



THE IOWA LAWYER

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THE BATTLE AGAINST SECRECY

How an Iowa attorney changed the landscape for open records cases

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Happy Holidays from The Iowa State Bar Association!

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NEW IOWADOCs® PLATFORM PROVIDES BETTER USER EXPERIENCE

Beginning Jan. 1, IowaDocs® will have a new platform – its first major overhaul in 20 years – that will provide a better user experience. Though subscribers to the new platform will need to apply for a new subscription and create a new log-in password once their current subscription expires, they will otherwise see very little change in the way the new platform looks or works.

The move to the new platform (XpressDox) came about due to concerns with the direction HotDocs is moving. HotDocs is the platform under which the program has been running. New ownership plans to discontinue the desktop version of the software and require all access to IowaDocs® to be web based via HotDocs Market. Experiences with HotDocs Market over the past six years have not been received well, so the ISBA began exploring other options.

During the exploration phase, the committee investigating an alternative was impressed with XpressDox's functionality and its online interface, as well as its ability to provide better product management of IowaDocs®. After 14 months of study it was decided XpressDox would provide a much more robust and user-friendly program.

More information about the switch can be found in this issue of the Iowa Lawyer beginning on page 15. Questions can be addressed to support@iowadocs.net.

FEBRUARY 2021 IOWA BAR EXAM TO BE DELIVERED REMOTELY

On Dec. 4, Chief Justice Susan Christensen signed an order regarding the February 2021 Iowa Bar Exam. Due to the recent rise of COVID-19 cases in Iowa, the court has decided to order the exam, scheduled for Feb. 23 and 24, to be administered remotely.

The National Conference of Bar Examiners recently announced it will make Uniform Bar Examination (UBE) materials available to be delivered either in-person or remotely for the February administration of the exam. According to the Office of Professional Regulation, the Iowa exam will remain the UBE, will consist of the same components as the in-person exam and will require the same passing score as provided for in Iowa Court rule 31.3(1)(b)-(c). Applicants will be required to use ExamSoft's testing software to take the exam.

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JUDICIAL INDEPENDENCE IS FUNDAMENTAL TO FAIR, IMPARTIAL COURTS

LETTER BY ISBA PRESIDENT JERRY SCHNURR III

“[Judges] rule on the basis of law, not public opinion, and they should be totally indifferent to pressures of the times.” – Warren E. Burger, Retired Chief Justice, U. S. Supreme Court

An independent judiciary is fundamental to fair and impartial courts. Fair and impartial courts are the foundation of the rule of law. And the rule of law is the foundation of who we are as a nation.

The Iowa State Bar Association works to preserve the independent judiciary in Iowa. As most people reading this know, Iowa courts are routinely viewed as among the finest in the country. This is attributed to the merit selection process we follow in Iowa.

Our effort to promote a fair and independent judiciary is based on the selection of judicial candidates by a nominating commission, appointment by the governor and the retention election. In 2008, retired Justice Sandra Day O'Connor wrote an article that appeared in *Point of View* published by Stanford Law School entitled, “The Importance of Judicial Independence.” In the article, she states that judicial selection should not be based on policy preferences, nor should it be influenced by voter preferences.

Judges must be accountable to the law as it is. They must be independent of political or outside pressure. Judges must be protected from influence of other branches of government as well as shifting public opinion. This allows judges to make decisions based on what is right under the law without facing political or personal consequences.

Unfortunately, a large segment of the country believes that state court judges should represent the views of the people of their states. This misperception of the role

of the judiciary is fed by judicial elections and, in some folks' views, politicians garnering votes by promising to appoint judges who will decide cases involving sensitive cultural or economic issues certain ways.

“The law sometimes demands unpopular outcomes, and a judge who is forced to weigh what is popular rather than focusing solely on what the law demands has lost some independence and impartiality.” – Sandra Day O'Connor, Retired Justice, U. S. Supreme Court.

Your bar association continues to promote a fair and independent judiciary. The ISBA Independence of the Judiciary Committee investigates and responds to unfair charges made against judges and the judiciary. The Fair and Impartial Courts Committee supports the retention election and educates the public about issues that affect and impede access to a fair, independent and impartial judiciary.

Because of the retention election this year, the Fair and Impartial Courts Committee, under the leadership of Past President Guy Cook, and bar association staff, began working this summer on the Judicial Performance Review. The Iowa State Bar Association has been conducting Judicial Performance Reviews since Iowa adopted merit selection in 1962 to give the public information to help make decisions about voting in retention elections.

The judicial performance review is sent out to all lawyers in Iowa. There is a biography of each judge up for retention. There are over 20 questions covering areas of professional competence and demeanor.

This year, almost 2,000 lawyers responded. This is significant because only lawyers who appear regularly in front of a

judge were to respond to the performance review question on that judge.

Once the attorneys responded to the survey, the bar association staff assembled the responses and prepared the information for the public. The Board of Governors then reviewed and approved the report of the Judicial Performance Review for release to the public. The report provides the results of the Judicial Performance Review and useful information to help voters decide how to vote in the retention election. The report provides other useful information, such as the qualities of a good judge, what retention elections are, the role of judges' personal views, etc.

The Fair and Impartial Courts Committee prepared to meet any effort from outside groups to mount a challenge to the independence of Iowa's judiciary and to help get the results of the Judicial Performance Review out to the public. Lawyers were encouraged to, and did, write letters and guest pieces for local newspapers supporting the retention of judges. The bar-sponsored website, www.judicialfacts.org, was also updated with valuable information to support the results of the Judicial Performance Review.

All judges up for retention were retained. While there was no organized “Vote No” effort, this has not always been the case. The Iowa State Bar Association mission includes serving the court. Our work supporting the Judicial Performance Review and retention election efforts in furtherance of fair and independent courts will continue.

Finally, at this time of year, I reflect on things I am thankful for. While some might think that there isn't much to be thankful for in 2020, I am thankful for fair and impartial courts and an excellent bar association staff and volunteers resulting in a first-rate Judicial Performance Review and a successful retention election. This is no small feat.

Finally, I am thankful for each lawyer's membership and involvement in The Iowa State Bar Association. I trust you will find something to be thankful for too. Please take care of yourselves.



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THE BATTLE AGAINST SECRECY

How an Iowa attorney changed the landscape for open records cases

By Lezli Luneckas-Broomhall

Gina Colbert struggled to control her emotions as she entered the building where depositions for her daughter's wrongful death case would be held in August of 2017. She walked into the lobby where the person who shot and killed Autumn Steele sat. "I couldn't breathe, and it felt like the air had been sucked right out the room," Colbert remembers.



Autumn Steele

Avoiding eye-contact, she headed down a hall – moving blindly toward voices – and came face-to-face with civil rights attorney Dave O'Brien for the first time. O'Brien had been hired to handle the officer-involved wrongful death suit in Iowa by Colbert and her daughter's widower.

With a tight grip on her pain and anxiety, the mother from Georgia listened closely as O'Brien explained that this day was about business – asking questions and getting answers – not emotion.

Colbert had been trying to get officials in Burlington to pay attention to her since her daughter was shot by Officer Jesse Hill in January of 2015 – when Hill claimed he was trying to shoot the family dog. She nodded, looked around the room, and noticed a huge stack of documents.

"It was over a foot high... and I noticed there were paper clips all in between different areas of this stack of papers," said Colbert. She looked at the pile of paperwork and evidence O'Brien had accumulated to question the law enforcement officers set to be deposed that day. "Then he sat down, and he pulled out a model of a dog's mouth."

As the day went on, Colbert says she was amazed at how much detail O'Brien knew about the case; more than even she had learned in over two years since her daughter was killed. With relief, she was getting answers now. People were paying attention now.

It was an article in the Washington Post that originally got O'Brien's attention. He first became aware of Colbert's quest for answers regarding her daughter's death while in Washington, D.C. He read about the city of Burlington refusing to release information following a Freedom of Information Act (FOIA) request in response to the death of an Iowa mother. As O'Brien read, he saw the case as more than a FOIA request and contacted the attorney representing Colbert to offer a suggestion. "I read that article and I saw a wrongful death case, a violation of civil rights," said O'Brien. The group of attorneys representing Steele's family members asked for his help.

In June of 2018, Colbert successfully settled the wrongful death and civil rights suit with the city of Burlington for \$2 million, but O'Brien says he learned something about bodycam footage while working on that case. He had signed a confidentiality agreement with the city to quickly get the material to analyze for his case.

"I came to regret that," said O'Brien. "I had signed some pretty onerous confidentiality provisions that kept us from releasing some material... I vowed never to make that mistake again."

"It's not just winning the case at the end. It's making sure the public knows what's going on."

In hindsight, O'Brien says that is how he became more involved in the FOIA aspect of his cases. "It's not just winning the case at the end," he said. "It's making sure the public knows what's going on – the efforts to cover up the wrongdoing that law enforcement agencies are engaged in by refusing to release this material."

Iowa Freedom of Information (FOI) Council Executive Director Randy Evans first met O'Brien in a courtroom in 2017 when his organization was arguing a FOIA motion to lift the seal on evidence in the Autumn Steele case. "Arguing for secrecy was the government; and here was Dave making the case, 'Why?'" recalls Evans. "The citizens of Iowa and the people of Burlington deserve to see that this police officer who was hired and trained by the Burlington Police Department, and given a deadly weapon to carry, made a decision that forever changed the lives of a family."

Evans says bodycam video allows the public to see what actually happens between citizens and law enforcement officers (LEOs). He explains that you can read the reports that LEOs write and look at photographs of the scene, but there's nothing that helps the public better understand what occurred than to also see video of the event.



The Iowa FOI Council is a coalition devoted to open government. The organization recently won a lawsuit against the Polk County Sheriff's Department for the release of evidence from the morning Deputy Ryan Phillips shot and killed Isaiah Hayes. Evans recalls the sparse information initially released by the Polk County Sheriff: There was a pursuit. Deputy Phillips thought Isaiah Hayes had a gun. The deputy feared for his life and fired. Hayes was pronounced dead at the scene.

"I felt strongly that the citizens were entitled to answers to some fundamental questions. Was there a gun found next to the body of Isaiah Hayes? How many times was he shot? Was he shot in the chest, or was he shot in the back? What led to the pursuit that ended on the cul-de-sac?" asked Evans.

It was Evans who suggested the Hayes family contact O'Brien about a civil rights case. "I said, 'Here's a lawyer that I know who feels strongly about these kinds of cases.'" Evans also believes the Hayes family might not have pursued a civil rights lawsuit if Polk County had just handed over the information they wanted about Isaiah's death.

"Iowa open records law clearly states the date, time, specific location and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential."

O'Brien says state law is clear: "Iowa open records law clearly states the date, time, specific location and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential." When people ask his opinion on how the law should be changed in relation to the release of bodycam and dashcam video, O'Brien sardonically asks, "Do you want to put right after that code section 'and we really mean it'?"

Iowa City attorney Martin Diaz has handled cases and kept his finger on the pulse of civil rights law in Iowa for 40 years. He says the choice to file a case in federal or state court often depends on the barrier of qualified immunity. Diaz explains that since Roxanne Conlin won *Godfrey v. State of Iowa* in 2017, most attorneys in the state have used that precedent in civil rights litigation. But O'Brien, he says, has created a niche using Federal 42 U.S.C. §1983 claims. "Not only does Dave have all that knowledge – having done 1983 litigation – but now he has the advantage of being in the right place at the right time when it comes to Iowa (in terms of making sure that the law goes in a way that is more balanced than it has been)," said Diaz.

O'Brien won't let qualified immunity stop him from pursuing justice for his clients. "We've got to hold these officers accountable when they do wrong," he asserts. "When you file these lawsuits – that can be the case that will set the precedent if you do have a qualified immunity problem."

