



# THE IOWA LAWYER

October 2018 V 78 N 9

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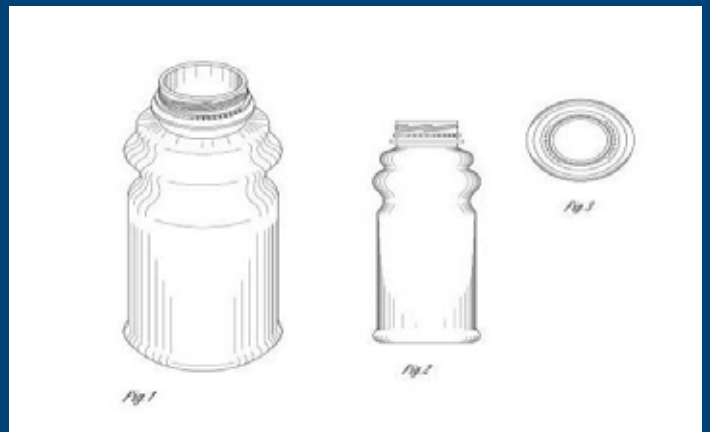
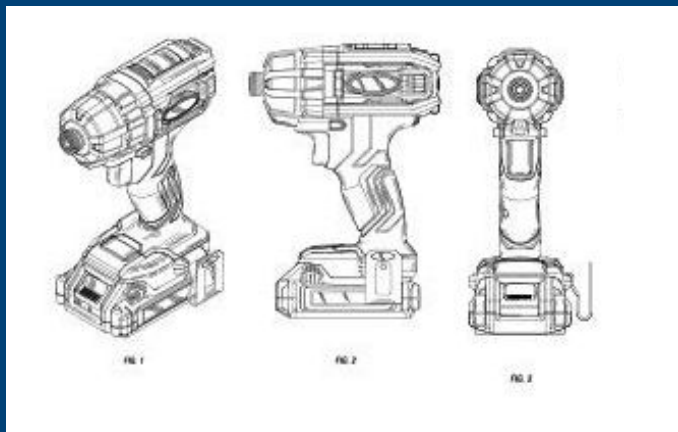
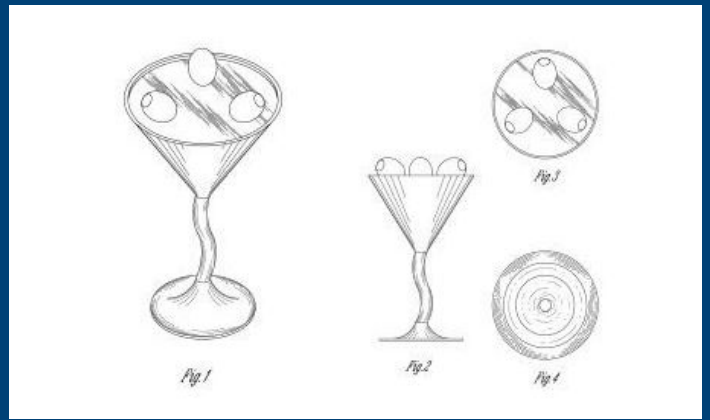
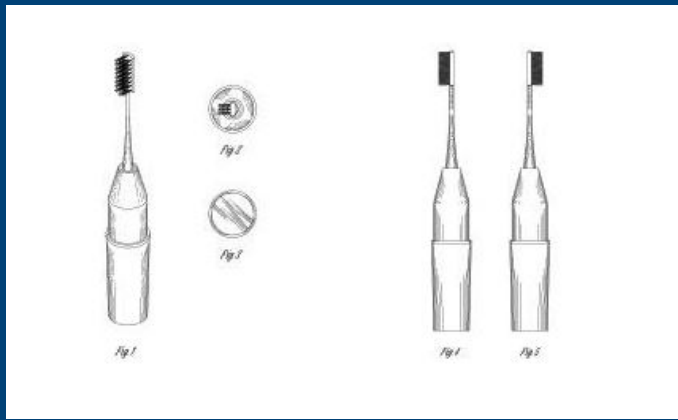
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Susan Christensen talks about how her penchant for always seeking more responsibility helped her travel the road from legal secretary to the state's highest court. **PAGE 8**



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#### EDITORIAL TEAM

Editor-in-Chief  
Melissa Higgins  
515-697-7896  
mhiggins@iowabar.org

Contributing Editor  
Virginia Sipes, J.D.  
515-697-7897  
vsipes@iowabar.org

Copy Editor  
Steve Boeckman  
515-697-7869  
sboeckman@iowabar.org

General Inquiries  
515-243-3179  
isba@iowabar.org

#### THE IOWA LAWYER

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

#### POSTMASTER

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

#### PRINTER

The Iowa Lawyer Magazine is printed by Colorfx, 10776 Aurora Avenue, Des Moines, Iowa, 50322. Telephone 515-270-0402. Design and Production: Mittera Creative.

#### ADVERTISING

CLASSIFIED. Qualifying ISBA members receive two free non-job listings annually as a member benefit. Members should contact the ISBA Communications Department for ad placement: communications@iowabar.org. For Career Center postings, visit <http://careers.iowabar.org/>. DISPLAY. Display advertising in The Iowa Lawyer Magazine is handled by Larson Enterprises, 909 50th Street, West Des Moines, Iowa, 50265. For display advertising and non-member classified ad rates, contact Alex Larson at 515-238-4406 or alex@larsonent.com.

#### SUBMISSIONS

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

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Number 9  
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## ISBA HOSTS FIRST-EVER PEOPLE'S LAW SCHOOL

On Sept. 19, The Iowa State Bar Association hosted its first "People's Law School" event, a free seminar covering older Iowan issues. Approximately 60 people came to learn about power of attorney, healthcare directives and disposition of remains; some even had a living will or medical power of attorney form notarized on site.

Speakers for the event included Greg Kenyon, elder law attorney with the Bradshaw Law Firm, and Deanna Clingan-Fischer, Ombuds Officer at Iowa State University.

ISBA staff plans to identify other topics of public interest and host similar seminars in the future. If you are interested in getting involved as a speaker, contact: [peopleslawschool@iowabar.org](mailto:peopleslawschool@iowabar.org) or 515-243-3179.



A packed house of members of the public gather at the ISBA office in Des Moines for the first-ever People's Law School on Sept. 19.

## ISBA RELEASES JUDICIAL PERFORMANCE SURVEY RESULTS

The Iowa State Bar Association released the results of its biennial survey of judges standing for retention in this year's general election in November. Members were asked to rate the three Court of Appeals judges, 36 district court judges and 28 district associate judges, based on qualities such as professional competence and demeanor.

The ISBA has conducted this performance review every two years since 1962, when Iowa adopted its merit system for selecting judges. The full results are available now on the website [www.iowabar.org](http://www.iowabar.org).

## JULY BAR EXAM RESULTS RELEASED

Of the 185 people who took the July 2018 Iowa State Bar Examination, 80 percent passed.

- 93 percent of first-time test-takers from the University of Iowa passed
- 88 percent of first-time test-takers from Drake University passed
- 89 percent of first-time test-takers from Creighton University passed

The newly-admitted members of the Iowa bar were sworn in during a ceremony on Sept. 27 at Scottish Rite Consistory in Des Moines, and welcomed into the profession with a special reception at the ISBA headquarters after the ceremony. The 2019 Summer Bar Examination will be held July 29 through July 31.

### PRESIDENT

Tom Levis W. Des Moines 515-274-1450 [tom.levis@brickgentrylaw.com](mailto:tom.levis@brickgentrylaw.com)

### PRESIDENT-ELECT

Willard Boyd III Des Moines 515-283-3172 [wlb@nyemaster.com](mailto:wlb@nyemaster.com)

### VICE PRESIDENT

Jerry Schnurr III Ft. Dodge 515-576-3977 [jschnurr@frontier.com](mailto:jschnurr@frontier.com)

### SECRETARY

Dwight Dinkla Des Moines 515-697-7867 [ddinkla@iowabar.org](mailto:ddinkla@iowabar.org)

### IMMEDIATE PAST PRESIDENT

Stephen R. Eckley Des Moines 515-283-4637 [sreckley@belinmccormick.com](mailto:sreckley@belinmccormick.com)

### DISTRICT GOVERNORS

#### DISTRICT 1A

Chris Even Dubuque 563-589-0830 [ceven@americantrust.com](mailto:ceven@americantrust.com)  
 Daniel Fretheim Dubuque 563-382-2959 [fretheim@andersonlawdecorah.com](mailto:fretheim@andersonlawdecorah.com)

#### DISTRICT 1B

Shannon Simms Waterloo 319-291-6161 [simms@nfiowa.com](mailto:simms@nfiowa.com)  
 Heather Prendergast Waterloo 319-234-4600 [heather@neilaw.com](mailto:heather@neilaw.com)

#### DISTRICT 2A

Matthew F. Berry Clear Lake 641-357-7296 [berrylaw@ctel.com](mailto:berrylaw@ctel.com)  
 Patrick Vickers Greene 641-823-4192 [pgv@myomnitel.com](mailto:pgv@myomnitel.com)

#### DISTRICT 2B

Victoria Feilmeyer Ames 515-956-3915 [vafeilmeyer@nyemaster.co](mailto:vafeilmeyer@nyemaster.co)  
 Jerry Schnurr III Fort Dodge 515-576-3977 [jschnurr@frontier.com](mailto:jschnurr@frontier.com)  
 Bethany Currie Marshalltown 641-421-0990 [bethany.currie@iowacourts.gov](mailto:bethany.currie@iowacourts.gov)

#### DISTRICT 3A

Jill Davis Spencer 712-262-1150 [jill@mbsdslaw.com](mailto:jill@mbsdslaw.com)  
 John Flaten Spirit Lake 712-336-1292 [jflaten@spirittlakelaw.com](mailto:jflaten@spirittlakelaw.com)

#### DISTRICT 3B

Maura Sailer Denison 712-263-4627 [msailer@frontier.net](mailto:msailer@frontier.net)  
 James Daane Sioux City 712-252-2424 [jdaane@maynelaw.com](mailto:jdaane@maynelaw.com)

