



THE IOWA LAWYER

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Heidi S. Nebel Continues Her Mission to Protect our Plants

Secretary of Agriculture, Sonny Perdue, has appointed Heidi S. Nebel, Intellectual Property (IP) Attorney, Managing Member, and Chair of the Biotechnology & Chemical Practice Group at McKee, Voorhees & Sease, PLC, to serve on the Plant Variety Protection (PVP) Board.

According to the United States Department of Agriculture (USDA), the mission of the PVP Board is “to provide direction to the PVP Office which ultimately influences the development of new plant varieties by providing an incentive (through intellectual property protection) to the breeders of these varieties”.



“I am honored to be able to represent interests of the many plant breeders across the country, many of whom are our clients, to help shape policy and IP strategy at a national level.”

Heidi has been an IP attorney for over 25 years, obtaining patents and designing IP strategy in the areas of agricultural biotechnology, plants, and animals. Heidi also enjoys being an advocate of biotechnology, speaking around the country on important issues in the field. Her practice includes representation of more than 30 different universities and research foundations across the country, as well as many agribusiness companies.

To learn more about Heidi’s involvement with the National PVP Board, as well as her plant and animal patent expertise, please call our office at (515) 288-3667.



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The official publication of The Iowa State Bar Association.

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THE IOWA LAWYER

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

POSTMASTER

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

PRINTER

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

ADVERTISING

CLASSIFIED. Qualifying ISBA members receive two free non-job listings annually as a member benefit. Members should contact the ISBA Communications Department for ad placement. Non-member classified ad rate is \$110 at 125 words per listing. See classified section for further details.

DISPLAY. Display advertising in The Iowa Lawyer Magazine is handled by Larson Enterprises, 909 50th Street, West Des Moines, Iowa, 50265. For display advertising and non-member classified advertisement rates, contact Alex Larson at 515-238-4406 or alex@larsonent.com.

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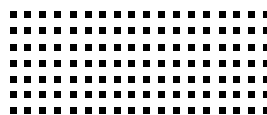
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STATEMENTS OR OPINIONS

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Incoming ISBA President Tom Levis is pictured in front of his office at Brick Gentry, PC in West Des Moines, where he practices with an emphasis in general civil litigation, including personal injury law, as well as construction and real estate litigation, family law, and general business and business associations. Levis lays out his agenda for his year as the 132nd president of the ISBA beginning on page 6.

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Bar Foundation issues 2018 - 2019 grants

The Iowa State Bar Foundation issued the following grants after their March 2018 board meeting:



- ISBA Center for Law & Civic Education - \$40,000
- Iowa Law Firm Incubator - \$2,000
- ISBA YLD Know Your Constitution - \$20,000
- Children & Families of Iowa (CFI) - \$1,500
- ArtForce Iowa - \$1,500
- American Legion Hawkeye Boys State - \$500



The Iowa State Bar Foundation met to discuss grant proposals for 2018-2019. Pictured in foreground: Mark Schuling. In background: Harry Shipley, Bill Scherle, Elisabeth Reynoldson.

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Need a new website photo or professional portrait?

ISBA Annual Meeting attendees who are looking to update their professional photos can take advantage of an opportunity to get a free, professional, digital photo taken right on-site.

Meeting attendees can visit the photo location near room 321 during most session breaks throughout the conference or visit the ISBA registration desk in the lobby of the Community Choice Credit Union Convention Center for assistance. Annual Meeting is being held June 18-19, with schedule information beginning on page 22.

SAYONARA

STEVE ECKLEY, PRESIDENT

This is my last opportunity to communicate with all of you as the 131st President of The Iowa State Bar Association. It is and should be an opportunity to say thanks, to review the year gone by and to look forward.

For their personal support, I am most grateful to the incomparable ISBA staff and to the Administrative Committee, past presidents and individuals who have generously given advice along the way. For their support of everything the ISBA does, I am grateful to the Board of Governors and the section and committee chairs and members. And for helping make Iowa the best place to practice law, I thank each of you who renewed your membership, participated in your local bar association, served on a section or committee, spoke at a CLE, took time to mentor a young lawyer, gave of yourself to a pro bono cause, contacted your legislator, volunteered for mock trial, helped another lawyer, expressed your views on an issue of importance to the bar or contributed to the fine reputation of Iowa lawyers by conducting yourself with integrity and professionalism.

We started this year knowing we would face several challenges. The first was a projected decline in membership due to demographic factors beyond our control—not enough law school graduates to replace retiring lawyers. We responded by adding even more member benefits and taking every opportunity to educate attorneys about the value of belonging to the ISBA. As a result, we held a projected net loss of 200 members to well under half that number.

A second challenge was to address the disconnect between underemployed

lawyers and the legal needs of many Iowans who are hard-pressed to afford an attorney. We responded by adding Free Legal Answers to the ISBA website and linking it to our Find-a-Lawyer program, and we have taken steps to make it more attractive for attorneys to offer limited-scope services.

The political battle for an adequately-funded and independent judicial system has become a recurring one, but this year it was particularly daunting. In the end, a proposed budget cut of \$10 million became an increase of \$3 million. Also secured was a significant increase in indigent defense funding. Still not enough, but victories nonetheless. Proposals to change the way judges are selected, to reduce their compensation, to allow guns in courtrooms and to require a supermajority to overturn unconstitutional laws were defeated.

Space limitations prevent going into detail, but overall our legislative results were surprisingly positive this year. Much credit goes to Iowa lawyers who made their views known to their elected representatives.

I regret not making real progress in addressing a fourth challenge—the need to attract more lawyers to rural areas. This problem is significantly exacerbated by high student loan debt for recent law school graduates.

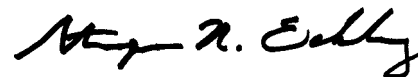
During the past year, two issues to which I had not previously given sufficient thought became important to me. The first is the need to prepare Iowa lawyers for technological advances that are already revolutionizing the legal market. The Young Lawyers Division of the ISBA has volunteered to take on this challenge. The second is the impact of unintentional

gender bias in our profession. I am heartened that this issue is finally getting the attention it should have received long ago.

My greatest regret this year is that we still do not have someone in line to serve as the next woman president of the ISBA. I am confident it will happen soon—outstanding candidates are out there – but the time must be right not just for us but also for them.

Looking ahead, I am very pleased to know that leadership of the ISBA will be in good hands for years to come. Tom Levis will soon be the 132nd President of the ISBA. His enthusiasm and energy are contagious. Bill Boyd and Jerry Schnurr will follow Tom.

In closing, my deepest thanks go to you for letting me serve as your president. Truth be told, I've had a blast getting to know lawyers across Iowa and doing my best to serve their interests. I'd jump at the chance to do it all over again.



Stephen R. Eckley

is a senior civil trial attorney at Belin McCormick in Des Moines.



Eckley speaking with Gov. Kim Reynolds during the ISBA's annual lobbying day in January 2018.



Eckley introducing Drake Law School Dean Jerry Anderson during the Board of Governors' meeting in September 2017.



Eckley speaking at the Board of Governors' dinner in September 2017.

Incoming ISBA PRESIDENT SETS AMBITIONOUS AGENDA

By Melissa Higgins

Tom Levis may very well be the friendliest attorney in Iowa. Those who know him can attest: you will rarely see Levis without a smile on his face and a pep in his step. He admits it can be hard to stay good-natured in a profession that can be naturally combative, but he finds most Iowa attorneys appreciate having a collegial professional relationship.

Levis plans to bring his positive outlook to his new role as ISBA's 132nd President. A man of boundless energy (he's completed several marathons, as well as an Ironman Triathlon), Levis is quick to rattle off an ambitious agenda for his year as president: assisting in the restructuring of the ISBA Board of Governors, focusing on bolstering rural practice opportunities, a commitment to access to justice issues, support for YLD efforts to combat future threats to the legal profession, developing strategies to combat ballooning student law school debt, promoting diversity in the bar, tweaking law school curriculums, lobbying for support and funding for the judiciary, spreading the word loudly and widely about the benefits of ISBA membership, and singing the praises to the public about Iowa's attorneys.

Levis knew from a young age he wanted to join this profession, after witnessing how two well-respected attorneys in his hometown of Chariton were perceived. Federal Judge Bill Stuart and District Court Judge Abe Hass were close friends of Levis' parents, and he spent a lot of time with them growing up.

"I saw how they were leaders in the



Levis cracks a big smile during the March 2018 Board of Governors meeting at the ISBA headquarters in Des Moines. Pictured to the left is outgoing president Steve Eckley, and to the right is incoming President-Elect Bill Boyd.

community and the voice of wisdom and reason. I thought, 'What a good gig they have!'" he said. They also encouraged him to go to law school.

Levis went to Drake University for undergrad (where he was friends with Iowa Supreme Court Chief Justice Mark Cady) and attended Drake University Law School (where he was friends and graduated with former Chief Justice Marsha Ternus). He claims those friendships really say something about Drake and the connections you can make, especially if you stay and practice in Iowa.

During law school, Levis clerked for

Larry Scalise, who at the time was the preeminent criminal defense lawyer in Iowa. Through that experience, he became involved with several high-profile murder cases, including one conviction that was appealed and resulted in the Iowa Supreme Court decision allowing depositions in criminal cases, which has since become a widely standard practice.