In 2004, O'Brien took on the case of two teachers, Alice McCabe and Christine

Nelson, who were arrested on a public street for protesting during a political rally for President George W. Bush in Cedar Rapids. Not only was the arrest a violation of their civil rights, but the women were also taken into custody and strip-searched. O'Brien offered to represent them in their criminal cases pro bono. As he learned more about how they were treated that day, he knew they had a strong civil rights case.

The criminal charges against McCabe and Nelson were dropped, but their civil rights case made history and changed the way Iowa law enforcement agencies handle political rallies. O'Brien says this is the case that lit the flame for the civil rights cases that followed.

The Cedar Rapids attorney also says his passion for protecting civil rights has nothing to do with a negative opinion of law enforcement. In fact, O'Brien has deep respect for LEOs. "Nine out of 10 times officers in Iowa are doing their jobs correctly



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A brief history lesson on Civil Rights Litigation in Iowa



Martin Diaz

The Civil Rights Act was passed after the Civil War by Congress in 1871 as part of the Reconstruction in an effort to limit Jim Crow laws and the violence against African Americans. “The idea was that anybody that violates someone’s constitutional rights while acting under color of state law - meaning while acting as some form of authority of the state - (the victim) would have a direct cause of action against that individual for damages,” explains Iowa City attorney Martin Diaz.

Section 1983 effectively creates an action for damages (and injunctive relief) under the Fourteenth Amendment. Further, in Supreme Court case law, “every person” includes state and local government officials as well as local governments themselves (but not states). “I think it’s important to understand the politics here because (Federal 42 U.S.C. §1983) was a pretty good vehicle by which you could assert a claim for violation of the constitutional rights,” according to Diaz.

Diaz says the statute was basically ignored until 1954, with *Brown v. Board of Education* Topeka, followed in the 1960s by a series of Supreme Court cases that transformed §1983 into an extremely valuable tool for civil rights complaints. He clarifies the statute itself has not been altered, only interpreted differently. Diaz states that statute interpretation continued to be somewhat liberal prior to the 1980s and early 90s, when a shift in judicial interpretation and cases like *Harlow v. Fitzgerald* in 1982 and *Mitchell v. Forsyth* in 1985 tightened its application. *Siebert v. Gilley* in 1991 was technically a *Bivens* claim, but applied “clear demonstration of a constitutional right to any qualified immunity defense,” explains Diaz. “The analysis of the qualified immunity defense before discovery is permitted leading to dismissal of cases at the earliest point possible,” he said.

Diaz sees drawbacks to trying civil rights in federal court today. He points to the need to find pre-existing case law of similar circumstances, he also says, “The federal judges were pretty stingy in terms of what they would allow you to go to a jury with.” Among other things, that is due to qualified immunity.

For Iowa lawyers, Roxanne Conlin’s landmark case *Godfrey v. State of Iowa* changed the climate for civil rights litigation. Diaz says precedent set by that case allowed plaintiffs to bring claims directly under the Iowa Constitution, which is what most Iowa civil rights attorneys do today.

and with integrity,” he explains. “In review of case after case of alleged police-involved wrongdoing, we don’t find an overwhelming number of instances where civil rights are violated. But when we do, we need to stand up for the rights of all Iowans. The results of our cases often lead to procedural and policy changes that make a real difference.”

“The results of our cases often lead to procedural and policy changes that make a real difference.”

Andrew Mertens, Deputy Director of the Iowa Association for Justice (IAJ), notes that O’Brien has shown a dedication and a focus on public service throughout his career. The Cedar Rapids attorney is the only member who has won the IAJ’s annual Verne Lawyer Outstanding Member Award, Roxanne Conlin Public Justice Award and Key Person Award.

“That demonstrates his leadership and commitment to public service directly,” said Mertens, “But beyond that, he has worked as a private attorney with a lot of the same goals: to ensure that law enforcement and prosecutors are held accountable to the people that they serve.”

One of O’Brien’s recent cases involved the July 2019 wrongful death of 22-year-old Drew Edwards in Maquoketa. Tricia Steines, Edwards’ sister, says her family was in shock – hearing different accounts of what happened the day her brother died in the custody of the Maquoketa Police Department. As the days turned into weeks with no real response to their agonizing questions, Steines realized the family needed an attorney. “I knew they weren’t going to be cooperative with us, and we wanted answers,” said Steines.

The family hired O’Brien, and the case was filed in October. Though Steines and her family chose not to watch Police Officer Mike Owen’s bodycam video (released by Dave O’Brien Law in January of 2020), she has heard of the horrific

details. She knows her younger brother was tasered repeatedly and suffocated while officers knelt on his back and neck. The family agreed the video should be made public so their community could know what happened.

Steines never believed that her brother had been violent and attacked officers on the scene. “When the video came out, I would have people come to me and say ‘Trisha, I didn’t see any fighting. I didn’t see Drew fighting at all with the police,’” said Steines. The video told a quite different story than the Maquoketa Police Department had.

Steines admits she was mad. Furious sometimes. To make matters worse, due to COVID-19 precautions, she attended mediation for the case via Zoom. Alone, sitting in in her bedroom, she felt physically sick as her stress escalated and her stomach lurched.

With a photo of her brother Drew in front of her, Steines watched the proceedings begin and hoped that the virtual gathering on the screen wouldn’t notice that her hands were shaking. Even from home her nerves were on edge and the process was intimidating. But O’Brien and attorney Nick Rowley were on her side and there on her laptop screen, along with the mediator and representatives for the city and county she called home. Steines took a deep breath and remembered her final words as she left her brother’s side after his death: “I will fight for you.” And she prayed.

As the mediation wore on, Steines’ thoughts screamed that she wanted something more than money – for her parents, for her family, for everyone that loved Drew, for her community, for herself. Steines longed for an apology – a kind word of consideration that she knew would never come from the city or the county.

O’Brien proposed a solution. Steines would likely never get an admission of guilt. But O’Brien worked to get the City of Maquoketa to agree to a review of their training and procedures. In the end, Steines settled the lawsuit with the



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City of Maquoketa and Jackson County for \$4.5 million. But to her it all comes down to the resolve that no one else in her hometown suffers the horrible death her brother did, that those responsible learn to do better, that officers are trained better and that everyone is safer.

Though he has had success holding law enforcement agencies accountable in civil court, O'Brien says changes need to be made when considering criminal charges in Iowa. Due to the inherent relationship between prosecutors, investigators and the officers who are under investigation, he says institutional bias is too strong to ensure just results. No officer has been charged criminally in any of O'Brien's civil cases. He plans to work for new legislation in Iowa in 2021. "We need to enact a statewide board with independent prosecutors and investigators for serious cases when officers are accused of wrong-doing," he proposes. "We can remove that incentive for prosecutors and investigators to find evidence of innocence and achieve a clearer review of events."



Lezli Luneckas-Broomhall has more than 20 years of experience in marketing, public relations and news. She is an award-winning, internationally published journalist, former television news anchor and reporter. She is the CEO of Luneckas Consulting, LLC (luneckasconsulting.com).

Why try civil rights cases in federal court?

O'Brien has found success with civil rights cases in federal court while others are deterred by the system. He contends that the benefits outweigh the drawbacks:

- Pulling a jury from a quarter of the state's voting population (one of Iowa's federal districts) rather than a single county allows for the possibility of a more diverse jury.
- Federal courts have the resources to better handle big cases. "We're talking about resources like staffing, a legal clerk, (technical) equipment in the courtroom," O'Brien explains.
- Courts carefully review attorney fee applications, but the recovery of attorney fees is also a benefit of successful § 1983 litigation.

The three most prevalent issues in § 1983 cases are as follows:

- Whether a plaintiff has established a violation of a federal constitutional right
- Whether qualified immunity protects an official from personal monetary liability
- Whether a plaintiff has established a basis for imposing municipal liability through enforcement of a municipal policy, a municipal practice or a decision of a municipal policy maker.

O'Brien considers the issues above before he even takes on a case. Further, he doesn't let qualified immunity become a deterrent – a new standard might emerge. "We've got to hold these officers accountable when they do wrong," explains O'Brien. "When you file these lawsuits, that can become the case that will set the precedent if you do have a qualified immunity problem."

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M&A Team, I-r: Paul Juffer, CPA, JD Geneser, CPA, Eric Engstrom, CPA/ABV, CFA



JUDGING THE JUDGES

Q&A with David L. Brown of the ABA Standing Committee on the Federal Judiciary



"It's a small contribution I can make as a private citizen to bettering the system. It is easy to think it's all politics. But this committee never talks politics. Nobody votes politically, ever. It's purely competency and temperament. It's refreshing, and contrary to what others might read or hear about."

— David L. Brown

As high-profile confirmation hearings for U.S. Supreme Court nominees play out in Washington, D.C., Iowa attorneys may not realize the important role a prominent Iowa attorney plays in this process. David L. Brown, partner at Hansen, McClintock & Riley in Des Moines, serves as vice chair for the American Bar Association Standing Committee on the Federal Judiciary. This committee evaluates the professional

qualifications of Article III nominees to the Supreme Court, the circuit courts of appeals, the district courts and the Court of International Trade. Brown estimates that in addition to evaluating most of the current federal bench in Iowa over the last 10 years, he has interviewed over 100 federal judges around the country. Brown discusses his role on this committee in the following Q&A exchange. ▶

Q: How and when did you get involved in the ABA Standing Committee on the Federal Judiciary?

A: In 2010 I was appointed to the ABA Standing Committee on the Federal Judiciary by then ABA President Steve Zach from Miami, Florida.

Q: What is the role of this committee in evaluating judicial nominees?

A: The committee evaluates each judicial nominee in terms of competency, temperament and integrity. These critiques are included in the committee's rating for a nominee which may be "Not Qualified," "Qualified" or "Well Qualified." In the event of a "Not Qualified" recommendation, there is a second evaluation which is always done by a different evaluator.

Q: Why does the committee provide this public service?

A: The committee provides this public service as the only non-partisan peer review the nominee will ever receive. Each member of the committee performs approximately 1,500 hours per year pro bono as a contribution to our system of justice and the independence of our federal judiciary.

Q: How does the committee perform its evaluations?

A: The evaluation for a specific nominee is assigned to a committee member. These committee members contact approximately 300 members of the bench, bar and academia who may have knowledge of the nominee. Each of the people who know the nominee is contacted and interviewed on a confidential basis. The lead evaluator then interviews the nominee for several hours before authoring a report and providing recommendation to the full committee for a rating by the full committee. The rating is then provided to the White House, the Department of Justice, the United States Senate and the nominee.

Evaluations of nominees to the Supreme Court of the United States

For more than 60 years, the ABA Standing Committee on the Federal Judiciary has evaluated the professional qualifications of nominees to the Supreme Court by conducting extensive peer reviews of each nominee's integrity, professional competence and judicial temperament. In conducting its evaluations, the standing committee focuses solely on a nominee's professional qualifications. It does not take into consideration a nominee's philosophy, political affiliation or ideology.

While these criteria – integrity, professional competence and judicial temperament – are the basis for the standing committee's evaluation of all federal court nominees, the committee's investigations of Supreme Court nominees are particularly rigorous. The significance, range and complexity of the issues considered by the Supreme Court demand that nominees appointed to the court be of exceptional ability. The standing committee conducts the most extensive nationwide peer review possible on the premise that the highest court in the land requires a lawyer or judge with exceptional professional qualifications.

The standing committee utilizes three rating categories in reporting the result of its evaluation of a nominee to the Supreme Court: "Well Qualified," "Qualified," and "Not Qualified."

"Only two Iowa lawyers have had the privilege of serving on this committee since its inception in 1953, and those appointed are chosen because they embody the values of competence, integrity and a strong devotion to public service. We Iowans should be proud of David L. Brown and grateful for the work he and the committee do to protect our principals of liberty and justice for We the People."