#### DISTRICT 4

Kathleen Kohorst Harlan 712-755-3156 [kate@harlannet.com](mailto:kate@harlannet.com)  
 Robert Livingston Council Bluffs 712-322-4033 [Robert.Livingston@stuarttinley.com](mailto:Robert.Livingston@stuarttinley.com)

#### DISTRICT 5A

Mason Ouder Kirk Indianola 515-961-5315 [mason@olfirm.com](mailto:mason@olfirm.com)  
 Daniel Huitink Pella 641-621-8130 [dhuitink@vermeer.com](mailto:dhuitink@vermeer.com)

#### DISTRICT 5B

Roberta Chambers Corydon 641-870-0108 [roberta.a.chambers@gmail.com](mailto:roberta.a.chambers@gmail.com)

#### DISTRICT 5C

Emily Chafa Johnston 515-986-0914 [emily.chafa@iwd.iowa.gov](mailto:emily.chafa@iwd.iowa.gov)  
 Joseph Happe Des Moines 515-288-2500 [JoeHappe@davisbrownlaw.com](mailto:JoeHappe@davisbrownlaw.com)  
 Margaret A. Hanson Des Moines 515-246-7957 [maggiehanson@davisbrownlaw.com](mailto:maggiehanson@davisbrownlaw.com)  
 Bridget R. Penick Des Moines 515-242-8902 [brpenick@fredlaw.com](mailto:brpenick@fredlaw.com)  
 Adam D. Zenor Des Moines 515-245-8902 [azenor@grefsidney.com](mailto:azenor@grefsidney.com)  
 Dawn Boucher W. Des Moines 515-267-1174 [dawnlarew@hotmail.com](mailto:dawnlarew@hotmail.com)  
 Kathleen Law Des Moines 515-283-3116 [kklaw@nyemaster.com](mailto:kklaw@nyemaster.com)  
 Nathan Overberg Des Moines 515-243-7611 [noverberg@ahlerslaw.com](mailto:noverberg@ahlerslaw.com)  
 Joe Moser Des Moines 515-288-0145 [jmoser@finleylaw.com](mailto:jmoser@finleylaw.com)  
 Mary Zambreno Des Moines 515-246-4512 [mzambreno@dickinsonlaw.com](mailto:mzambreno@dickinsonlaw.com)  
 William Miller Des Moines 515-283-1000 [miller.william@dorsey.com](mailto:miller.william@dorsey.com)

#### DISTRICT 6

Erin R. Nathan Cedar Rapids 319-896-4013 [enathan@spmlaw.com](mailto:enathan@spmlaw.com)  
 Melvin Shaw Coralville 319-337-7429 [law@melvinshaw.com](mailto:law@melvinshaw.com)  
 Caitlin Slessor Cedar Rapids 319-365-9461 [cls@shuttleworthlaw.com](mailto:cls@shuttleworthlaw.com)  
 Robert Fischer Vinton 319-472-2353 [rfischerlaw@qwestoffice.net](mailto:rfischerlaw@qwestoffice.net)  
 Mark Parmenter Cedar Rapids 319-365-1184 [mparmenter@lwclawyers.com](mailto:mparmenter@lwclawyers.com)

#### DISTRICT 7

David J. Helscher Clinton 563-243-1243 [dave.helscher@clintonnational.net](mailto:dave.helscher@clintonnational.net)  
 Christopher Surls Lowden 563-941-5301 [cls@wbnlaw.com](mailto:cls@wbnlaw.com)  
 Ian J. Russell Bettendorf 563-324-3246 [irussell@l-wlaw.com](mailto:irussell@l-wlaw.com)

#### DISTRICT 8A

Rick Lynch Bloomfield 641-664-1997 [lynchlaw@netins.net](mailto:lynchlaw@netins.net)  
 Ryan J. Mitchell Ottumwa 641-682-5447 [ryan@ommglaw.com](mailto:ryan@ommglaw.com)

#### DISTRICT 8B

Brian Helling Burlington 319-754-6587 [bhelling@seialaw.com](mailto:bhelling@seialaw.com)

### REPRESENTATIVES AND DELEGATES

#### Iowa Judges Association Delegate

Paul Scott Des Moines 515-286-3198 [paul.scott@iowacourts.gov](mailto:paul.scott@iowacourts.gov)

#### ABA Delegates

Alan Olson Des Moines 515-271-9100 [aoo@olson-law.net](mailto:aoo@olson-law.net)  
 David L. Brown Des Moines 515-244-2141 [dlibrown@hmlawfirm.com](mailto:dlibrown@hmlawfirm.com)  
 Jane Lorentzen Des Moines 515-244-0111 [jlorentzen@hllawpc.com](mailto:jlorentzen@hllawpc.com)

### LEGISLATIVE COUNSEL TEAM

James Carney Des Moines 515-282-6803 [carney@carneyappleby.com](mailto:carney@carneyappleby.com)  
 Doug Struyk Des Moines 515-282-6803 [struyk@carneyappleby.com](mailto:struyk@carneyappleby.com)  
 Jenny Dorman Des Moines 515-282-6803 [dorman@carneyappleby.com](mailto:dorman@carneyappleby.com)

### ISBA YOUNG LAWYERS DIVISION OFFICERS

President Margret E. White Des Moines 515-244-4300 [maggie.e.white@emcins.com](mailto:maggie.e.white@emcins.com)

#### President-elect

Abhay Nadipuram Des Moines 515-288-2500 [abhaynadipuram@davisbrownlaw.com](mailto:abhaynadipuram@davisbrownlaw.com)  
 Secretary Torey Cuellar Marshalltown 515-229-4140 [toreycuellar@gmail.com](mailto:toreycuellar@gmail.com)

#### Immediate Past President

Thomas Hillers Des Moines 515-984-0091 [thillers@hupy.com](mailto:thillers@hupy.com)

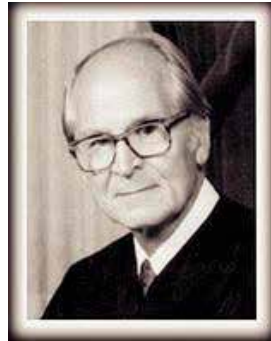
## HARVEY UHLENHOPP AND THE MERITS OF MERIT SELECTION TOM LEVIS, PRESIDENT

**B**efore a rural lawyer from Hampton decided to weigh in on the issue, Iowa elected its judges. My great uncle, Harold Levis, was one of those elected judges. He presided in Southern Iowa, with his home base in rural Chariton. Although I was pretty young at the time, I remember going to uncle Harold's office and seeing his judicial campaign signs. My vague memory is that the signs touted uncle Harold's honesty and integrity (How creative for a judicial election!). My father told me later that uncle Harold loved campaigning as a legislator, but hated campaigning to be a judge. He loathed having to ask his lawyer and social friends for campaign money, and he hated campaigning against his lawyer friends.

Like my uncle Harold, Harvey Uhlenhopp practiced law in rural Hampton. By all accounts, he was a smart, talented and successful lawyer who was active in his community, active in The Iowa State Bar Association and active in his beloved Republican party where he served as a member of the Iowa House of Representatives from 1951 to 1953. In 1953, Harvey Uhlenhopp was elected to the district court bench.

Like my great uncle Harold, Harvey Uhlenhopp hated running for election as a judge. He didn't mind running for political office, but campaigning to be a judge was just plain wrong in his estimation. According to Harvey, a "judicial system must have qualified personnel in order to function properly. Unswerving devotion to justice is the quintessence of the judicial function. Fulfillment of this ideal requires judges beholden to no one." In Harvey's eyes, electing judges was no way to select a judge. Whether a candidate was popular in the community or a funny and witty speaker did not ensure that the candidate would be a good judge. The fact that a candidate was financially successful did not mean he or she would make good decisions on the bench. Harvey knew from his own experience that powerful politicians were generally not the best candidates to be a judge. After all, politicians are often beholden to someone. That is the na-

ture of politics. Even if an elected judge was truly beholden to no one, like Harvey hoped he was, soliciting money from local lawyers and businesses did not give the public confidence that its judges were impartial. In Harvey's view, politics and judging were like oil and water; they just don't mix!



HARVEY UHLENHOPP

For nearly five years after his election to the bench, Harvey thought about changing the way Iowa chooses its judges. In 1958, as Chair of The Iowa State Bar Association's Committee on the Judicial Administration of Justice, Harvey decided to do something about it. He wrote a fascinating article for the Iowa Law Review entitled "Judicial Reorganization in Iowa," 44 Iowa L. Rev. 6 (1958-1959). This 60-year-old article is a wonderful historical piece that reviews Iowa Courts from 1846 to 1958. It makes a number of recommendations for court reform, one of which immediately found favor in the Iowa General Assembly. Harvey proposed that Iowa amend its Constitution to eliminate judicial elections and adopt a system for selecting judges based on merit. Less than a year after his famous article was published, the Iowa legislature agreed with Harvey and voted to amend the Iowa Constitution to eliminate judicial elections and adopt Harvey's merit selection plan.

Amending the Iowa Constitution is not something Iowa generally does on the spur of the moment, so the Iowa legislature must have known there was a problem with the quality of judges elected to the bench. In 1961, the Iowa legislature again voted in favor of Harvey's merit selection plan. On both occasions, Senator Charles Grassley, then a state lawmaker, voted in favor of

Harvey's proposal. Years later, Senator Grassley said: "I'm the guy who voted in 1959 and 1961 for Iowa's present way of selecting judges...it was a very forward-looking thing to do what we did 50 years ago." In 1962, Iowa voters approved Harvey's proposed Constitutional Amendment and, as they say, the rest is history. Merit, not politics, became the polestar for choosing Iowa judges.

Harvey Uhlenhopp's merit selection plan created nominating commissions to investigate and interview prospective judicial candidates and then send the names of the candidates with the most merit to the governor for final selection. These nominating commissions are composed of members appointed by the governor and an equal number of lawyer-members elected by Iowa lawyers. The senior justice of the Iowa Supreme Court chairs the state nominating commission. The senior judge of the district typically chairs the district court commissions. The state nominating commission interviews and

### I WANT TO EAT A MEAL WITH YOU!

#### A message from President Tom Levis

In early September, ISBA officers and staff held the first of many "Table for Ten" events with lawyers in Oskaloosa. A "Table for Ten" is a lunch, breakfast or dinner event with members of the local bar where any issues affecting lawyers and the courts can and will be discussed.