After graduation in 1977, he considered a move to San Francisco, but ultimately decided to stay in his home state, the only place he has ever lived. He spent about 15 years trying civil and criminal cases all over Iowa, until his father encouraged him to generalize.

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Levis currently practices with Brick Gentry, PC in West Des Moines, with an emphasis in general civil litigation, including personal injury law, as well as construction and real estate litigation, family law, and general business and business associations. He also does mediations, which he enjoys and says he could see himself eventually doing almost exclusively. Levis began getting involved in the Polk County Bar Association in the mid-2000s, serving as its president in 2010. From there, he began to get more involved with The Iowa State Bar Association, before deciding to make a run at being an officer.

"I like being around lawyers. Having grown up in a smaller community and practicing law in a bigger community, I'm able to see both sides of that and thought I could bring some perspective to the statewide association," he said.

And while he has enjoyed his time serving on the Board of Governors and as an officer, he sees room for change in the structure of the leadership and how meetings are organized. Specifically, he wants the quarterly ISBA Board of Governors meetings to involve a lot more interaction from the governors.

"These are bright, talented people from all around the state. I want them to be more engaged," he said. That potential

restructuring will include an intense look at why more women and minorities are not taking the opportunity to get involved at a leadership level.

"Why is it that it's primarily old white guys like me in these positions?" he asked. "Sure, I raised my hand. But there has to be some reason that others who don't look like me aren't getting as involved."

It's that desire to hear from all perspectives that he thinks will serve the association well as it tackles tough issues, like the constant underfunding of the Iowa Judicial Branch.

"If we don't get good quality judges in Iowa courthouses, business suffers. And if the business community doesn't have confidence in Iowa, the economy suffers. And that's what happens when the judicial system isn't appropriately funded and what we need lawmakers to understand," he said. In his role as president, lobbying on behalf of the judicial branch will be one of Levis' primary roles during the 2019 session.

Levis also has a special personal reason for wanting to see the judicial branch and the legal profession flourish into the future. He has a son who is just beginning his career as an attorney. Tucker Levis graduated from Drake Law School in 2017 and works for Parker & Geadelmann, PLLC as counsel for the Iowa Farm Bureau. Levis said he




Levis hands out the ISBA American Citizenship Award to two students at East High School in Des Moines in May 2018. Photo courtesy: Kelly Sargent



Levis (right) is pictured at a reception honoring newly admitted attorneys in September 2017 with his son Tucker (a new attorney), and wife Wendy (center).

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never steered Tucker down this career path, but he encouraged his interest.

“I told him it’s a great profession and that I liked it very much. But he should make up his own mind,” Levis said. His younger son, Hunter, went the STEM route, graduating with a degree in biomedical engineering from the University of Utah. During college, he was heavily involved in a cutting-edge DNA extraction program called CRISPR, a technology that was recently featured on 60 Minutes.

Levis has a keen interest in technology himself, and specifically how it may shape the legal profession. It’s why he is warning everyone he can: “If you don’t keep up, you get left out.

“I’ve been practicing law for 40 years. Our technology back then was a typewriter, a Dictaphone and a miracle product called white-out. And that was it,” he said. “I couldn’t have imagined the changes that would come and how technology would take over our lives.” He wants the ISBA to be ahead of the curve when it comes to shaping the way technological advances impact the profession.

Tom, his two sons, and his wife Wendy, are all very active and love the outdoors. They also have a passion for travel, culminating in the trip of a lifetime: a three-week hiking excursion in Nepal. The Levis family also owns a remote mountain home in Colorado that is only accessible by snowshoe in the winter. They go as often as they can, and the entire family has been trained

in avalanche survival skills.

Levis travels for athletic endeavors as well, competing in the Boston marathon multiple times and an Ironman Triathlon in Utah. In his spare time, he is a member of the Polk County Conservation Board, the 5C Judicial Nominating Commission, an investment club, and he loves to golf.

He knows some of these hobbies will take the backburner over the next year, as well as his caseload, as he focuses on representing the ISBA. He wants to travel all over the state to get to know the membership, which will require a significant amount of time.

“My agenda is probably too big,” Levis said, with his signature laugh. But, with that good-natured humor and a perpetual energy fueling his efforts, he thinks he’ll be able to tackle a lot of his goals.

“I hope members see me as a leader, somebody that will take some risks,” he said, of his upcoming tenure. “Somebody who will do some things for the bar association that haven’t been done.”



The Levis family is pictured during a family trip hiking in Nepal.



Levis is seen completing the biking portion of an Ironman Triathlon in Utah.

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Federal Judge Bill Stuart gave this tiny golfer statue to Levis when he retired from the bench. Judge Stuart told Levis that whenever he was having a bad day at the courthouse, he would look over at it and think about how fun it would be to be playing golf. Levis has kept it in his office ever since as a reminder that there are things outside of law that can make you happy. It currently sits on a shelf between photos of his sons.

Unbundling LIMITED SCOPE REPRESENTATION

By Tim Eckley

How many attorneys consider their law practices to be “bundled”?

Limited scope or unbundled representation is when an attorney and client agree that the attorney's representation of the client will be limited to a portion of the legal matter or to a discrete task within the matter. For example, the attorney might assist with child support calculations, draft a document or correspondence, provide legal research, attend a hearing with the client or conduct a mediation or settlement conference, while the client (or another attorney) handles other aspects of the case. Countless matters or tasks can be unbundled from full representation in legal actions.

In 2005, Iowa adopted the ABA Model Rules of Professional Conduct, which included rule 32:1.2(c) providing for limited scope representation if reasonable under the circumstances and upon informed consent of the client.

According to the Self-Represented Litigation Network and the ABA, Iowa is one of at least 41 states to have adopted the model rule or a substantially similar rule.

In 2007, the Iowa Supreme Court further signaled its support for Iowa attorneys to engage in limited scope representation. The court adopted several provisions in the Iowa Rules of Civil Procedure, as well as enumerating aspects of informed consent in Iowa Rule of Professional Conduct 32:1.2(c), following recommendations from the report of the Iowa Judges Association and The Iowa State Bar Association Joint Task Force on Pro Se Litigation. In its 2005 report, the task force stated:

Limited representation by the private bar offers a way to expand legal services to people of limited financial means. This will leave these litigants better prepared and should relieve judges and other court staff from the pressures of giving advice or advocacy. It can also offer lawyers an opportunity to adapt a law practice that offers “all or nothing” services into one in which they may enter agreements with litigants to limit the scope of their representation to discrete legal tasks, as they often do with their transactional clients.

The task force accurately presaged

the value and effect of limited scope services. Today, across the nation, unbundling of legal services is widely accepted as an effective tool in addressing the “justice gap” and as a positive practice element for attorneys offering such services. One concern, however, is that the exploding number of self-represented litigants in the legal system is outpacing the growth of available unbundled services from the legal community. In Iowa, 13 years after adoption of the first rule encouraging limited scope representation, limited scope practice remains an underutilized resource.

Many attorneys unfamiliar with limited scope practice worry about extricating themselves from continued representation in a case for which they typically would not have undertaken full representation. Some attorneys have malpractice concerns. Others may consider that unbundling is somehow an inferior form of practice.

When undertaken carefully and deliberately in appropriate cases, however, limited scope representation offers many positives for the practicing attorney. There are attorneys in Iowa engaging in limited scope representation, and at least one central Iowa firm bases its practice primarily on unbundling. Many attorneys who engage in limited scope representation enthusiastically support the practice and are more than willing to share their experiences and offer assistance.

Tara van Brederode, administrator of the Attorney Disciplinary Board and assistant director of the Iowa Supreme Court Office of Professional Regulation, identifies several benefits of unbundling: “Limited scope representation is an excellent way to match an attorney's services to the client's expectations, lessening the potential on the client's side for misunderstanding or disappointed expectations resulting from the attorney's representation. Statistics and anecdotal reports indicate that limited scope representation results in happier clients, fewer ethics complaints and fewer malpractice claims.”

Limited scope representation does not mean lesser quality representation: the

requirements and ethical obligations of competence remain the same. Unbundled services are not free. Attorneys offering limited scope representation in the marketplace can charge their full rate, expand their client base, and successfully compete with online document preparation or legal service providers.

In 2007, the Iowa Supreme Court approved Iowa Rules of Civil Procedure 1.404(3) and (4), providing for limited appearances and terminations of limited appearances without court intervention, thus obviating any concern about becoming mired in a case the attorney would not otherwise take full on. The court also approved rule 1.423, addressing limited representation in drafting pleadings and papers. The pro se family law forms in chapter 17 of the Iowa Court Rules accommodate limited scope services by asking litigants to indicate whether an attorney assisted in preparing the form.

State access to justice commissions heartily embrace limited scope representation practice as a practical and sensible approach to expanding litigants' access to justice. The interests of justice advance when litigants have at least some representation, and the courts and clerks offices appreciate the efficacies gained from partial representation.

Iowa Supreme Court Justice Brent Appel, chair of the Iowa Access to Justice Commis-

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sion, notes the effectiveness that limited scope practice can have in addressing access to justice issues: “Limited scope representation is an exciting tool that more attorneys should consider utilizing to fill in the gaps in legal services that many litigants may confront when they cannot afford full representation from an attorney.”

It is important too, that members of the public understand the option and benefits of seeking limited scope representation. Unfortunately, this also is a stubborn challenge. Research indicates that the general public remains largely unaware of the option to limit professional legal representation in their legal matters.