– Jane Lorentzen, Iowa ABA Delegate

Q: Some of these appointments become controversial and very political. How does the committee keep politics out of its evaluation process?

A: The committee is non-partisan and does not consider politics in its evaluation. The president of the United States asks the committee to do the non-partisan peer review as an assistance to the process. This has been done since Dwight D. Eisenhower was president in the 1950s.

Q: Do you attend confirmation hearings for these nominees? Have you gotten to personally testify on their behalf?

A: We attend confirmation hearings. We are also able to view the confirmation hearings on the U.S. Senate website and routinely do this. So far, I have not had the privilege of testifying on behalf of a nominee although I have helped prepare ABA witnesses for testimony, most recently this fall. I also had the privilege of attending the recent Senate Hearing of United States Supreme Court Justice Amy Coney Barrett.

Q: What is the most interesting thing that has happened or that you have learned through your experience with this committee?

A: I have had the opportunity to evaluate many judicial nominees in the 11 federal circuit courts of appeal. My profound respect for the federal judicial system nationally is unsurpassed and my respect for the men and women who have served with me on the ABA Standing Committee on the Federal Judiciary is limitless. These are some of the finest lawyers that I have ever had occasion to meet and work with on any legal matter. It is truly an honor and a privilege to serve with them and be a part of the federal nomination process. I am grateful for this opportunity.



ABA "Advocate of the Month" Spotlight

David L. Brown was honored as the American Bar Association's Advocate of the Month for October 2020. Iowa Sen. Chuck Grassley publicly recognized Brown at a recent Judiciary Committee hearing as a hard-working member of the legal profession for over 40 years.

A long time ABA member, Brown serves as vice chair for the ABA Standing Committee on the Federal Judiciary, as a delegate for the state of Iowa in the ABA House of Delegates and as a former member of the ABA Board of Governors.

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FAMILY LAW MEDIATION

A blessing or a CURSE?



By Christine Crilley,
Lawyer and Mediator

Do Iowa lawyers still resist family law mediation? Do lawyers consider family law mediation a blessing or a curse?

As I pondered these questions several things came to mind—lawyers used to resist very vocally and many clearly considered the mediation a curse when I first started as a mediator. As years passed by, lawyers seemed to resist less and some even praised the process. But what about now? The answer that comes to mind—it depends.

Family law lawyers trained as mediators support mediation and consider it a blessing to the clients, lawyers and the court system. Mediation Services of Eastern Iowa, the court-appointed program that administers the Roster Mediation program in the Sixth Judicial District of Iowa, notes that “Over 70 percent [of participants] reach an agreement on some or all issues in divorce or custody cases (Sixth Judicial District of Iowa).”

These family law lawyers/mediators tend to be a vocal group in this state, supporting mediation through roster mediation programs, speaking to lawyers and non-lawyer groups in support of mediation, and educating mediation participants in the benefits and advantages of using mediation in their family law disputes. This group of lawyers religiously uses other mediator-peers to mediate their own family law cases to resolution.

What does this group of family law lawyer/mediators and other supporters of mediation know that everyone should know?

1. The Sixth Judicial District of Iowa’s family law roster mediation program was one of the first family law roster mediation programs in Iowa, existing since 1996. When that program first started, you probably could have heard the lawyer-resistant outcry all the way to Des Moines. But success is hard to dispute. As indicated above, that program claims that over 70 percent of participants reach agreement on all or part of the issues presented during mediation. Those are hard statistics to dispute and support a process that takes a huge strain off of the already over-burdened court docket in that district.
2. Other Iowa roster mediation programs indicate the benefits of mediation as: “Decision-making remains with the parents. When the parents have created the agreement, they are more likely to cooperate with its terms. The parents work together to solve disputes regarding their children. It is informal, quicker, private and less costly. The children’s emotional well-being is greatly improved when parents cooperate and maintain a relationship with their children.

Mediation has been very successful in minimizing the trauma of divorce on the parents and the children.” These reasons are very difficult to disagree with and show great benefits (blessings) not only to the clients served but their children as well. (These programs also boast the 70 percent success rate—could it be that this statistic was taken from the success rate of the Sixth Judicial District?)

3. In a web search, national statistics boast family law mediation success rates from the mid-70 percent to the mid-90 percent depending on the program.

I frequently tell mediation participants that they know their needs, their children’s needs and their family needs better than anyone else, which makes them the BEST persons in this situation to make the decisions that need to be made as they end their marriage/romantic relationship. The mediator is not making these decisions, but creating a quality, neutral environment where the parties can have the discussions they need to have that lead to the decision-making that benefits the needs of their family, not decision-making made by the court system that knows nothing about their family except what is “fed” to the court at trial.

So... do lawyers practicing family law in Iowa still resist mediation?

Many family law lawyers, including those supportive of mediation, consider the mandatory deadlines for mediation participation a curse at times. They argue that court-imposed deadlines diminish the expertise of the lawyer to know when a case or client is “ripe” for mediation. The lawyer is not necessarily being unsupportive of the process of mediation, but does not support court mandates as to when mediation should occur.

Lawyers argue that these deadlines invade the attorney’s realm of how they handle their divorce practice cases and clients. Attorneys argue that mediation only works if both parties are ready, willing and able to settle, which is not necessarily true in court-mandated mediation but are the primary components of private mediation which is scheduled voluntarily by the parties. Some lawyers refer to the court’s deadline mediation as “hoop mediation.” Even though the participants are not ready or the case is not ready due to complexities, the client must “jump through the hoop” to satisfy the court, while not really settling the case.

Solutions to this “hoop mediation” include court flexibility and deferral to primary attorneys when indications are made that clients or the case need more time before participating in mediation. Adjustments in thought processes provide solutions, when family lawyers and the court view court-mandated mediation as an early opportunity for case discussion, work on the emotional divorce and matters that immediately face a family at the time of the filing of a dissolution, not necessarily the final negotiated agreement.

Both the lawyers and the court should look for opportunities for second, third, fourth mediations as private mediations (scheduled by the parties) or court-ordered mediation (under Iowa Code Chapter 598). Mediation should not be a “one-shot deal” occurring due to court-mandated timelines, but an opportunity available to participants throughout the time of litigation.

But what about those lawyers that really do not support the family mediation process? I would suggest that this group is becoming smaller and smaller in the state the longer we have mediation. The benefits continue to speak for themselves. Lawyers have, in the past, argued that mediation takes work away from lawyers. This is not necessarily the case. Lawyers continue to guide their client, develop cases, prepare the client for mediation, negotiate with and for the client during mediation, draft the agreements and finalize with the court.

During 2020, mediators have adjusted how they conduct their sessions due to COVID-19 concerns. In large numbers, mediation

sessions are now being handled by Zoom or other teleconferencing methods, which has permitted attorneys to participate with their clients in ever-growing numbers by actually participating in the mediation session or being more available for client questions during the mediation session. Lawyers should be part of the mediation process in scheduling, preparing and supporting through availability during the process.

Some attorneys have argued that mediation leads clients to resolutions that the attorney will not approve or finalize with the court. Client preparation and attorney availability is the key to overcoming this challenge. Clients need to be prepared for mediation. Clients need affidavits of financial status, child support calculations, stipulations of assets and liabilities, pending settlement offers, settlement spread sheets, tax returns, investment statements and many other helpful documents with them at mediation. Clients need to come to mediation with advice from their attorneys including best- and worst-case scenarios.

Attorneys need to send information to mediators in advance of the session that will assist during the mediation; clients frequently forget to bring the documents with them to the session. As indicated above, attorneys need to be available during mediation sessions for client questions and concerns; alternatively, attorneys should be attending mediation sessions particularly when the issues are difficult, the information is confusing, or clients are too heavily reliant on the attorney.

Others will argue that lack of success in the mediation can make the court case more difficult as the parties participated in mediation and no agreements were reached. Responses to this argument include:

1. Was it a timing issue? Perhaps the case or party was not yet “ripe” for resolution;
2. Was it a preparation issue? Perhaps one or both parties did not have the information or advice from their lawyers necessary to

move toward resolution;

3. Was more progress needed on the emotional issues? Perhaps there needed to be a referral to counseling so the parties could resolve the relational issues and disputes before they were ready to resolve the legal issues;

4. Were the parties at different stages in the grieving cycle? Again, one or both parties were not ready for resolution—needed to “air differences or hurts” before legal issues resolve;

5. Did the primary attorneys subtly sabotage the mediation? The lawyer told the client, “don’t resolve anything at mediation;” or “this is just a hoop to jump through so you can go get your certificate for the court;” or the attorney sent clients so ill prepared for mediation that no agreements could possibly be reached as the clients didn’t know what they were supposed to talk about or what they were supposed to do to resolve.

Mediation offers so much to the families of Iowa when disputes arise. Court intervention should only be the very last resort. Attorneys are the “gate keepers” as to which methods are used to resolve disputes. And, by the methods we choose, we can either support the integrity of family and build up the family even during times of dispute by using mediation (a blessing) or contribute to further tearing the family apart by using litigation (the real curse).



Christine L. Crilley is a general practice attorney/ collaborative lawyer and mediator, as well as a nationally approved mediation trainer. She has been practicing law since graduating from the University of Iowa College of Law in 1983 and has been mediating since 1999.



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Admission to the U.S. Supreme Court Bar

Kudos to The Iowa State Bar Association for hosting another group admission ceremony before the U.S. Supreme Court in May of 2021. My wife, son and I attended a similar trip in June of 1999, and it ranks as one of my most rewarding legal experiences since joining the Iowa Bar in 1978.

On the morning of our admission, we were led to an area of the courtroom reserved for members. After the Supreme Court clerk read our names, the solicitor general moved our admission to the court and Chief Justice Rehnquist administered the bar oath.

After the ceremony, the Eighth Circuit Liaison Justice Clarence Thomas, along with Sen. Chuck Grassley and Rep. Tom Latham, joined us in one of the court's reception rooms. In contrast to his quiet demeanor during oral argument, Justice Thomas was humorous and engaging; my family and I thoroughly enjoyed him. After the reception, Rep. Latham escorted us across the street and gave us a tour of the floor of the House of Representatives.

What I didn't appreciate when we were originally admitted was how helpful membership would be years later when I began visiting Washington on a regular basis. You can imagine my dismay on my first attempt to attend an oral argument when I arrived at the court only to see the public line extending around the corner of the Supreme Court grounds.

When I asked a guard whether there might be a second line for court members, he said "sure," and directed me to a small door on the north side of the court's staircase. After confirming my membership by driver's license, an attendant gave me a ticket for the first set of oral arguments. Only after borrowing a quarter from a court staffer to store my overcoat in a locker, was I directed to a seat in the second row of the area in the front of the courtroom, probably no more than 10 feet from the chief justice.

So, if you are interested in joining the U.S. Supreme Court Bar, you should consider the bar association's trip. The admission ceremony and certificate alone are worth it, meeting an associate justice after oral argument is like talking with a star player right after the big game, and the benefits of membership extend long after you are admitted.

Mark Schouten
Norwalk



JOIN IOWA ATTORNEYS FOR ADMISSION CEREMONY BEFORE THE U.S. SUPREME COURT

On May 24, 2021, The Iowa State Bar Association will host a group admission ceremony before the U.S. Supreme Court in Washington, D.C. Any Iowa State Bar Association attorney member with three or more years of practice, in good standing with the Iowa Supreme Court, is welcome to sign up for admittance and to participate in the ceremony.

Attorneys need to indicate their interest by letter to the ISBA and submit the \$200 registration fee paid to The Iowa State Bar

Association before Feb. 1, 2021. Details on the application process will be sent to you after receipt of your admission fee. Send to: ISBA, U.S. Supreme Court Ceremony, 625 E. Court Ave, Des Moines, IA 50309.