We met 10 lawyers from the Oskaloosa Bar for lunch at Tasos and spent nearly 90 minutes talking about possible solutions to the rural practice problem, about the new Drake Law Incubator firm opening in Oskaloosa, about access to justice issues in Mahaska County, about judicial residency requirements for district judges and about proposed new guardianship and conservatorship legislation. We also had a laugh or two.

It was a great event and one we will duplicate across Iowa in the next year. If you want to have a "Table for Ten" in your town, let us know and we will set one up. We do travel, so don't be bashful about asking! In addition, the bar picks up the tab. Contact Harry Shiple at [hshiple@iowabar.org](mailto:hshiple@iowabar.org).



investigates all candidates and then sends three names to the governor who chooses one of the three for the next Iowa Supreme Court justice or Court of Appeals judge. The district court commissions send two names to the governor who chooses one to be the next district court judge.

Why nominating commissions? According to Harvey, no judicial selection system is perfect, but the objective is to select the best-qualified individual. According to Harvey, the inquiry ought to be: "Has the individual judicial temperament? Is he or she studious? What about his or her integrity, intelligence, training and experience?" Harvey suggested that when a judgeship becomes vacant, a judicial nominating commission composed of lawyers, appointed members and a senior judge should thoroughly examine the qualifications of all of the candidates without reference to political affiliation, and then certify the best candidates to the governor who would appoint one of the individuals recommended.

Harvey thought that dividing the commissioners equally between lawyers and appointed members made the most sense. The governor, on behalf of the public, should provide half of the commissioners. And lawyers, who have special knowledge of the job and candidates, should have an equal say in who should be the next judge or justice. Harvey also thought judges had valuable knowledge of the judicial position, as well as the candidates, so a judicial representative should be

on the commission. Harvey felt that, except for the judicial members, there should be no restriction respecting the occupation of any of the governor-appointed commissioners. He also felt that none of the commissioners should hold public office while serving on the nominating commission, and each commissioner should be eligible for only one full term. Finally, Harvey thought all of the commissioners should be electors in the judicial area in question, but their political affiliation should be disregarded.

Harvey's system for selecting judges has been in place since 1962. Hundreds of judges and justices have been appointed based on their merit and not their politics. The system has worked well. Republican governors have picked Democrat judges and Democrat governors have picked Republican judges. Each governor knew that the judicial candidates referred to him or her were exhaustively evaluated by an independent and non-political commission.

Unfortunately, Harvey Uhlenhopp's 60-year-old merit selection system is now under attack by politicians who want politics to play a bigger role in the selection of Iowa judges. They believe that the Uhlenhopp system is broken and think that the lawyer members of the judicial nominating commissions wield too much power in the selection of judges. They propose changing the law to allow the governor to appoint all members of the nominating commissions in the hope that the candidates would be more politically-aligned to

the governor. This change is being proposed by Senator Julian Garrett, a Republican and attorney from Indiana. Despite the fact that he has been supportive of other ISBA measures in the past, I am sure Harvey Uhlenhopp is rolling over in his grave wondering why a fellow Republican and fellow lawyer is trying to re-inject politics into the selection of judges after 56 years of success. But that is politics today. There is no data to support this proposal. That is because there is no data to support that lawyers wield too much power or "run the show." Interestingly, Governor Branstad and Governor Reynolds have appointed lawyers to be among the appointed members of nominating commissions. I was on the District 5C nominating commission when Governor Branstad appointed attorney Ryan Koopmans to the commission and on the commission when Governor Reynolds appointed attorney Brett Roberts. If the person actually choosing the new judges thought lawyers "ran the show," he or she would not be adding lawyers to the commission mix!

As I said, I am on the District 5C nominating commission (Polk County). In the last four years, the 5C commission has been involved in the selection of eight district court judges. Candidly, when I ran to be a lawyer-member of the 5C commission, I had no idea that in just four years I would be involved in the appointment of eight district court judges! But, that is the way it worked out and I am honored to have played a role in the future of Polk County justice. I want you to know that in the last four years I have come to know and appreciate my fellow 5C commissioners: both the elected lawyer-members and the governor-appointed members. We do what Harvey wanted us to do. We ignore politics. The politics of a candidate are never discussed. Like Harvey hoped, we read the extensive materials and talk to each other about the merits of each candidate. We investigate each candidate's judicial temperament, their integrity, their intelligence, their training and their experiences. When we are interviewing candidates, all of us candidly share information and thoughts.



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During our deliberations, each of us openly discusses the strengths and the weaknesses of each candidate. I can assure you that none of us wants to send a name to the governor who is not uniquely qualified to be a district court judge. We are all looking for the best candidates with the most MERIT.

Each of the elected lawyers on the 5C nominating commission brings a special knowledge to the commission, just like Harvey hoped. Most of us have worked with the candidates and know their work habits, their skills and their temperament. As lawyers, we generally know what the job entails. As lawyers, we all recognize that the candidates selected may very well be deciding cases involving our clients in the very near future. So, we want to recommend the candidates with the most merit. We share our special knowledge with the appointed members. In my opinion, the appointed members of the 5C nominating commission appreciate

the special knowledge that we lawyers bring to the discussions and would struggle without it.

The appointed members also bring special talents to the commission. On the 5C commission, we have lay people from different occupations. For instance, currently we have a lobbyist, a realtor, a banker, a lawyer and a business CEO. None of these appointed members are afraid to ask questions or confront other commissioners about a candidate's merit. Frankly, several of our appointed members ask questions of candidates that I would never have thought to ask, but yielded important information that I would not have learned had the question not been asked. I, for one, appreciate the fact that these appointed members bring a different perspective to the table. They view selecting judges from the perspective of a consumer of justice. What's not to appreciate about that?

Harvey's system works. It's not

perfect, as Harvey predicted, but it is the best system for selecting judges in America. Many of my bar association friends from other states marvel at Iowa's merit selection process. They all wish their judges didn't have to be so political to get elected or appointed. Perhaps if they had a Harvey Uhlenhopp helping them, they too would have an independent judicial branch. Thank you, Harvey.

P.S. In 1970, Governor Robert D. Ray appointed Judge Harvey Uhlenhopp to the Iowa Supreme Court. He served until 1986. By all accounts, he was a wonderful Supreme Court Justice.



**Tom Levis**  
Shareholder at Brick Gentry P.C  
tom.levis@brickgentrylaw.com  
515.274.1450

# Corporate Counsel and Trade Regulation Seminar

(In-person or Live Webinar)

**October 19**

**8:45 a.m. - 4:15 p.m.**

*In-person attendance will take place at the ISBA Headquarters, 625 E. Court Ave., Des Moines, Iowa 50309*



## TOPICS

- Hot Topics in Immigration Law
- New Developments in Antitrust
- Sexual Harassment and First Amendment Issues in the Workplace
- Data Privacy Legal Issues
- What's New and Important on Trade and Tariffs
- Trademarks and Social Media
- Iowa Supreme Court Update

# MEET THE NEWEST IOWA SUPREME COURT JUSTICE

Susan Christensen talks about how her penchant for always seeking more responsibility helped her travel the road from legal secretary to the state's highest court

By Steve Boeckman,  
Communications Director Emeritus

The Iowa Supreme Court's newest justice, Susan Christensen, says she has always sought more responsibility in her life. She never lets her foot off the gas pedal.

Evidence of those statements can be seen by her appointment to the state's highest court, a position she officially began with her investiture last month.

It has been a long road from her upbringing in Harlan as the third child of four born to the supreme court's

longest serving justice, Jerry Larson, to her position as the third woman ever to serve on the state's highest court. The road took her from a legal secretary, to a lawyer, to a district associate judge, to a district court judge and, finally, to the supreme court.

She also is a mother of five and grandmother of four. And, she is very active in the Special Olympics "Opening Eyes" program with her

husband, Jay, an optometrist in Harlan, and her five children.

Suzy, as she calls herself, met Jay in the first grade. They dated throughout

high school, and decided to marry shortly after graduating. Their plan was for her to acquire a skill that would support them while Jay was in college.

She enrolled in the legal secretary program at AIB in Des Moines.

"I wanted to do something quick, and law didn't scare me," she says. "There were also medical opportunities, but I had no background in my family or interest, so I didn't want to be a medical transcriptionist. I was trying to think of something quick that wouldn't be a great challenge as far as my interests. And, I thought I would work until Jay was done, then quit and just be a housewife."

But, as the old saying goes, the "best laid plans ..."

Jay was pursuing a bachelor's degree at the University of South Dakota in Vermillion. Suzy was working for a law firm in Sioux City. What the couple hadn't planned on was that she would fall in love with the practice of law, and that one of her bosses at the firm would tell her she should do more than be a secretary.

"He said being a secretary was very important. And, my goodness, me having been a lawyer for 16 years, my secretary was my right hand," she says. "When I thought about going out on my own, I didn't make the decision until I checked with my secretary and

knew she was coming with me."

She started her first year of undergraduate schooling at South Dakota while Jay was finishing his fourth year.

When Jay graduated, he took a management job with Payless Cashways, a home improvement/lumberyard company. The job took them to California. Suzy completed her second year of college at California State University in Fresno.

Four or five months into the job, Jay realized the lumber business wasn't for him. A visit to the local optometrist in Harlan over Christmas break, when Suzy was pregnant with their second child, made him realize he wanted to be an optometrist. First, though, he had to pick up some undergraduate credits that would enable him to apply for optometry school. That took the couple, who by now had two sons – the oldest of whom was diagnosed with cerebral palsy – to Iowa City. Suzy finished her third year of undergraduate studies at the University of Iowa.

Jay was accepted into optometry school in Chicago. Suzy finished her last year at Judson College in Elgin, Illinois, from which she graduated with a degree in psychology.

She chose psychology because she was "extremely interested in it, loved it, my grades reflected it, and because I am a firm believer in doing what you love," she says. "I only used psychology as a way to get into law school."