An American Bar Association 2013 Resolution encouraged attorneys to “consider limiting the scope of their representation, including the unbundling of legal services, as a means of increasing access to legal services.” The resolution further urged efforts “to increase public awareness of the

availability of limited scope representation as an option to help meet the legal needs of the public.”

Most self-represented litigants need more than procedural assistance in determining which form to use or how to file a document. They need to know options, exercise judgment, use strategy, negotiate personal and financial matters, appear in court, and often they must do these things at a stressful time in their lives. Unbundling services can provide clients with autonomy to make their own choices, empowering them with a sense of control and certainty, especially for those struggling to make ends meet. It can provide an avenue to professional legal representation for people who otherwise may not have sought legal assistance. In many cases, it may be a person’s first experience working with an attorney, perhaps opening a door to full representation. It is responsive to the new realities of self-represented litigation.

There is a vast amount of information and resources on limited scope representation available from a variety of sources. The American Bar Association and the Self-Represented Litigation Network are two such sources. The Institute for the Advancement of the American Legal System (known as IAALS) lists a trove of unbundling resources on its website. There is no need to reinvent the wheel to practice limited scope representation.



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

Kudos

Brett F. Roberts, a shareholder at Fredrikson & Byron in Des Moines, for being appointed to the Judicial Nominating Commission for District 5C. The commission is tasked with interviewing candidates and submitting nominees to the governor for district-court judgeships in Polk County, which includes the Des Moines metro area. Roberts counsels public-company, private-equity and other clients in public and private mergers and acquisitions, and he also helps clients comply with securities laws and exchange rules, manage director and shareholder relationships, effect legal reorganizations and negotiate commercial contracts.

Margaret Van Houten, an attorney at the Davis Brown Law Firm, for being asked to speak at the 2019 Heckerling Institute in January. Heckerling is a CLE sponsored by the University of Miami and 2019 will be its 53rd annual seminar. It is the most widely attended estate planning CLE in the country, regularly drawing more than 3,000 estate planning attorneys, accountants and financial advisors. Van Houten is only the second Iowa attorney to speak at Heckerling in the past 20 years.


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2018 Bench-Bar IN THIS TOGETHER

This year's Bench-Bar Conference was held May 9-11 in Waterloo, dedicated to the problems that the community of lawyers and judges in Iowa face with increased fiscal burdens placed on the judicial branch.



Iowa Supreme Court Justice Bruce Zager received a standing ovation when he was recognized after announcing his retirement.



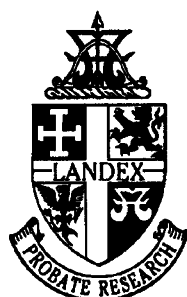
Casual dress is mandated for Bench-Bar conferences, and Iowa Supreme Court justices are no exception. Chief Justice Mark Cady gets his jacket removed and his tie clipped by Bench-Bar Co-Chair Matt Novak, during opening remarks.



One of the many fun social events happening as part of Bench-Bar was a bike ride from Waterloo to Cedar Falls along the Cedar Valley Lakes trails.



Many attendees spent the afternoon golfing at the Irv Warren Memorial Golf Course in Waterloo. One foursome team is pictured: Judge James Bauch; Judge David Staudt; Judge Stuart Werling; ISBA President Steve Eckley.



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The featured speaker during the Iowa Supreme Court reception and dinner was Arne Sorenson, the president and CEO of Marriott International. On the left is Heather Prendergast, an attorney with Roberts Stevens & Prendergast PLLC in Waterloo, who conducted the “fireside chat” with Sorenson.



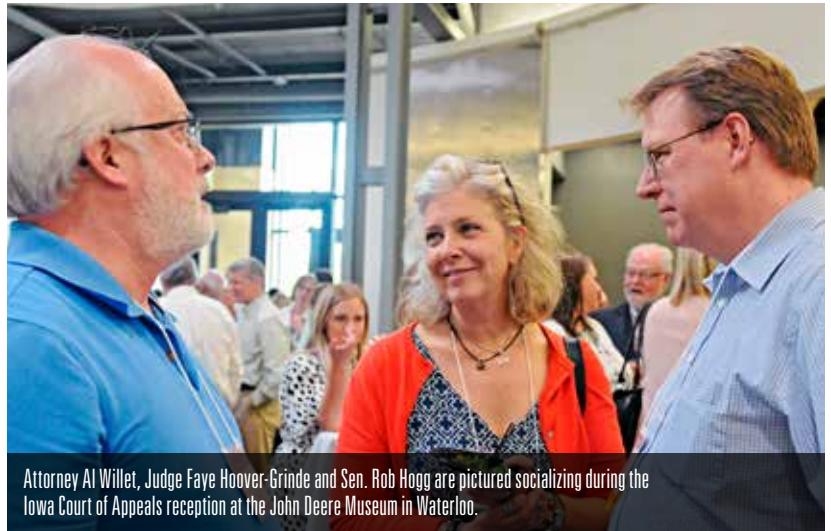
Justice Thomas Waterman, Bench-Bar Co-Chair, greets attendees to begin the 2018 conference.



Iowa Court of Appeals Judge Mary Tabor, and Iowa Supreme Court Justice Edward Mansfield presented on professional ethics.



Court of Appeals Judge Rick Doyle shows off his humorous biking attire.



Attorney Al Willet, Judge Faye Hoover-Grinde and Sen. Rob Hogg are pictured socializing during the Iowa Court of Appeals reception at the John Deere Museum in Waterloo.



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One of the many social events Bench-Bar participants could take part in was a painting and wine tasting class. Participants painted pictures of their pets.

2018

LEGISLATIVE SESSION

Update

By James Carney,
ISBA Legislative Counsel
Douglas Struyk,
Assistant ISBA Legislative Counsel
Jenny Dorman,
Assistant ISBA Legislative Counsel

The Iowa General Assembly adjourned on Saturday, May 5, 2018. The Governor had 30 days from adjournment to act on all legislation received within three days of adjournment.

The 2017 session was the first session since 1998 with Republicans controlling the House, Senate and Governor's office. Republican control certainly impacted the legislative agenda. Also impacting the legislative agenda was Iowa's struggling farm economy and its impact on state tax receipts.

BUDGET AND FUNDING

The December 2017 Revenue Estimating Conference's (REC) estimate for FY 2019 predicted four percent growth. This would total \$7.527 billion in available funds. As a frame of reference, enacted appropriations for FY 2018 totaled \$7.269 billion. If Iowa's expenditure limitation was ignored and all programs were funded at the FY 2018 level, \$258 million in new revenue was available.

Complying with Iowa law, the REC met again in March. They estimated an additional \$28.4 million in revenue for FY 2018 and an additional \$188.3 million in FY 2019. These changes in revenue were a result of tax cuts at the federal level. Iowa law requires the legislature to base their budget

on the December REC unless the March REC is lower. The legislature was bound by the \$7.527 million in available funds from the December REC.

This session, the legislature appropriated an additional \$40 million to K-12 education, \$60.5 million to Health and Human Services, and repaid \$113.1 million to the Cash Reserve Fund. These three items alone total \$213.6 million and consumed all but \$44.4 million of the maximum available revenue if the 99 percent spending limitation is notwithstanding. Competition for the remaining available funds was very high.

JUDICIAL BRANCH FUNDING

The Judicial Branch requested a 7.9 percent increase in funding which would take its appropriation to \$189.5 million. The net Judicial Branch appropriation for FY 2018 was \$175.7 million. This session the legislature appropriated \$177.6 million. This is an increase of \$1.9 million or 1.1 percent growth in funding year on year. However, this is a \$3.4 million increase when the deappropriation passed by the legislature in March of 2018 affecting FY 2018 is accounted for. The Judicial Branch received \$3 million in technology funding that currently is funded out of the court's general fund appropriation.

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OTHER ISBA FUNDING PRIORITIES

- State Public Defender - \$26,505,299 (\$323,056 increase 1.2 percent)
- Indigent Defense Contracts - \$35,144,448 (\$1,700,000 increase 5.1 percent)
- Poverty Grants - \$2,304,601 (same as FY 2018)
- Polk County Justice Center - \$1,464,705 (final investment)

ISBA AFFIRMATIVE LEGISLATION

The ISBA had a very aggressive 2018 Affirmative Legislative Program. Items contained in the program are advanced by the various ISBA sections and approved by the Board of Governors.

The 2018 Program consisted of 14 affirmative proposals. Three of the 14 bills were holdover bills from last session and did not have activity this session. Nine of the remaining 11 bills have been signed by the Governor. These bills are:

- **SF 2314** – Business Law Technical Changes
 - **SF 2139** – Waiver of Spousal Share
 - **SF 2098** – Conforming Probate Code to EDMS Standards.
 - **SF 2099** – Small Estate Changes
 - **HF 2125** – Distribution by Affidavit/ Very Small Estates
 - **SF 2303** – Deferred Payment of Taxes – Options to Bonding
 - **HF 2318** – Redemption from Tax Sale of Property Owned by Persons with Disabilities
 - **HF 2232** – Requirements for Timely Filing of Releases or Satisfactions of Mortgages
 - **SF 2175** – Real Estate Partitions
- Again this session, ISBA Legislative Counsel and Probate Section members engaged significantly on addressing the calculation of probate court costs with bills moving in both chambers (SF 2234/ HF 2229). This has been a priority bill of the ISBA for several years due to the inequity caused by the disparate application of costs to nonprobate assets throughout the state. Late in the session, ISBA Legal Counsel, Executive Director Dinkla, President Eckley, and Probate Section Chair Gray met with the chief justice, supreme court administrator, and other judicial branch staff to try and find resolution. Unfortunately, we are still working to find a path suitable to all parties including the legislature. Clearly the issue has risen to the highest levels.

