



THE

Volume 76 Number 6 July 2016

# IOWA LAWYER

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**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 a make a determination of suitability for publication. Email all submissions to communications@iowabar.org in Microsoft Word format.

**STATEMENTS OR OPINIONS**

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# IOWA LAWYER

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Children can provide valuable insights and credible information to help the court make fully-informed decisions if they are provided a safe environment. How can attorneys help children testify in custody cases between their parents? Read this insightful article by a leader in child centered practice.

*By Jenny Schultz, Executive Director of Kids First Law Center in Cedar Rapids, Iowa*



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### Sign on the Dotted Line

Your blood, sweat, and tears have gone into negotiating and drafting an agreement. Now all you need to do is get the parties to sign it. Seems straightforward, right? Not so fast. If you do not negotiate agreements in your everyday practice, or even if you do, you will benefit from this article.

*By Lisa Reel Schmidt, Assistant Attorney General for the Iowa Department of Justice, in Des Moines, Iowa*



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### Attorney coach for Iowa's 2016 national champion mock trial team tells about the coach's role

If the common perception that the national high school mock trial championship won by an Iowa team was the result of brilliant coaching is not totally true, how did the team become the national champions? Read how Matt Dake, an attorney with Wertz, Dake & Anderson, P.C. in Cedar Rapids, Iowa, and the team's attorney coach, describes the coach's role.

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## ABOUT THE COVER

Michael Dayton has written articles for the Iowa Lawyer Magazine related to his work as a business attorney. However, in this issue, he writes about his personal experience serving as a juror. His viewpoint of the proceedings is different than that of a litigator but his legal education and practice informed his experience. Read about what it was like to serve on a jury and about one lawyer's critique of attorneys' practices from an attorney-juror's perspective. *Cover photo by Jon Lemons Photography*

# Letters to the Editor

Dear Editor:

I want to thank the ISBA and the staff of the Iowa Lawyer Magazine for the publication of the articles submitted by the Iowa Lawyers Assistance Program for the May issue of the magazine. I also want to thank ISBA President Bruce Walker for his supportive comments in his column.

The immediate response we received after the publication was gratifying. In May, we received seven referrals from people who read the articles in the magazine. So far in June, we have received two. This is a tremendous number of new referrals in a short period of time. Without articles such as those published by the magazine, we might not have received those referrals.

The mission of ILAP is to provide assistance to lawyers, law students and family members affected by substance abuse or mental health issues. As my May article indicated, lawyers have unique issues facing them which leads to a higher percentage of alcohol abuse than any other profession. Stress and depression start early for young lawyers. It begins in law school and disproportionately affects them in the early years of practice. The same is true for alcohol dependence. The more education we can provide the better the chance to help folks early.

Without the support of the ISBA, the judiciary and concerned lawyers around the state we would not be as able to reach lawyers who need help.

*Hugh Grady*  
Director

*Iowa Lawyers Assistance Program*

## CORRECTION

Last month we published a list of the newly elected leaders for the Iowa Academy of Trial Lawyers, but failed to include two attorneys in the announcement. We sincerely apologize for the oversight and would like to correct that error by recognizing them here.

**Kristopher K. Madsen**, partner at Stuart Tinley Law Firm L.L.P. in Council Bluffs, Iowa, was elected vice-president. He is a graduate of Drake University Law School and practices primarily in personal injury and insurance defense. Madsen is also a member of the Iowa Association for Justice and the Iowa Defense Counsel Association.

**David L. Brown**, partner at Hansen, McClintock & Riley in Des Moines, Iowa, was elected secretary/treasurer. He is a graduate of Drake University Law School and practices primarily in estate planning and probate, insurance defense, real estate law, personal injury and family law. Brown has previously served as president, vice-president and on the board of governors for the IATL.

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**Arnold “Skip” Kenyon III**

is in-house counsel at the Iowa State Savings Bank in Creston, Iowa, and head of the trust department.

## Emphasizing Professionalism

It is truly an honor and a privilege to serve as the 130th President of The Iowa State Bar Association. I recognize this leadership role is considered the most responsible fiduciary position within our state’s practice of law, and I am humbled by the trust you have placed in me. It is my commitment to work hard and to respectfully follow the exceptional leadership demonstrated by those before me.

I am fortunate to walk in the footsteps of President Bruce Walker, who created a clear path to effectively move many important issues forward. Most notably, he initiated the process of reinvigorating and strengthening the working relationship between county and district bar associations by encouraging more committee, section, and board of governor engagement. President Walker worked diligently to create more access to justice, the courts, and community resources, putting the ISBA on a firm footing as we look toward the future.

Strong leadership is not unusual for our association. In addition to being one of the oldest voluntary bar associations in the country, the other bar associations throughout the country consistently recognize ISBA for our effective leadership, our professional development efforts, and our strong advocacy in advancing the practice of law in Iowa. Much of this success has been the result of prioritizing relationships with the legislative and judiciary branches of government. In addition, our leadership’s ongoing commitment to maintaining a fiscally responsible association has positioned us to operate debt free, to fully fund a reserve for operations, and to move steadily toward our building reserve goal.

After reflecting on our past achievements and looking toward the future, I would like to dedicate the coming year to emphasizing professionalism, collegiality and camaraderie within our profession. It is my goal to foster quality interactions among attorneys and with the courts. Enhancing our relationship with the broader court system is particularly important as new technology displaces traditional face-to-face discussion. While EDMS, for example, created significant court efficiencies, it has reduced the need for direct communication. In order to maintain balance within the profession, we must bolster this new efficiency with valuable interaction with our colleagues on all levels. That process begins with increasing ISBA member participation in district and county bar association meetings. Whether these meetings focus on continuing education, providing court and legislative updates, or establishing social gatherings, they are vital to our ongoing relationship-building efforts.

In addition to creating stronger ties among attorneys and with the courts, I believe it is important to reinvest in our association to maintain its nationally renowned strength and effectiveness. To that end, I intend to work with members to develop a mission statement that will sharpen ISBA’s focus and guide us toward more effective use of resources. Once the Board of Governors has endorsed our mission, creating a strategic plan will help us implement its concepts and strengthen us as an organization. Part of that strategy will include evaluation of all projects, endorsements and activities involving the ISBA to ascertain whether they align with our mission and strategic plan.

The image of integrity is one that we as attorneys must project on all levels. The respect we show each other, our association and the courts is crucial for us to live up to our past and to achieve great things in the future. Our partnership is our effectiveness—together our focus creates unity and positive change.

Thank you for allowing me this opportunity to serve.

A handwritten signature in black ink that reads "Arnold O. Kenyon III". The signature is written in a cursive, slightly slanted style.

**Arnold O. Kenyon, III**  
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# On Jury Duty

By Michael Dayton

I have written a number of articles for the Iowa Lawyer on substantive matters that I hope you have found useful and a bit entertaining. From those articles you have probably determined that I am a business attorney – usually working on mergers and acquisitions and general contracting matters. This time, however, I am writing on a personal experience that I hope you will find meaningful and perhaps educational: my service as a juror. I am certain the fact that I am a business attorney and not a litigator was, in part, what kept me on the jury; and I am also certain that my viewpoint of the proceedings is different than that of a litigator. Still, I know every juror's experience is colored by his or her life (e.g., belief system, upbringing, family) and my legal education and practice certainly did the same.

The article is broken down into four short parts: (1) a brief description of the subject matter and jurisdiction

of the trial; (2) what it felt like to be a juror; (3) a critique of attorney practices based on my experience; and (4) some closing thoughts.

## 1. The trial

The trial was a criminal matter in the Southern District of Iowa. The matter contained a number of counts, some of which were of a disturbing nature. And the jury was required to view evidence that was disturbing. That may be enough for some of you to figure out which trial I took part in, but I don't want to go into any further detail in this article. I will tell you that my background in psychology and social work and the composition of my family made the evidence on certain counts very difficult to view.

## 2. What it's like

There were a multitude of reactions when I had to let clients and colleagues know I would be out of the office for up

to two weeks. Some were sympathetic of the time commitment; some were envious, knowing they would never be selected; and all were understanding (not understanding how, as a lawyer, I got selected, but understanding of the fact that I would not be able to help them for a while). Having experienced the trial, I would not be envious. I think the view of most non-lawyers – that jury duty is an imposition, but a necessary one – is correct.

**It is stressful.** In many ways I was much more fortunate than many folks who are selected for jury duty. It is a stress and hardship for jurors. If you can continue to work, it is another full-time job jammed into the middle of your current full-time job. For many of the people on the jury, they could not continue to work and were foregoing their current wages to get \$8/hour. I got paid \$239 for my first week of jury duty. FYI – that is not a livable wage. It would be an extreme stress to forgo two weeks of pay to sit on a jury. That stress was palpable in voir dire. For me, I have flexibility in my job, so I could work before and after jury duty each day and on the weekend. But I couldn't work as much, which means my firm was burdened and had to absorb my absence, and my wife and kids basically didn't see me.

**It is disorienting.** I don't have a trial practice and am never in court. Still, I know the trial process, have participated in moot court, and remember civil procedure and the rules of evidence – I even read the introductory booklet they provide to you while you are awaiting



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Michael Dayton appears in a jury room at the United States District Court for the Southern District of Iowa in Des Moines. Photo credit: Jon Lemons Photography

voir dire. But despite my background, jury duty was still disorienting.

There is minimal introduction as to what will occur. You call the number; it tells you to report on a certain date at a certain time; you arrive at the courthouse; you have your personal items scanned and go through a metal detector; you go into a hall to wait with about 50 people who all look confused; you wait in line to be checked in then are told to go to a different room (which is the courtroom); you wait on benches in the courtroom until your name is called; you cram yourself into the jury box and seats in front of it; voir dire begins. After voir dire, which took about three hours for our case, the trial begins. Immediately. It is a lot to process in a few hours, especially given the fact that you have no idea when your day begins whether you will be asked to stay or asked to go.

**It is exhausting.** This one, perhaps, is unique to my experience, but I don't think so. As noted above, I was working a decent amount during trial, which could account for how extremely fatigued I was at the end of the day. However, I think the more likely reasons are: it is tiring to be stressed and disoriented (as discussed above); it is tiring to listen; it is tiring to hear about the subject matter; it is tiring to keep a secret; and it is tiring knowing you have someone's freedom in your hands.

Listening intently for a workday is extremely difficult. I would say this is especially true for lawyers, but all of my jurors felt the same. They wanted to ask

questions, have evidence replayed, and otherwise interact with the trial. That, of course, is not permitted. So you just sit there, take notes, try to remember every little thing you heard, and try to fit the puzzle together. All of that listening without being able to otherwise interact with the proceedings is exhausting.

So too is hearing about certain subject matter. The subject matter of certain

counts of our case was disturbing. And isn't forgettable. There are aspects of my life that I know will change because of the evidence we heard and saw. Even now, I know that it wears on my psyche – my emotions feel closer to the surface than I would otherwise like. The subject matter changes in each case, but this type of subject matter is, unfortunately, not uncommon.