The number of admittees is limited by the Supreme Court, so reservations will be taken on a first-come-first-served basis. Participants will make their own travel and accommodation arrangements. If the COVID-19 pandemic prevents the ability of Iowa attorneys to travel, or results in the cancellation of the ceremony, other arrangements will be made.

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IowaDocs® prepares for transition to new form creation program

The Iowa State Bar Association is preparing for a major change to its IowaDocs® platform in the new year. XpressDox will become the new provider that drives the creation of forms.

IowaDocs® is now over 20 years old and has always run under the HotDocs software, but with changes in HotDocs ownership, technology changes and the move to cloud computing, ISBA leadership believed it was in the best interest of IowaDocs® users to switch to a different engine.

“IowaDocs® is vitally important to our membership as a service to create forms in a timely, easy manner. After weighing all options, we felt this switch was the best way to continue delivering this service for our attorneys and their

staff members,” says Harry Shipley, ISBA Assistant Executive Director.

YOUR QUESTIONS ANSWERED

Why is the ISBA making this switch?

The ISBA has chosen to convert its IowaDocs® software from HotDocs to XpressDox for a variety of reasons. HotDocs was purchased by Abacus, and concerns arose with new management regarding the future of HotDocs, including lack of research and development of publisher software, concerns over potential costs increases, significant lack of technical support, changes in the delivery method and lack of development of the HotDocs Market over the past six years.

What is the timeline for making the change, and what do ISBA users need to do to prepare?

ISBA staff have moved into the beta testing phase (with about 50 Iowa attorneys and their staff members currently beta testing the service) and are working to have a functional product at the end of 2020. The full launch will occur in January 2021 with user tutorials available. Current IowaDocs® users will receive instructions when it's necessary to take action.

XpressDox requires no software installation and no need to update because it is an online service. The new program is quite intuitive and should be straight forward to those with experience using IowaDocs®.

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What changes should ISBA users of IowaDocs expect?

With a new service provider, there will be some changes, but there will also be many similarities. First and foremost, the delivery of the software will be different. HotDocs allowed for a desktop version of the software (which was planning a phase-out), and XpressDox is strictly online. The overall experience from an end-user perspective is very similar: You open the library, select your form and it starts asking for information specific to the form.

HotDocs uses answer files for client data and XpressDox uses a data file, but they serve the same purpose as they can be reused in other forms. XpressDox has greater capability for retrieving answers from databases, like Excel spreadsheets. XpressDox also allows for the storage of the data sets to be on your local computer or in a cloud service.

The main changes users will see at the beginning are the speed and the ease of use with the XpressDox

Publisher platform and the fact that it is not accessed through a shared marketplace. A few notable differences are: a) Many templates have been redesigned when it comes to entering parties which will allow for greater consistency when pulling data from one document to another, and b) Most documents now have the option to be produced in Word or PDF format (or both). In addition, it's very intuitive and has a much simpler user interface.

What will be the biggest hurdles, and what kind of support will be available?

This is a change of service after almost 20 years, so as with moving to any new software package, it may take time to become comfortable with a different look and the basic commands and functions. Your law firm may need to establish new standard practices and procedures for getting the templates built, saved and shared.

Due to this being a web-based service, there will be less need for technical support. No software or updates will need to be installed.

The ISBA will provide online videos with 24-hour access for training, as well as monthly webinars for members to learn more. The ISBA technical support team will be available.

ISBA TECHNICAL SUPPORT:
Monday-Friday 9 a.m.-3 p.m.
Email: support@iowadocs.net
Phone: 866-597-6040

What is coming in the future?

XpressDox is working hard to enhance the Publisher product and some exciting enhancements are on the horizon. First quarter 2021, Document Services will be released, which will give firms the ability to send intake forms and questionnaires to clients. The interviews for the questionnaires can be emailed to law firm clients and will be branded with the law firm colors and logo. The client will complete the questionnaire and route the data back to the law firm. This pushes the data entry from lawyer to client. DocuSign integration is also coming next year as well.

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ASSESSING DIGITAL RISK, PART 2

HOW DO YOU STOP HACKERS? HIRE ONE TO HELP YOU

In the battle against cyber thieves, automated security scans and “white hat” hackers are indispensable tools.

By Trevor Meers, Director of Partnerships and Content at Pratum

The hacker’s pulse raced as he typed the message. He’d been at the keyboard for hours, methodically probing a specific company’s data systems, looking for a place to tunnel in. And now he was tapping out some big news.

“I got the passwords!” he wrote.

“Which ones?” his friend’s reply popped up.

“All of them.”

The hacker may have been bragging, but he wasn’t exaggerating. And this isn’t a theoretical example. It comes straight from an Iowa cybersecurity test in the fall of 2020.

The hacker’s cyber heist had netted every password in the organization, including a particularly satisfying prize: the password of the IT director charged with protecting the organization’s data. And the hacker was about to turn around and give it all back.

The thief in this case was a “white hat” hacker (yes, that’s an official thing) working for Pratum, an Iowa cybersecurity firm the organization hired to help up its game. And now he would turn his exploits into a report that would explain what the organization should do to keep a true bad guy from replicating his success.

TWO TESTS THAT TELL THE STORY

In the November issue of the Iowa Lawyer (“Cybersecurity essentials for law firms”), we looked at risk assessments – the overall review that surveys your business’ structure and processes and summarizes your cybersecurity risks. We saw that cyber attacks are booming in

response to 2020’s newly dispersed workforce. And we noted that 60 percent of small businesses go out of business within six months of being hacked, according to the National Cybersecurity Alliance.

In this article, we dive into two more services that add to your risk assessment by examining how well your security tools work in the real world.

“While it looks good on paper, is it actually being done in reality?” asks Pratum Senior Penetration Tester Jason Moulder. “If I send your employees a file, will 60 percent of them open it without understanding what it actually is?”

Unfortunately, the answer is “probably.” To find out, a cybersecurity firm can use vulnerability scans and penetration tests to evaluate your defenses using both processing power and human ingenuity.

Vulnerability scanning is an automated scan of your systems that looks for known security vulnerabilities. The scan delivers a

report of potential exposures that may threaten your organization.

In penetration testing, a human uses information found in a scan, or divulged by unwitting employees during a simulated social engineering attack, to exploit vulnerabilities and gain access to sensitive data. But because they’re the good guys, they finish their hacking adventure by giving you a report of what you need to fix.

VULNERABILITY SCANS

The first step in this two-stage process is the “vulnerability scan,” which identifies the common weak spots every criminal knows about in popular tools such as Microsoft server software. Software companies constantly release updates and patches that plug the gaps, but you have to install them. A vulnerability scan checks whether you’ve addressed all the known issues such as misconfigured firewalls, exploitable server configurations,



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out-of-date and unpatched software and unencrypted login credentials.

As an automated service, vulnerability scanning relies on technology more than the individual deploying the scan. But the human touch plays a key role in the vulnerability scan scoping phase. It takes a knowledgeable consultant to define the appropriate devices to target and scan. A consultant will also help you choose between authenticated (scanning as a user on the system) or unauthenticated (scanning as an outsider, without user account information) scans.

Vulnerability scans are fast and simple to implement. You just set up a monthly service with a cyber security company with a fee based on the number of devices being scanned. Then the software reviews things each month, keeping an automated eye on systems that might change from secure to vulnerable in the course of a week, depending on what new weaknesses the world's hackers discover. The regularly scheduled vulnerability scans help provide a baseline of normal activity for a given information security program.

At the end of each scan, you'll get a detailed report that includes actionable recommendations.

Keep in mind that a vulnerability scan is limited by the "we don't know what we don't know yet" syndrome. Pratum's Moulder says, "It's only looking for what it's programmed to look for. That doesn't always give you an accurate picture of what's going on." And that brings us to the value of teaming vulnerability scans with "pen tests."

PENETRATION TESTING

At this point, your security program enters into the mind of an attacker—and starts to sound like a spy novel or heist movie. In a penetration test (the scenario described at the beginning of this article), your cybersecurity consultant sends in

ethical hackers to manually attack your systems, looking to exploit security risks. "Pen tests" go after your network, wireless access points, web apps and staff members via social engineering attacks.

"In a pen test," Pratum's Moulder says, "you're validating the whole process of how a company reacts to an attack."

A thorough pen test examines the three core elements of security: people, process and technology. With the people aspect in mind, the test may include your physical security controls. A full-scale Pratum pen test, for example, involves ethical hackers taking a crack at your system from a lab while social engineers might dress like telephone company crew members and try to talk their way into your office's server room.

The testers aren't simply after "gotcha moments." They set out to gain actionable intelligence so you can create safeguards that stop actual bad guys from replicating what the tester just pulled off. But even "white hat" hackers like to finish their work with a flourish to prove how serious a real attack could get.

"We usually don't actually take any data, unless it is part of the test," Moulder says. "But I usually leave a calling card file in the system that says, 'If you find this, it means you've been completely taken over, and here's what we could've done.' We might just show them the last four digits of a bunch of credit cards to show that if we can get that, we can get everything."

The pen test's quality rests on the experience and skill of the ethical hacker and the supporting team. Consider these four factors when looking for a pen testing partner:

Objectivity – Some companies trust their pen test to parties that aren't exactly impartial. For example, if your testers developed the platform being tested, they may be reluctant to share any findings that reveal vulnerabilities in their initial

development work. So, choose an individual or company whose only interest is helping make your organization more secure.

Certifications – Industry certifications make it much easier to ensure you're hiring a capable tester. Some key titles to look for are: Certified Ethical Hacker (C|EH), Offensive Security Certified Professional (OSCP), GIAC Penetration Tester (GPEN) and GIAC Web Application Penetration Tester (GWAPT).

Reports – This is the true deliverable from a pen test since it helps your organization fix issues before a criminal has a chance to exploit your vulnerabilities. Ask potential pen testers for a sample report and look for sections that clearly lay out what was compromised, how the tester did it and what you can do to improve your security posture.

Follow-up Tests – Some pen tests include follow-up validation to prove you've fixed all the issues. Your consultant can clarify when you'll need that checkup.

As you consider potential security testing vendors or consultants, drill them on the difference between vulnerability scanning and penetration testing. You might be surprised to find they don't have a clear understanding of the difference, which would be a good reason to move on to the next vendor.

Also, don't be surprised when you find vastly different pricing for "testing" services. As with most services, the most expensive quote isn't necessarily better, but there is probably a correlation between price and quality. And considering the damage your reputation would take after word of a data breach gets out, investing a few thousand dollars in a thorough test by a reputable company just might be the best risk management investment you make this year.

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Trevor Meers leads Pratum's content development and partner relationships and has covered technology as a journalist for more than 20 years. Pratum (pratum.com) is an information security services firm based in Ankeny. The company helps small-to-midsize businesses nationwide solve information security challenges based on risk, not fear. Pratum does not sell hardware or software, keeping its focus on objective security consulting services.

Statutory developments in business services practice with the Office of the Iowa Secretary of State

By Carl Dietz

It has been an interesting year for the Business Services Division of the Iowa Secretary of State's office, as it has for everyone. Obvious 2020 challenges aside, the enactment of three significant bills impacting business services procedures have practical effects on how attorneys, business entities and notaries interact with the office and with each other. These changes should result in more efficient business practices in Iowa.

First, Senate File 569's revision of Iowa Code Chapter 489's series limited liability company sections give greatly improved functionality to that tool for structuring business entities. Second, the passage of Senate File 475 in 2019 had unanticipated benefits for notaries and people seeking notary services as we entered the COVID era. The bill's introduction of remote online notarization provisions to Iowa Code Chapter 9B and the revision of Iowa Administrative Code Section 721-43 provided for greater safety by removing the need for the principal to be in the physical presence of the notary. Last, House File 2402's sweeping revision of the business entity chapters to require a 31-day delay of the effective dates of registered agent resignations means more entities will be easier to serve with important documents.