SIGNIFICANT LEGISLATION PASSED

HF 2492 Justice Systems Appropriations. Increases the jurisdiction of small claims courts to \$6,500 for all actions commenced on or after July 1, 2018. Signed 6/1/18. Effective 7/1/18.

SF 2135 Mitigation of Damages for Failure to Wear Seat Belt. Increases the amount that damages can be reduced in litigation where the defense claims that failure to wear a seat belt contributed to injuries from five percent to 25 percent. This modifies legislation passed in 1986 establishing the five percent limitation. Signed 3/15/18. Effective 7/1/18.

SF 2169 Dram-Shop Reform. A bill for an act limiting liability of an alcoholic beverage licensee or permittee for certain alcohol-related injuries. Limits the liability for certain alcohol-related accidents for some license holders (dram shop act). Changes the limit from an innocent victim to a third party who is not the intoxicated person. Limits the damages to \$250,000 in non-economic damages but gives juries the right to award more under specified circumstances (death, serious disfigurement, or a substantial/permanent impairment that requires a higher award). This limitation is similar to the medical malpractice limitations passed in 2017. Requires biennial studies by the Insurance Commissioner on dram shop liability issues. Signed 4/10/18. Effective 7/1/18.

SF 2235 Critical Infrastructure Sabotage. Bill proposed by Homeland Security that creates a new criminal violation for criminal acts committed on or against critical infrastructure. Makes the sabotage of critical infrastructure a Class B felony. Defines critical infrastructure to include various utilities, infrastructure for oil, gas, petroleum, chemicals, electricity, water, telecommunications, broadband and other related services. Excludes various farm activities and accidental interruptions from the definition of sabotage. Signed 4/17/18. Effective 7/1/18.

HF 2501 Health and Human Services Appropriations-Wrongful Death/Wrongful Life. Contained within this budget bill was policy legislation that prohibits civil actions or awards for damages based on

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wrongful birth or wrongful life claims. The prohibitions apply to any claim regardless of whether the child is born healthy or with a birth defect or disorder or other adverse medical condition. However, the prohibition does not apply to a civil action for damages for an intentional or grossly negligent act or omission, including any act that constitutes a public offense. This legislation overturns the Iowa Supreme Court decision in *Plowman v. Fort Madison Hospital*. (See *Plowman v Fort Madison Community Hospital*, No. 22 15-0974 (June 2, 2017) from the Iowa Supreme Court.) This law applies to all causes of action that accrue on or after June 1, 2018. Signed and Effective 6/1/18.

LEGISLATION THE ISBA OPPOSED THAT FAILED TO PASS

SF 2282 Supermajority Bill.

Prohibits the Iowa Supreme Court from striking down a statute as unconstitutional without the vote of at least five justices. Currently, only three states have this requirement, and all three implemented this requirement through an amendment to their state constitutions, not by statute. Had it passed, it would have been effective on enactment. This bill passed the Senate 26-24 and messaged to the House on 3/8/18, no further action was taken.

SF 2305 Worker's Comp Fraud.

Would have established a Workers Comp Fraud Unit within the Iowa Insurance Division and required that unit to hire one full-time prosecuting attorney to prosecute workers compensation fraud cases. This unit would also employ

worker's compensation fraud investigators and give the investigators the same authority of law enforcement officers. The bill also deemed the employer to have the exclusive right to choose the type of care the injured employee could have throughout their treatment and healing process. Finally, the bill set out criminal penalties for fraud, on suspension of benefits and other matters. This bill passed the Senate 28-22, assigned a subcommittee in the House on 3/27/18, no further action was taken.

The ISBA legislative team appreciates the countless hours that ISBA members invested in reviewing legislation, providing comments and participating in hearings. The ISBA is very well respected at the Capitol due to the expertise and accessibility of its members. Thank you all for your efforts this session and your great support.

If you have any questions regarding the ISBA Affirmative Legislative Program or any other legislative matter, please contact Jim Carney, Doug Struyk, or Jenny Dorman at 515-282-6803, or by email: carney@carneyappleby.com, struyk@carneyappleby.com, or dorman@carneyappleby.com.

In Memoriam

Jerry Larson, 81, of Harlan died April 25.

Larson was born in Harlan in 1936. He received his J.D. from the University of Iowa College of Law in 1960, then clerked for Judge Van Oosterhout of the U.S. 8th Circuit Court of Appeals. Larson then joined his father in the family law firm of Larson & Larson. He had a general practice and was Shelby County Attorney for two terms before his appointment to the 4th District Court in 1975. In 1978, Jerry was appointed by Governor Robert Ray to the Iowa Supreme Court where he remained until retirement in 2008.

Robert C. Reimer, 90, of Denison died April 27.

Reimer was born in 1927 in Morgan Township. He received his J.D. from the University of Iowa College of Law in 1950, then served in the U.S. Army until 1953. After returning from the service, Bob joined Judge L.W. Powers in the practice of law in Denison. He also served as president of the ISBA from 1979-80, on the Board of Governors from 1975-77 and was the 1991 Award of Merit recipient.

Raymond O. Snook, 77, of Glidden died May 8.

Snook was born in 1940 in Carroll. He served in the U.S. Navy after high school and received his J.D. from Drake University Law School in 1972. He began practicing law in Carroll with Art Neu for two years before starting his practice in Glidden where he practiced for 44 years. Snook served as the city attorney for Glidden, Lanesboro, Lidderdale, and Ralston and was a magistrate judge for Carroll County for 10 years.

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Perfecting YOUR ORAL ARGUMENT

By Christopher Keleher

Attorneys often approach an appellate argument with a mix of trepidation, anticipation and excitement. Whether a novice or veteran, these feelings are natural. The anxiety caused by an oral argument stems from its amorphous nature. Just as no two cases are alike, no two arguments are alike. Beyond the inherent factual and legal distinctions, the makeup of an appellate panel often differs with each case. That makeup impacts the tenor of the argument. Further, there can be a disconnect between bench and bar as to the focus of the argument. The court may inquire about matters that counsel (perhaps correctly) considers peripheral. Such questions must be answered before addressing the issues counsel deems dispositive. As the court largely controls

the direction of oral argument, unpredictability reigns.

Counsel can mitigate this uncertainty with a presentation that is fluid and flexible. A fluid argument absorbs questions and uses the answers to pivot to the next point. While the segue from answer to argument is hard to master, the source of that difficulty can be the very thing attorneys cling to for support—their notes.

GOING PAPERLESS

Large binders are often lugged to the lectern. Other than a decade-long antitrust case, this is cumbersome. Even bringing the appellate briefs is unnecessary. By the time of argument, the case should be distilled to its essentials. A one-page outline is preferable. Better yet, bring nothing. While arguing

without notes is not always feasible, for a typical two- or three-issue appeal, it is attainable.

So why go paperless? The advice to aim for a conversational tone at argument is familiar. Indeed, you want to talk with your listeners, not at them. But how many conversations with friends or colleagues occur while glancing at paperwork, or consulting an outline when they ask a question? Notes impede the process because they interrupt the flow. A conversational tone is difficult when papers are shuffled.

Contrast an argument without notes. Along with a conversational tone, judges will be more attentive because you are engaging them, not the lectern. Your presentation loses its rigidity because you are not tied to a script. Eye contact is maintained the entire time. There is nothing to look down at when a difficult question is posed. Put simply, there is no crutch. While this may sound problematic, for a prepared practitioner, it is not.

IT'S NEVER TOO EARLY TO PREPARE

Going paperless is not as daunting as it sounds. The key, like most things, is preparation. An argument becomes instinctual with substantial and consistent preparation.

When to start? As soon as practical. Oral argument is often not set until months after appellate briefing finishes. For a harried lawyer, that few-month gap can be a lifetime. This passage of time dilutes the momentum and knowledge that come from writing a brief. Waiting until a week before argument to prepare requires relearning the case. A more efficient and effective method is to prepare right after finishing your response brief (if the appellee) or your reply brief (if the appellant). This way the case is fresh. While an appellee will not yet have the appellant's reply brief, the argument should still be developed because it is better to lead with the merits of your position.

Adequate preparation enables you to speak effortlessly without notes. Practice out loud regularly. Record your practice

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runs to gauge how you look and sound. Have colleagues sit in so that eye contact becomes second nature. These sessions allow you to learn the material, to pace yourself and to polish the content of your argument.

CRAFTING YOUR MESSAGE

Even the best preparation is for naught if the substance of your argument is weak. Time limits will prevent you from addressing every issue during oral argument. Thus, after briefing, assess the merits of each point and recognize which has the best chance of success given the standard of review, law and facts. Select the most viable issue and build the argument around it. The core of your message should be about why you prevail, not why your opponent loses. While an opponent's flaws should be highlighted, that focus is secondary.

The key to a convincing message is a forceful introduction. The one aspect of oral argument counsel controls, albeit tentatively, is the beginning. Before the clamor of questions, assert your strongest point. Framing your position in the best light—whether it is fact, law or policy—starts the argument on favorable terms. While the court can quickly shift the debate, it must acknowledge your opening comment.