She applied to law schools, and was accepted at the University of Iowa, Drake University and Creighton University. Now came the difficult decision of which to attend. She ruled out Iowa, even though it was only four hours from Chicago where Jay still had two years to complete his optometry training, because "I would have been in Iowa City by myself without extended family and two kids." She also ruled out Drake for the same reasons. She decided on Creighton because it was close enough to Harlan that she could get



Justice Christensen stands on the balcony on the third floor of the judicial branch building.

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help with the two children from family members and she could commute.

“Jay came home every weekend but three during those two years,” she recalls. “He also would call every night and talk to the boys before they went to bed. Then he would call after 11 p.m. and we would talk.” That was in the days when long-distance calls were cheaper after 11 p.m., she laughs.

Her routine involved taking the boys to school in the mornings, then driving to Omaha for classes. Jay’s mom, who was a Home Economics teacher at the time, would have the boys ride a bus to her school then take them to her home until Suzy was able to get back.

“I didn’t do anything extra in law school,” she says. “I had an hour-drive home so I could unwind from the school day and I was ready to be mom when I picked up the boys.”



Governor Kim Reynolds (left) administers the oath of office to Justice Christensen during her investiture ceremony on Sept. 21.

Once she picked up the boys, she’d spend the evening with them, fixing dinner, helping with homework and other activities until they went to bed about 7:30 p.m.. Then, she would sit down and study. Her studying never got in the way of her time with the boys.

Jay finished his optometry training, moved back to Harlan and started his own practice.

When she graduated from law school, Suzy joined the family firm. Almost as soon as she began practicing, she also began working as the assistant county attorney for Shelby County. Her brother, Jeff, now the chief judge for the fourth district, was the county attorney.

The time spent in the county attorney’s office gave her “lots of trial experience,” and also opportunities to train and teach law enforcement

personnel, she says.

She practiced law for 16 years, the last four in her own practice. Early on, she developed an interest in family law, which served her in good stead when she later became a district associate judge in the fourth judicial district on her first try. Most of her cases were juvenile cases, child welfare in particular.

“Juvenile court is a good way for young judges to acquire judicial temperament,” she says.

Her juvenile experience will also serve her well on the supreme court, she believes. No one on the court has juvenile experience, except for Chief Justice Mark Cady who had two years of experience 32 years ago.

Why become a judge when she had a thriving family law practice?

“I was seeking more responsibility,” she says simply.

Plus, she likes problem solving. She could do that for clients in her law practice. As a judge, however, she could solve the overall problem in a case.

Her move to a district judgeship eight years after her appointment as a district associate judge, ironically came about because she twice applied for openings on the Iowa Court of Appeals. She applied in 2011, was nominated, but was not appointed by the governor. She was told that Governor Terry Branstad, who was governor at the time, wanted her to have district court judge experience first. In 2015, she was appointed a district court judge



Her grandchildren join Justice Christensen on the bench after the investiture and robing ceremony.

in the fourth judicial district.

“Life has a way of testing us with disappointment before trusting us with responsibility,” she says, looking back on the experience.

As far as being the first woman on the high court since 2010, and only the third woman in the court’s history, she believes the experiences she brings to the court are more valuable than her gender. In particular, she cites her extensive experience in family and juvenile law, her recent trial court experience, her commitment to improving access to justice for all Iowans and her residence in a rural community as benefiting the court.


“I know it’s not because I’m a woman that will make a difference,” she says.

However, she’s also aware that outsiders who look at the supreme court notice that she’s the only woman on the court, and that little girls may be motivated by the presence of a woman on the state’s highest court.


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Partner

# MORE NEWS FROM THE IOWA SUPREME COURT

## JUSTICE ZAGER RETIRES FROM THE BENCH



On Aug. 29, the Iowa Supreme Court held a special ceremony to mark the retirement of Justice Bruce B. Zager, with a reception held afterwards at the ISBA headquarters. Guest speakers included ISBA President Tom Levis; Rick Sole, an attorney from Cedar Rapids and longtime friend; Senior Judge James Bauch, who served as a district judge with Zager in District 1B; and Chief

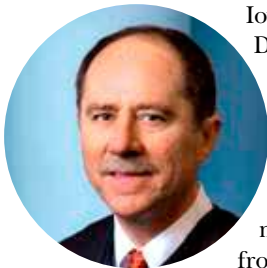
Justice Mark Cady.

Justice Zager was born and raised in Waterloo. He earned his bachelor's degree in business administration from the University of Iowa in 1975, his Master of Science degree in Industrial Relations from Loyola University of Chicago in 1977 and his law degree from Drake University Law School in 1980. Justice Zager was in private practice in Waterloo and was an attorney with the Black Hawk County Attorney's Office until his appointment by Governor Tom Vilsack

to the Iowa District Court in 1999. He was appointed by Governor Terry Branstad to the Iowa Supreme Court in 2011.

During his seven years on the Iowa Supreme Court, Justice Zager wrote 104 majority opinions. As a member of the court, Justice Zager played a key role in updating the rules for expanded media coverage of Iowa's courts. He also chaired the Iowa Guardianship and Conservatorship Reform Task Force.

## JUSTICE HECHT RESUMING CASES DURING CANCER TREATMENT



Iowa Supreme Court Justice Daryl Hecht has resumed hearing cases and participating in the decisions of the Iowa Supreme Court, as he continues to battle cancer and receive treatment. Justice Hecht, age 66 from Sloan, has not participated in oral arguments since the end

of March 2018, and participated in only a few cases during the remainder of the court term that ended June 30.

Justice Hecht is receiving treatment for melanoma in Sioux City and at the Mayo Clinic in Rochester, Minnesota. He expects that improvement resulting from a new treatment regimen will allow him to resume a more active role on the court.

Justice Hecht has served on the Iowa Supreme Court since 2006 and served as a judge on the Iowa Court of Appeals for seven years prior to his appointment to the supreme court.



# CLE Calendar

October 19

**Corporate Counsel and Trade Regulation Seminar**  
(In-person or Live Webinar)

October 22

**Opioid Trends**  
(Live Webinar)

October 24

**Probate Mediation**  
(Live Webinar)

October 25-26

**Family Law Seminar**  
West Des Moines Marriott

November 6

**Contractual Issues Arising Out of Livestock Production**  
(Live Webinar)

November 9

**Environmental Law Seminar**  
(In-person or Live Webinar)

November 14

**Trademark Law Update**  
(Live Webinar)

November 15

**Shifting Landscapes: Adapting Your Firm to Emerging Threats**  
(Live Webinar)

November 27

**Risk Assessment and Your Professional/Personal Security**  
(Live Webinar)

December 5-7

**Bloethe Tax School**  
Des Moines Marriott  
Downtown

December 31

**Confidentiality: A Review of the Rules and Cases**  
(In-person or Live Webinar)





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	13	X	15	16	17	
	20 PM	21	22	23	24	
	27	28 PM	29	30	31	

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# THE IOWA SUPREME COURT'S 2017-2018 TERM: BY THE NUMBERS

By Matt O'Hollearn

With the beginning of a new Iowa Supreme Court term, it is time to look back and review the 2017-2018 term by the numbers. The Cady Court has been tracked since its inception in April 2011<sup>1</sup>, and this year's numbers further confirm what has been trending since the 2013-2014 term, which is that the current court is Chief Justice Cady's both in naming rights and decision-making authority.

## OPINIONS

During the 2017-2018 term, the Iowa Supreme Court issued 103 opinions. The court also held over three cases (Cedar Rapids v. Leaf, Behm v. Cedar Rapids, and Weizberg v. Des Moines) for resubmission next term. The number of opinions is in line with the court's past caseload. Since the institution of the term system, the court has averaged approximately 104 opinions per year (100 in 2012-13, 107 in 2013-14, 102 in 2014-15, 96 in 2015-16 and 116 in 2016-2017).

Although the subject matter of the opinions can be difficult to pigeonhole, the opinions can roughly be categorized as follows: 46 criminal, 44 civil,

four juvenile and nine disciplinary opinions.

## SOURCE OF APPEAL

With a defunctive appellate system, the Iowa Supreme Court obtains cases both by direct appeal and by further review from the Iowa Court of Appeals. This year, the court took 44 cases by direct appeal and 49 cases by further review. The court also answered one case by certified question from the U.S. District Court for the Northern District of Iowa. Using the same subject matter breakdown as above, the type of cases taken by each source of appeal is shown organized in Chart A.

Historically, the court has followed a relatively close 50/50 split between cases taken by direct appeal and cases taken by further review, and this year is no different. However, this year is unique in the number of criminal cases taken by direct appeal. In the previous two terms, approximately 70 percent of the court's criminal cases came by further review, but this year, it was less than half.

## ORAL ARGUMENT

This term, the court held oral arguments in 63 cases. The court also continued to hold

arguments outside the Judicial Branch Building. In addition to the recurring oral arguments held at Iowa College of Law, Drake Law School, and the Night Session held when the legislature is in session, the court also heard arguments at Des Moines Hoover High School, Davenport Central High School, Cedar Falls and Knoxville.

## AUTHORSHIP

As will be seen in Chart B, a direct consequence of the disagreements within the Cady Court is the proliferation of authorship. In total, the Court issued 158 opinions in the 103 cases. The authorship of those opinions is shown in Chart B.

This year, Justice Mansfield retained his title as the most prolific writer. He, along with Justices Wiggins and Appel, are generally the court's most prolific writers. In line with historical averages,

CHART A

	Criminal	Civil	Juvenile
Direct Appeal	25	19	0
Further Review	21	24	4
Certified Question	0	1	0

CHART B

Justice	Majority	Dissent	Spec. Con.	TOTAL
Cady	12	2	2	16
Wiggins	16	6	2	24
Appel	14	11	3	28
Hecht	5	2	1	8
Waterman	15	8	2	25
Mansfield	19	13	2	34
Zager	16	1	0	17
Per Curiam	-	-	-	6
<b>TOTAL</b>				<b>158</b>

Chief Justice Cady and Justice Zager wrote the least number of opinions (likely due to their status as the swing votes for this court).