Here is a summary of the changes and their practical effects on practice with the Business Services Division:

SERIES LIMITED LIABILITY COMPANIES

Senate File 569, which took effect on July 1 of this year, is closely modeled on the Uniform Protected Series Act, and made significant additions and revisions to the Iowa Code. Primarily, it replaces Iowa Code Chapter 489 Article 12 and provides specifics on how to use series limited liability companies in Iowa.

As a brief overview, an LLC that has designated at least one protected series is a series LLC. Protected series are deemed to be separate LLCs distinct

from the series LLC and each other, and establishing them can be more efficient and cheaper than arranging separate LLCs in hierarchies designed to limit liability or distribute assets. Members of the series LLC can be associated as members of the protected series, and protected series can have their own managers, assets and creditors.

When the series LLC files its biennial report with our office each odd-numbered year, it will need to list in that report the name of each of its protected series that is to remain active. The registered agent of a series LLC is necessarily also the registered agent of each of that LLC's protected series. An LLC may establish a protected series by filing a protected series designation with our office.

Currently, there is no Fast Track Filing option for series LLC filings. This was a deliberate decision. Once we are confident that we have a solid paper process in place, we will add the option to file at least some series LLC filing types using Fast Track Filing.

There are many more statutory details and nuances to using series LLCs and their protected series effectively. If you believe your clients may benefit from using them, you will find it wise to spend some time parsing the language of the new provisions and gaining understanding of the key filings and mechanics.

REMOTE ONLINE NOTARIZATION

Senate File 475 provides for remote online notarization (RON), the ability to perform notarial acts for remotely located individuals through the use of communication technology. Even though it officially went into effect on July 1 of this year, significant portions of it were brought into effect several months earlier by one of the governor's emergency proclamations to help keep business operations in motion during the first few months of the COVID-19 pandemic. The bill made several RON-specific additions and revisions to Iowa Code Chapter 9B, the notary statute, in order to permit Iowa notaries public to perform remote online notarizations if they choose to do so. Pursuant to the bill, Iowa Administrative Code Section 721-43 provides specific rules and guidelines for notaries and notary technology providers in order to facilitate practical RON operation.

As you may surmise, most of the key provisions are technological in nature. For example, new subsection (2) of 9B.6 specifies that the "personal appearance" requirement may also be satisfied by a remotely located individual using communication technology to appear before a notary public, rather than only by physically appearing in the presence of the notary.



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Section 9B.14A adds the ability to verify the identity of the principal by means of third-party identity proofing technology, such as identification card analysis and knowledge-based authentication services. Section 9B.14A also provides rules for providing notarization to individuals located outside the United States, an occurrence which would not have been possible before the advent of this ability to notarize for a person not physically located in Iowa with the notary.

Other provisions state that a notary is required to make and retain an audio-visual recording of the performance of each notarial act, and that a commissioned notary must notify our office that he or she will be performing remote notarizations and identify the technologies he or she intends to use before performing the notary public's first one.

Two important requirements of the administrative rules are that Iowa notaries may only use communication technology providers approved by our office, a list of which can be found on our website, and that, before registering with our office as a remote notary, a commissioned notary must take the approved online training course outlining the additional skills and requirements of performing remote online notarizations.

DELAYED EFFECTIVE DATE OF REGISTERED AGENT RESIGNATION

House File 2402 revised Iowa Code Chapters 488, 489, 490, 501, 501A, 501B and 504, governing various types of business entities, to require a 31-day delay in the effective date of resignation of a registered agent. Chapters 486A and 499 already contained the 31-day delay language, but the bill added the further specification to all of the listed chapters that the resignation doesn't take effect until 12:01 a.m. on the 31st day after the resignation is filed with our office, or until a new registered agent is designated.

Our office has implemented controls within our database system to automatically delay the effect of registered agent resignation filing until the end of the 31-day period or the designation of a new registered agent. Registered agents and business entities need to be aware of the delay, but agents do not need to file anything different than they would have before.

In conclusion, these new statutes and rules should help improve the efficiency of the activities to which they relate. Practitioners, entity representatives and notaries are encouraged to review

the statutes to familiarize themselves with the principles outlined therein. Obviously, our office can't provide legal advice, but we welcome calls and emails with questions specifically related to forms or filing procedures. Additionally, I will be happy to present on any or all of these topics for legal professionals via telephone or video-conference. If you'd like to schedule me to address your group, just contact our office and ask to speak with me.



Carl Dietz is Business Services Division Attorney with the Iowa Secretary of State's office. He handles implementation of and legal issues regarding business entity filings, notary commissions, lien filings and trademark registration. He earned his law degree at Drake University, and can be reached at (515) 725-2338 or Carl.Dietz@sos.iowa.gov.



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TRANSITIONS

Joseph J. Porter, Matthew L. Roth, Madison T. Schroeder, Jackson C. Blais and Rebekah W. Jalilian-Nosraty have joined Simmons Perrine Moyer Bergman PLC in Cedar Rapids.

Porter joined the firm's litigation practice. He received his J.D. from the University of Iowa College of Law in 2020.

Roth joined the firm's litigation practice. He received his J.D. from The University of Iowa College of Law in 2020. While in law school he served as a judicial extern to the Hon. Edward M. Mansfield of the Iowa Supreme Court.

Schroeder has a general practice with a focused interest in helping families and is also working with businesses related to employment law matters. She received her J.D. from the University of Iowa College of Law.

Blais joined the firm's litigation practice. He received his J.D. from Notre Dame Law School in 2019. After graduating, he clerked for Chief Judge Thomas D. Schroeder of the Middle District of North Carolina in Winston-Salem.

Jalilian-Nosraty joined the transactions practice group at the firm. She received her J.D. from the University of Iowa College of Law in 2020.

Alexander Milona has joined Nyemaster Goode, P.C., in Des Moines as an associate attorney in the firm's business, finance and real estate department. He received his J.D. from the University of Iowa College of Law.

Gribble Boles Stewart and Witosky Law Firm (GBSW Law) announces its formation, located at 2015 Grand Avenue, Suite 200, in Des Moines.

Partners **Charles Gribble, Matthew Boles, Christopher Stewart** and **Adam Witosky**, and associate and family law mediator **Heidi Young**, have been practicing law in the state and federal courts of Iowa for a combined 90-plus years. GBSW Law's areas of practice include employment and labor law, wrongful death/personal injury, civil rights, family law and mediation and criminal defense and appeals.

Joshua D. Feil, Jennifer B. Chavez-Rivera and James Andersen recently joined Whitfield & Eddy Law in Des Moines.

Feil joined Whitfield & Eddy Law as an associate attorney in the firm's business and banking practice group. He received his law degree from the University of Iowa College of Law in 2016 and was a managing editor of the Iowa Law Review.

Chavez-Rivera joined Whitfield & Eddy Law as an associate attorney in the firm's business and banking practice group. She received her J.D. from Drake University Law School and served as vice president of Drake Law's Student Bar Association and articles editor for the Drake Law Review.

Andersen joined Whitfield & Eddy as a member of the firm's litigation practice group. Prior to joining the firm, he was an appellate law clerk for Justice Jeffrey J. Funke of the Nebraska Supreme Court from 2018 to 2020. He served as an appellate law clerk at the Nebraska Court of Appeals in the 2017 to 2018 term. He also was a judicial law clerk for Iowa's Third Judicial District from 2015 to 2016 and the First Judicial District in 2017.

Roberts & Eddy, P.C. and **Craig Wilson & Flickinger** announced that they have completed the merger of their two firms as of Nov. 1. **Lans Flickinger**, a partner of Craig Wilson & Flickinger, is now a shareholder of Roberts & Eddy, P.C. Denny Wilson, a partner of Craig Wilson & Flickinger, has retired after 44 years of practicing law. Roberts & Eddy, P.C. offers professional legal services in several areas including business/corporate law, taxation, real estate, probate, estate planning, wills, trusts, family law and litigation.

Kayli Paul has joined the Peddicord Wharton Law Firm in West Des Moines as an associate. She will be working in workers' compensation and litigation. Paul graduated from Drake University Law School in 2020.

Jennifer Pithan has joined Gardner Law Firm, PC in Urbandale as an associate attorney. Her practice will focus on probate and estate planning. Pithan received her J.D. from Drake University Law School in 2019.

Brittany A. Sievers and Brandon M. Hanson have joined Bradshaw, Fowler, Proctor & Fairgrave, P.C. in Des Moines.

Sievers joined the firm as an associate in the litigation practice group. She received her J.D. from Drake University Law School in 2019.

Hanson joined the firm as an associate in the litigation practice group. He received his J.D. from Drake University Law School in 2020.

Spencer Willems joined the Davis Brown Law Firm in Des Moines as an associate litigation attorney. His practice focuses primarily on general litigation, commercial litigation and employment and labor law. He received his J.D. from Drake University Law School in 2019.



Heiny, McManigal, Duffy, Stambaugh & Anderson of Mason City will be opening an office at the former offices of Berry Law in Clear Lake. As part of the expansion, **Matt Berry** will be joining the firm and continue to practice full-time. The firm will operate at both locations under its former name, **Laird Law Firm**, beginning Jan. 1.



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DUBUQUE YOUNG LAWYERS POTLUCK TURNS 40

Submitted

In the summer of '79, a dozen young lawyers and law clerks began meeting for lunch on Wednesday at the Iron Kettle Deli next door to Dubuque's City Hall. By February of 1981 when the group met at newlywed Jane and Frank Lange's apartment for a Saturday evening potluck, several of the couples decided to meet each month taking turns hosting. All were in private practice with Dubuque firms. All were childless except Bruce and Carleen Rehmke.

Now all have children and half of the six remaining lawyers are also grandparents. They have gone from little houses to big houses and some back to smaller retirement condos. As a group, they have supported each other through job changes, promotions, partnerships, adoptions, cancer, heart attacks, the death of two children, three retirements this year and the death of two members. Larry Kurt passed away from a brain tumor in his 30s and Judge Rick Gleason of a heart attack at 60.

Forty years later, the group is still meeting. Bruce, who is still running marathons, questions whether the name Young Lawyers should still apply. Rich Whitty, the youngest original member, gives his legal opinion as yes.

The last in-person pre-COVID potluck was March 7. Chad Leitch suggested a virtual potluck and has been hosting the meetings via the internet since May from Palm Springs. It made it easier for Tom Collins who moved to Cedar Falls last year when his wife, Sandy, took a senior level management position. They had been driving to Dubuque for potlucks the last two years hosting their turn at a Dubuque restaurant.

The December internet gathering will be the Christmas celebration with a gift exchange by mail. Mary Lynn Neuhaus and James Jarrard don't know yet who their gift recipients will be, but ML will be sending a gift basket with Third Coast Coffee Beans and Texas-made chocolates and jam while Jim is putting together a holiday spirit box from an Austin distillery where they have recently moved.

"When we were young lawyers of 25, we never thought that we would be together at 65+. Yet, these wonderfully talented lawyers and their spouses have provided an amazing scaffolding of support over all these years. Four of the wives are nurses. We have all benefitted from their nurturing side too," remarked Mary Lynn.

They look forward to meeting again in person in years to come to share their favorite dishes.



Top row, left-to-right: Rich Whitty, Mary Lynn Neuhaus, Chad Leitch; Seated: Frank Lange, Tom Collins (not pictured - Bruce Rehmke)



Now the group gathers via Zoom to carry on the 40-year tradition. Top row, left to right: Mary Lynn Neuhaus and James Jarrard (Austin, TX); Rita and Chad Leitch (Palm Springs, CA); Carleen and Bruce Rehmke (Peosta). Bottom row, Susan and Rich Whitty (Dubuque); Sandy and Tom Collins (Cedar Falls); Frank and Jane Lange (Dubuque).