A strong start is important for another reason. Information presented at the beginning tends to be better retained due to the effect of primacy. Dull introductions such as “this is an appeal of a summary judgment” or “this case involves a breach of contract” are lost opportunities. Instead, pique the court's interest with an attention-grabbing introduction. This is confirmed by Chief Justice John Roberts: “You're only guaranteed usually about a minute or so . . . before a Justice is going to jump in. So I always thought it was very important to work very hard on those first few sentences.”¹

A flexible argument anticipates both positive and negative reactions. If the court is unreceptive and you are mired in hostile questions, try to find common ground and build from there. If the court is not grasping the import of a critical fact or principle,

restate it. Restating is the art of being redundant without being repetitious. To restate, use different types of support: an example, an analogy or a case. What motivates one judge may fall flat with another. Restating increases the likelihood the panel will better understand your position. It also recognizes the divergent needs and motivations of different listeners. Speaking experts emphasize that you communicate not by what you say, but by what listeners hear.² Saying something multiple ways makes it more likely judges will hear your message in a way that individually resonates with them.

If time permits, finish assertively. A conclusion with a memorable impact statement is superior to the staid request for reversal or affirmance.

CONVEYING YOUR MESSAGE

While appearance is not everything, you should still be mindful of how the court perceives you. Aim for an aura that exudes control. Approach the lectern with a purposeful stride. Plant your feet firmly, don't sway, and don't lean on the lectern. Project your voice with confidence. You should come across as wanting to be there. A positive and confident demeanor enhances your credibility.

Engage the court by using body language that shows you care about your client and your message. Avoid bristling at unfriendly questions. Instead, focus on the needs of the court by displaying a welcoming attitude to-

wards questions. Provide full and forthright answers to those questions. Finally, employ silent pauses to give listeners (and yourself) a break.

CONCLUSION

Oral argument is your only chance to face the appellate court. Capitalize on this opportunity with a fluid and flexible presentation. With consistent eye contact and a conversational tone, you will strengthen your appellate argument and increase your chances of success.

1. *Garner, Bryan A. et al., eds., The Scribes Journal of Legal Writing (2010) at 20; available at <http://legaltimes.typepad.com/files/garner-transcripts-1.pdf>.*
2. *Krannich, Caryle Rae, 101 Secrets of Highly Effective Speakers (1998).*



Christopher Keleher is an appellate litigator with the Keleher Appellate Law Group in Chicago, Illinois. He argues appeals in the U.S. Court of Appeals for the Sixth, Seventh, Eighth, and Tenth Circuits, and

clerked for the Hon. William J. Bauer of the U.S. Court of Appeals for the Seventh Circuit. He graduated summa cum laude from DePaul University School of Law.

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Importance of Non Tax Considerations

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Too often, estate planning has been dominated by tax issues. With the recently increased exemption amounts, fewer families will have to write a check to Uncle Sam upon the passing of a loved one. However, there are still challenges we see, not focused on mitigating taxes.

AVOIDING PROBATE. Much has been made of the “need” to avoid probate under the theory that the process is expensive, time-consuming, and public, meaning otherwise private information becomes part of the public record. Those with real estate in multiple states may find it very advantageous to avoid multiple probate proceedings.

To avoid probate, a collection of will substitutes is available including trusts, joint ownership, Transfer on Death registration, and beneficiary designations. Make sure all assets are registered somehow in one of these forms. Also, make sure to coordinate these will substitutes and

map out which assets are intended to go where. It is all too common to have people diligently list their wishes in a trust or will, yet have assets end up elsewhere by virtue of joint ownership or outdated beneficiary designations.

SPECIAL NEEDS TRUSTS. In certain circumstances, special needs trusts are needed to assist beneficiaries who face disabilities. Some of these trusts are designed to assist with personal planning needs, such as helping with investment or spending decisions, and some are created to improve the quality of a person’s life without disqualifying the beneficiary from receiving governmental benefits.

DIMINISHED CAPACITY. Executing a will or trust and most any financial transaction require a person to be legally competent. Varying legal standards of competency exist for different acts (e.g., marriage, executing a contract,

or implementing a will). It is often difficult to define when a person clearly moves from competent to incompetent. Sometimes, as mental capacity diminishes, people become more susceptible to influence. Proactive planning can help ensure a person’s wishes are carried out throughout this struggle.

ASSET PROTECTION. Protecting assets with well designed trusts is especially important. The liability within this vocation is high, and advanced strategic planning is critical to ensure assets are not unjustly taken.

Bottom line, when planning for your clients’ estate, make sure they are surrounded by a team of professionals who can ask good questions, help determine what’s most important, and then assist with implementing a solid plan and keeping it on course.



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Bench-Bar Conference

May 9-11, 2018

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 Stephen Eckley, The Iowa State Bar Association President, Belin McCormick PC
 Brian Farrell, Lecturer, University of Iowa College of Law
 Sen. Robert Hogg, State Legislator
 Quentin Hart, Mayor, Waterloo
 Dan Huitink, Corporate Counsel, Vermeer Corporation
 Hon. Kellyann Lekar, Chief Judge, District 1B
 Justice Edward Mansfield, Iowa Supreme Court
 Matt Novak, Bench-Bar Co-Chair, Pickens Barnes & Abernathy
 Todd Nuccio, State Court Administrator
 Heather Prendergast, Roberts Stevens & Prendergast PLLC
 Barbara Randell, Future Image Group
 Jaki Samuelson, Whitfield & Eddy PLC
 Arne Sorenson, Marriott International Inc., President and Chief Executive Officer
 Doug Struyk, ISBA Assistant Legislative Counsel, Carney & Appleby PLC
 Judge Mary Tabor, Iowa Court of Appeals
 Georgia Van Gundy, Executive Director, Iowa Business Council
 Justice Thomas Waterman, Bench-Bar Co-Chair, Iowa Supreme Court

SHIIP: Helping Your Clients with Medicare Issues (Live Webinar)

May 14, 2018

Sponsored by The Iowa State Bar Association Elder Law Section
 Kris Gross, Senior Health Insurance Information Program, SHIIP

Copyright Law and Recent Updates (Live Webinar)

May 16, 2018

Sponsored by The Iowa State Bar Association Intellectual Property Law Section
 Brandon Clark, McKee, Voorhees & Sease, PLC

Tax Law Update (In-person or Live Webinar)

May 18, 2018

Sponsored by The Iowa State Bar Association Taxation Section
 Scott Hartsook, Attorney at Law, Iowa Legal Aid
 Christine Halbrook, Bradshaw, Fowler, Proctor & Fairgrave, PC
 Janice Kerkove, Bradley & Riley
 Prof. Roger McEowen, Washburn University School of Law
 Paul Morf, Simmons Perrine Moyer Bergman PLC
 Paul Neiffer, CliftonLarsonAllen
 Michel Nelson, Iowa Saving Bank
 Margaret Van Houten, Davis Brown Law Firm

Medicaid to Nursing Home Care: Solving Semi-Complicated Scenarios (Live Webinar)

May 21, 2018

Sponsored by The Iowa State Bar Association Elder Law Section
 Scott Hartsook, Attorney at Law, Iowa Legal Aid's Legal Hotline for Older Iowans

Social Media Discovery Issues in Litigation (Live Webinar)

May 29, 2018

Sponsored by The Iowa State Bar Association Litigation Section
 Katie Graham, Nyemaster Goode PC

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Transitions



Roe

Kathleen Roe has joined Rawlings, Ellwanger, Mohrhauser, Nelson & Roe, L.L.P., in Sioux City as a partner. She is a 1998 graduate of Creighton University School of Law and is licensed in Iowa and South Dakota. Roe's general practice includes civil litigation and workers' compensation. She advises individuals and companies in the areas of employment law, wrongful termination, discrimination, sexual harassment, personal injury, contract disputes, construction disputes, wrongful death, mold litigation, subrogation, products liability, work injuries, workers' compensation, bad faith and insurance.



Feiereisen

Rebecca Feiereisen has joined Trent Law Firm, PLLC, in Cedar Falls as an associate. She received her J.D. from the University of Iowa College of Law. Feiereisen serves on The Iowa State Bar Association's Judicial Administration Committee and is an instructor for the National Business Institute for several topics involving family law.



Morgan

Daniel M. Morgan has joined Crilley Law Offices, PLLC in Hiawatha as an associate having previously clerked for the firm throughout law school. Morgan received his J.D. from the University of Iowa College of Law in 2017. Beyond a general practice of law, Morgan will also serve as a mediator and collaboratively trained lawyer for the firm.



McNeill

David McNeill has joined Faegre Baker Daniels' Des Moines office as counsel. He received his J.D. from Drake University Law School. In his role, McNeill will provide strategic legal counsel to insurance companies and other persons and entities in the financial services sector.



Montague

Shuttleworth & Ingersoll, P.L.C., a multi-specialty law firm in Cedar Rapids, has announced it will open a second location to better serve its growing client base in Coralville, Iowa City and the surrounding area. The new location, expected to open by Aug. 1, will be located in Coralville at 327 2nd Street.

Nick Montague has joined Goosmann Law Firm, PLC at the Omaha, Nebraska, office. He received his J.D. from the Creighton University School of Law. Montague provides personalized estate planning to individuals and families throughout Nebraska, Iowa and Missouri.