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And you also have to keep it a secret. You literally cannot talk about the evidence with anyone until deliberations, when at last you can talk to your fellow jurors. You are carrying around a very dark secret that you must keep inside you until then. It is not quite the same as harboring your own guilt, but it is close. It is cathartic to finally be able to talk to your jurors about the case, and then finally to others when the case is over.

We didn't know what the sentence might be until after the trial, but the jury knew, given the counts, that it would likely be substantial if we convicted the defendant on all counts. That is stressful and exhausting. Don't confuse my stress or exhaustion with sympathy. The jury heard the evidence and reached the appropriate verdict. More than that, I think the sentence will be morally and ethically right. But I don't think you are human if it doesn't affect you to know that because of your actions (in part, of course) that a person will lose his or her freedom for what could be the rest of his or her life.

### 3. Critique of attorney practices

Knowing my experiences above can hopefully help you in your litigation practice. Remember that it is stressful and exhausting for a juror, not only because of the time and financial commitment the juror is making to be

present at the trial, but also because of what the juror actually goes through at the trial. Based on my experience, here are some thoughts:

Don't ever waste the jury's time (or make them think you are wasting their time). A juror is necessarily going to feel about the government or the defendant how they feel about the attorney representing them. If you have a jury that can truly focus on the elements of the crimes and discuss simply the evidence as applied to those elements, then the jurors' feelings towards you might not matter. I am guessing, in most cases, they do.

There are times where evidence needs to be admitted, or the pieces won't truly fit together, or questioning must take a long time. Let the jury know what you are trying to accomplish, to the extent you can; don't let the jury guess at what you are trying to accomplish. Explain things very clearly in your opening statements. And don't repeat things – trust me that we heard you the first time.

Be organized and alert. The jury will notice your preparedness, or lack thereof. If you are rifling through papers, don't immediately answer the judge, or appear lost or circuitous in your questioning, the jury will notice. And they will comment on it in deliberations.

Sympathize and be cordial with your

jury. Before you get sucked into the details of the trial, as a juror you are mostly sitting there with a mixture of anticipation about what is to come and worry about how the hell you are going to manage your life while on the jury. Sympathize with the jury about this. Sympathize with the jury about the subject matter. Most of the trial feels like a conversation between you and the attorneys, with the witnesses involved. Be a person the jury wants to have a conversation with. Don't condescend or repeat yourself. Don't mock or belittle witnesses. Remember that being and acting like a good person goes a long way in Iowa.

### 4. Closing thoughts

Having made it through my article, you are probably wondering what the verdict was and what I thought about the judge and the attorneys in the case. I won't tell you the verdict, but I will tell you that I think it was the right verdict and that every single one of the jurors did an excellent job in listening to the evidence, applying it to the elements and coming to an unprejudiced decision. I think, at least in federal criminal matters, you should have a lot of faith in our jury system.

The judge was very good. I had never interacted with the judge previously, but the judge's courtroom demeanor, respect for juror time, and explanations to the jury were excellent and gave me great respect for the judge.

The defense did the best they could with the evidence presented and what appeared to be a difficult client.

The prosecutors were excellent. The presentation of the evidence was clear and concise. And the cross-examination of the defendant was, quite frankly, phenomenal. Of the whole experience, it was the only thing that was something you might see in the movies.

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# May Thanks to speakers

May 3

**Legal Ethics in Cyber Space – Are You Maintaining Legal Confidences and Secrets?**

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Roxanne Ryan, Iowa Department of Public Safety

May 4-6

**Bench-Bar Conference**

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Hon. Patrick Grady, Chief Judge, District 6

Hon. Marlita Greve, Chief Judge, District 7

Hon. Jeffrey Larson, Chief Judge, District 4

Hon. Kellyann Lekar, Chief Judge, District 1B

Chris Luzzie, Iowa Legal Aid

Annette Scieszinski, District Court Judge, District 8A

Martha Shaff, Betty Neuman & McMahon, P.L.C.

Anjela Shutts, Whitfield & Eddy, P.L.C.

Kent Simmons, Davenport Lawyer

Brett Toresdahl, Director, ISBA Public Service Project

Hon. Cheryl Traum, District Associate Judge, District 7

Dean Ben Ullem, Drake University Law School

Bruce Walker, Phelan Tucker Mullen Walker Tucker & Gelman, L.L.P.

Robert Waterman, Lane & Waterman, L.L.P.

Justice Tom Waterman, Iowa Supreme Court

Hon. John Wright, District Court Judge, District 8B

May 11

**Every Iowa Lawyer Needs to Know About Transgender Persons**

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Ellen Krug, Executive Director, Call for Justice, L.L.C.

May 17

**Patent Strategies: Surviving in A Post #ALICESTORM**

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May 20

**2016 Government Practice Law Seminar**

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Eric Goers, City of Iowa City - City Attorney's Office

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Hon. Eliza Ovrom, District Court Judge, District 5C

Rachel Rowley, Brown Winick, P.L.C.

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Donald Stanley, Iowa Attorney General's Office

May 23

**Elder Law Intensive at the Governor's Conference on Aging and Disabilities**

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Dr. Robert Bender, The Orr Center

Jo Kline Cebuhar, author and speaker

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# Children as Witnesses in Custody Cases

By Jenny Schulz

Judicial custody determinations impact children more than anyone else in the family. The Iowa Code directs judges to consider children's wishes in custody cases. Hearing from children directly can provide the judge with a reliable and unique perspective that is not the same as either parent's. Children can provide valuable insights and credible information to help the court make fully informed decisions if they are provided a safe environment. However, having children testify in a custody case between their parents is uncomfortable and risks traumatizing children if not done with care.

## When to receive a child's testimony

Whether a child testifies is, and should be, solely within the discretion of the court. If the court determines that the child should be allowed to testify, the attorneys seeking the testimony and the court should put safeguards in place to

ensure that a child is not being asked to choose sides and that a child does not bear the weight of the court's decision.

Currently little guidance exists for judges and attorneys regarding how and when children's testimony should be received. Below are considerations for when and how to receive children's testimony in these cases.

## Respecting the child's wish not to testify

First and foremost, children should not be forced to participate if they do not wish to testify in a civil case between parents. It is also best to avoid seeking a child's testimony when jail time may result for a parent, such as in contempt proceedings.

## Appointing a child's representative

If a child has indicated a desire to speak to a judge, the court should consider appointing an attorney or guardian ad litem to represent the child. The appointment may be limited in nature, such as

having the child's attorney ascertain if the child wants to be heard and if so, preparing the child for court and conducting the child's direct examination. The child's attorney/guardian ad litem can help the child know what to expect and give the child a tour of the courthouse in advance to help her become comfortable.

## At court: logistics

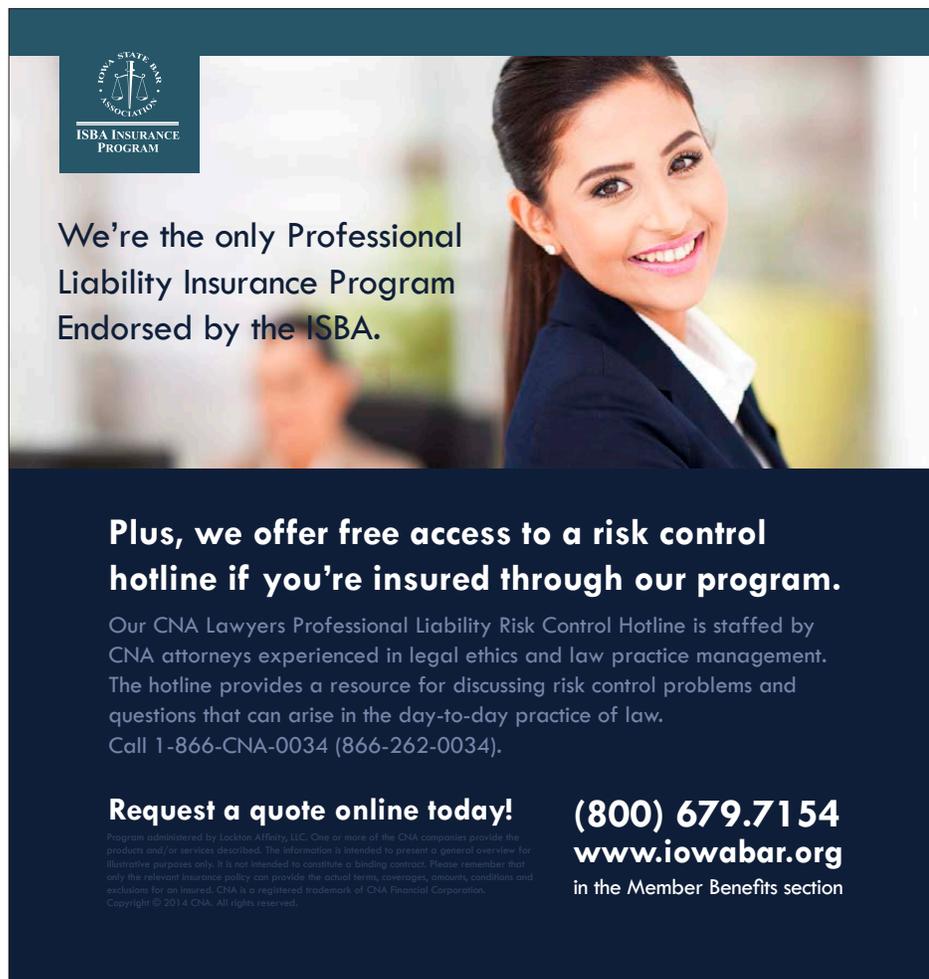
The best practice is for a child's testimony to be taken informally, in chambers or in a less formal room. This allows the child to feel more at ease and avoid being exposed to the adversarial nature of the courtroom. From a child's perspective, ideally, only the judge, court reporter, and child's attorney/guardian ad litem would be present with the child. The judge may choose not to wear a robe to appear less intimidating. Under no circumstance in these cases should a child have to testify in front of either parent or in an open courtroom from the witness stand.

## Procedure

The judge should confirm that the child wants to talk to the judge. The judge should inform the child in advance if her words will be written down (either in a transcript or the court's ruling) and if her parents may later be able to read what she said. The child should be told that although the judge will listen to her thoughts, feelings and experiences, the judge will make an independent decision that includes input from both parents and others. The child should be assured that the outcome is not her responsibility and that it is the judge's decision. (e.g. "If things don't turn out the way you want them to, it isn't your fault. If things do turn out the way you want them to, it might not be because of anything you said.")

To meet due process concerns, the court can take a break after the direct examination to summarize the testimony for the parties (outside of the child's presence) and receive cross-examination questions for the judge to offer. Judges should screen questions to ensure that they are appropriate for a child.

Any cross examination of the child should be conducted by the judge. This avoids argumentative and intimidating





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questioning by parents' attorneys and avoids making the child's attorney/guardian ad litem cross-examine a client. The judge may ask parents/attorneys to waive any cross-examination of the child in the interest of creating a child-friendly environment.