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"Count your blessings" and donate to the Iowa State Bar Foundation

By William D. Scherle, Iowa State Bar Foundation Past President

As COVID-19 continues to surge in Iowa, it is only natural for concerns for family and friends to overshadow hope. But we have a responsibility as professionals and leaders in our communities to NOT let this happen. This is still the season for giving thanks, charity and hope. Let's begin by counting the blessings we have.

While it is important to not diminish the fact that COVID has infected over 200,000 Iowans, we can be thankful for the vaccines that are ready to be distributed. As of early December, the stock market has recovered and is hitting new highs. The personal savings level of Americans is at record levels. Farm prices have seen a dramatic increase, and the weather, to date, has been mild.

It is the responsibility of those who are blessed to help those who are not. We, as lawyers, hold ourselves to this standard

in the pro bono hours we contribute and the charitable causes we support. The

Iowa State Bar Foundation and its programs benefit all Iowans. The foundation has long sponsored Mock Trial and Know Your Constitution in Iowa's schools. These programs are the only civic education opportunities many students have. The concepts taught are vital to a well-informed public and are the foundations of our government. These programs need your donation dollars to continue.

Many will celebrate the end of 2020. Make that celebration especially meaningful by donating to the Iowa State Bar Foundation. Visit iowabar.org/ISBAFoundation for more information or contact Mary Hill at mhill@iowabar.org. GIVING IS GOOD.



The ISBA thanks the speakers from November 2020 CLEs:

The Language of Judicial Opinion Writing – Nov. 2, 2020

Hon. Mary Pat Gunderson, District Court Judge (ret.)

City Annexation from Simple to Complex – Nov. 9, 2020

Thomas Fisher, Legal Department, City of Des Moines

POWER Act + Gender and Judicial Opinion Writing – Nov. 12, 2020

Holy Elliott, Victim Assistance Specialist for U.S. Attorney's Office for the Northern District of Iowa

Chad Frese, Kaplan & Frese LLP

Hon. Mary Pat Gunderson, District Court Judge (ret.)

Brynn Howard, Iowa Legal Aid

Nicole Lepley, RISE

Chief Magistrate Judge Kelly Mahoney, U.S.

District Court for the Northern District of Iowa

Lisa Williams, Assistant U.S. Attorney for the Northern District of Iowa

2020 Corporate Counsel Institute – Nov. 16-17, 2020

Lisa Arechavaleta, Vice President of Compliance, Athene

Michele Brott, Davis Brown Law Firm

Ryan Cole, Assistant General Counsel and Director of Compliance, American Enterprise Group

Gary Goudelock, Jr., Whitfield & Eddy
Lee Henderson, Associate General Counsel,
EMC Insurance Companies

Lousene Hoppe, Fredrikson & Byron

Kate Lyon, General Counsel, EcoTech, Inc.

Bill McCartan, Bradley & Riley PC

Bill Pearson, Assistant Attorney General,

Consumer Protection Division

Emily Pontius, Fredrikson & Byron

John "Ogie" Sheehy, CEO of European

Business and Global CIO, ViClarity

Asmah Tareen, Fredrikson & Byron

Deb Tharnish, Davis Brown Law Firm

David Waytz, Fredrikson & Byron

Silver Linings: New Opportunities for Online Mediation – Nov. 16, 2020

Kristen Boldt, Harmony Law

Drug Testing in Child Welfare Cases: Chemistry, Methodology and Legal Implications – Nov. 17, 2020

Diana Rugh Johnson, Diana Rugh Johnson, PC

Unemployment Insurance Appeals During COVID-19 – Nov. 18, 2020

Stephanie Callahan, Administrative Law Judge,
Iowa Workforce Development

Alex Kornya, Iowa Legal Aid

Espnola Cartmill, Belin McCormick PC

Safe Harbors and Calm Seas: Navigating Risk in Law Practice – Nov. 19, 2020

Theresa Garthwaite, Risk Control Specialist,
Lawyers Professional Liability, CNA Global
Specialty Lines

Matthew Fitterer, Risk Control Attorney,
CNA Insurance

2020 Labor and Employment Law Seminar – Nov. 19-20, 2020

Rick Autry, Employment Appeal Board
Chief Magistrate Judge Helen Adams, U.S.

District Court of Southern District of Iowa
Erika Bauer, Belin McCormick PC

Mark Bennett, Director of the Institute
for Justice Reform & Innovation, Drake
Law School

Tara Cheever, LIT Software LLC

Nick Critelli, CritelliLaw PC

David Goldman, Babich Goldman PC

Maegan Gorham, Lane & Waterman LLP

Chief District Court Judge Marlita Greve,
District 7

Miriam Van Heukelem, Ahlers & Cooney PC

Ryan West, Iowa Workforce Development

Jo Ellen Whitney, Davis Brown Law Firm

Melissa Wright, U.S. Department of Labor's
Wage and Hour Division

Kids, Custody and COVID-19 – Nov. 23, 2020

Tyler Coe, Whitfield & Eddy, P.L.C.



THANK YOU TO OUR SPONSORS!!

Unfortunately, we had to cancel our Equal Justice After Hours fundraising event because of the pandemic. But you came through for Iowa Legal Aid, helping us to continue providing critical legal services to low-income Iowans during these difficult times.

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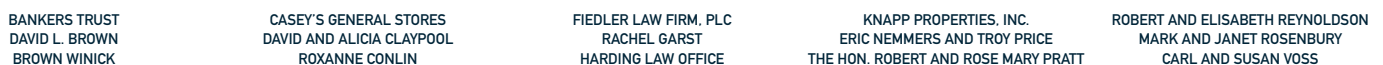
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UNIVERSITY OF IOWA LAW DEAN LEADS BIDEN TRANSITION TEAM REVIEWING DEPT. OF INTERIOR

University of Iowa College of Law Dean **Kevin Washburn** has been tapped by President-elect Joe Biden's transition team to head a team reviewing the Department of Interior. Washburn, who served four years as assistant secretary of Indian Affairs at Interior during President Barack Obama's administration, will lead a team of 11 other volunteers in evaluating the operations of the federal agency.



DRAKE LAW TEAM WINS ENVIRONMENTAL LAW AND POLICY COMPETITION

The Drake Law School team of **Bradley Adams** and **Katherine Leidahl** has won the inaugural Elisabeth Haub School of Law at Pace University Environmental Law & Policy Hack Competition. This national competition is designed to orient students toward the development of creative and impactful environmental policy.



The competition required the submission of a written policy brief, detailing suggestions for the use of vegetative landscapes to combat and mitigate climate change. The Drake Law team's subject was Cedar Rapids. After a preliminary round of judging based on the briefs, the finals required an oral presentation and defense of the policy recommendations.

The team was awarded a cash prize to be used to help implement the policy concept.



NEW PRESIDENT OF THE IOWA DEFENSE COUNSEL ASSOCIATION

Steve Doohen was installed as president of the Iowa Defense Counsel Association (IDCA) on Sept. 18. He will serve as president through the annual meeting in 2021. Doohen is currently practicing at Whitfield & Eddy P.L.C. in Des Moines.



MARION COUNTY ATTORNEY NAMED PRESIDENT-ELECT OF THE IOWA COUNTY ATTORNEY'S ASSOCIATION

Marion County Attorney **Ed Bull** has been named President-elect of the Iowa County Attorney's Association. The Iowa County Attorney's Association is a nonprofit corporation whose primary purposes are to encourage and maintain close coordination among county attorneys and to promote the uniform and efficient administration of the criminal justice system in this state through cooperation with law enforcement agencies, monitoring of legislation and the provision of continuing legal education for prosecutors.



HARDING MIDDLE SCHOOL WINS MOCK TRIAL STATE TOURNAMENT

The Iowa Middle School Mock Trial State Tournament was held virtually in early December, with the championship round occurring on Thursday, Dec. 3. Harding Middle School in Cedar Rapids "Team Gold" emerged with the 2020 championship trophy, coached by Cedar Rapids educator Shannon Haas and attorney Bill Haas. The state runner-up team was "Team Purple" from Johnston Middle School.

The virtual competition (held over Zoom due to the pandemic) involved 80 teams from more than 40 middle schools in Iowa. Additional results from the 2020 competition and the recording of the championship round can be found at iowabar.org/MSMockTrial.

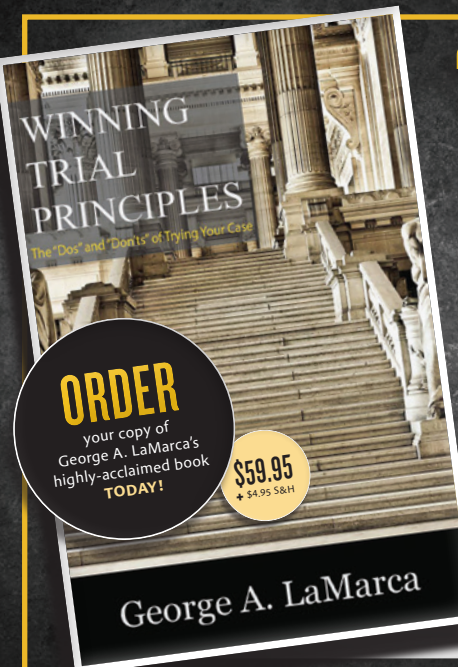
The Iowa Middle School Mock Trial Program is the largest in the nation. Each fall, students in grades 6-8 are presented with a challenging legal problem and set out to prepare and present both sides of the case to a panel of volunteer lawyers and judges. The 2020 tournament, with regional rounds occurring throughout November, involved approximately 300 legal volunteers (lawyers, judges and law students) as judges.

IOWA ACADEMY OF TRIAL LAWYERS WELCOMES NEW MEMBERS

The Iowa Academy of Trial Lawyers has invited fellowship to six new members:

- Allison Abbott**, Elverson Vase Abbott
- Katie Graham**, Nyemaster Goode
- Todd Michael Lantz**, Weinhardt Law Firm
- Stephen Marso**, Whitfield and Eddy
- Brett Charles Redenbaugh**, Redenbaugh and Mohr
- Raymond Stefani**, Gray, Stefani, & Mitvasky

They will receive their membership certificates at the Annual Seminar Reception in February 2021. Membership in the academy is limited to 250 attorneys whose primary dedication is to trial practice. Membership is by invitation only, with unanimous approval of the Board of Governors.



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Dean, Drake University Law School

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DISCIPLINARY OPINIONS

CASE NO. 20-0844: IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD V. LORI J. KIEFFER-GARRISON

Excerpted from the opinion filed Nov. 13, 2020, by Chief Justice Christensen

“The Iowa Supreme Court Attorney Disciplinary Board charged an Iowa attorney with violations of the Iowa Rules of Professional Conduct after she failed to consult with her client before signing his name to court filings, including a waiver of the client’s preliminary hearing and his right to a speedy trial, and allegedly made knowingly false statements to the court. The Iowa Supreme Court Grievance Commission found various violations of our ethical rules and recommended suspending the attorney’s license to practice law indefinitely for a period of at least one year from the date of our holding in this matter. Upon our de novo review of the record, we conclude the Board proved the alleged violations and **suspend the attorney’s license to practice law indefinitely** with no possibility of reinstatement for one year from the date of this opinion.”