Neuerburg

Michael Neuerburg has joined the litigation practice at Simmons Perrine Moyer Bergman in Cedar Rapids. He received his J.D. from the University of North Carolina. Neuerburg has a strong background in civil litigation representing plaintiffs and defendants in state and federal courts, and is also a registered patent attorney.

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INTEGRITY. PRECISION. SECURITY.

Welcome newly admitted Iowa attorneys!

A swearing-in ceremony was held on May 4 for the 37 new attorneys who passed the February Iowa bar exam. ISBA leadership, including YLD President Tom Hillers (pictured bottom left), welcomed them to the practice. The ISBA hosted the new attorneys and their families during a reception at the bar office in Des Moines that afternoon (bottom right).



“A Monumental Journey” - Installation begins on sculpture recognizing National Bar Association

Since the start of spring, construction crews from Neumann Brothers, Inc. have been installing “A Monumental Journey,” a piece of public art in downtown Des Moines that honors the legacy of 12 African American attorneys who founded the National Bar Association in 1925. The NBA was incorporated in Des Moines after its founders were denied membership in the American Bar Association.

The art piece, which is located at Hansen Triangle Park at Grand and 2nd Avenues, was made possible by more than 200 individuals and organizations that donated gifts totaling more than \$1.2 million. The artist, Kerry James Marshall, used the shape of African talking drums as his inspiration, to represent the notion of communication among diverse people in the legal

system which, while not perfect, is striving to be balanced. The sculpture was constructed from Manganese Black brick and will stand approximately 30 feet high.

All are welcome to attend a public dedication for this important piece of art honoring the work of the 12 men and women, and others after them, who fought against segregation and racism in the legal field.

SAVE THE DATE

DEDICATION

A MONUMENTAL JOURNEY

Kerry James Marshall (American, b. 1955)

THURSDAY, JULY 12, 2018
DES MOINES, IOWA

11 am Public Dedication
of A MONUMENTAL JOURNEY

6 pm Lecture by Kerry James Marshall

Plan to join us for the dedication of this world-class public art project which honors the legacy of the African-American lawyers who founded the National Bar Association in Des Moines, Iowa in 1925.

MORE INFORMATION AT
<https://dsmpublicartfoundation.org/installation-begins-on-long-awaited-public-art-sculpture/>

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MONUMENTAL JOURNEY rendering by Substance Architecture



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The Iowa State Bar Association

ANNUAL MEETING

June 18 - 20 | Iowa Events Center | Des Moines

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MONDAY, JUNE 18

AG LAW TRACK

- › Animal Agriculture Law Update - Jake Bylund, Eldon McAfee and Julie Vyskocil
- › **Evaluating the Impact of the Tax Cuts and Jobs Act on Agriculture - Kristine Tidgren**

This session will explore what the Tax Cuts and Jobs Act means for farming businesses, in particular, its impact on C-corporations and pass-through businesses.



RETIREMENT TRACK

- › Malpractice Insurance Tail Policies for Protection After Exiting the Practice - Matt Fitterer
- › Practical Knowledge for Retirement - Roberta Chambers, Jay Eaton and J.C. Salvo
- › Q&A Session
- › **Supreme Court Requirements and What License Status to Choose - Tre Critelli**

In this presentation, Tre Critelli will outline the steps required by court rules to exit a law practice. He will also discuss the advantages and disadvantages of the license-status choices retiring attorneys can make.



TUESDAY, JUNE 19

JUVENILE LAW TRACK

- › Best Practices from Judges - Hon. Stephanie Forker Parry and Hon. Joseph Seidlin
- › Immigration Issues - Rachel Antonuccio and Julia Zalenski
- › Interstate Compact on the Placement of Children (ICPC): Best Practices/Checklist - Tami Hoffman and Wendy Scheetz
- › Representing Incarcerated and Detained Parents in Juvenile Court - Jami Hagemeyer
- › **Juvenile Court Case Law Update - Prof. Bent Pattison**

Brent Pattison will discuss the year in review of appellate cases related to juvenile court cases.



Register at www.iowabar.org/2018Meeting

TUESDAY, JUNE 19 (CONT'D)

PROBATE TRACK

- › Drafting for Estate Planners: How to Make Fiduciaries Happy and Avoid Litigation - Elizabeth Meyer and Jana Weiler
- › Ethical Dilemmas for Estate Planners - Prof. Emily Hughes
- › Legislative Update for Estate Planners - Sue Pence
- › Saving Your Clients' Retirement Savings - Robert Kirkland
- › **Tax Primer for Estate Planners - Frank Comito, J. Michael Deege and Michael Gilmer**

Tax Primer for Estate Planners will cover the new Tax Cuts and Jobs Act and the estate planning implications for income tax, fiduciary income tax, estate tax, gift tax and charitable implications and strategies.



WEDNESDAY, JUNE 20

ELDER LAW TRACK

- › Deeper Dive into Medicaid Assistance and Special Needs Trusts - Gregory Kenyon
- › Medicaid Managed Care and Appeals - Scott Lyon and Cyndy Miller
- › Iowa Medicaid Estate Recovery - Ben Chatman
- › Medicaid Q&A - Ben Chatman, Deanna Clingan-Fischer, Scott Hartsook, Gregory Kenyon, Scott Lyon and Cyndy Miller
- › **Medicaid Eligibility for Nursing Home and In-Home Services - Scott Hartsook**

Learn the Medicaid eligibility rules for nursing home and elderly waiver services, including attribution of assets, spousal allowances, transfer of asset restriction, Miller Trusts, the estate recovery law and how to preserve assets with Scott Hartsook.



FAMILY LAW TRACK

- › Appellate Practice - Andrew Howie and Hon. Richard Doyle
- › Equitable Powers of the Court - David Cox, Hon. Chad Kepros and Hon. David Odekirk
- › Family Law Case Update - James Meade
- › Limited Scope Representation and the Self-Representation Tsunami - Matthew Brandes and Justice Thomas Waterman
- › Vocational Experts and Trying a Spousal Support Case Following Gust and Mauer - Amy Botkin, Diane Dornburg and Jaclyn Zimmerman
- › What Family Law Attorneys Need to Know About Real Estate Law - Kirsten Frey
- › **Tax Implications of Divorce Following Changes to Federal Tax Law - Brian Crotty and Ron Nielson**

The Tax Cuts and Jobs Act of 2017 contains several provisions that will impact family law cases in 2017 and future years. Brian Crotty and Ron Nielson will focus on the key changes that will impact your clients and better prepare you for the changing landscape.



ADDITIONAL TRACKS AVAILABLE

Monday

- Collaborate Law
- Corporate Counsel
- Federal Practice
- Fundamentals of Law
- Plenary
- What's Trending in Law

Tuesday

- Case Law
- Fundamentals of Law
- Litigation
- Plenary

Wednesday

- Access to Justice
- Commercial and Bankruptcy
- Fundamentals of Law
- Litigation
- Plenary
- Real Estate

SOCIAL EVENTS

MONDAY

Creighton Law School Luncheon
Drake Law School Luncheon
Joint Presidents' Reception

TUESDAY

50-Year Member Luncheon
University of Iowa Law School
Hospitality Suite
YLD Corks and Forks

WEDNESDAY

The Iowa Supreme Court
Honors Luncheon
ISBA Annual Awards Gala



CLE Calendar

June 18-20

Annual Meeting
Des Moines

July 19

IP Licensing
(Live Webinar)

July 24

Secured Transactions Under
Article 9 of the Iowa Uniform
Commercial Code
(Live Webinar)

August 1-3

8th Circuit Social Security
Disability Conference
(In-person or Live Webinar)
Des Moines

August 23

Those Affected by
Dementia: Understanding
Their Needs
(Live Webinar)

September 13-14

Bridge the Gap Seminar
West Des Moines

October 11

Bitcoin Trends and IP
(Live Webinar)

November 14

Trademark Law Update
(Live Webinar)

December 5

Bloethe Tax School
Des Moines

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calendar](http://iowabar.org/calendar)

Let's BTG!

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Improving well-being

IN THE LEGAL COMMUNITY

By Rachel Regenold

Why I had to leave the practice of law to find balance

I left the practice of law for two years, uncertain if I would return. Later, I realized compassion fatigue and burnout drove me away from the career I once loved as a public defender.

In June 2015, I attended my last Public Defender Criminal Law seminar as a member of the office. I was honored to be named Attorney of the Year, though it felt bittersweet as I was contemplating leaving the practice of law. The very next day I lost a case I cared about deeply, which was the final nail in the coffin of my 11-year career. Six months later I resigned and walked away from the law to teach yoga and attend massage school.

Compassion fatigue strikes hard and fast; it can be the cumulative effect of a number of cases or the result of one. In contrast, burnout creeps up slowly, and is due to increasing stress and intense client contact.¹ Also known as vicarious trauma, secondary trauma or trauma exposure response, compassion fatigue stems from working with traumatized individuals or exposure to traumatic material.² Legal professionals practicing criminal, family and juvenile law are particularly at risk because of the nature of their work,³ as are those whose work might be isolating, such as sole practitioners and judges.⁴

Burnout and compassion fatigue can coexist, and burnout can make us more susceptible to compassion fatigue.⁵ Signs of burnout include exhaustion at the mental, physical and emotional level, depression, apathy about work and substance abuse.⁶ Burnout can be resolved by taking time off, a job change or reviving passion in your work by learning new skills.