At the end of the child's testimony, the judge may wish to conclude by affirming the child's feelings, such as by saying, "I have listened closely to what you told me today. I also must listen to what your parents and the other witnesses say. I will work hard to make a good decision. Parents' attorneys can play a valuable role by helping clients understand that the child's testimony is just one factor for the court to consider and that the child's wishes will not control the outcome of the case. They should advise parents not to discuss the child's testimony with the child before or after court to avoid the child feeling pressured.

### Asking children questions

Questions for children should be prepared in advance using simple language and sentence structure. The Handbook on Questioning Children by Anne Graffam Walker or a consultation with an experienced child's attorney/guardian ad litem or child's therapist are helpful resources when preparing questions.

Open-ended, easy questions at the beginning ("What are things you like to do?" or "Tell me about your school/pet/football team/dance class") help children open up and set the tone for answering non-leading questions.

Children should be allowed to tell their story with little interruption. The goal is to help children focus on the main topics they wish to discuss without asking leading questions. Fill in the gaps if need be by asking non-suggestive questions (Can you tell me more about that?).

Asking children non-suggestive questions is more difficult and troublesome than asking adults those same questions. And children may answer questions literally, so the question "What do you like about dad's house?" might only elicit an answer like "the basketball hoop." Instead, a question such as "What do you like about spending time with your dad?" may yield a more pertinent response.

Children are still developing verbal skills; they need more time to process words than adults do. Give children time to think about a question and respond

rather than rephrasing it if they do not answer immediately.

### Afterwards

Judges and attorneys should be cautious about whether and how much to share of the child's testimony with parents. Consideration should be given as to whether there will be a negative impact on the relationship between the child and one or both parents as a result of reporting the testimony.

It is important to keep the child out of the spotlight. The court and attorneys should refrain from quoting or referencing the child's testimony in the court's ruling, filings and pleadings as parents could make a child feel guilty for what was said.

### Conclusion

With careful preparation and care, children's testimony can provide valuable information for the court to make more fully-informed decisions.



**Jenny Schulz** is the executive director and founder of Kids First Law Center. Jenny has been practicing in the area of family law since she received her law degree from the University of Iowa in 1998. Jenny serves as a member of Iowa's Family Law Case Processing Reform Task Force Steering Committee, the Sixth Judicial District nominating commission, and the ISBA Family Law Section.

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# Punishment in practice

Dr. Andrew J. Hosmanek

When I chose a topic for my recent dissertation on ethics,<sup>1</sup> I decided to go with what I knew – attorneys. I’ve always been fascinated by the stories found in the Iowa disciplinary opinions. I wanted to know more about the types of attorneys who were committing ethical violations, the types of violations they were committing, and how they were being punished. I examined the last three years’ disciplinary opinions from Iowa, Wisconsin, and Florida (377 cases altogether made up my final sample). The attorneys’ violations ranged from the mundane (shoddy accounting) to the extreme (violent crime and drug deals gone bad). Every case told a personal drama in that attorney’s life, and his or her reckoning with the disciplinary authorities.

## Why we punish

There are several reasons we punish attorneys who commit ethical breaches. Iowa’s Rules of Professional Conduct (based on the ABA’s Model Rules) are formalistic rather than utilitarian – in other words, any violation of the rules must result in punishment, even where there is no identifiable victim. Two major theoretical reasons for punishment are incapacitation (revocation or long-term suspension of an attorney’s license to protect the public), and deterrence (short suspension or public reprimand, which sends a message to the offender, and other attorneys, that the behavior was inappropriate). Rehabilitative punishments are also available, such as manda-

tory treatment for addictions or mental health issues.

## How we punish

Our ethical rules provide strong guidance on what to do and what not to do, but the rules do not set out specific punishments for each offense. Each state’s disciplinary board (and top appeals court) decides the sanctions on a case-by-case basis. Surprisingly, I found no large-scale studies examining whether punishments for attorney ethical violations are decided proportionally (in accordance with the blameworthiness of the offense) and consistently (similar punishments across similar offenders/offenses). To analyze these factors, I gathered information from each case about the offender, elements of the offense and the punishment handed down. I hypothesized that two elements of the offense would be important: the intentionality and the victim. I expected an intentional breach to result in stronger punishment, as it would be more blameworthy.<sup>2</sup> I expected a breach against a client to result in the strongest punishment, followed by a breach against a colleague (opposing counsel or judge). I expected “victimless” breaches (e.g., failure to maintain CLE credits) to result in the lowest level of punishment. I also expected a breach that was also a criminal offense (e.g., theft) to result in more punishment.

After reviewing hundreds of disciplinary cases, I determined several offender characteristics that should affect punishment. Our Supreme Court

has said that non-cooperation with the disciplinary board, and repeated ethical offenses, will result in more punishment.<sup>3</sup> The court has also said that volunteer and pro bono work is a mitigating factor,<sup>4</sup> and that impairment (mental health or addictions) may be a mitigating factor.<sup>5</sup>

## What matters – and what doesn’t

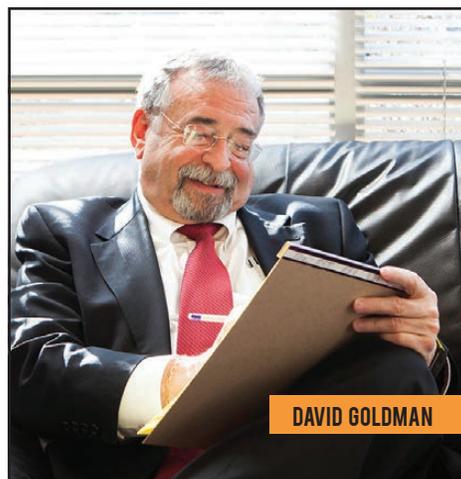
My study found several differences between how we say we will punish, and how we punish in practice. First, neither the target nor the intentionality of the breach mattered. Theoretically, a breach against a client, who relies on the attorney’s superior knowledge and credentials, should be the most blameworthy type of breach. Also, an intentional breach should be more blameworthy than an unintentional breach. However, these variables were not significantly related to the severity of punishment.

The connection between criminality and punishment was supported. An ethical breach that was also a crime was about three times more likely to result in a higher level of punishment. Noncooperation with the disciplinary authorities was bad news for offenders. An uncooperative attorney was 2.4 times more likely to receive a higher punishment. Interestingly, neither an offender’s good (pro bono, volunteerism) nor bad (prior ethical offenses) history significantly affected punishment.

Despite case law stating that impairment is a mitigating factor (or an aggravating factor if untreated), impaired attorneys as a whole did not receive more or less punishment for their offenses. There was one important exception – attorneys impaired by alcohol use were about three times more likely to receive a lighter punishment than an unimpaired offender. Mental health, drug use, gambling problems, or other addictions did not significantly affect punishment severity.

## What’s next

My study highlights several areas of potential misalignment between how we say we will punish, and how we actually punish. If our case law says that we will consider prior good and bad acts in punishing, then our decision-makers



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should be sure to actually use these factors. If we value the rights of our clients, then breaches against clients should be punished more severely than others. And if intentional breaches are more blameworthy than unintentional breaches, they should trigger greater punishment.

In my sample of cases, 23 percent of cases involved an attorney with one or more of these impairments: mental health (17 percent of cases), alcohol use (8 percent), drug use (6 percent), general addiction (5 percent) and gambling (1 percent). It is likely that some percentage of impaired attorneys entered into confidential diversionary programs, and thus their cases were not in my sample. However, I noted that despite the relatively high levels of impairment, less than 4 percent of cases involved a rehabilitative punishment. Aside from alcohol use, there was no consistent consideration of impairment as a mitigating or aggravating factor by the decision-makers. This suggests we may be missing opportunities to address impairment issues and rehabilitate offenders.

Offenders (and those who defend them) should know that noncooperation with the disciplinary authorities signifi-

cantly increases the chances of a higher punishment. This may raise justice concerns. In our criminal system, offenders have Constitutional protections against self-incrimination. However, attorneys accused of ethical offenses must either provide information that may hurt them, or receive more punishment. Even putting up a defense that is too vigorous may result in a finding of noncooperation.<sup>6</sup>

Finally, the overall picture for ethical offenders is quite bleak. Only 1.6 percent of the cases in my sample resulted in a dismissal or finding of not guilty. This may be due to pre-screening procedures, but the rate seems low for an adversarial system.<sup>7</sup> Also, in 45 percent of the cases I analyzed, the authorities handed down the highest levels of punishment available (incapacitation, defined as a revocation or long suspension). Once an offender enters the disciplinary system, it is highly likely that he or she will be punished, and strictly. An incapacitative punishment such as revocation or a long suspension should be a last resort, not the norm. These results may suggest we may not be doing enough to screen for potential offenders before they are admitted to the bar.

My future research will focus on extending the findings in this study, particularly as to impaired offenders. I would welcome additional thoughts and questions from attorneys, judges, and past offenders at [andrew-hosmanek@uiowa.edu](mailto:andrew-hosmanek@uiowa.edu).

<sup>1</sup> The dissertation, and accompanying statistical analyses, can be accessed on the Research page of my website: [www.hawkeyelaw.com](http://www.hawkeyelaw.com). An expanded version of this article, using the same data, will be presented at the Academy of Management Annual Meeting in August 2016.

<sup>2</sup> See Supreme Court Attorney Disc. Bd. v. D'Angelo, 710 NW 2d 226, (Iowa: Supreme Court).

<sup>3</sup> Supreme Ct. Atty. Disc. Bd. v. Marks, 759 N.W.2d 330, (Iowa: Supreme Court).

<sup>4</sup> Supreme Ct. Atty. Disc. Bd. v. Boles, 808 N.W.2d 431, (Iowa: Supreme Court).

<sup>5</sup> Marks at 332

<sup>6</sup> In the Matter of Disciplinary Proceedings against Kenneth R. Kratz, 851 N.W.2d 219, (Wis: Supreme Court).

<sup>7</sup> Comparatively, the US Department of Justice reported a 93% conviction rate for federal criminal prosecutions in 2012 – but 97% of these convictions came from guilty pleas. US Department of Justice, United States Attorneys' Annual Statistical Report (2012).



**Dr. Andrew J. Hosmanek, Ph.D.,** J.D., is a Lecturer in Law and Ethics at the Tippie College of Business, University of Iowa. He has practiced law in Iowa since 2005 and is managing attorney at HawkeyeLaw, PLC.

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## Sign on the dotted line

By Lisa Reel Schmidt

Your blood, sweat, and tears have gone into negotiating and drafting an agreement. Now all you need to do is get the parties to sign it. Seems straightforward, right? Not so fast – if your contract involves some type of business entity, there are a few more steps to finalizing signatures on the contracts. First, you need to make sure that you have included the correct entities as parties to the contract. Second, you need to make sure that the person who is signing on behalf of the entity has the authority to bind the entity. Third, you need to ensure that the signature lines both reflect the correct name of the entity and identify the authority of the person who is signing on behalf of the entity.

One important aspect of ensuring that you have bound the correct parties is to confirm that you have the correct company names for the parties. In the course of negotiations and drafting,

you've probably spent quite a bit of time with your client and the other contracting party. If both of these parties are entities, you may feel pretty confident that you know who the entities are. Maybe you've seen company letterhead or promotional materials, or you have visited the company website. However, ensuring that the agreement binds the proper parties may not be as straightforward as cutting and pasting the company name from these sources into the document. The company name used in promotional materials or social media may be a fictitious name under which the real company is operating and not the company name as it appears on the articles of incorporation. The "entity" may actually be a sole proprietor doing business under another name.