CASE NO. 20-0187: IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD V. DAVID EBONG AKPAN

Excerpted from the opinion filed Nov. 20, 2020, by Justice Mansfield

“This attorney disciplinary case with interstate dimensions involves an Iowa-licensed attorney who practiced immigration law in Texas. The attorney received payments totaling \$4,000 from a client on a flat-fee representation. He put those payments directly in his operating account. After the attorney had worked on the case for a while, the client changed her mind and decided not to go forward with the representation. The attorney refused to refund any of the payments or to provide an accounting. The client filed a complaint with the Iowa Supreme Court Attorney Disciplinary Board. The Board charged various violations of the Texas Attorney Disciplinary Rules of Professional Conduct. The matter went to a hearing before a division of the Iowa Supreme Court Grievance Commission. At the hearing, which occurred prior

to the COVID-19 pandemic, the client was allowed to testify by video over the attorney’s objection. The commission found a number of violations and recommended a suspension. On our review, we find that the attorney violated the Texas rules when he failed to deposit client payments in his trust account, took those payments as income before they were earned, and failed to provide accountings to his client. We are not persuaded, however, that the attorney violated Texas’s prohibition on “unconscionable” fees when he collected \$4,000 for the work performed, which included many hours spent trying to get information from his client. We also believe the Board failed to show a sufficient basis for the admission of video testimony. As a sanction, we impose a **public reprimand.**”



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Weather-related insurance claims for special events

By Matthew J. Bunkers, Ph.D.

This article presents two examples where insurance was purchased to protect against weather-related losses in attendance for fundraising events.

In the first example, insurance was purchased to protect against losses in attendance for a winter event. For an insurance payment to be made, at least five inches of snow was required to fall in a 12-hour period for a specific date during the winter of 2018–2019 near Valley City, North Dakota. The analysis by the insurance company's meteorologists was that only 4.6 inches fell at the venue during the 12-hour period; therefore, payment of the claim was denied.

Based on this decision, Northern Plains Weather Services was retained to do an independent analysis of the snowfall. The first step was to assess snowfall for the sites around Valley City (Fig. 1). The storm-total 7.5-inch snowfall report closest to the venue was the lowest of the four reports in the area, but this was a "public" report, and not from a trained observer.

The main challenge in this case was determining how much of the snow fell in the 12-hour insurance window (it snowed for a total of 16 hours and 10 minutes at the venue). In order to do this, five methods were used to calculate the percentage of snow that fell in the 12-hour window. Collectively, these methods showed a 67–80 percent likelihood that snowfall was five inches or greater during the time of interest. After considering other factors such as the change in snow density with time, there was very high confidence (90 percent) that at least five inches of snow fell at the venue during the insured period. Based on this new information, the insurance company decided to pay the claim.

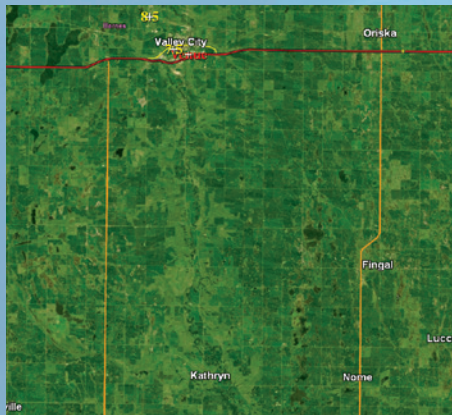


Figure 1. Snowfall (inches, in yellow) for the winter 2018–2019 event at the four sites with available data relatively close to the venue (red). White plus signs denote the locations of the sites.

The second example was like the first, but instead the insurance was based on at least 0.25 inches of rain falling at the venue in a 12-hour period during an event in the summer of 2018. The insurance company's meteorologists estimated that 0.14 inches of rain fell at the venue during the 12-hour period; therefore, payment of the claim was denied.

Based on this decision, Northern Plains Weather Services was retained to do an independent analysis of the rainfall. The first step was to assess the radar-estimated storm-total precipitation based on observations. Because the venue was located in-between observing stations (Fig. 2), interpolation of observations was required to arrive at a rainfall estimate for the venue.

At first glance, it is apparent that the venue (yellow plus sign in Fig. 2) was very close to the axis of heaviest rainfall (red line in Fig. 2); locations along this line had at least 0.25 inches of rain. Upon further examination of the radar as well as a comparison to the observed rainfall reports, the radar was underestimating rainfall for some of the sites. Finally, the radar never sampled the heaviest part of the storm as it moved over the venue. The result was 80 percent confidence that the rainfall at the venue was at least 0.25 inches.

The insurance company had its meteorologists reevaluate the rainfall estimate based on this new information. They noted that their smoothed analysis was inappropriately reducing the rainfall estimate, whereas the radar analysis suggested rainfall of 0.26 inches. Therefore, they agreed to pay the insurance claim.

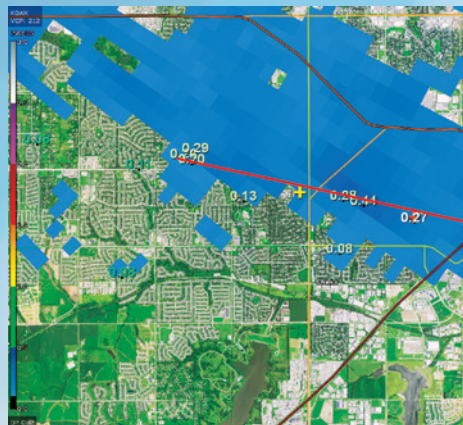


Figure 2. One-hour precipitation estimation from the Omaha, NE, National Weather Service radar using the dual-polarization algorithm. Values ≥ 0.10 inches are shaded blue. The venue is indicated with a yellow plus sign and the Millard Airport is indicated with an orange plus sign (with 0.27 inches of rain). The very light green-colored numbers are Community Collaborative Rain, Hail, and Snow (CoCoRaHS) network rainfall reports, while the cyan-colored numbers are from citizen weather observers from the Weather Underground. The red line is the axis of heaviest rainfall.

In summary, a consulting meteorologist typically is not needed when the weather situation is straightforward and/or weather information is readily available at the location and time of interest. However, they become especially valuable when weather information has to be pieced together (i.e., extrapolated or interpolated) from various sources and times to a specific location where weather information generally is lacking. In these cases, a consulting meteorologist uses her/his experience and expertise to interpret all available information and recreate the weather that happened for the case of interest.



Matthew J. Bunkers, Ph.D., is a Certified Consulting Meteorologist (CCM) with Northern Plains Weather Services (<http://npweather.com>) based out of Rapid City, South Dakota. He has 27+ years of weather analysis and forecasting experience.

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IN MEMORIAM

Craig Eugene Carlson, 78, of Des Moines, died Feb. 29. Carlson was born in 1941 in Iowa City. He received his J.D. from Drake University Law School and worked for 25 years with the Johnson Law Firm in Fort Dodge, becoming a senior partner. He retired from the firm and moved to West Des Moines to be an independent financial advisor and estate planner. He was a lifetime member of The Iowa State Bar Association and served as president of the Fort Dodge Community School Board.

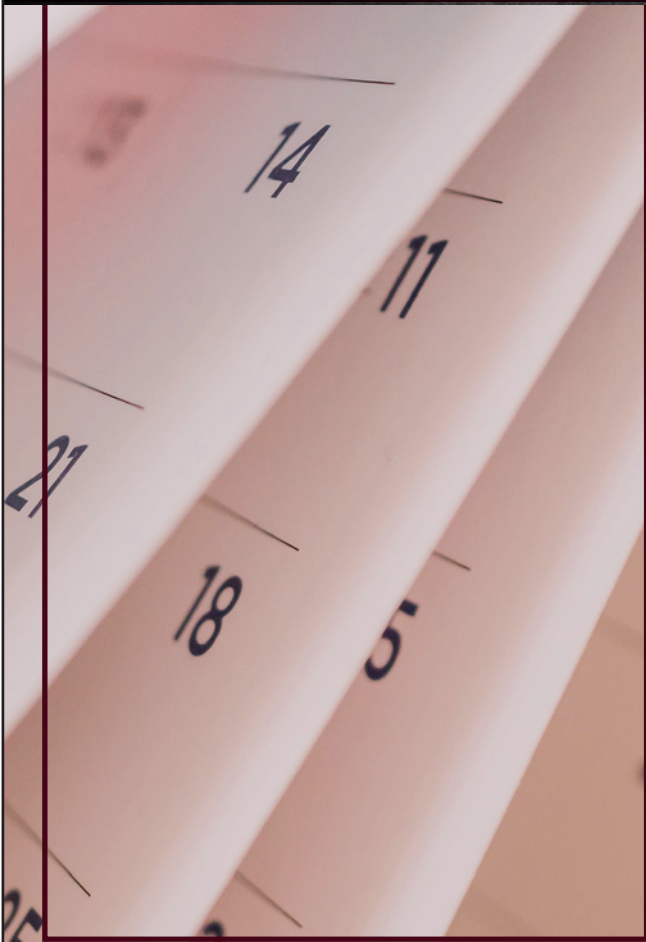
Steve Roberts, 81, of Des Moines, died Nov. 7. Roberts was born in Des Moines in 1939. He received his J.D. from the University of Michigan Law School. After college, he spent a year clerking for the Honorable Harvey M. Johnson, chief judge of the 9th Circuit Court of Appeals. He later joined the Davis Brown Law Firm where he practiced for over 51 years, retiring as counsel emeritus on Nov. 30, 2016. Later in life he also served as one of Davis Brown's lobbyists at the State Capitol with long-time friend Dick Thornton. Roberts also served as state chairman of the Iowa Republican Party from 1977-1981 and national committeeman in 1988 where he served for 20 years.

Suzanne Verene Cohn Engman, 81, of Des Moines, died Nov. 15. Engman was born in Pocatello, Idaho. She received her J.D. from Drake University Law School and served as assistant Polk County Attorney for many years. After that, she was a member and chair of the Des Moines Civil Service Commission.

Ruth Klotz, 98, of Des Moines, died Nov. 14. Klotz was born in 1922 in Mason City. She received her J.D. from Drake University Law School. She had a solo practice in Hampton, then joined the Dickinson firm in Des Moines, followed by several years with Bankers Trust. She was appointed to the bench as probate referee for the 5th Iowa Circuit in 1978 and retired as an associate judge in 2013 at the age of 90. Klotz was recognized for her service by the Iowa Organization of Women Attorneys' Arabella Mansfield Award, the Polk County Bar Association's Lifetime of Service Award and as Drake Law School's 1999 Alumna of the Year, among other honors. In 2019, she was inducted into the Iowa Women's Hall of Fame.

Clark Edward McNeal II, 78, of Branson, Missouri, died Nov. 9. McNeal was born in Belmont in 1942. He received his J.D. from the University of Iowa College of Law. McNeal practiced law in Iowa Falls at the offices of Barker, McNeal, Wiese & Holt from 1967 until his retirement. From 1991 to 1995, he also served as the state representative for Hardin County.

Scott Lynch Tully, 55, of Broken Arrow, Oklahoma., died Oct. 5. Tully was born in Ottumwa in 1965. He received his J.D. from the University of Tulsa College of Law. Tully began his legal career with a large Tulsa firm and then founded the Tully Law Firm in 2007. Although primarily practicing in Oklahoma, he was also admitted to practice in Iowa and Alabama.



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POSITIONS AVAILABLE

Executive Director – Disability Rights Iowa, Des Moines, IA – Disability Rights Iowa (DRI) seeks an executive director to lead our dynamic advocacy organization as we continue our mission to identify and eliminate the barriers that Iowans with disabilities of all ages face in exercising their civil, legal and human rights. The executive director will lead the organization as we work toward an improved quality of life for Iowans with disabilities, their families and our community as a whole. Applications will be handled in a confidential manner. Questions regarding the application process should be directed to: Katie VandeVorde, DRI Operations Manager, kvandevorde@driowa.org. Applications should be submitted by email to: board@driowa.org

Attorney – Peters & Longmuir, PLC, Independence, IA – Established and growing three-person law office is seeking a lawyer ready to join an active family law and criminal practice. We have a broad regional client base handling real estate, probate and tax matters. Applicants must have an interest in working to continue the growth of the practice and a desire to assume a management and ownership role. Competitive compensation options. Lawofficeadvert@gmail.com

Family Law Associate Attorney – Arenson Law Group, PC, Cedar Rapids, IA – Arenson Law Group, PC seeks to hire an energetic, highly-motivated attorney practicing in family law. Practice areas may include alimony, child custody, child support, divorce, juvenile law, marriage, parental rights, paternity, separation, shared parenting, surrogacy and visitation. Please email James Arenson at info@arensonlaw.com with any interest and questions. Only applications that include a cover letter and resume will be considered. Writing samples are accepted.