Compassion fatigue is a secondary form of trauma. Signs of compassion fatigue include the same as burnout, as well as feeling helpless or hopeless, a loss of creativity, the inability to embrace complexity, numbing, an inability to empathize, anger and cynicism, dissociative moments, fear and hypervigilance, guilt and a sense

that you can never do enough.⁷

A couple weeks after the June 2015 seminar, I met with a financial planner to plan my exit strategy; we discussed my resources and how I would make an income. I shared that I was a yoga teacher and enjoyed writing. She looked at me skeptically, then turned back to the paperwork in front of her. "What about massage therapy?" she asked casually. "That fits well with yoga."

I was so offended. "I am a lawyer!" I thought indignantly, never mind that I didn't want to be a lawyer anymore.

Still, the idea gained traction in my mind. I wanted something completely different than the law. I was tired of the relentless deadlines, angry clients and the emotional darkness of being mired in rape and murder on a daily basis. While I once loved dealing with the darker aspects of humanity, I couldn't tolerate it any longer; I had stopped keeping up with the news and no longer watched crime-related shows or movies. Increasingly I spent time with friends and acquaintances who had nothing to do with the law.

Yet, thoughts about my cases dogged me outside work hours. Was I doing enough? How would my clients and their families cope if we lost?

I resigned from the public defender office in December 2015. My plan was to take a whole five weeks off, and then begin massage school and find part-time work in addition to teaching yoga. I found I had no energy to work; I was utterly exhausted in a way I hadn't allowed myself to recognize until then. And I was also grief stricken; more than once I found myself sobbing on the couch over having left the law. It was my first career love, but I felt I wasn't capable of doing it any longer.

When people asked about my career detour, I replied, "I blame yoga. Yoga changed everything." In 2010, I had transferred from a trial office to the appellate office of the State Public Defender. I knew the change would allow me to utilize my research and writing skills, but I also hoped it would allow me to build a life outside of work, which I had not made time for before. In 2011,

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Rachel Regenold is an attorney, registered yoga teacher and licensed massage therapist. Regenold educates legal professionals about wellness to reduce stress and increase well-being so you can retain the talented professionals you hired. She offers presentations and teaches yoga, meditation and mindfulness at your law office during the workday. To learn more, visit www.iowaseeker.com or contact her at (515) 238-4683 or regenoldlaw@gmail.com.

I attended a yoga class for the first time and fell in love with the practice. For the first time, I could get out of my head as I focused on moving my body into different shapes and learned new ways to breathe. Yoga allowed me to reconnect with my body and manage stress.

Yoga became one of my most powerful stress-relieving tools. I attended yoga class right before oral arguments to get out of my head and release physical tension. In the week leading up to back-to-back oral arguments before the Iowa Supreme Court in Decorah in the spring of 2015, I was a mess: exhausted, scared, worried I wasn't prepared, and what would happen if I lost. I brought all of it to my yoga mat each morning, and the morning before argument, the fear evaporated. When I went into the office that day before going out of town, a coworker asked: "What are you doing here and why are you so calm?"

"Yoga," I replied. And the following night I walked up to the podium before an audience of 350 people to face the Iowa Supreme Court, calmer than I had ever felt in a courtroom.

While I had been a regular yoga practitioner during my last several years practicing law, I only occasionally received bodywork, like massage, acupuncture and healing touch. My "public-defender shoulders" quickly became a joke in massage school after an instructor commented on how tight my shoulders were. One student complained that working on me was like working on a bust because it felt like I was made of marble from the shoulders up.

Of course, stress is a natural part of life and work, but stress isn't all bad. There's the good kind of stress where we're preparing for something we're looking forward to but are still nervous, such as buying a home, a wedding or a particularly good case. Tolerable stress is when something bad happens, say we lose a case or the sale of our house falls through, but we have the resources to deal with it. Stress can become toxic, however, when it's chronic or we don't have the ability to handle the problem.⁸ This is when we may turn to unhealthy

coping mechanisms. Meanwhile, we are physically depleted because we are constantly in "fight or flight" (sympathetic nervous system) instead of "rest and digest" (parasympathetic nervous system); our breathing is shallower, our muscles tensed for action, our heart rate is faster and our digestive and immune systems aren't functioning as well. Seventy-five to 90 percent of doctor visits are for stress-related complaints, including anxiety, depression, digestive problems, headaches, heart disease, sleep problems, weight gain and memory impairment.⁹

How do we cure what ails us? First, stop using the excuse that you don't have time to take care of yourself. No one has the time. You must make the time. A report from the National Task Force on Lawyer Well-Being from August 2017 indicates that attorneys are suffering high rates of anxiety, depression and problem drinking, and their professionalism and competency are impacted by it.¹⁰ Not only does your well-being depend on making the time to care for yourself, but the well-being of your clients and your career do as well.

Connect with others, including people and activities unrelated to the legal profession. A recent study indicates lawyers top the charts as the loneliest workers.¹¹ As stress and burnout increase, you're more likely to withdraw from people and things you once enjoyed. Do the opposite – seek out friends and interests that bring you joy.

Get your rest and take regular time off, including time away from your devices, the news and social media. Commit to taking regular free time, even if it means just one evening a week during busy periods.

Nurture your body and get moving. We store stress and trauma in our bodies.¹² Get up and walk around the block or take stretch breaks during the work day. At least give yourself a moment to take three deep breaths before moving on to the next task. Find a physical activity you enjoy and participate regularly. Receive regular bodywork, such as massage, acupuncture or chiropractic; spending long hours sitting is hard on the body and you'll need help undoing the damage.

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Learn to meditate and practice mindfulness. Your mind is one of your biggest assets as an attorney, but it needs to recharge like any other tool you use. You don't have to empty your mind to meditate. That isn't possible for anyone! I recommend *The Anxious Lawyer: An 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation* to learn more about meditation; you can also visit www.theanxious-lawyer.com for free guided meditations that only take six minutes.

Set boundaries and find someone to talk to about your work. Clients can be demanding, as can other participants in the legal system. Talking with a licensed mental-health professional isn't just for those who have mental health problems. The attorney-client relationship is intense, yet we learn little about how to manage it. Talking with someone in a confidential setting will help you better understand how to do so.

Learn to recognize when you and your colleagues need help. Rather than showing weakness, it takes a lot of strength to admit you need help. If your workload is overwhelming or you're having difficulties in your personal life, talk with someone. You don't have to do it alone.

As for me, it was 18 months after I walked away from the law that I felt rested and healed. I spent a year in massage school and taught yoga, then started my own yoga and massage business in early 2017. A few months later I began to think about how to reincorporate the law into my life because I missed it. Now I bridge the legal and health & wellness professions by educating legal professionals about wellness and advising health and wellness business owners about the law.

1. *Levin, Andrew P. & Greisberg, Scott, Vicarious Trauma in Attorneys, 24 Pace L. Rev. 245, 248 (2003).*
2. *Levin, at pp. 245-246.*
3. *American Bar Association, What is Compassion Fatigue? available at https://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue.html (last visited April 24, 2018).*
4. *Jaffe, at p. 6. Jaffe, Peter G., et. al.,*

Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice, 54 Juv. and Family Court J. 1, 6 (Fall 2003).

5. *Jaffe, at p. 2.*
6. *Levin, at p. 248.*
7. *Van Dernoot Lipsky, Laura & Burk, Connie, Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others, pp. 47-71 (Berrett-Koehler Publishers, Inc. 2009).*
8. *McEwen, Bruce, When is Stress Good for You? (July 11, 2017), available at <https://aeon.co/essays/how-stress-works-in-the-human-body-to-make-or-break-us> (last visited April 24, 2018).*
9. *Robinson, Jennifer, MD, The Effects of Stress on Your Body (Dec. 10, 2017), available at <https://www.webmd.com/balance/stress-management/effects-of-stress-on-your-body> (last visited April 24, 2018).*
10. *National Task Force on Lawyer Well-Being, The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, p. 7 (Aug. 14, 2017), available at <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf> (last visited April 24, 2018).*
11. *Anchor, Shawn, et. al., America's Loneliest Workers, According to Research, Harvard Business Review (March 19, 2018), available at <https://hbr.org/2018/03/americas-loneliest-workers-according-to-research> (last visited April 24, 2018).*
12. *Van Der Kolk, Bessel, M.D., The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma, pp. 100-101 (Viking 2014).*

You have one of the most effective stress-relieving tools with you at all times: your breath. Use it to shift your nervous system out of "fight or flight" and into "rest and digest" with the following steps:

1. Seated or standing, rest your hands on your belly below your belly button and inhale deeply through your nose, causing your belly to expand into your hands. Exhale through your mouth until your lungs are empty.
2. As you continue inhaling and exhaling deeply, notice how long your inhales last. Then make your exhales one to two counts longer than your inhales. For example, if you inhale for three counts, make your exhales last four to five counts.
3. Introduce a pause after your inhale by retaining your breath for three to five seconds, then exhale through your mouth.
4. Set a timer for five to 10 minutes and practice daily or several times a day, even for a few minutes.



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COVERAGE ATTORNEY – Great Western Casualty Company, South Sioux City, NE – As a Coverage Attorney for

Great West Casualty Company, you will focus on the Motor Carrier Policy, providing counsel, training, and assistance to the regions' claims departments to foster consistent, efficient, and appropriate claims practices. You will prepare coverage opinions and memoranda on claims legal topics as well as oversee litigation and declaratory judgement action while supervising outside counsel. This position qualifies for relocation assistance. To learn more about Great West and our office locations, please visit our website www.gwccnet.com.