The first step in identifying the company name is to ask questions. Ask your client its legal company name, and find out from the other attorney the company

name for his or her client. Once you've gotten that information, the next step is to visit the Iowa Secretary of State website to identify the official name for the company. If there are related companies, be certain that the company you are integrating in the document is the correct company. I once was involved in contract litigation in which three different entities were named throughout the contract. In my defense, I didn't write the contract, but as the litigator I got to defend it. The "interchangeable" entities named in the contract were something along the lines of Smith Painting (a sole proprietorship), Smith Painting & Sons, LLC, and Smith Painting, Inc. These were three different but related entities all performing similar work. When the other party to the contract sued, it wanted to hold all of the named parties liable, including Mr. Smith personally in his capacity as a sole proprietor. Mr. Smith argued that the corporation was the only party to the contract. The conflict was ultimately resolved out of court, but it highlights the need for ensuring that the lawyer correctly identifies the desired party to the contract and consistently uses the correct name for that entity throughout the contract.

Once you have identified the parties to the contract, you need to make sure that the person who signs on behalf of the entity has the authority to bind that entity. This can get a little complicated because who has the



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authority to sign depends on the type of business entity that is a party to the contract. The primary types of business entities are sole proprietorships, partnerships, corporations and limited liability companies.

Technically, a sole proprietorship isn't an entity at all. It is merely an extension of the individual. A sole proprietorship may use the name of the individual, a business name that includes the surname of the individual, or a completely unrelated business name. Under the relevant Iowa statute, if a sole proprietor uses a business name that does not include his surname, he is required to make a public filing in the county in which he does business. In any event, the best way to deal with identifying a sole proprietor in an agreement is to either identify the individual or identify the person as the individual doing business under a particular name. For example, John Smith d/b/a Yellow Bee Painting Services. The individual always has authority to sign on behalf of himself as a sole proprietor.

Once you get beyond the sole proprietor, identifying who has the authority to sign on behalf of any particular entity can get a little bit tricky. Partnerships seem complicated because there are several different types of partnerships. Interestingly, despite their differences, the signing authority for all partnerships is fairly consistent – a general partner has the authority to sign unless there is an agreement to the contrary.

A general partnership is an entity separate from its partners. However, all of the partners are jointly and severally liable for the obligations of the partnership. Thus, it makes sense that in a general partnership, any general partner can sign on behalf of the partnership. This is true unless there is some enlargement or restriction in a partnership statement or partnership agreement that alters the right of a general partner to bind the entity. A general partnership is not required to file anything with the

Secretary of State, although it may, if it desires, file a partnership statement.

A limited partnership (LP) includes two types of partners – general partners and limited partners. Limited partners enjoy some protection from liability for the obligations of the partnership. The general partners continue to be jointly and severally liable. Thus, the same rule that applies to general partnerships applies to limited partnerships – any general partner may sign on behalf of

the partnership unless there is some enlargement or restriction in a partnership statement or partnership agreement. Like the general partnership, a limited partnership may, but need not, file a partnership statement. It must, however, file a certificate of limited partnership with the Secretary of State. The certificate of limited partnership will identify the general partners.

And if having general partnerships and limited partnerships doesn't create



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enough partnership options to cause some signing confusion, there are also limited liability partnerships. There are both limited liability general partnerships (LLPs) and limited liability limited partnerships (LLLPs). If a partnership decides to become a limited liability partnership, all of the partners are protected from liability. Both types of limited liability partnerships are required to file its election of that type of partnership with the Secretary of State. As with other partnerships, unless there is a written agreement to the contrary, all general

partners have the authority to bind the partnership.

A corporation is a creation of statute and is an entity separate and apart from its owners – the shareholders – and, therefore, shields its owners from liability. Every corporation must file its Articles of Incorporation with the Secretary of State. Unless granted authority to bind the corporation, shareholders and directors do not have authority to sign on behalf of the corporation. While the chief officer of the corporation has “apparent authority” to sign on behalf of the corporation, the actual authority to sign is granted by the other corporate documents. Rarely is the authority to sign identified in the Articles of Incorporation. Most often it will be found in the bylaws, in resolutions by the board of directors, or in a certificate of incumbency. These types of documents are generally not filed with the Secretary of State.

Finally, the law also allows for limited liability companies (LCs or LLCs). The limited liability company is not incorporated, but its members are protected from liability. The limited liability company must file organizational papers with the Secretary of State. Because a limited liability company can be managed by its members or by managers, there is no assumption that either a member or manager has the authority to sign on behalf of the company. That is, unlike the corporation, neither members nor managers have apparent authority. There are two sources of express authority to bind a limited liability company: an operating agreement or a statement of authority. Operating agreements are not often filed with the Secretary of State. A statement of authority may be filed, but that is at the option of the organization.

So what’s the best plan of attack in determining who has the authority to sign? First, look on the Secretary of State website and determine whether any of the documents on that website give specific authority to a particular person to sign on behalf of the entity. Remember, often there will be no document on the Secretary of State website that provides that information. Next, ask the organization to provide a document that grants

authority to a particular person to sign on behalf of the entity. A grant of authority may be found in partnership agreements, statements of authority, operating agreements, bylaws, resolutions of the board of directors, or certificates of authority.

Sometimes lawyers include a provision in the agreement itself indicating that the person signing the document has the authority to bind the entity. This is a bit of a circular solution that I would not advise. If the person signing the document does not actually have authority, they cannot bind the entity to the representation that they do have authority. In that case, both the representation and the signature are not binding on the entity. Therefore, the wiser practice is to reference sources outside the contract being signed to ensure that the signing individual has authority to sign.

Once you have identified the correct name of the company and you have identified a person who has authority to sign on behalf of the company, make sure that your signature lines reflect this information.

To ensure that your contract is legally binding, you must do your homework. Get the entity names correct and make sure you consistently use only the name of the obligated entity throughout the contract. Make sure that the person signing on behalf of the entity has the authority to do so. Finally, make sure that your signature lines reflect the correct name of the entity, the name of the signing individual, and the relationship of the signing person to the entity that demonstrates the person has the authority to sign. Get it right and get it signed – now you can relax!

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**Lisa Reel Schmidt**, is an Assistant Attorney General for the Iowa Department of Justice, primarily representing the Iowa Medicaid Enterprise. She taught contract drafting for nine years at Drake

University Law School and for two summers at University of Las Vegas, William S. Boyd School of Law. For a more extensive discussion of drafting contracts, she highly recommends Tina Stark, *Drafting Contracts: How and Why Lawyers Do What They Do* (2d ed. Aspen 2014).

## IN MEMORIAM

*Thomas Patrick Hyland*, 85, died May 31 in Clive, Iowa.

Hyland was born in 1930 in Chicago, Illinois. He earned his J.D. at Drake University Law School in 1959. He spent time as an assistant Polk County Attorney before entering private practice.

*Jeff Logan*, 46, died March 1 in Ottumwa, Iowa.

Logan was born in 1970 in Ottumwa. He received his J.D. from the Creighton University School of Law. Jeff began his career as a clerk for Judge Phil Collett, then joined the Curran Law Office in private practice where he most recently became a partner.

*Elliott R. McDonald, Jr.*, 87, of Davenport, Iowa, died April 8.

McDonald was born in 1945 in Peoria, Illinois. He earned his J.D. from the University of Iowa College of Law, then served in the Air Force during the Korean War. Following his service, he joined McDonald, Woodward & Carlson, P.C., in Davenport where he worked until retirement. Elliott spent nine years on the Board of Law Examiners and assisted in administering the Iowa Bar Exam for nearly 40 years.

*Robert Sandblom*, 89, died April 11 in Scottsdale, Arizona.

Sandblom was born in 1927 in Creston, Iowa. He earned his J.D. from the University of Michigan Law School, where he edited the law review and was Order of the Coif. He spent 30 years practicing in Des Moines until his retirement.

*Gary L. Yahnke*, 79, died February 14 in Marion, Iowa.

Yahnke was born in 1936 in Dixon, Illinois. He earned his J.D. from the University of Arizona College of Law. Gary spent time as a city attorney in Prescott, Arizona, then worked for Lockheed Aircraft before returning to Anamosa, Iowa in 1983.

Signatures lines should always appear on the right hand side of the page with the signature of one party following the signature of the other. The correct name of the entity should appear above the signature line. I use all caps to better highlight the names of the parties. The signature line should identify by name the individual who is signing and the individual's position in the entity that gives them authority to sign. For example:

SMITH PAINTING, INC.

By: \_\_\_\_\_  
John Smith, Chief Executive Officer

DOZEN DONUTS, LLP

By: \_\_\_\_\_  
Ronda Wells, General Partner

Signature lines must also clearly identify the organizational layers of entities. For example, what if the party to the contract is White Smiles Dental Office, L.P., but HealthCare, Inc. is a general partner who has authority to sign? Who signs the contract and what does the signature line look like? You should indicate the layers in the identification of the signatory. You should also have an individual who is authorized to sign on behalf of the second organization sign the document. It will look something like this:

WHITE SMILES DENTAL OFFICE, L.P.,

By: HealthCare, Inc., a general partner  
John Smith, Chief Executive Officer

By: \_\_\_\_\_  
Jennifer Brown, President

Notice how the signature line identifies HealthCare, Inc.'s relationship to the signatory – it is a general partner. The ultimate signature line identifies the signing party's name and her relationship to HealthCare, Inc.

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**Jennifer Julander**  
ASA



# Meet new ISBA Vice President Tom Levis

*The West Des Moines practitioner shares information about himself and what he sees ahead for the association*

Thomas J. Levis, known as “Tom” to most people, recently was elected as the ISBA’s vice president. Assuming the members elect him to the position of president-elect next year, he will become the ISBA’s 132nd president.

The following profile is designed to help members learn more about the 1977 Drake Law School graduate who practices with Brick Gentry, PC in West Des Moines, Iowa. In the article and the accompanying sidebar, he talks about his background, his thoughts about the practice of law and what he sees is needed in the future for the bar association.

## Why did you become a lawyer?

As a child growing up in Chariton, I got to know quite well two former super stars of the Iowa legal community: Federal Judge, Bill Stuart, and Iowa District Court Judge, Abe Hass. Both of these men and their families were close friends of my parents. As a kid growing up, I spent many days at the Stuart house playing with the Stuart kids. As a teenager, my family enjoyed annual ski vacations in Colorado with the Hass’s and often the Stuarts. I knew Judge Stuart as Bill and Judge Hass as Abe. So, when I was thinking about college and what I wanted to do when I grew up, I asked a few questions of Bill and Abe. Both took the time to answer my, no doubt, goofy questions. In fact they were both delighted that I had asked them for advice. I don’t recall exactly what they told me, but I do remember the pride they both had in being members of a profession that focused on honesty, integrity and equality. What I really remember after talking to these two judges is that I wanted to grow up to be just like them.

