall Law Firm, Albuquerque, NM – Personal injury attorney. Get paid more for your great work. Salary plus incentives paid twice a month. Great benefits. Outstanding office team culture. Learn more at www.HurtCallBert.com/attorney-jobs. Or apply by email Bert@ParnallLaw.com and write "Apples" in the subject line.

Associate Attorney - Rawlings Law Firm, Sioux City, IA – Rawlings, Ellwanger, Mohrhauser, Nelson & Roe, L.L.P., an established "AV" rated law firm in Sioux City, is seeking to hire an attorney to work in the areas of business, real estate, probate and estate planning. Candidates will be organized and possess excellent writing and oral skills. We offer competitive salary, 401(k), health insurance, CLE and bar dues. Membership in Nebraska and/or South Dakota bars a plus. Confidential inquiries, including resume, should be sent to Kathleen Roe, 522 4th Street, Suite 300, Sioux City, Iowa, 51101, or to kroc@rawlings-law.com.

Associate Attorney - Davis Brown Law Firm, Des Moines, IA – Davis Brown seeks an experienced business attorney for the downtown Des Moines office. Candidates must have experience in general business transactions. Experience in mergers and acquisitions or private equity is a plus. To be considered, applicants should submit their resume, cover letter, references and

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Associate Attorney - McDonald, Woodward & Carlson, P.C., Davenport, IA – Our established Davenport trial practice firm is currently seeking an associate attorney with at least 2-4 years of hands-on litigation experience. We are seeking a highly motivated trial lawyer who is looking to further his or her career. Must possess excellent communication skills and be organized, detail-oriented and self-motivated. We offer a competitive compensation and benefits package including medical and 401k. Must be licensed to practice in Iowa, although an Illinois license is a plus. To apply visit <https://careers.iowabar.org/jobs/12005529/associate-attorney>

Associate Attorney - Caldwell Brierly & Chalupa, PLLC, Newton, IA -- Central Iowa general practice law firm seeks associate attorney with 0 – 5 years experience. Variety of practice experiences possible including office practice, real estate, criminal, business, family, municipal, probate and litigation. Submit cover letter and resume to frontdesk@caldwellandbrierly.com.

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, a recovering alcoholic and drug addict. He is a trained substance abuse counselor. We cannot help unless you call – 515-277-3817 or 800-243-1533 – or message (in confidence) help@iowalap.org. All you have to do is ask us to contact you. No other details are necessary. We will call you. The Iowa Lawyers Assistance Program also can provide speakers for local bar associations.

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HAVANA GOOD TIME IN CUBA WITH THE ISBA

By Elisabeth Archer

Shortly after I registered for The Iowa State Bar Association's trip to Cuba, an itinerary from Cuba Cultural Travel arrived in my email inbox. Entitled, "Journey to Cuba: A Cross-Cultural Educational Exchange, February 1–5, 2019," the itinerary's cover page featured several vibrant scenes from the streets of Havana. In almost all respects, that title accurately billed the trip I was about to experience. From the moment we arrived in Cuba, our group was graciously welcomed into the Cuban culture and introduced to Cuba's amiable people, dynamic visual and performing arts scene, and delectable cuisine. In one respect, however, the title was not completely correct, at least for me. You see, my journey to Cuba began long before February of this year. Instead, it began about 25 years earlier with a woman named Ana Peck, née Hernández.

Ana was a Cuban who fled her native country for America shortly after Castro's revolution. She was 28 years old when she arrived in Iowa. Several decades later, she and I would meet when my family moved into the house next door to her own in Ottumwa. I was just three years old at the time and had little idea that the woman next door would eventually become a life-long friend. My journey to Cuba began as my relationship with Ana developed, because to truly know and understand Ana, you had to know and understand Cuba, its people, and its history; all things she was eager to share with me. When I heard about the bar association's upcoming trip, I was excited about the opportunity to see the country that had so profoundly shaped my dear friend—the country that she was never able to go back to, but that she was never fully able to leave behind.

After traveling on this remarkable journey, I now know why Ana never did let go of Cuba, but instead brought pieces of it with her to the States. The country itself and the trip that had been planned for us exceeded my expectations in every way. From the time our group landed at the José Martí In-

ternational Airport, I was immediately welcomed into the same hospitable and warm Cuban culture that Ana had first shown me back in Ottumwa. We caught our first glimpse of Cuba just steps outside the airport as American cars from the '50s and '60s swerved in and out of the arrival and departure lanes. Spotting those brightly-colored classics was an unceasing thrill throughout the trip and likely the most photographed aspect as well.