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CONTRACT ATTORNEY – WORKERS' COMPENSATION – Davis Brown Law Firm, Des Moines, IA – The Davis Brown Law Firm, an established central Iowa law firm with offices in Des Moines, West Des Moines and Ames, seeks to add a contract attorney in its Des Moines office in the area of Work-

ers' Compensation. To apply, visit <http://careers.iowabar.org/jobs/11066355/contract-attorney-workers-compensation>

CONTRACTS ADMINISTRATOR (Sponsored research specialist) – The University of Iowa, Iowa City, IA – Seeking highly motivated, organized and service-oriented professionals to assume a key contract negotiator/administrator role. Responsibilities include reviewing, drafting, negotiating and administering research related agreements. The successful candidate will use independent judgment to determine and negotiate acceptable terms for a variety of contracts including funding agreements, data use agreements, confidentiality agreements, material transfer agreements and outgoing subawards. For a complete job description, email wendy-loney@uiowa.edu. To apply, please visit [Jobs@UIOWA](https://jobs.uiowa.edu/) at <https://jobs.uiowa.edu/> and reference Requisition # 72787. Or click on: <https://jobs.uiowa.edu/pands/view/72787>

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

STAFF ATTORNEY – LITIGATION – Avera McKennan, Sioux Falls, SD – The Staff Attorney-Litigation is responsible for providing any and all legal services for collection of primarily out-of-state patient accounts on behalf of Accounts Management, Inc. ("AMI"); responsible for assisting with AMI claims and county poor relief claims of Avera Health hospitals in the state of South Dakota, time permitting and as requested by the Avera Patient Accounts Attorney, to the extent that such proceedings or actions necessitate the involvement of legal counsel; and

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serves as an additional legal resource to the Director and Litigation/Collection Manager of AMI with respect to the collection of such patient accounts. To apply, visit <http://careers.iowabar.org/jobs/11040148/staff-attorney-litigation>

LITIGATION PARALEGAL – Boyce Law Firm, LLP, Sioux Falls, SD

Seeking a full-time paralegal to assist with its litigation practice with emphasis in working in medical malpractice and health law area. Candidates should possess strong organizational, multi-tasking and computer skills and be able to maintain a heavy workload. Excellent grammar, spelling, punctuation and attention to detail are also required. The firm offers a competitive compensation. Benefits include generous 401K, profit sharing, health insurance, life insurance, professional dues, memberships and paid attendance and expenses for continuing legal education. Please send resume, cover letter and references. For more information about Boyce Law Firm, please visit www.boycelaw.com.

LATERAL HIRE – Stanley, Lande & Hunter, Davenport, IA

We are seeking a highly motivated attorney for the firm's Davenport office to assist in our Iowa and Illinois business practice. Experience preferred in commercial transactions, including business purchases and sales, business planning, and real estate. Candidates should have 3-7 years of practice experience in transactional work and possess excellent client development skills. License and experience in Iowa and Illinois preferred. All inquiries will be kept confidential. To apply, visit <http://careers.iowabar.org/jobs/11030791/lateral-hire>

COUNSEL-AGRI/FARM INSURANCE – Nationwide Insurance, Des Moines, IA

The Counsel position provides Claims/Legal support for all Nationwide Agribusiness (NWAG) and Farm for casualty, property and Workers Comp claims across the country. The position is located in Nationwide's Des Moines, Iowa Office and will work directly with the NWAG leadership team in that

office. To apply, visit <http://careers.iowabar.org/jobs/11021796/counsel-agri-farm-insurance>.

DIRECTOR OF PROGRAMS – Animal Rescue League of Iowa, Inc., Des Moines, IA

Seeking a full time Program Director. This position will have strategic and program development and direction of ARL programs in relation to execution of its mission. Working closely with the CEO, the program director will have and continue to develop a deep knowledge of field and core programs and operations of the shelter. The perfect candidate would have a law degree and/or strong and proven supervisory and/or human resources background. The Animal Rescue League of Iowa, Inc. is a progressive and award-winning shelter in Iowa; visit our website at www.arl-iowa.org/?/careers for information about benefits offered and more information about the ARL.

PUBLIC FINANCE ATTORNEY – Dorsey & Whitney LLP, Des Moines, IA

Seeking an attorney with at least four years of experience to join the Public Finance Department in our Des Moines office. In this role you will have the opportunity to work on all phases of finance transactions for public and private entities and advise clients on state and federal governmental and tax law issues. Dorsey & Whitney LLP accepts online applications at <http://www.dorsey.com/attorneyjobs>. We do not accept application materials by mail or email except as a reasonable accommodation for qualified disabled applicants. Individuals who are unable to use our online process due to a disability should call 612-492-5186.

SPACE AVAILABLE

OFFICE SPACE AVAILABLE – Private space available in a shared office located in West Des Moines \$750/month. Rent includes utilities and internet. All you need is your own phone line! The space features large, glare-proof windows, modern dark wood floors and a professional atmosphere that sets the scene for your success. For more information,

call 515.868.0088 or email assistant@iowadefenders.com.

OFFICE SPACE AVAILABLE – Waterloo

– Office space available for sole practitioner or small law firm. Space includes conference room, restroom with shower and four additional office rooms available in downtown Waterloo, located at 321 E. 4th Street. For more information email Carolyn at carolyn@neialaw.com.

OFFICE SPACE AVAILABLE – Berger Law Firm, PC

at 7109 Hickman Rd. in Urbandale has many options available for office space and potential referrals. For more information, call 515-288-888.

FOR SALE

FULL-TIME ATTORNEY – D. Bradley Kiesey, Attorney

– Seeking general practice attorney/attorneys to assume long-time county seat law practice in southeast Iowa, wherein current attorneys approach retirement age. Association available. Stand-alone premises able to accommodate 2-3 lawyers and staff, with furniture and office machines available for sale on negotiable terms. Email dbradleykiesey@gmail.com with cover letter, resume and references.

SERVICES OFFERED

MEDIATION SERVICES – Judge Joel D. Novak

, retired from the Fifth Judicial District Court in 2011, has begun offering mediation services for any cases. Novak has 32 years' experience as a trial judge and six years as a senior judge. He also served as the first judge-in-residence at the Drake Law School Legal Clinic. For information and scheduling, call 515-279-5523, 515-480-1943 or email juezjoey@gmail.com.

MEDIATION SERVICES – Jack C. Paige, Iowa City

, has offered civil and workers' compensation mediation services statewide since 2011. Resume and scheduling calendar at jackpaigelaw.com. Call 319-351-3005 or email jackpaigelaw@gmail.com to schedule or for further information.

CLASSIFIEDS

SPOTLIGHT on SERVICE



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

Few people put passion into action with quite the same vigor as attorney Shayla McCormally. She is the founder and owner of McCormally & Cosgrove, P.L.L.C. in Des Moines, but helping clients navigate litigation is just the beginning of her commitment to helping others and the community.

“If we don’t stand up and do the work, who is going to? We are all responsible for building and supporting our communities and making the change we want to see,” McCormally says of her dedication to volunteer work.

Most recently, McCormally has been heavily involved with EMERGE Iowa, an

organization that launched in 2017 to recruit and train women to run for public office. She is a founding board member.

“Women bring a different perspective, adding to solutions and creating more compromise. I want to elect more women at all levels of government in order to better support working moms and families,” she said.

She has been heavily involved in other political and issues-based organizations as well, including the Iowa Democratic Party and the Planned Parenthood Voters Board. She is also very involved in the Interfaith Alliance, as well as her church, Plymouth United Congregational

in Des Moines. She assists with her daughter’s Girl Scouts troop, organizes fundraisers for her children’s school, helps coordinate the Sherman Hill Halloween canned food drive and serves on numerous other non-profit boards.

“It is important for the next generation to show up and say yes to a cause they care about. I want to be a role model for my kids,” McCormally said. “You always have something to offer, and there are others who can fill in what you don’t know. When you are passionate about something, the ‘work’ is always more enjoyable.”



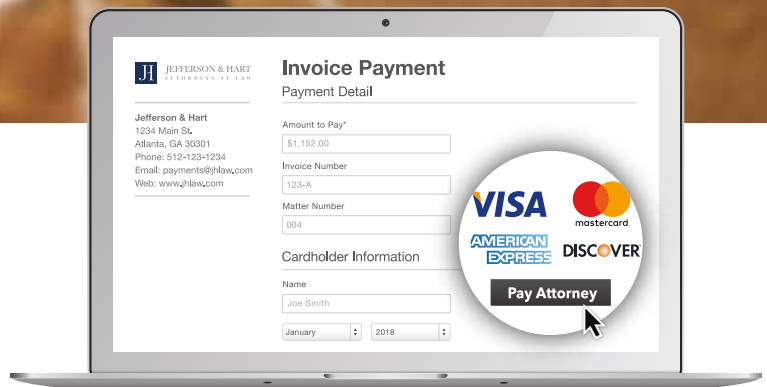
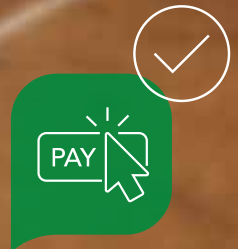
Shayla McCormally with the Home2Home class project team for the Greater Des Moines Leadership Institute (class of 2016). She chaired the project, which provided more than \$160,000 in renovations to the House of Mercy’s facility.

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