## Your profile in the ISBA member database says you have a general practice. Can you elaborate on what areas of the law you find yourself dealing with most, and how you gravitated to those areas?

I started practicing law as a civil and criminal litigator. However, my father encouraged me to be a generalist. I suspect that isn’t the thinking for young lawyers today, but because of my dad’s encouragement, I can read an abstract, represent a corporation, probate an estate, prosecute or defend a civil action, try a divorce, collect a debt and even defend a traffic ticket. (I can’t do taxes-not even my own, and I’m a fish out of water in bankruptcy court.) In recent years, I have spent a good amount of time helping people resolve their problems in mediation.

## In your 39 years as an attorney, what have been some of the highlights you’ve experienced in your career, and how have those impacted your motivation to practice law?

When I finished my first year in law school, I got a job clerking for the Des Moines firm of Scalise, Scism, Gentry, Brick, and Brick. At the time, Larry Scalise was the preeminent criminal defense lawyer in Iowa. Within a month of starting my clerking job, Larry took me to a highly publicized murder trial in Fort Dodge where I got to sit with Larry and the prosecutors at counsel table. I even got to go back into chambers and meet with the judge! It

was an awesome experience. A few months later I was asked by Larry to help with the defense of a lawyer from Waterloo accused of murdering four people. I was only a second-year law student, but, I got to sit in on depositions, hearings and witness interviews. I even got to help argue an occasional motion in chambers. (not well, but I tried). This all happened before I graduated from law school. What a start to my legal career!

After graduation, I spent about 15 years trying civil and criminal cases all over Iowa. I liked trial work, but as I grew older I found myself spending more and more time resolving cases outside the courtroom. In the last 15 years, I have developed a mediation practice. I probably do two mediations a week. I like mediations because they usually last less than a day and, if you succeed in helping people resolve their disputes, you get instantaneous positive feedback.

Today, I practice with 34 other lawyers in a firm called Brick Gentry PC, located in West Des Moines. I have wonderful partners and a staff to die for. All of these things have kept me as motivated today as I was in 1977.

## What have been some of the frustrations, or things you would do differently in hindsight?

First of all, I get frustrated when I see our courts not receiving the funding they need and deserve. Over the years, I wish I had been more outspoken when talking to my legislative friends. So, as an officer of the ISBA, I intend to use what limited talents I have to encourage our elected officials to properly fund our courts. Secondly, I was President of the Polk County Bar Association when Justices Ternus, Streit and Baker lost the retention election. I regret not having spent more time on their behalf. As an officer of the ISBA, I will do what I can to protect and support our judges.

## Speaking of being an ISBA officer, why did you want to become an officer, and what do you hope to accomplish during the two years in the officer ranks assuming, of course, that the members elect you to the president-elect position next year?

I am passionate about the legal profession and protecting its legacy. I believe that significant changes to our profession are on the way. I want to be involved in these changes and, hopefully help ensure that our profession stays a “profession.” I suspect my first goal will be to learn the ropes of being an officer of an 8,000-plus-member professional organization. However, after learning the ropes, I would like to help ISBA create new ways of attracting and keeping members, whether they are young or old, rural or urban. Finally, I want to drive around Iowa and meet lawyers from all over the state to find out what the ISBA could do to make their professional lives better.

## What would you say are the strengths of the ISBA?

The ISBA has a great staff that works very hard to keep Iowa lawyers happy. In addition, this great staff also takes great care of the association’s money. Jim Carney and his partners do a great

job of pushing ISBA legislation and blocking legislation averse to lawyers. The ISBA works well with the Iowa Supreme Court and the Iowa Judiciary.

### How about areas that could use some improvement?

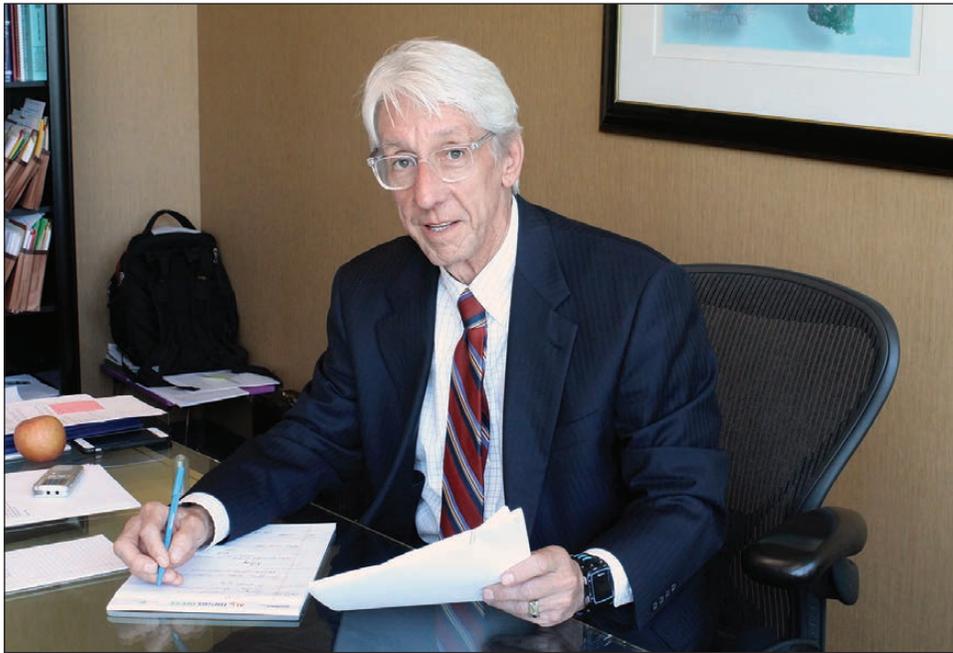
First, the legal profession is changing rapidly. ISBA must continue to protect the profession yet embrace the changes that are good for lawyers. Second, there are many government and in-house counsel lawyers who are not members of the ISBA. We need to figure out how to make the ISBA relevant and attractive to them. Finally, the ISBA needs to encourage more lawyers to run for public office.

### You always seem to be cheerful and have quite a sense of humor. Where did those personality traits come from?

Mostly from my dad. My father had a great sense of humor and the best and biggest laugh in Lucas County. When he hit a bad shot at the golf course, you could hear him laugh from all corners of the county.

### What, if any, motto(s) do you try to live by?

I don't really have a motto, but I am passionate about living my life to the fullest, even if I make a mistake here and there. So, don't be surprised if I make a mistake or two during my tenure.



Tom Levis works at his desk in the Brick Gentry law firm's offices in West Des Moines, Iowa. He is the first member of the nearly 50-year-old firm to become a state bar association officer.

## Thomas J. Levis

2016-2017 ISBA Vice President

### Background

- Born Chariton, Iowa
- Younger sister: Ann, Wichita, Kansas
- Father: Independent insurance agent, Chariton
- Mother: Stay-at-home mom
- Wife: Wendy, HyVee pharmacist, Lamoni and Leon, Iowa
- Son: Tucker, 26, just completed 2L year at Drake University Law School
- Son: Hunter, 22, December 2016 graduate University of Utah in Salt Lake City (anticipated) with a degree in Bio Medical Engineering

### Leisure activities

- Snow skiing, especially in Colorado.
- Running – few marathons, including Ironman Triathlon a few years ago “in one of my weaker moments.”
- Biking as I get older.
- Travel. Spent three weeks in Nepal trekking the Himalayas a few years ago.
- Golf. “I like, but occasionally it doesn't like me.”
- Reading a good book, especially a good mystery.

### Community service

- Member of the Polk County Conservation Board. Assisted in raising \$50 million for conservation, parks and trails, and water quality via a bond referendum.
- Member of the Polk County Judicial Nominating Commission.
- Sunday School teacher at church
- Former mock trial coach for Valley High School in West Des Moines, Iowa.
- Board member for a community bank for many years.
- Active for several years with wife, Wendy, in Mentor Iowa.
- Active with ISBA and Polk County Bar Association.



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Beise

**Trista M. Beise** joined Lane & Waterman, L.L.P., in Davenport, Iowa, as an associate. Beise received her J.D. from the University of Iowa College of Law in 2015. She will maintain a practice focused on insurance, professional malpractice and trial law.



Bosworth

**Mark R. Bosworth** joined Otto, Lorence & Wiederstein in Atlantic, Iowa, as an associate. He earned his J.D. from the Creighton University School of Law. Bosworth will maintain a general practice including family law, estate planning and probate, commercial and business law, municipal law and general civil matters.



Brownell

**Maria Brownell** joined Ahlers & Cooney, P.C., in Des Moines, Iowa as an associate. Prior to joining, she was an administrative law judge for the State of Iowa Department of Inspections and Appeals. Brownell will join the firm's litigation and public finance practice areas, serving public entities including cities, city utilities, counties, school districts, special districts and other local governments, as well as corporate and business clients.



Fischer

**Daniel Fischer** was named a shareholder with Hall Hudson Fischer, P.C., in Harlan, Iowa. Fischer received his J.D. from the University of Iowa College of Law in 2012. He practices primarily in estate and trust planning and administration, real estate and tax law.



Grasso

**Alex Grasso** joined Hopkins & Huebner, P.C., in Des Moines, Iowa, as an associate. Grasso earned his J.D. from the University of Iowa College of Law in 2013. He will maintain a practice focused on liability and insurance defense.



Mommsen

**Laura Mommsen** joined the Rawlings Law Firm in Sioux City, Iowa, as an associate. She received her J.D. from Drake University Law School in 2012. Mommsen will maintain a general practice with a focus on employment law and civil litigation.

**Joe Holland, Robert Michael, Crystal Raiber and Erik Sittig** joined together a



Holland



Michael



Raiber



Sittig

general legal practice in Iowa City, Iowa, now to be known as Holland Michael Raiber & Sittig, P.L.C. The firm remains in the previous moniker's location in the historic Brewery Square in downtown Iowa City. The firm practices primarily in the following areas: Real estate, transactional and commercial law, business formation and advice, school law, estate planning and probate, appellate law and collaborative dissolution of marriage, among other areas.

**Holland** received his J.D. from the University of Iowa College of Law and began practicing law in 1977. Holland served as ISBA president in 2001-2002.

**Michael** received his J.D. from the University of Iowa College of Law and was admitted to the Iowa bar in 1987.

**Raiber** received her J.D. from the University of Iowa College of Law and was admitted to the Iowa bar in 2008.

**Sittig** received his J.D. from the University of Iowa College of Law and was admitted to the Iowa bar in 2005.



**Rush & Nicholson P.L.C.** in Cedar Rapids, Iowa, moved to a new location. The new address is one block west of the old location at 115 First Ave S.E., Suite 201, in Cedar Rapids.

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# Disciplinary OPINIONS

**Larry Alan Stoller**

**Spirit Lake, Iowa**

**Iowa Supreme Court Opinion - May 13, 2016**

**60-day Suspension**

Attorney Larry Stoller was licensed to practice law in Iowa in 1980, and is currently a sole practitioner in Spirit Lake. Stoller previously received a public reprimand. This disciplinary matter arose out of two client matters.