For Justice Hecht, there is good cause for his low authorship total. In April 2018, the court confirmed that Justice Hecht had been diagnosed with melanoma, the most serious type of skin cancer. As a result, Justice Hecht participated in the court's decisions as his treatment allowed. Although Justice Hecht participated in every case prior to April 2018, from April 2018 to the

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end of the term, Justice Hecht took no part in 21 of the court's final 47 issued opinions.

### JUSTICE DISAGREEMENT

The Cady Court continues to have significant differences resulting in numerous dissents and special concurrences. This term, only 57 of the 103 opinions were unanimous. Although the 46 non-unanimous opinions would seem high, it is not out of the norm for the Cady Court. Last term had 45 non-unanimous opinions, and from 2011-2016, the Cady Court averaged 30 non-unanimous opinions per year. For comparison, the previous Ternus Court only averaged eight non-unanimous opinions per year from 2006 through 2010.

The battle lines for this court can be drawn into two voting blocs, with Justices Wiggins, Appel and Hecht in one bloc, and Justices Waterman, Mansfield and Zager in the other. Chief

Justice Cady acts as the swing vote in the middle. Chart C shows the voting blocs and their cohesiveness by showing how often each justice agreed in the non-unanimous cases.

As the table shows, Chief Justice Cady was a true swing vote, agreeing with each of his colleagues about half the time. His status in the middle of the two blocs can also be seen by the fact that Chief Justice Cady was in the majority in all but two cases this term. This is a continuation of the previous two terms. For the terms from 2015 to 2018, Chief Justice Cady has found himself in the dissent just six times in 315 opinions, resulting in a majority rate of 98 percent.

Further, Chief Justice Cady's importance as the swing vote in this court is most evident from the court's multiple "4-3" decisions. This term, the court had 20 "4-3" opinions, and seven "4-2" opinions in which Justice Hecht took no part, but his general voting bloc of Justice Wiggins and Appel were in dissent. Of these 27 split-opinions, Chief Justice Cady was only in the dissent one time. Further, 25 of these 27 opinions were decided in

accordance with the general voting blocs of the justices with Chief Justice Cady sitting perfectly in the middle. Specifically, 13 of the 27 split-decisions resulted in the bloc of Justices Wiggins, Appel, and Hecht in dissent, and 12 resulted in the bloc of Justices Waterman, Mansfield, and Zager in dissent.

In summary, by the numbers, the 2017-2018 term was in line with the previous terms of Cady Court, and very much remained "Cady's Court."



**Matt O'Hollearn** is an associate attorney at Brick Gentry, P.C. in West Des Moines, who focuses on civil and appellate litigation. He is a 2009 graduate of Drake University Law School, who clerked for Justice Edward M. Mansfield of the Iowa Supreme Court and Judge Michael R. Mullins of the Iowa Court of Appeals.

CHART C						
	Wiggins	Appel	Hecht	Waterman	Mansfield	Zager
Cady	47.8%	50%	X	47.8%	50%	58.7%
Wiggins		82.6%	X	8.7%	10.9%	26.1%
Appel			X	13.0%	13.0%	30.4%
Hecht				X	X	X
Waterman					91.3%	82.6%
Mansfield						71.7%
Zager						

<sup>1</sup>Ryan Koopmans, On Brief: Iowa's Appellate Blog, *Voting Alignment on the Iowa Supreme Court* (July 16, 2012), <https://www.iowaappeals.com/voting-alignment-on-the-iowa-supreme-court/>; Ryan Koopmans, On Brief: Iowa's Appellate Blog, *The Iowa Supreme Court: How Each Justice Voted During the 2012-2013 Term* (Oct. 2, 2013), <https://www.iowaappeals.com/voting-alignment-on-the-iowa-supreme-court-during-the-2012-2013-term/>; Ryan Koopmans, On Brief: Iowa's Appellate Blog, *The Iowa Supreme Court's 2013-2014 Term: By the Numbers* (Aug. 18, 2014), <https://www.iowaappeals.com/iowa-supreme-courts-2013-2014-term-by-the-numbers/>; Ryan Koopmans, *It's Still Cady's Court: A Statistical Review of the Iowa Supreme Court's 2015-16 Term*, THE IOWA LAWYER, Vol. 76, No. 9 (Oct. 2016)



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# Lawyers' service on nonprofit boards: **MANAGING THE RISKS OF AN IMPORTANT COMMUNITY ACTIVITY**

by Willard L. Boyd III

**L**awyers often are requested to serve on nonprofit boards of directors. This can be an important way to become more involved in your community. Given that many nonprofits have limited resources, the lawyer-director also may be asked at some time during the lawyer's board service to provide some form of legal services on a pro bono basis.

A lawyer-director needs to be mindful of the fiduciary duties imposed on directors of nonprofit organizations, the ethical duties imposed on lawyers and the potential issues that arise as a result of a lawyer serving on a nonprofit board. Although there are some risks associated with such service, there are ways these risks might be managed.

## OVERVIEW OF DUTIES

Under the Revised Iowa Nonprofit Corporation Act (Iowa Nonprofit Act),

a director has fiduciary duties to the organization. See Iowa Code section 504.831. The main duties are the duty of care and the duty of loyalty. The duty of care requires the director to act with the care a person in a like position would reasonably believe to be appropriate under similar circumstances. The duty of loyalty requires the director to act in good faith and in a manner that the director reasonably believes to be in the best interests of the organization. The duty of loyalty covers conflict of interest situations. The Iowa Nonprofit Act provides a process for handling conflict of interest situations, which requires the disclosure of a potential conflict and the nonparticipation of the conflicted director in the action taken by the organization with regard to the conflict situation. See Iowa Code section 504.833.

With regard to ethical obligations imposed on lawyers in their representation of clients, Rule 1.7 of the Iowa Rules of Professional Conduct (Iowa Rules) provides that a lawyer may not represent a client if such representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client or there is significant risk that representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer.

## POTENTIAL CONFLICTS OF INTEREST FOR LAWYER-DIRECTORS

Conflicts can arise for lawyers serving as members of a nonprofit's board of directors because of the duties imposed on nonprofit directors

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as well as the lawyers' ethical duties to clients as set forth in the Iowa Rules. As part of the duty of loyalty, a director is required to act in the best interests of the organization, which can include, for example, not using confidential information of the organization to the detriment of the organization. With such a duty to the organization, a lawyer-director's service on the board of directors of a nonprofit can pose an issue in the event the lawyer is requested to represent another client adverse to the organization.

Conflicts also can arise for a lawyer-director when the lawyer's firm represents a client that is a grant recipient of the nonprofit. To the extent such situations occur infrequently, the organization and lawyer-director should be able to handle them by following conflict of interest requirements that are imposed by the Iowa Nonprofit Act and the organization's conflict of interest policies and procedures.

Other types of conflicts can arise when the lawyer-director is serving as the lawyer for the nonprofit. ABA Formal Ethics Opinion 98-410 identifies four possible conflict situations that can arise in representing an organization in which the lawyer is serving. The first situation is when the lawyer is asked to pursue objectives of the organization that, as a director, the lawyer opposed. According to the formal ethics opinion, a lawyer must determine whether the lawyer's representation of the organization may be materially limited by the lawyer's opposition to the action the organization has decided to undertake such that ABA Model Rules of Professional Conduct 1.7 precludes the representation. The second situation occurs when a lawyer is asked to opine on board actions in which the lawyer participated. Here, there would be a concern that the lawyer/director is unable to have the independence of professional judgment required for

such representation. Still, as noted by the Committee on Lawyer Business Ethics of the Section of Business Law in its report, *The Lawyer as Director of Client*, 57 Bus. Law. 387 (Nov. 2001), the circumstances that require a lawyer to opine on the actions of the board should be infrequent, and in those situations it would be prudent, and even ethically required, that the organization be advised to seek the advice of other legal counsel.

The third situation described in the formal ethics opinion is when the board is taking action affecting the lawyer, such as when the board is determining whether to retain the lawyer's law firm. In such a situation, it is important to comply with the Iowa Nonprofit Act and the organization's conflict of interest procedures and ensure the lawyer-director is not a participant in the decision process. The fourth situation described in the ethics opinion occurs when the lawyer



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or lawyer's law firm represents the organization in litigation that includes the organization and directors as defendants. Among other things, it notes the need for the organization and directors to have independent representation in any controversy between the organization and its lawyers (including the lawyer-director).

Comment 35 to Iowa Rule 1.7 states that "[a] lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict." According to the comment, "consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations." The comment also states that "[i]f there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise."

### LAWYER-DIRECTOR LEGAL REPRESENTATION OF ORGANIZATION AND INPUT ON LEGAL MATTERS

The provision of legal services to a nonprofit helps many lawyers fulfill their pro bono obligations. See Iowa Rule 6.1. When a lawyer/director provides legal services to the organization on a pro bono basis, it should be assumed that a lawyer-client relationship is formed and the duties of a lawyer to

the client apply regardless of whether the lawyer receives compensation or serves pro bono.

Many lawyers join nonprofit boards with the expectation of not serving as the lawyer for the organization. Still, they can end up providing legal services, such as would be the case when the lawyer works on amendments to the articles of incorporation or bylaws of the organization, prepares the executive director's employment agreement or assists with an application for tax-exempt status for the organization. In such situations, the lawyer can be deemed to have a lawyer-client relationship with the organization.

Even if a lawyer-director is not acting as a lawyer for the organization, a lawyer is still expected to use the lawyer's expertise in considering matters before the board. At the same time, it is important to make clear to other board members that the lawyer/director is not acting as a lawyer for the organization and is not providing legal advice. If appropriate, the lawyer-director should recommend that the organization seek legal advice from another lawyer or law firm.

### ATTORNEY-CLIENT PRIVILEGE

Assuming there is a lawyer-client relationship, the lawyer-director's dual roles can, in some situations, make it difficult to ensure that the attorney-client privilege protects communications between the lawyer and the nonprofit organization. A basic element of the privilege is that the lawyer act as legal counsel rather than as a business advisor to protect communication from disclosure in litigation. In the for-profit

context, communications from a lawyer-director that involve business issues (as opposed to legal advice) have been held not protected by the attorney-client privilege. The same argument can be made in the nonprofit context.