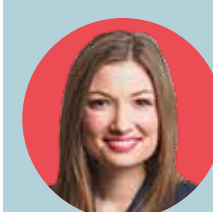
Every facet of our visit was perfectly curated by the team at Cuba Cultural Travel and our local guides Lachi and Oscar. Our days were a combination of insightful lectures and sightseeing excursions in and around Havana. We heard talks by preeminent Cuban scholars and diplomats discussing the current state of U.S.-Cuba relations and had meaningful opportunities to engage with each other and with the presenters about the relationship we would like to see between our two countries in the future. A Cuban attorney and adjunct Professor of Law at the University of Havana spoke with our group about her practice in Cuba which led to a lively discussion about the similarities and differences between the Cuban and American legal systems. We also explored various aspects of the 2019 Cuban constitutional referendum with many of the speakers as the referendum was scheduled for a vote at the end of February.

One notable feature of our itinerary was the flexibility we were given to choose some of the sights and activities in which we wanted to partake. On the fourth day, for example, half of our group chose to visit Las Terrazas, a pioneering eco-community in Sierra del Rosario, as well as the ruins of a French coffee plantation from 1801. The other half of our group, myself included, traveled to see Finca Vigía, Ernest Hemingway's picturesque home in San Francisco de Paula, and the nearby fishing village of Cojimar that Hemingway used as the setting for *The Old Man and the Sea*. Our group also had numerous opportunities to soak up Havana's nightlife including attend-

ing the Cuban National Ballet's performance of *Swan Lake* and taking in the famous Tropicana Club, a Cuban staple since 1939.

More than the cuisine, the classic cars or the cigars (locals say Cohiba Esplendidos are unrivaled), for me, Cuba's people are its greatest attraction. The Cuban people were exceedingly kind and genuine and I marveled at their zeal for knowledge and education. I encountered a number of Cubans who, upon discovering that I was an American, were eager to converse and exchange information about the vastly different forms of government in our respective countries and the benefits and drawbacks of each. These interactions are some of many that demonstrated how eager Cubans are to engage in an exchange of ideas, culture, and maybe one day, an exchange of goods with Americans. It is my hope that others continue to participate in these cultural exchange trips to Cuba because, as with the many great lessons I learned from my next-door-neighbor Ana, I believe we Americans have much to learn from our next-door-neighbor Cuba.

Finally, I would be remiss if I failed to mention what a privilege it was to travel with Iowa lawyers and their families from across the state. Together we made many lasting memories and friendships, and for that reason, I strongly encourage others to take advantage of the wonderful experience that is traveling together as members of The Iowa State Bar Association.



Elisabeth A. Archer is an associate at The Weinhardt Law Firm focusing on complex civil disputes and white collar criminal defense. Prior to joining the firm, she served as a law clerk to Chief Judge John A. Jarvey of the United States District Court for the Southern District of Iowa and as an Assistant County Attorney in the Polk County Attorney's Office.

SPOTLIGHT ON SERVICE

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

Golfing a pristine course on a sunny spring day, paired with some friendly rivalry, may sound like a fun way to spend an afternoon. And it certainly is fun, but the annual Dean's Cup golf outing is also raising thousands of dollars each year for a worthwhile cause: Iowa Legal Aid.

The idea for the event started back in 2004, when attorney Jeff Boehlert suggested setting up a golf match play event between Drake and Iowa Law

grads, faculty, staff and students. The first event was held on May 20, 2005 at the Legacy Golf Course in Norwalk. The captains were two federal court judges: the Hon. Ronald W. Longstaff for Iowa and the Hon. James Gritzner for Drake. Drake won.

Since then, the event has grown. Organizers eventually capped participation at 100 players. Between registration fees, other events and a silent auction, the Dean's Cup generates

between \$12,000 and \$15,000 in net proceeds to Iowa Legal Aid annually.

Organizer Greg Kenyon calls this a wonderful chance to network and compete with colleagues, and support an organization of critical importance.

"Legal Aid provides a much-needed service to so many people who would be unrepresented. Legal Aid makes good use of the funds and it is a great honor to help them extend their services," says Kenyon.



Carts line up at Echo Valley Golf Course in Norwalk for the 2018 Dean's Cup. Since its founding, the event has raised \$140,000 for Iowa Legal Aid.

DEAN'S CUP

THE 2019 TOURNAMENT WILL BE HELD MONDAY, MAY 20, AT THE AMANA COLONIES GOLF CLUB. TO REGISTER, CONTACT TERRI BENNETT AT IOWA LEGAL AID: TBENNETT@IOWALAW.ORG.

THE 2019 DEAN'S CUP PLANNING COMMITTEE CONSISTS OF:

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