The “Okoboji Cocktails, Inc.” Matter: Stoller represented Martin and Melinda Marten, a couple who owned a building leased to Okoboji Cocktails, Inc. for a bar and restaurant. The officers of OCI were Troy Dahl, Jolene Schmidke, and Diana Chaplin, with Chaplin the registered agent for OCI. Chaplin had a falling out with Dahl and Schmidke, and was “locked out” of the business. OCI eventually stopped paying rent and abandoned the premises, leaving a large amount of equipment.

Once the Martens were aware of the abandonment, Stoller sent two letters to Chaplin as

registered agent confirming the abandonment and intent to seize the equipment to credit towards debts owed the Martens. Chaplin, without actual or apparent authority, consented to the seizure. Stoller then assisted Chaplin with the creation of a new corporation, Chaplin’s Inc., and represented both the Martens and Chaplin in the negotiation of a new lease. Chaplin opened a new bar and restaurant called “Chaplin’s,” using OCI’s former equipment.

OCI brought an action in replevin against the Martens, Chaplin, and eventually Stoller, to recover the equipment left in the premises and for legal malpractice. The district court found the transaction between Chaplin and Martens to be a sham, and granted a writ of replevin to OCI. The malpractice action against Stoller was settled.

In this matter, the court found Stoller had violated Rule 32:1.7, regarding concurrent conflicts of interest. Because Stoller began representing Chaplin in the creation of a new corporation and negotiation of a lease with the Martens, his clients, before he obtained informed written consent from either party, the court found an unethical conflict. The court also found violations of Rule 32:8.4(c), prohibiting dishonesty, deceit, fraud, and misrepresentation, for perpetrating the sham transaction. The court found Stoller arranged for Chaplin to convey OCI’s assets when he should have known Chaplin had no authority and the transaction was unlawful under Iowa abandonment law. The court determined Stoller’s actions were more than a misreading of Iowa law, but an intent to mislead OCI and his clients.

The “Zylstra” Matter: Stoller represented Robert and Marcia Zylstra on various legal

matters between 2002 and 2014. In 2007, Stoller met with Robert Zylstra to discuss several manure easements being negotiated with NuStar Farms, and estate planning. Stoller gave a cursory review of the manure easements, and recommended the Zylstras obtain opinions from agricultural law counsel. Stoller also represented the Zylstras in a small claims matter in 2014.

During the course of the small claims matter, Stoller undertook to represent NuStar Farms in an action regarding loan covenants. The action involved the Zylstras’ failure to provide NuStar with a deed to property involving ingress. Stoller contacted the Zylstras on several occasions regarding the execution of deeds for NuStar Farms, and reminded them of his work on their behalf. The Zylstras obtained other counsel. Stoller eventually filed and litigated an action against the Zylstras on behalf of NuStar Farms.

For this matter, the court found another violation of Rule 32:1.7, regarding a concurrent conflict of interest. While the court noted it would consider Stoller’s representation of NuStar Farms to be a directly adverse representation under Rule 32.1.7(a)(1), it analyzed the conflict under Rule 32.1.7(a)(2), based on the board’s analysis. The court found Stoller threatened litigation against the Zylstras on behalf of NuStar Farms while he still represented the Zylstras in the small claims action, and obtained no informed written consent. The court did not find violations of Rule 32:1.9(a) or (c) for undertaking representation of NuStar Farms on the loan action, because Stoller’s review of the manure easements was cursory, not significant in NuFarm’s action, and no confidential information was revealed or used.

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In discussing sanctions, the court considered Stoller's work in counseling others regarding mental health issues, following Stoller's own major depressive disorder and dealing with a friend's suicide, as a mitigating factor. Stoller's previous public reprimand was not considered a significant aggravating factor, since it involved unrelated conduct. The harm to Stoller's clients, however, was an aggravating factor. All things considered, the court imposed a 60-day license suspension.

**Mary E. Howes**  
**Davenport, Iowa**  
**Iowa Supreme Court - May 20, 2016**  
**Public Admonishment**

The Honorable Mary E. Howes has served as a district court judge in the Seventh Judicial District of Iowa since 2006. Judge Howes has not been disciplined in the past.

In June 2011, Howes petitioned for dissolution of marriage from her husband. Attorney Maria Pauly represented Howes free of charge, and a settlement agreement and dissolution decree was entered. Following the dissolution, Howes and her ex-husband got into a tax dispute regarding reimbursement for \$3,192 deducted from the husband's 2012 income tax return. Of the opinion her husband was entitled to half of the amount, Howes sent him checks for half the amount and Pauly sent a letter confirming this position on May 22. It was not until July 31 that the ex-husband's attorney sent Pauly correspondence requesting the full amount. A contempt action was filed, and eventually settled.

During the "lull" in correspondence in the tax matter, Pauly represented a client in a divorce action with child custody issues. On July 25, Pauly learned that her client's wife intended to take their child to Pakistan, and she sought a temporary injunction. Howes was the only judge at the courthouse not otherwise assigned to motion hearings or trial.

She signed the temporary injunction. When the wife learned that Pauly had represented Howes in her own dissolution action, this ethical action was filed. Howes informed the commission she did not consider the tax dispute ongoing when she signed the order for Pauly.

The court considered whether Howes violated Rule 51:2.11(A) and canon 2 of the Iowa Code of Judicial Conduct by failing to disqualify herself. Under the rule, a judge is required to recuse themselves when a "reasonable person" may doubt the judge's impartiality. The court found "a reasonable person with knowledge of all the facts on July 25 might have had a reasonable basis for questioning Judge Howes's impartiality . . . even if Judge Howes did not have an ongoing attorney-client relationship with Ms. Pauly on that date." Moreover, Howes did not comply with the rule by disclosing her relationship with Pauly and obtaining a disqualification waiver from both parties.

The court then considered whether the "rule of necessity" allowed the judge to

proceed without disclosure and consent due to the need for "immediate action." Because a number of other judges were in the courthouse on July 25, the court held another could have heard the matter. The court also noted Howes did not ascertain whether another judge was available before considering the order.

Next, the court determined Howes violated Rule 51:3.13(A) and canon 3 because Howes accepted free legal services from Pauly, but did not either recuse herself or disclose the legal services and obtain a waiver from the parties before proceeding on any matter with Pauly. The court also held the same conduct resulted in violations of Rules 51:1.1, 51:2.1, and canon 1, for failing to promote public confidence in the independence, integrity and impartiality of the judiciary.

Emphasizing that sanctions serve the purpose of maintaining the dignity, honor, and impartiality of the judiciary, the court found that Howes acted in good faith with a misunderstanding of her ethical obligations. The court issued a public admonishment.

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**2016 Summary in Brief**  
**2016 Regular Session, 86th Iowa General Assembly**  
Special to the Iowa State Bar Association

Date convened: **January 11**  
 Date adjourned: **April 29**

Length: **110 calendar days**

**Bills introduced: 855**  
 Senate Files: 353  
 House Files: 502

**Study Bills proposed: 349**  
 Senate Study Bills: 190  
 House Study Bills: 159

**Bills and Joint Resolutions Enacted: 141**

**Amendments filed: 499**  
 Senate Amendments: 188  
 House Amendments: 311

**LAWMAKERS PASS BILLS DURING 2016 SESSION**

*To access a bill on the Iowa General Assembly Website, click on the bill number.*



Iowa General Assembly Website  
 2016 Enrolled Bills

**BUSINESS, LABOR, and INSURANCE**

- Summoning emergency assistance, residents, landlords and tenants. HF 493
- Child labor, instruction permit as identification. HF 2274
- Farm tenancies, written termination. HF 2344
- Limited partnerships or limited liability companies, administration. HF 2373
- Commercial transactions, voidable. HF 2400
- Transportation network companies and taxicabs, regulation. HF 2414

**CIVIL and JUVENILE LAW**

- Patient behavioral health information, care coordination disclosure. SF 2144
- Contested cases and other administrative proceedings, electronic filing. SF 2162
- Military members, custody and visitation. SF 2233
- Mental health outpatient treatment orders, noncompliance. SF 2259
- Juvenile delinquency records, confidentiality. SF 2288
- Address confidentiality program, participant address disclosure. HF 2265
- Paternal rights, juvenile justice proceedings. HF 2270
- Guardian ad litem appointments, adoption proceedings. HF 2282
- Magistrate court proceedings, electronic recordings. HF 2354
- Probate, trusts, and fiduciaries update. HF 2335
- Parental rights termination, children conceived through sexual abuse. HF 2386

**CRIMINAL LAW AND PUBLIC SAFETY**

- Community corrections facilities, felony offenders. SF 2059
- Criminal history data, right to access. SF 2110
- Interference with official acts of a jailer. SF 2115
- Expungement of criminal offenses, including alcohol related offenses. SF 2164
- Criminal trespass and invasion of privacy, modifications. SF 2185
- Delinquent court debt collection and driver's licenses. SF 2316
- Drug offenses, robbery, and child endangerment, modifications. HF 2064
- Identity theft, modifications. HF 2271
- Human trafficking and kidnapping, statute of limitations. HF 2278
- Firearm suppressors, possessing or transferring. HF 2279
- Snowmobile and all-terrain vehicle operation, firearms. HF 2283
- State public defender, pilot project. HF 2458

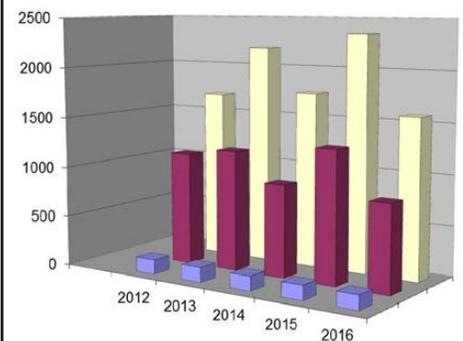
**TAXES**

- Internal Revenue Code updating and manufacturing sales tax exemptions. HF 2433
- Tax credits, renewable energy and adoptions. HF 2468

This page is produced by the Legal Services Division of the Legislative Services Agency and contains a partial listing of legislation of interest to the legal profession. A complete list and summary of legislation enacted during the 2016 Legislative Session may be found at [www.legis.iowa.gov/publications](http://www.legis.iowa.gov/publications) and then by clicking on the second to last link on the page titled "Summary of Legislation."

The Legal Services Division provides legal services to the General Assembly in a nonpartisan objective manner, including bill and amendment drafting, legal and legislative research, official Iowa law publications, standing committee staffing, and Legislative Council, statutory, and interim study committee staffing. Bill drafting services are also provided to state agencies, the Judicial Branch, and the Governor.

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Information: Legislative Services Agency

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The Iowa State Bar Association congratulates the following individuals for recognition they received.



**Law**

**Kathleen Law**, shareholder at Nyemaster Goode, P.C., in Des Moines, Iowa, for being elected a fellow of the American College of Real Estate Lawyers. ACREL is a national non-profit founded in 1978 that elected 43 lawyers this year who are distinguished in the practice of real estate law. Law is the first woman from Iowa admitted to the college and practices with the firm's business, finance and real estate department.