Litigation Attorney – Hupy and Abraham, S.C., P.C., West Des Moines, IA – Hupy and Abraham, an AV-rated personal injury law firm headquartered in Milwaukee, Wis-

consin, seeks an experienced attorney with three to five years of litigation experience to join our West Des Moines team. Experience in personal injury, workers compensation or insurance defense is preferred. To apply, visit <https://careers.iowabar.org/jobs/14088934/litigation-attorney>

Assistant Attorney General-Burlington – Iowa Department of Justice – Attorney General, Burlington, IA – Iowa Attorney General seeks attorney to represent Child Support Recovery Unit. Position located in Burlington. Must be licensed to practice law in Iowa. To apply, visit <https://careers.iowabar.org/jobs/14112852/assistant-attorney-general-burlington>

Immigration Attorney – BrownWinick Law Firm, Des Moines, IA – Seeking a full-time qualified attorney with two-plus years of experience (primarily in business immigration law) to join our employment practice group. Candidates must be proactive, detail oriented and organized, and should have experience with employment-based immigrant and non-immigrant visas. Confidential inquiries, including cover letter, resume and law school transcript (unofficial is acceptable) should be directed to: Tia Calhoun, Recruiting Coordinator, BrownWinick Law Firm, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309, E-mail: tia.calhoun@brownwinick.com

Appellate Paralegal – Iowa Judicial Branch, Des Moines, IA – The Iowa Judicial Branch is looking for a highly skilled paralegal for the Appellate Clerk of Courts Office. The ideal candidate has the ability to juggle multiple tasks and has a high attention to detail. In this role, the candidate would provide effective and proficient legal assistance to attorneys and justices of the judicial branch. Please include a cover letter, resume, paralegal certification (if applicable), references and a writing sample along with the Iowa Judicial Branch Application for Employment. Email: SCAHR@iowacourts.gov. See the full job posting at www.iowacourts.gov/iowa-courts/career-opportunities/

Transactional Partner/Associate – Phelan Tucker Law LLP, Iowa City, IA – Phelan Tucker Law LLP, an AV-rated Iowa City firm, is seeking an exceptional individual to join its active transactional practice. The ideal candidate will have significant experience with real estate and commercial transactions; real estate development; business entities; and estate planning and estate/trust administration with extraordinary communication and analytic abilities, as well as connections to the Iowa City area. Phelan Tucker is an equal opportunity employer and values a diverse team. Please send resume and cover letter to Christine Gaudet at gaudet@phelantuckerlaw.com.

Attorney 1 – Iowa Department of Revenue, Des Moines, IA – The Iowa Department of Revenue is seeking an attorney to perform beginning level legal work for the department and related work as required. The department has the opportunity to interact with nearly every Iowan at some point during his or her lifetime. All applicants must submit a cover letter and resume to Mary Kay Younker at marykay.younker@iowa.gov by the application deadline. All applicants must identify any relevant coursework (i.e. Administrative Law, Legislation, Tax Courses) by either listing them on the resume or by providing a transcript.

Litigation Partner/Associate – Phelan Tucker Law LLP, Iowa City, IA – Phelan Tucker Law LLP, an AV-rated Iowa City firm, is seeking an exceptional individual to join its active litigation practice. The ideal candidate will have significant courtroom and discovery experience, extraordinary written and verbal communication skills, strong analytic abilities, as well as connections to the Iowa City area. Phelan Tucker is an equal opportunity employer and values a diverse team. Please send resume and cover letter to Christine Gaudet at gaudet@phelantuckerlaw.com.

Law Clerk 3 – Iowa Judicial Branch, Des Moines, IA – Seeking a law clerk 3 for Iowa Supreme Court Justice Brent Appel. This position is a clerkship opportunity beginning in Fall 2021. The law clerk will conduct legal research, draft memoranda, prepare case summaries and review opinions to assist the justice with the disposition of cases. All applicants must complete an Iowa Judicial Branch Application for Employment. Applicants must also submit a resume, cover letter, transcripts, references and a writing sample. Mail application and supporting materials to: Iowa Supreme Court, Attn. Hon. Brent Appel, Judicial Branch Building, 1111 E Court Ave, Des Moines, IA 50319, Or email application materials to: Julie.Cosner@iowacourts.gov. View the full posting at <https://www.iowacourts.gov/iowa-courts/career-opportunities/>

Associate Attorney – Lederer Weston & Craig PLC, West Des Moines, IA – Lederer Weston Craig, PLC is seeking a lawyer to join its West Des Moines office. A candidate with two or more years' experience in civil litigation or a judicial clerkship is preferred. To apply, visit <https://careers.iowabar.org/jobs/14138230/associate-attorney>

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Transactional/Real Estate Associate – Davis Brown Law Firm, Des Moines, IA – Davis Brown Law, a 78-attorney law firm with offices in Des Moines, West Des Moines and Ames, seeks an associate attorney for the Des Moines office. A minimum of two-to-three years of transactional experience is preferred. Specific real estate experience is not required; however, a desire to work in real estate is required. *To apply, visit <https://careers.iowabar.org/jobs/14137994/transactional-real-estate-associate>*

Attorney – Jordan, Oliver, Walters & Smith, PC, Winterset, IA – Jordan, Oliver, Walters & Smith, PC, an AV-rated Winterset general practice law firm, is seeking an attorney with experience or a desire to practice in the areas of real estate, tax and probate. Salary commensurate with experience and qualifications. *Send cover letter and resume to: Mark L. Smith, P.O. Box 230, Winterset, IA 50273.*

Attorney – Grefe & Sidney, PLC, Des Moines, IA – Long established Des Moines law firm seeks associate with zero to three years' experience and a passion for trial practice. *Please send resume and references to Hiring Partner, Grefe & Sidney, PLC, 500 E. Court Avenue, Suite 200, Des Moines, IA 50309.*

Associate Attorney – Fischer Law Firm, Vinton, IA – Fischer Law Firm, located in Vinton, county seat of Benton County in eastern Iowa, is hiring an associate or potential partner to join a busy practice. The law firm handles everything a small general practice office does, with an emphasis on transactional law including real estate, probate, agricultural law and small business. The firm is looking for an associate who would like to make a future with the firm, preferably an attorney with at least two years' experience in general practice. Vinton is equidistant from Cedar Rapids and Waterloo. An attorney could enjoy the amenities of living in a vibrant smaller town like Vinton or could commute either direction. *Send resume to Johnfishlawusa@aol.com for immediate consideration.*

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Consulting Services for Not-for-Profits – Dennis Groenenboom, who served as executive director of Iowa Legal Aid for over 25 years, is now offering assistance

with mergers of not-for-profit organizations, executive search, organizational reviews, including quality assessment and service delivery structure, funding diversification and policy compliance matters. *For further information call 515-537-4242 or email dgroenenboom4@gmail.com.*

FREELANCE LITIGATION SERVICES – Iowa-licensed attorney provides freelance litigation services to other lawyers and law firms on an hourly, as-needed basis – research, motions, brief writing, discovery, document review, appellate work and other trial preparation tasks. *Melinda Ellwanger, P.L.L.C. / 515.988.5622 / mellwanger@yahoo.com / www.Linkedin.com/in/melindaellwanger.*

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Davis Brown Law Firm to combine with Dentons

Davis Brown Law Firm announced on Dec. 8 a future combination with Dentons, the world's largest law firm.

Davis Brown is one of the largest law firms in Iowa with close to 80 lawyers and three offices in West Des Moines, Ames and the Davis Brown Tower in downtown Des Moines.

Through the combination, both Davis Brown and Dentons will enhance the depth of services available to clients among the areas of corporate, employment, healthcare, insurance, litigation, construction and real estate law.

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Lawyers in the Iowa National Guard deploy to Kosovo for Operation Joint Guardian



Left to right: CPT David Faith, CPT David Brooks, PFC Katherine Post (paralegal) and MAJ Benjamin Smith.

Benjamin Smith, the Sac County attorney, recently said an emotional goodbye to his family as he was deployed to Kosovo with the Iowa National Guard 2nd Brigade Combat Team, 34th Infantry Division, for Operation Joint Guardian.

“It is heartbreaking, especially now with the holidays looming,” Major Smith said. “I have a wife and two young daughters I miss dearly.”

Smith, who joined the Iowa Army National Guard in 2009, serves as the lawyer for the Brigade Commander, and is also responsible for supervising, training and mentoring subordinate judge advocates and paralegals assigned to the Brigade. His unit is deployed for “Kosovo Force,” the NATO-led peacekeeping mission which has operated in Kosovo since 1999.

There are two other Iowa attorneys serving under Major Smith with the Iowa National Guard in Kosovo: Captain David Brooks, an attorney for the Iowa State Public Defender’s Office in Council Bluffs, and Captain David Faith, an Assistant United States Attorney for the Southern District of Iowa. Their duties include serving as the trial counsel, military justice advisor and foreign claims commissioner for the region – prosecuting crimes under the Uniform Code of Military Justice. They also advise commanders on military justice proceedings and adjudicate any claims by foreign nationals against the United States.

“Our mission in Kosovo is to ensure a safe and secure environment and freedom of movement for the people of Kosovo,” explained Capt. Brooks. “I will be advising our commanders on a variety of issues, including operations and ethics. In the military, our commanders are given tremendous power as they make tough decisions. As a commander’s legal and ethical advisor, we often say that as a military lawyer, we have to speak truth to power.”

All three men are taking leave from their “day jobs” as practicing civilian attorneys, and they credit supportive employers and spouses for their ability to carry out this mission.

“I feel bad that my wife is having to function as a single working parent (she is also a lawyer) in the midst of everything going on in the world right now,” said Capt. Faith. “Fortunately, my wife has been extremely supportive and is strong enough to handle anything that happens at home. I couldn’t do what I do here without knowing that.”

“Being gone for such a long time is hard,” said Capt. Brooks. “My wife and I have two children under 20 months and I miss them a lot. I am constantly

amazed at my wife’s ability to manage—she undoubtedly has a more difficult job at the moment than I do. I am also very grateful to my civilian employer—it would be hard to be in the military without such supportive coworkers. The State of Iowa goes above and beyond to support its workers who are in the military.”

The three men say their careers as lawyers trained them well for this kind of service.

“Lawyers have a special skill set which gives us the opportunity to contribute something meaningful to all the institutions that shape our society, protect us and govern us,” said Capt. Faith.

It is also about carrying on a family tradition.

“This experience means doing my part. I’m not charging up hills into machinegun fire like my grandfather (a World War II veteran) did, but this is something I can do. This is service I can offer,” said Capt. Faith. “I’m proud of that.”

“There are several reasons I joined the military; foremost, however, was my admiration for my late grandfather, an Army Ranger who served in World War II. He loved our country unconditionally and believed fighting for it to be a great honor and privilege. I have always felt the same,” said Major Smith.



Major Benjamin Smith pictured with his family on the day of his deployment.



Smith says goodbye to his two young daughters on the day of his deployment.

The ISBA Public Relations Committee honors an Iowa attorney or group of attorneys each month in this special “Spotlight on Service” 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.**



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