Although the lawyer-director should understand when the lawyer is acting as legal counsel as opposed to a business advisor, these separate roles may not be clear to non-lawyer directors and officers of the organization. The comments to Iowa Rule 1.7 provide that a lawyer must warn a corporate client of the lack of protection of the attorney-client privilege when the lawyer is acting as a board member.

### PROTECTIONS FOR LAWYERS

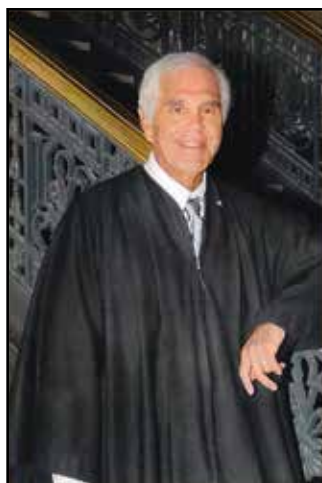
The protections available to directors of nonprofit organizations and lawyers are also available to lawyer-directors. In terms of nonprofit directors, the Iowa Nonprofit Act provides protection under the business judgment rule. See Iowa Code section 504.832. The Iowa Nonprofit Act also provides a liability shield for directors and officers acting in such capacity. See Iowa Code sections 504.202(2)(d) and 504.901. This shield can protect the directors from liability to the organization and its members for money damages unless their conduct is deemed to fall under an exception to the shield.

Directors and officers (D&O) insurance coverage can be helpful in protecting lawyers in their service as directors of a nonprofit organization. In addition, professional liability coverage should provide protection for the lawyer-director when acting in the role of the lawyer for the organization. Still, it is important to recognize that professional liability coverage generally does not cover claims arising out of a lawyer's service as a director, and D&O policies often limit claims arising solely out of service as a director or officer.

### CONSIDERATIONS FOR LAWYERS SERVING ON NONPROFIT CLIENT BOARDS

Before agreeing to serve as a director or officer of a nonprofit organization, a lawyer should consider:

- the expectations of the lawyer-director regarding board services and legal representation;
- the organization's governance



#### MEDIATION AND ARBITRATION SERVICES Honorable Joel D. Novak (Retired)

Joel D. Novak was a civil trial lawyer for 14 years prior to his appointment as a Trial Judge for District 5C where he served for 32 years. He then served as a 5C senior Judge for 6 years as well as the Judge in Residence at the Drake Legal Clinic.

Contact Joel Novak at: (515) 279-5523 cell: (515) 480-1943  
(please no texting) or email: [juezjoey@gmail.com](mailto:juezjoey@gmail.com)

documents and the Iowa Nonprofit Act's requirements imposed on directors;

- the organization's D&O liability coverage;
- the lawyer's professional liability coverage; and
- the lawyer's law firm or employer policies regarding board service.

The lawyer also should consider the likelihood that the lawyer's role as a director will present conflicts in representation of clients that may be adverse to the nonprofit organization.

In accepting a position on the board of directors of a client nonprofit organization, a lawyer-director who will be providing legal representation to the organization should provide an explanation of the potential conflicts of interest and how they might preclude the lawyer-director from acting as either the director or lawyer on some issues or require safeguards, such as engaging the services of counsel other than the lawyer-director or the lawyer-director's law firm. It is important to make the other board members aware of the potential conflicts. Moreover, in order to address a potential conflict adequately, a lawyer-director should not participate in board or committee deliberations or actions on the relationship of the organization with the lawyer.

When a lawyer-director speaks to the board as a lawyer for the organization, the lawyer should communicate that fact and remind the board of the methods for preserving the attorney-client privilege.

If the lawyer-director agrees to take on a specific, limited representation of the organization, such as preparing restated articles of incorporation or an employment agreement for the executive director, the lawyer should make clear in writing to the organization—the extent of the representation.

The lawyer-director should make clear to the board the extent of the lawyer's expertise and the fact that any statements made by the lawyer with regard to such subject matter are made as a director and not as a lawyer to the entity.

Service on a nonprofit board can be very rewarding to both the lawyer-director and the nonprofit. The Committee on Lawyer Business Ethics of the

Section of Business Law concludes in its report, *The Lawyer as a Director of Client*, that, assuming the lawyer makes the necessary commitment of time and effort, a lawyer and the nonprofit should in many cases be able to conclude that the risks of the lawyer's service on the organization's board are not unreasonable and that it is in the nonprofit's best interest to have the lawyer join the board.



**Willard (Bill) L. Boyd III** is an attorney with Nyemaster Goode, P.C., Des Moines, and is the President-Elect of The Iowa State Bar Association. His email is [wlb@nyemaster.com](mailto:wlb@nyemaster.com). This article is based on previous articles published by the author in ABA Business Law Today, Vol. 18, No. 2, and ABA Experience, Vol. 28, No. 2.

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To address this need, Iowa's attorneys annually donate thousands upon thousands of hours of pro bono legal services and make financial contributions to legal service organizations that assist low-income Iowans. Despite this steadfast commitment, there remains a substantial unmet need for legal representation for the poor and disadvantaged.

The Iowa Judicial Branch encourages all Iowa attorneys to devote at least 50 hours of pro bono legal services each year. This pro bono service is vital not only for the people represented; it is vital to society as a whole. Pro bono service turns the promise of equal access to justice into reality.

The ISBA commends all Iowa attorneys who perform pro bono work for clients who would otherwise be unable to afford the assistance of an attorney.

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## EMBRACING LEGAL PRACTICE CHANGES FOR THE DIGITAL AGE (IN-PERSON/LIVE WEBINAR)

**Friday, September 7, 2018**

*Sponsored by The Iowa State Bar Association Family & Juvenile Law Section, Drake University Law School, CNA, Lockton Affinity, Goodman Law PC, United Lex, Harbinger, and Deloitte*

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## DEALING WITH THE 'A' WORD: HOW TO CALCULATE SPOUSAL SUPPORT (LIVE WEBINAR)

**Wednesday, September 12, 2018**

*Sponsored by The Iowa State Bar Association Family & Juvenile Law Section and Drake University Law School*

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## PRUDENCE VS. NEGLIGENCE: MANAGING RISK IN CONCUSSION RESPONSE IN SCHOOL SPORTS (LIVE WEBINAR)

**Tuesday, September 18, 2018**

*Sponsored by The Iowa State Bar Association Litigation Section*

Tim Semelroth, RSH Legal

## 2018 AG LAW SEMINAR (IN-PERSON/LIVE WEBINAR)

**Thursday, September 20, 2018**

*Co-sponsored by Iowa State University Center for Agricultural Law and Taxation, the Agricultural Section of The Iowa State Bar Association and Iowa Farm Bureau*

Jonathan Coppess, Department of Agricultural and Consumer, Economics, University of Illinois

Ed Cox, Orsborn, Milani, Mitchell, & Goedken, LLP

Pat Dillon, Dillon Law PC

Steve Kammeyer, Farm Bureau Financial Services

Eldon McAfee, Brick Gentry PC

Mike Naig, Iowa Secretary of Agriculture

Jim Nervig, Brick Gentry PC

Harrison Pittman, National Agricultural Law Center

Kristine Tidgren, CALT

Julia Vyskocil, Brick Gentry PC

Wendong Zhang, Department of Economics, Iowa State University

Jennie Zwagerman, Drake University Law School

## LEGISLATIVE PREVIEW AND LEGAL UPDATE (LIVE WEBINAR)

**Thursday, September 20, 2018**

*Sponsored by The Iowa State Bar Association Government Practice Section*

Jim Carney, Carney Appleby Law

Jenny Dorman, Carney Appleby Law

Doug Struyk, Carney Appleby Law

## PREPARING FOR MEDIATION (LIVE WEBINAR)

**Wednesday, September 26, 2018**

*Sponsored by The Iowa State Bar Association Family & Juvenile Law Section and Drake University Law School*

Kim Stamatelos, Stamatelos & Tollakson

# KUDOS



**Judge Thomas J. Bice**, a district court

judge in Fort Dodge, was honored for his exemplary contributions to bar admissions on Aug. 11 by the Hon. Rebecca White Berch (Ret.), chair of the National Conference of Bar Examiners, at the annual meeting of NCBE and the Council of Bar Admission Administrators in Asheville, North Carolina. Bice was recognized for his service on the NCBE board of trustees from 2008 to 2017. He served as chair from 2015 to 2016. Bice was appointed to the bench in November 2008.

Nyemaster Goode attorney **Kristina Stanger** (right)

was honored with the 2018 Gertrude Rush Award at the Iowa Organization of Women Attorneys annual awards

banquet. The award recognizes

a lawyer who demonstrates leadership in the community and in the legal profession, and who demonstrates concern for human and civil rights.

**Judge Eliza Ovrom** (left) was honored at the banquet with the Arabella Mansfield Award, which recognizes outstanding women lawyers in Iowa who have promoted and nurtured women in the legal profession.



## Fifth Judicial District Chief Judge

**Arthur Gamble** received the prestigious 2018 American Inns of Court Professionalism Award for the Eighth Circuit. The award was presented Aug. 17 during the Eighth Circuit Judicial Conference in Des Moines. Gamble has been chief judge of the Fifth Judicial District since 1995. He is president emeritus of the C. Edwin Moore American Inn of Court and past president of the Iowa Judges Association.



**Robert Van Vooren**, of counsel at Lane & Waterman in Davenport, was awarded the Richard S. Arnold Award for

Distinguished Service by the Eighth Circuit Bar Association in August. Van Vooren has been recognized as one of the very best of the courtroom bar by, among other things, being inducted into the American College of Trial Lawyers and the American Board of Trial Advocates. The award is named in honor of former Chief Judge Richard S. Arnold, who led a distinguished career that included graduating first in his class at Yale University and Harvard Law School.





# Board of Governors Fall Quarterly Meeting

ISBA BOG discusses opportunities and acts on legislative agenda items at quarterly meeting

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

## ACTIONS

ISBA Section recommendations for the 2019 ISBA Affirmative Legislative Program were approved as follows:

### Business law

- Support for adoption of the Uniform Protective Series Act to permit better protection of asset series inside an LLC and require reporting of separate series entities to the Iowa Secretary of State.