**Lederer**

**Greg Lederer**, founding member of Weston and Craig, P.L.C., in Cedar Rapids, Iowa, for being selected for a distinguished service award by the 8th Circuit Bar Association. The Richard S. Arnold Award for Distinguished Service is given in honor of a career that focuses on the protection and advocacy of civil and human rights. Lederer received the award for his exemplary leadership and excellence in helping to deliver legal services to underserved members of the community.

## KUDOS



**Nordstrom**

**Andrew Nordstrom**, Vice President/In-House Counsel at Black Hawk County Abstract & Title in Waterloo, Iowa, for being elected President of the Iowa Land Title Association. Nordstrom is a graduate of the University of Iowa College of Law and has been with Black Hawk Abstract since 2012. The ILTA represents over 140 member organizations and is the recognized voice of the real estate title industry in the state of Iowa, setting the standards of professional excellence and technical competence for the lasting benefit of the public and the industry.



**Overberg**

**Nathan Overberg**, shareholder with the Ahlers & Cooney, P.C., in Des Moines, Iowa, for being selected for the Greater Des Moines Leadership Institute's 2016 Inspiring Award. GDLMI annually selects six individuals for the award who provide significant contributions to the community. Overberg was nominated for his support of Children & Families of Iowa, where he has served on the board of trustees and assisted with projects for over six years.



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**COMPLIANCE ATTORNEY** – *PolicyWorks, Affiliates Management Company, Des Moines, Iowa* – Seeking an attorney with 3-5 years of experience in mortgage lending, regulatory compliance or delivery of compliance education and training. Candidates need strong communication and presentation skills, as well as the ability to develop interpersonal relationships with a variety of business professionals. Some travel is required. Send resume and salary requirements to: [chelsih@affiliatesmgt.com](mailto:chelsih@affiliatesmgt.com). (76-7)

**DIRECTOR OF STATE ADVOCACY/STAFF LEGAL COUNSEL** – *Iowa Hospital Association, Iowa* – Seeking an attorney. Responsibilities include policy analysis of legislation before the Iowa General Assembly, evaluation of proposed regulatory changes to Iowa hospitals, and in-house legal work including contract review and corporate compliance. The position will be a registered state lobbyist representing all 118 Iowa hospitals at both legislative and executive branch levels. Send cover letter and resume to: [stultsc@ihaonline.org](mailto:stultsc@ihaonline.org). (76-7)

**LABOR & EMPLOYMENT ATTORNEY** – *McGrath North Mullin & Kratz, P.C. L.L.O., Omaha, Nebraska* – Seeking an attorney with 5 or more years of experience to join a management-side labor and employment practice. Candidates need familiarity with federal and state labor and employment laws and litigation experience in these areas. Position includes work in all aspects of litigation. Admission to practice in Nebraska is required. Send cover letter and resume to: [ppepper@mcgrathnorth.com](mailto:ppepper@mcgrathnorth.com). (76-7)

**SENIOR COUNSEL** – *ACT Inc., Iowa City, Iowa* – Seeking an attorney to serve as senior counsel. This is a corporate generalist role, providing legal advice to team members at all levels of the organization regarding a wide range of legal matters. Candidates need 5 years of corporate transactional experience, with experience in international and/or nonprofit law preferred. Salary commensurate with qualifications. Please send cover letter and resume to: [mark.hennessey@act.org](mailto:mark.hennessey@act.org). (76-7)

**FAMILY LAW PARALEGAL** – *The Law Offices of Mark R. Hinshaw, P.C., West Des Moines, Iowa* – Two positions available immediately. Duties include calendaring events, drafting pleadings, drafting child support guidelines worksheets and financial affidavits, and other work as required. Significant experience dealing with general litigation or family law required. Send application/resume to: [mark@hawkeyedivorce.com](mailto:mark@hawkeyedivorce.com). (76-7)

**ESTATE PLANNING ATTORNEY** – *Thompson Law, P.C. Sioux Falls, South Dakota* – Seeking an attorney with 5+ years experience in estate planning. Advanced planning and/or estate administration experience preferred. Applicants must be team-oriented and value the opportunity to collaborate. Please send cover letter and resume to Sandy Hensch, Thompson Law, P.C., 5027 S. Western Avenue, Sioux Falls, SD 57108, or email to [sandy@cathompsonlaw.com](mailto:sandy@cathompsonlaw.com). (76-7)

**EXPERIENCED TRANSACTIONAL ATTORNEY** – *Pasley and Singer Law Firm L.L.P., Ames, Iowa* – Seeks an attorney with at least 5 years of experience in real estate for the Des Moines office. The successful candidate is expected to take on well-established transactional practice. For more information on the firm visit [www.singerlaw.com](http://www.singerlaw.com). Send resume and cover letter to: [jmathison@singerlaw.com](mailto:jmathison@singerlaw.com) or mail to: Pasley & Singer Law Firm, L.L.P., Attn: Jane Mathison, P.O. Box 664, Ames, IA 50010. (76-7)

**BUSINESS TRANSACTIONS AND ESTATE PLANNING ATTORNEY** – *Phelan Tucker Mullen Walker Tucker and Gelman, L.L.P., Iowa City, Iowa* – Seeking an attorney with 10+ years of experience in business, real estate, probate, estate planning and tax. Candidates need a strong work ethic and time management skills. Send cover letter and resume to: [haught@ptmlaw.com](mailto:haught@ptmlaw.com). (76-7)

**ATTORNEY** – *Mauro, Archer & Associates, Iowa* – Seeking attorneys for a six-month project recruiting and servicing clients with the possibility of additional work. Must have excellent public speaking skills, an ability to think on your feet, time management skills, attention to detail, and a willingness to spend a majority of your time traveling throughout your state. Salary commensurate with experience, bonuses based upon performance and per diem while traveling. Send cover letter and resume to: [resumes@mauroarcher.com](mailto:resumes@mauroarcher.com). (76-7)

**MANAGING ATTORNEY** – *Great West Casualty Company, South Sioux City, Nebraska* – Seeking an experienced attorney to join our corporate office as a legal manager. This individual will manage a staff of experienced legal professionals with various responsibilities and areas of expertise. Qualifications: J.D. required and must be accredited by the ABA. Minimum of 10 years' experience with professional level legal such as public practice, private practice, or corporate legal counsel in the business of insurance. Prior experience in management or leadership preferred. To apply visit the career section of our website at [www.gwccnet.com](http://www.gwccnet.com). (76-7)

**ASSOCIATE ATTORNEY** – *Betty, Neuman & McMahon, P.L.C., Davenport, Iowa* – Seeking an attorney with 3-5 years' experience in litigation. Experience in insurance defense and/or workers' compensation is preferred but not required. Salary commensurate with experience. Please send cover letter and resume to Jean Dickson, [jzd@bettylawfirm.com](mailto:jzd@bettylawfirm.com). (76-7)

**ASSOCIATE ATTORNEY** – *Woods & Aitken L.L.P., Omaha, Nebraska* – Seeking an associate with 1-5 years of experience to join its construction law group. Some periodic travel will be required. For more information visit [www.woodsaitken.com](http://www.woodsaitken.com). Litigation experience required. Candidates must have strong academic credentials, including outstanding research and writing, problem-solving, critical thinking, and communication skills, and should be actively licensed to practice law in Nebraska or be able to obtain a Nebraska law license in the near future. Resumes may be submitted to [admin@woodsaitken.com](mailto:admin@woodsaitken.com). (76-7)

**CITY ATTORNEY** – *City of Cedar Falls, Cedar Falls, Iowa* – Seeking candidates for an in-house city attorney to coordinate with contracted and part-time legal staff. Duties include providing legal advice to elected officials, boards and commissions in matters related to operations, services and activities of the municipality. Candidates must have five years of experience in municipal or governmental law including legal research and human resources. Post-offer pre-employment physical and drug screen required. Submit cover letter with salary requirements, resume, credentials, and completed application from City Hall or [www.cedarfalls.com/jobs](http://www.cedarfalls.com/jobs) to City of Cedar Falls, Attn: FBO Dep't-City Atty, 220 Clay St., Cedar Falls, IA 50613 or to [jobs@cedarfalls.com](mailto:jobs@cedarfalls.com). Deadline for applications is July 8. (76-7)

**POLICY DIRECTOR** – *American Civil Liberties Union of Iowa, Des Moines, Iowa* – Seeking an attorney with lobbying and policy experience to serve as policy director. Duties include development and implementation of state legislative agenda, cultivating relationships with key officials and managing lobbyists or professionals assisting with lobbying activities. Candidates must have at least one year of experience in political, legislative or policy work, preferably in Iowa. Submit letter of interest, resume, professional writing sample and three professional references to Jeremy Rosen at [jobs@ACLU-IA.org](mailto:jobs@ACLU-IA.org) with the Policy Director as subject. (76-7)

**PUBLIC LAW ATTORNEY (BOND COUNSEL/PUBLIC FINANCE)** – *Ahlers & Cooney, P.C., Des Moines, Iowa* – Seeking an Iowa attorney with 3-5 years of experience in public finance, municipal bonds, disclosure matters or experience in general transactional matters, negotiations, contract drafting and contract review. Real estate experience is a plus. Public law experience is also a plus. Must be currently licensed or willing to become licensed in the state of Iowa. To apply, send resume and cover letter to [info@ahlerslaw.com](mailto:info@ahlerslaw.com). (76-7)

**ASSOCIATE ATTORNEY** – *Benzoni Law Office, P.L.C. Des Moines, Iowa* – Seeking an associate attorney with 2-5 years' experience to practice primarily in criminal and family law. This is an established immigrant-centered law practice seeking to expand its services, particularly where family and criminal cases impact immigration cases. Candidates must have an Iowa license or be able to attain licensing in Iowa. Spanish proficiency preferred. Please send resume, cover letter and writing sample to: Benzoni Law Office, P.L.C., 2912 Beaver Avenue, Des Moines, IA 50310 or [Justice@BenzoniLaw.com](mailto:Justice@BenzoniLaw.com). (76-8)

**ASSOCIATE ATTORNEY** – *Fuerste, Carew, Juergens & Sudmeier P.C., Dubuque, Iowa* – Seeking an associate attorney with 2-4 years' experience with emphasis in estate planning, estate administration, tax, real estate and general corporate work. Candidates should also have a talent to develop and maintain a network of clients in the community. Admission to practice in the state of Iowa is required. Send resume to Mark J. Willging, Fuerste, Carew, Juergens & Sudmeier, P.C., 151 West 8th Street, 200 Security Building, Dubuque, IA 52001 or [mwillging@fuerstelaw.com](mailto:mwillging@fuerstelaw.com) (76-8)

**FOR SALE**

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**LEGAL LIBRARY** – Retiring Fort Dodge attorney seeks to sell legal library: Northwestern Reporter Series, 1942-1996 (complete 509 volume set); A Physician's Guide to Return to Work (AMA); AMA Guides to the Evaluation of Disease and Injury Causation; AMA Guides to the Evaluation of Permanent Impairment (2nd Edition, 3rd Edition, 3rd Edition Revised, 4th Edition, 5th Edition); Modern Workers Compensation by Thomson and West (5 volume set); Larson on Workers' Compensation (10 volume set); Branton & Lovett - Discovery Trial Lawyers Series (2 volumes); and West's Legal Forms, 2nd Edition (29 volumes). If interested, please contact Tito Trevino at 515-955-2266 or [trevino@hawkeyemail.net](mailto:trevino@hawkeyemail.net). (76-7)

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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](mailto: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. Just ask. (TF)

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| OCTOBER 2016 |     |     |     |       |     |     |
|--------------|-----|-----|-----|-------|-----|-----|
| Sun          | Mon | Tue | Wed | Thurs | Fri | Sat |
|              |     |     | 1   | 2     | 3   |     |
|              |     |     | -   | -     | -   |     |
|              | 6   | 7   | 8   | 9     | 10  |     |
|              | -   | X   |     | X     |     |     |
|              | 13  | 14  | 15  | 16    | 17  |     |
|              |     | X   | X   | X     |     |     |
|              | 20  | 21  | 22  | 23    | 24  |     |
|              |     |     |     | X     |     |     |
|              | 27  | 28  |     | 30    | 31  |     |
|              | X   | PM  |     |       |     |     |

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# ISBA CLE Calendar

Visit [www.iowabar.org/calendar](http://www.iowabar.org/calendar) for more information on any of our upcoming CLE opportunities.

August 11

**New Patent Filing Option in Europe**  
(Live Webinar)

August 11 - 13

**Solo and Small Firm Conference**  
Ameristar Casino Hotel  
Council Bluffs

September 8 - 9

**Bridge the Gap Seminar**  
West Des Moines Marriott  
West Des Moines

September 13

**Ethics in Intellectual Property Law**  
(Live Webinar)

September 23

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

September 30

**Fundamentals of Federal Practice**  
U.S. District Courthouses

October 14

**Labor and Employment Seminar**  
Hilton Garden Inn  
Johnston

October 27

**Family Law Seminar**  
Hilton Garden Inn  
Johnston

## Solo & Small Firm Conference

August 11 - 13  
Ameristar Casino Hotel  
Council Bluffs

### SCHEDULE

**THURSDAY, AUGUST 11**

4:00 - 6:00 - Welcoming Reception and Registration

**FRIDAY, AUGUST 12**

7:00 - 8:00 - Registration and Breakfast

8:00 - 9:00 - Tweets, Bleats, Blogs and Chats: Ethics in the Cloud - Dustin Cole, Attorneys Master Class

9:00 - 10:00 - Breakouts

Practice Management Software: A New Outlook - Scott Baird, Tabs3

Employment Law in 60 Minutes: The Basics Every Employer and Attorney Should Know - Catherine Cano, Jackson Lewis

Not Your Father's Yellow Pages Ad Anymore...Social Media and Marketing - Matthew Gardner, Gardner Law Firm

10:00 - 10:15 - Break

10:15 - 11:15 - Breakouts

Cyber Liability and Protecting Confidential Client Information - Todd Scott, Minnesota Lawyers Mutual

Unbundling the Sticks - Real Estate Transactions - Deborah Petersen, Petersen Law

The When, How, Why - and Why Not - of Advertising and Public Relations - Dustin Cole, Attorneys Master Class

11:15 - 11:30 - Lunch Pick-Up (provided with registration)

11:30 - 12:30 - Small Firms, Big Markets - Mary Vandennack, Vandennack Williams LLC

12:30 - 12:45 - Break

12:45 - 2:45 - The Model Rules and a Practice That Works Like a Business - Robert Clements, Benchmark Business Group

2:45 - 3:00 - Break

Schedule continued on the following page

3:00 – 4:00 – Breakouts

Succession Planning/Buying or Selling a Practice – Joseph Feller, Koopman Kennedy & Feller

Estate Planning: Breaking Down the Basics – Laura Essay, Dvorak & Donovan Law Group

4:00 – 5:00 – “Beer and Bull” Small Group Sessions: Discussions on Productivity/Time Management Tips, Marketing and Staffing (beverages and snacks provided)

**SATURDAY, AUGUST 13**

7:30 – 8:30 – Breakfast

8:30 – 9:30 – Breakouts

Alternative Fees: Making Them Profitable – Mary Vandenack, Vandenack Williams

Family Law 101: Best Practices and Pitfalls – Brandie Fowler, Higgins Law

Introduction to NebDocs – Joel Carney, Larson, Kuper, Wenninghoff & Carney

Introduction to IowaDocs – Brian Hegg, The Iowa State Bar Association

9:30 – 9:45 – Break

9:45 – 10:45 – Breakouts

Staffing/HR-Recruiting for Small Markets – Katie Samples Dean, Sonntag Goodwin & Leef, P.C. and Phil Garland, Philip L. Garland Law Firm

Representing Business Clients – David S. Houghton, Houghton, Bradford & Whitted

Introduction to the Nebraska Child Support Calculator – Adam Astley, Slowiaczek, Albers & Astley

10:45 – 11:45 – Breakouts

Mobility in Representation: Taking Technology from the Desk to the Bench – Rick Sheehy, P&L Technology, Lincoln

Juvenile Law Basics: Interviewing and Counseling the Youth Client – Christine Henningsen, University of Nebraska Center on Children & Families

Introduction to Casemaker – Jim Corbett, Casemaker

Introduction to Fastcase – Christina Steinbrecker Jack, Fastcase Representative

**REGISTRATION FORM: SOLO & SMALL FIRM CONFERENCE**

Name: \_\_\_\_\_ ISBA Member #: \_\_\_\_\_ or NE Bar #: \_\_\_\_\_

Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Phone #: \_\_\_\_\_

E-mail: \_\_\_\_\_

**REGISTRATION FEES**

Prices below reflect the early-bird registration fees. Registering after August 8 will result in a \$50 late fee being added on to your registration fee amount.

Nebraska State Bar or Iowa State Bar Dues-Paying Members - \$350

Non-Nebraska State Bar or Iowa State Bar Dues-Paying Members - \$550

**SOCIAL ACTIVITIES**

Attending Thursday’s Welcoming Reception  Yes  No

Attending Friday’s Breakfast  Yes  No

Attending Friday’s Lunch  Yes  No

Attending Friday’s “Beer and Bull” Sessions  Yes  No

Attending Saturday’s Breakfast  Yes  No

**MATERIALS**

Attendees will receive an electronic copy of the materials. A hard copy of the materials can be purchased for \$30.

I would like a hard copy of the materials (include \$30 with registration fee)

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Return registration form to: ISBA CLE, 625 E. Court Avenue, Des Moines, Iowa 50309 or fax (515) 243-2511

For questions: phone (515) 697-7874 or e-mail cle@iowabar.org

Cancellation policy: Registration refunds will be issued only if written notification is received by the bar office by August 4, 2016. Written notification can be mailed, faxed, or e-mailed to the bar office.

# Attorney coach for Iowa's 2016 national champion mock trial team tells about the coach's role

*Matt Dake learned during his first year of law practice that ownership of a case must belong to those trying the case; nonetheless attorneys play an important role in helping students prepare*

Common perception might suggest that the national high school mock trial championship won by the Marion Home School Association's Team Slayhawks in mid-May in Boise, Idaho, was the result of brilliant coaching.

Not totally true, says Matt Dake, an attorney with Wertz, Dake & Anderson, PC in Cedar Rapids, Iowa, and the team's attorney coach.

Dake and teacher coach, Dana Miller, along with three former mock trial students who assisted with the team, were an integral part of the team's success. However, "this is the students' case, not mine," says Dake. "As a result, they really own their own case and the credit for the victories, too."

That's not to play down the role of the attorney coach. Dake, who has coached some of the members of the winning team for all four of their high school years and a few others for three years, introduces the students to the rules of evidence and the legal issues present in each case. However, his approach "is to

act as an instructor regarding the legal issues, and a facilitator with regard to everything else."

He arrived at that approach in part from an experience in his first year of practice when he was trying a case with the firm's senior partner. The partner told him that he "had good instincts and needed to trust them," and not try the case the way he guessed the partner would try it.

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***"Practicing law can make us all hardened and cynical at times. Doing it for 'fun' can remind you of what attracted you to the legal profession in the first place," he says.***

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"Best advice I ever received," the 1997 Creighton University School of Law graduate, says. "I try to pass that along."

Dake became involved with the Marion Home School teams five years

ago when a friend from church invited him to help coach. He'd had some prior experience with mock trial when fellow Cedar Rapids attorney, Tim Semelroth, asked him to assist with the Xavier High School team. He worked with the Xavier team for a few years.

That experience showed him that he really enjoyed working with young adults, and seeing what mock trial can do for young people. Mock trial reveals and builds strengths and abilities in each student in critical reasoning, persuasion and public speaking, he says. "Being part of that process is very rewarding."

Assisting with a mock trial team also benefits him as a lawyer, he believes. "Practicing law can make us all hardened and cynical at times. Doing it for 'fun' can remind you of what attracted you to the legal profession in the first place," he says.



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hharmon@grefesidney.com



Lauren Woltz (left) in her role as attorney walks witness Ben Carlile through an explanation of the defendant's ability to make it from one location to another in the murder trial that was the case for the 2016 high school mock trial program. Woltz and Carlile were members of the Marion Home School Association's Team Slayhawks who won the state championship, then went on to win the national mock trial championship in May.

## Get CLE credit for preparation time

By Tre Critelli, Administrator of the CLE Commission



One of the new rules which went into effect Jan. 1 of this year was Iowa Court Rule 42.2(3) which gives credit for time involved in the preparation for a CLE presentation. Under the rule

you are entitled to preparation credit equal to the length of the presentation you make, up to an annual maximum of three hours. So, if you give a 60-minute presentation, you are entitled to up to 60 minutes of preparation time for drafting the written materials. If the preparation of the written materials took less than 60 minutes, then you would reduce the amount of preparation credit accordingly. Written materials include PowerPoint or other similar presentation slides.

One caveat is that only attorneys who prepare

the written materials AND give the presentation are eligible for the CLE preparation credit. If you are a panelist who did not prepare the written materials, you are not entitled to preparation credit. However, you may still claim attendance credit for the presentation itself. If you only prepared the written materials but were not part of the actual presentation, you are not entitled to any CLE credit. Nor are you allowed to claim preparation credit if you have received financial compensation for your role in preparing or presenting the CLE. Other exclusions can be found in rule 42.2(3).

To certify your preparation credit you will need to add CLE Activity ID #214549 to your CLE transcript. You can then indicate how many hours of preparation credit you are claiming. Preparation credit for multiple CLE presentations made during 2016 can be claimed by increasing the number of hours of credit claimed under this Activity ID, to reflect the total preparation credit for all the events, subject to the limit of three hours per year.

A Marion Home School team has gone to the national tournament three times.. During those years, Dake estimates that he spends six-to-eight hours a week from late December to the beginning of May working with the team.

The commitment doesn't have to be that significant for any lawyer who considers helping coach a team. "The students will gladly take even those few spare hours you have to offer," he says.

And, the payoff? "I know it is clichéd, but I can honestly say I have benefitted more from this program than the students. They make me not only a better lawyer, but a better person overall."

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