### Criminal Law

- Approved amendments to Iowa Code Section 822.6 to add language that provides a framework for converting exiting paper files to electronic files needed in postconviction actions by adding new sections §822.6A, “Underlying criminal file,” and §822.6B, “Previous postconviction files,” and repeal outdated language requiring documents from paper files be attached to pleadings.

### Probate, trust & estate planning

- Approved amendment to Iowa Code Section 633A.4604(2) to allow any current trustee or an attorney for a current trustee to execute certification of trust documents in order to expand on who is able to verify the powers of the trustee.

### Additional actions taken by the BOG included:

- Approval of legal forms Affidavit of Compliance pursuant to Iowa Title Standard Section 2.1, Farm Lease Flexible Cash Rent, Farm Lease – Crop Share approved and recommended by the Legal Forms Committee.
- Approval of changes to the description of the ISBA Membership Committee’s purpose so that it is focused on

recruitment and retention of members and enhancement of the value of member benefits.

- Authorized release of 2018 Judicial Performance Review.
- Approval of creation of a Grassroots Advocacy Network that requires ISBA BOG members to either serve as a liaison, or to recruit a liaison, to legislators in districts in each governor’s judicial district.
- Endorsement of the ISBA YLD’s Law School Transparency Report to the American Bar Association.
- Authorized renewal of endorsement of CNA as the ISBA’s malpractice lawyers’ professional liability carrier.
- Approval of the Resolution in Support of State Funding for Civil Legal Services approved and recommended by the Legal Access Committee.

## HIGHLIGHTS

### President’s Report – *President Tom Levis*

ISBA President Tom Levis updated the governors on his “Table for Ten” initiative. ISBA leaders meet with local lawyers and judges for lunch throughout the state to discuss issues that impact the practice of law at the local and state levels. If you are interested in hosting a “Table for Ten” event, please let ISBA Assistant Executive Director Harry Shipley know.

At the 2018 Annual ISBA BOG meeting, Levis created six small groups to discuss and address rural practice, the future of the practice of law in Iowa, ISBA member services/benefits, wellness, record retention and the size and make-up of the board of governors. The small groups meet between

the ISBA BOG quarterly meetings and are charged with reporting back to the larger board where any recommendations for changes will be thoroughly vetted.

## ISBA BOG SMALL GROUP REPORTS

### Rural Practice – *Emily Chafa*

The Rural Practice group discussed some of the benefits and challenges to practicing in rural Iowa including a lower cost of living, strong sense of community, work/life balance, community leadership opportunities where lawyers are welcomed and appreciated.

### The Future of the Practice

#### of Law in Iowa – *Robert Livingston*

The Future of the Practice of Law group is looking at how other states and professions are addressing common issues and ideas related to technology, competition from online services and strategies to fight potential unauthorized legal service providers through marketing rather than litigation.

### ISBA Member Services/Benefits

#### – *Dawn Boucher*

The ISBA Member Services/Benefits group is evaluating separate dues structures for institutional, rural and other subgroups based on use of services and benefits and the possibility of leveraging bar plan opportunities for general business products and service provider discounts such as email encryption.

### Wellness – *Kathleen Law*

The Wellness group is reviewing issues that impact or are experienced by lawyers related to substance abuse, addiction, mental health, physical health, stress, depression and well-being and researching activities and programs in



Legislative Counsel Jim Carney discusses the upcoming 2019 session.



BOG members and distinguished guests enjoy the view at Jester Park Lodge, where the meeting was held.



LawPAC Chairman Tom Henderson recognizes donors.



other states along with the possibility for continuing legal education credit for wellness topics.

**Record Retention** – *Bridget Penick*

The Record Retention group is working with the Office of Professional Regulation to develop a record retention policy for Iowa lawyers. The group is performing an independent study of other jurisdictions and policies that can be considered.

**ISBA BOG Task Force** – *Bill Boyd*

ISBA BOG Task Force is reviewing and assessing the size, operations, elections, committees, communications, member obligations & orientation/training of the ISBA Board of Governors. The task force plans to provide a report to the BOG in March 2019.

**ISBA Executive Director's Report**

ISBA Executive Director Dwight Dinkla and ISBA Assistant Executive Director Harry Shipley provided an overview of the new Membership Engagement Coordinator position. They also presented the ISBA Anti-Nepotism Policy which was approved by the ISBA Administrative Committee. Dinkla and Shipley introduced Hank Hanson to the governors in his new capacity as the ISBA Member Engagement Coordinator. Hanson will represent the ISBA in various forms to promote the benefits of ISBA membership, serve as a member of the staff marketing team to develop promotional materials for all ISBA activities, identify and cultivate new member benefits, serve as the staff liaison to the ISBA Membership Committee.

**Legislative Counsel's Report**

ISBA Legislative Counsel Jim Carney highlighted opportunities for the upcoming legislative session. Thirty-four million dollars was paid out for indigent defense last year. The hourly rate continues to be \$60/hour with no allowance for driving time. The ISBA Legislative Counsel will continue to advocate for an hourly rate increase. There have been improvements in terms of claim turnaround time.

Members of the BOG discussed the proposed change in the judicial nominating commission residency eligibility standards to allow anyone to apply for

judicial positions so long as they agree to move to the judicial district upon appointment to the bench.

LawPAC Chair Tom Henderson advised that only 14 percent of ISBA members contribute to LawPAC; the current balance is about \$70,000, less than \$9 per member. LawPAC supports all lawyer-legislator candidates regardless of political affiliation, whether incumbents or challengers. Contributions are almost 50 percent to Republican and 50 percent to Democrat candidates.

Legislative proposals requested by the Government Practice Section, the Family and Juvenile Law Section, and the Probate, Trust and Estate Planning Section that will be brought back to the ISBA BOG for discussion at the December meeting include:

**Government Practice**

- Legislation that amends Iowa Code Section 123.3(34), "Person of good moral character." This proposed amendment adds language to §123.3(34) to include criteria that shall



R. Scott Van Vooren, the Chair of the Business Law Section, provides an update.

be considered when making a determination under §123.3(34). This legislative proposal will be brought back to the ISBA BOG for discussion at the December meeting per the suggestion of the ISBA's legislative counsel, as a proposal is being developed by the Iowa Alcoholic Beverages Division and there may be opportunity to make the section's proposed amendment a part of the ABD proposal.

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# IN MEMORIAM

**Timothy Finn**, 69, of Ames died Aug. 22. Finn was born in Jefferson in 1948. He received his J.D. from Drake University Law School in 1974, then clerked for Justice David Harris of the Iowa Supreme Court. In 1975, he created the firm of Murray Curtis and Finn, later becoming Curtis Finn and Pattison. Finn was appointed a district court judge in 1987 and served 30 years on the bench.

**Lei Bei**, 31, of Cedar Rapids died Sept. 14. Bei was born in 1986 in Shiyang, China. He received his J.D. from the University of Iowa College of Law and was an attorney at the Nidey Erdahl Fisher Pilkington and Meier PLC law firm for several years.

## Probate, Trust and Estate Planning and Family and Juvenile Law

• Legislation that creates a new chapter of the Juvenile Code for minor guardianship proceedings to provide for juvenile court jurisdiction. The Probate, Trust and Estate Planning and Family and Juvenile Law Sections have a meeting in October to attempt to reach a consensus regarding the Family Law Section's minor guardianship legislative proposal.

## **ISBA YLD President's Report**

– *YLD President Maggie White*

ISBA YLD President Maggie White reported on the YLD's accomplishments and goals and stated that the YLD's Law School Transparency Report is receiving a growing number of endorsements. (For more information on the ISBA YLD's Law School Transparency Report, see the April issue of *The Iowa Lawyer*.)

## **Dialogue with Iowa Supreme Court Chief Justice Mark Cady**

ISBA President Levis informed the ISBA BOG that Iowa Supreme Court Chief Justice Mark Cady is the Conference of Chief Justices of America president-elect. Chief Justice Cady provided updates from the Court's 2018 administrative term and reported that State Court Administrator Todd Nuccio, Counsel to the Chief Justice Molly Kottmeyer and Chief Justice Cady are engaged in long-term planning related to organizational, technology and operational efficiencies and exploring examples in other states. Justice Hecht resumed hearing cases and participating in the decisions of the Iowa Supreme Court. Chief Justice Cady also reported on Justice Susan Christensen's Investiture Sept. 21.

## **Office of Professional Regulation**

– *Director N. Tré Critelli*

Office of Professional Regulation Director Tré Critelli reported that the ISBA's succession plan is working. Critelli provided information on the pending crisis that will occur if vacancies cannot be filled when court reporters retire. He enlisted members of the BOG to ask high school students to consider becoming court reporters. The only training program

in Iowa is at DMACC. Starting court reporter salaries in Iowa after two-year training programs are approximately \$54,000 plus benefits. Some court reporters earn in excess of \$100,000 per year when including their freelance work.

## **Reports from the Law Schools**

Drake Law School Dean Jerry Anderson provided information on recent and upcoming activities; gave updates on the Drake Institute for Judicial Reform and Innovation and the Drake Rural Access to Justice Initiative; remarked on the upcoming retirements of Neil Hamilton and Chip Lowe; and reported on the composition of the new law school class.

University of Iowa Law School Dean Kevin Washburn also provided information on recent and upcoming activities, including reunion weekend Oct. 19-21; stated that the 3yr + 3yr combined BA/JD program was renewed; remarked on the upcoming retirement of Steve Burke; and reported that 38 different states are represented in this year's incoming class of 145. The percentage of Iowans in the entering law school class increased from 35 percent to 48 percent.

Both law school deans provided information on the average law school debt of graduates. The average debt of graduates from the Drake Law School is in the middle of the nationwide average for private law schools at approximately \$107,000. The average debt of graduates from the University of Iowa College of Law is approximately \$72,500.

## MEDIATOR TRAINING



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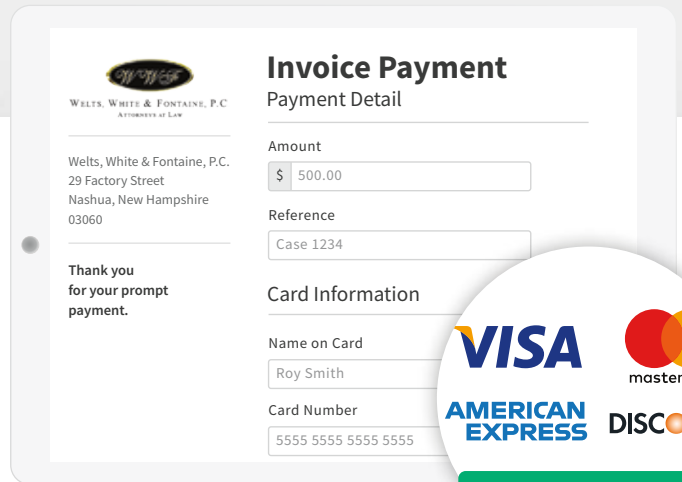
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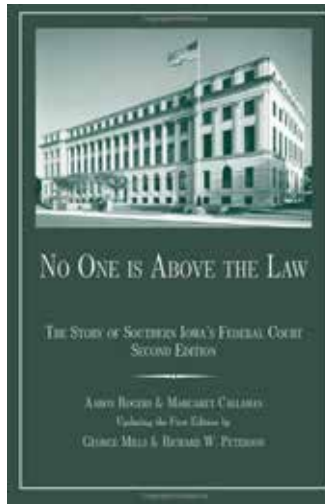
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# BOOK REVIEW

## New book highlights history of Iowa's federal courts

The Southern District of Iowa Branch of the Historical Society of the United States Courts in the Eighth Circuit has published a second edition of its history of the district. "No One is Above the Law" includes profiles of the district's judges and stories of their interesting cases. The title comes from a quote from United States v. Lee which held the Lee family was entitled to compensation from the federal government for taking Arlington for a cemetery.

This edition brings current the information previously provided in the 1995 edition and includes judges which have been appointed since then. This history of federal courts in Southern Iowa combines the stories of the district's judges with the stories of their most significant and interesting cases. In the process, the book necessarily provides a reminder of changes in our society from around 1850 to the present, with the cases discussed changing in subject matter from slavery and railroad expansion to draft-card burning and anti-war protests to employment discrimination and controversies over criminal sentencing laws and policies. The judges themselves change also, not in their integrity and commitment to justice but in their backgrounds, with one-room schools, informal study of law and military service giving



way to diverse career paths and early experience as law clerks to then-sitting judges. The profiles of the more recent judges include their thoughts on why they became lawyers and judges plus their insights into how courts have changed during their careers.

The book also touches on the establishment of federal courts and of the Southern District; the development of new judicial roles such as magistrate judge and bankruptcy judge; the expansion of court staff to include, for

example, law clerks and eventually prose staff attorneys; and the changing relationship between the court and court reporters. Additional sections of the book provide basic background on court "players" such as the U.S. Attorney's Office, the U.S. Marshals Service, probation and the federal public defender. To help preserve the record of the Southern District, the book includes lists of the names of persons who have held some of these positions at various times. Finally, the book does not ignore the courthouses where the Southern District has regularly held session over the years, offering a photograph and at least some description of nine different buildings in six southern Iowa cities.

If you are interested in learning about the background of a current judge you may appear before in federal court, the book is well worth reading. Or if you are just interested in the district's history, you will enjoy reading the book. It is available through Amazon.com or on Kindle.



**Richard "Dick" Lyford** is of counsel with Dickinson, Mackaman, Tyler & Hagen, P.C. in Des Moines and president of the Southern District of Iowa branch of the Historical Society for the Courts in the Eighth Circuit.

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## FEATURING



**Dr. Arnold Shienvold**  
Riegler Shienvold and Associates

Dr. Shienvold is recognized nationally as an expert in the areas of custody evaluations and family mediation. In addition to his direct clinical practice in those areas, he has consulted to public and private agencies, taught and lectured at a multitude of professional conferences and published a variety of papers on these topics.



## TOPICS

Family Law Update  
Child Custody Evaluation Cases  
DHS Adoptions  
Drug Trends and Policies

Representing Incarcerated Parents  
Proposed Changes in Minor Guardianships  
Surrogacy Agreements in Iowa: The Baby H Case  
Collaborative Law, Early Neutral Evaluation and Other Alternatives

# Environmental and Natural Resources Law Seminar

November 9

ISBA Headquarters or Live Webinar

Sponsored by the ISBA Environmental and Natural Resources Law Section

## Presentations:

- ▶ Federal Endangered Species Act and Monarch Butterfly Status
- ▶ EPA Update
- ▶ DNR Update
- ▶ Federal Environmental Update
  - ▶ Waters of the United States, Wetlands and Stream Mitigation and Regulation
  - ▶ Climate Change Update



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**LITIGATION ATTORNEY** – Crary Huff Law Firm, Sioux City, IA – Crary Huff Law Firm is seeking an experienced litigation attorney for its office located in Sioux City. Candidates should have at least two years of practice, primarily in civil litigation. Excellent research and writing skills are required, and trial experience is preferred. Iowa bar admission required. All applications will be handled confidentially. Send resume and cover letter to Crary Huff Law Firm, Attention Mick Connealy, Personnel Partner, PO Box 27, Sioux City, IA 51102 or [mconnealy@craryhuff.com](mailto:mconnealy@craryhuff.com). Equal Opportunity Employer.

**BUSINESS AND ESTATE PLANNING ATTORNEY** – Crary Huff Law Firm, Sioux City, IA – Crary Huff Law Firm is seeking an experienced business and estate planning attorney for its office located in Sioux City. Candidates should have at least two years of legal practice. Experience with estate planning, corporate law and real estate transactions is preferred. Applicants should have a strong work ethic and favor a collaborative team-oriented approach to the practice. Iowa bar admission required. All applications will be handled confidentially. Send resume and cover letter to Crary Huff Law Firm, Atten-

tion Mick Connealy, Personnel Partner, PO Box 27, Sioux City, IA 51102 or [mconnealy@craryhuff.com](mailto:mconnealy@craryhuff.com). Equal Opportunity Employer.

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nications@iowabar.org, reference code 901.

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

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PATTON



MYERS

# TRANSITIONS

**Sydney Gangestad, Joni Ploeger, Kassandra Ricklefs** and **Olivia Slater** joined the Davis Brown Law Firm in Des Moines.

**Gangestad** earned her J.D. at Drake University Law School and joins the firm as special counsel. She will help clients develop their legislative agendas and represent their interests before the Iowa legislative and executive branches.

**Ploeger** earned her J.D. at Drake University Law School. She joined the workers' compensation department at the firm and will assist clients through all phases of their claims.

**Ricklefs** earned her J.D. from the University of Iowa College of Law. She joins the firm's intellectual property department where she will assist clients with their patent, trademark and copyright matters.

**Slater** earned her J.D. at Drake University Law School. She joined the firm's litigation division assisting with matters in the health, labor and employment, business, commercial litigation and insurance defense departments.

**Leah Patton** has joined Iowa Legal Aid at its HELP Regional Office in Davenport as its managing attorney. Patton received her J.D. from Drake Law School in 2005. Prior to joining Iowa Legal Aid, she was a judicial law clerk with the Third Judicial District of Iowa as well as the Iowa Court of Appeals and was employed as an assistant public defender with the Iowa State Public Defender's Office, a staff attorney with Muscatine Legal Services, an associate attorney at a private law firm, and a staff attorney with Prairie State Legal Services.

**Jeffrey T. Myers** has joined Goosmann Law Firm's Sioux City location. Myers has been a solo practitioner since 1974, previously associated with Hutchison, Myers, Eckert & Vohs. His practice focuses on corporate and business law, estate planning and probate, and commercial and residential real estate.

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# SPOTLIGHT on SERVICE



Debra Hockett-Clark



Hope Wood

In honor of pro bono month, the ISBA is recognizing two of its member attorneys who have gone above and beyond to assist in the IA Free Legal Answers online pro bono initiative spearheaded by the ISBA. IA Free Legal Answers, part of a nationwide ABA pro bono initiative, is designed like a virtual walk-in legal clinic where qualified clients post questions to a secure website. The ISBA's public website, IowaFindALawyer.com, serves

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.

as the portal for IA Free Legal Answers.

"I was introduced to the Iowa Free Legal Answers program through the ISBA and have found it to be a quick and easy way to answer questions for people in my specific area of specialty anytime of the day or evening when I have free time," said West Des Moines attorney Debra Hockett-Clark. "You could not find a more convenient and easy way to help people by just answering their questions online."

Hockett-Clark just celebrated her 25th year in solo practice in the area of family law, and initially began doing pro bono work when she first opened her practice in order to build her legal skills. She continued when she realized how even a small amount of her time could make a significant impact on someone's life.

Hope Wood is an estate planning attorney in Des Moines, and she performs pro bono work mainly in the areas of wills and estate. In addition to her work with Free Legal Answers, she also enjoys assisting fellow attorneys pro bono who are getting their own businesses up and running.

"Whenever an attorney considers hanging a shingle, I offer 100 percent support to help them with the startup process. I had and still have great mentors that I rely on for assistance and I always want to pay it forward," Wood said.

Both Wood and Hockett-Clark also provide pro-bono legal services through the Polk County Bar Association Volunteer Lawyers project as part of their commitment to their community.

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Volunteer attorneys are needed to answer questions in family law, housing, consumer debt, work issues, public benefits, probate and guardianship. Attorneys who want to volunteer can remain anonymous to clients (with limited exceptions), are covered by the ABA's Free Legal Answers malpractice insurance and perform limited scope representation within the website. A commitment of approximately one hour per month can serve approximately five people and can be counted as pro bono publico service pursuant to Iowa Supreme Court Rule 32: 6.1. If you are interested in signing up to help, please email [attorney-IA-FLA@iowabar.org](mailto:attorney-IA-FLA@iowabar.org).





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**TOM L. DREW**

535 40th Street, Des Moines, IA 50312

Phone: (515) 323-5640

Fax: (515) 323-5643

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