



# THE IOWA LAWYER

May 2020 V 80 N4

New justice brings  
drive and passion  
for public service  
to the bench

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Newly-appointed Iowa Supreme Court Justice Matt McDermott is pictured next to the running trail by his home in West Des Moines that he frequently uses to train. Justice McDermott is a marathon runner, avid volunteer and a busy family man. Learn about him beginning on **page 22**.

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# President's Letter

The rites of a virtual spring:  
Looking back and looking forward

The significant challenges of the past couple of months have brought to mind comparisons with earlier trying times, particularly the Spanish flu that swept across the world, this country and Iowa in 1918-1919. That pandemic coupled with the casualties of World War I wrought devastation to the nation and Iowa. Then, as now, Iowa lawyers (and soon-to-be lawyers) have endured and persevered. As we start to think about what life will be like, public health measures taken in 1918, such as social distancing, become more understandable.

In that year, the University of Iowa football team welcomed Frederick W. "Duke" Slater from Clinton, Iowa. Judge L.F. Sutton, a district court judge in Clinton, and Judge Ralph Howell, a former district court judge in Iowa City who had resigned from his judgeship to enlist in the Great War, were influential in convincing Duke to attend the U of I.

After the first two games of the 1918 season, the social climate took an unexpected turn as the Spanish flu began to reach Iowa. Big Ten play was halted in early October and Iowa ended up rescheduling games. It played Coe College on Oct. 12 in an empty Iowa stadium. Iowa next played Cornell College on Oct. 19, but again in an empty stadium. Homecoming against Grinnell College was cancelled because the entire state was in quarantine and the season thereafter was indefinitely postponed due to the pandemic.

Then, in November, the War Department allowed Big Ten play to resume and Iowa played three more games. Duke's heroics on the football field would earn him All-American status and he would go on to further gridiron glory, as indicated by his recent induction into the NFL Hall of Fame. He subsequently graduated from the University of Iowa College of Law and had a distinguished career as a municipal, superior and circuit court judge in Chicago.

The 1918 and 1919 annual meetings of The Iowa State Bar Association encouraged members to be hopeful and optimistic for the country, the state and the profession. It was a momentous time

as the Great War was coming to an end, the 19th amendment supporting women's suffrage was in the process of being ratified by the states and Gertrude Durden Rush became the first African-American woman admitted to the Iowa bar.

The ISBA has held in-person annual meetings since that time. But in the face of the continuation of the COVID-19 pandemic, the administrative committee of the Board of Governors, the Annual Meeting Committee, officers and staff have been compelled to consider alternatives for the annual meeting that was scheduled for June 22-25 at Prairie Meadows in Altoona. We concluded that instead of proceeding with an in-person annual meeting, the ISBA will convene a week of annual meeting CLE webinars during May 18-22.

ISBA CLE Director Christy Cronin and the committee, chaired by Kathy Law and Chris Moon, have been working hard to reorganize the structure of the annual meeting. You can read more on the following page. We are grateful to the many speakers who have agreed to move their presentations up a month to accommodate this new date.

## MEMBERSHIP RENEWAL

Members have started receiving notices about ISBA membership renewal. Many other states mandate membership for their lawyers; however, ISBA membership is voluntary. The ISBA is committed to fulfilling its mission of helping support its members in their service to clients, the judiciary and the community, and providing value to you for your membership.

The ISBA provides resources, including CLEs, to keep members current on legal developments in order to better represent clients. During the COVID-19 pandemic, the ISBA has provided almost 8,000 hours of free virtual COVID-19-related CLE webinars in service to more than 5,300 attendees. The ISBA regularly updates its COVID-19 resources webpage at [iowabar.org/COVIDResources](http://iowabar.org/COVIDResources) in order to centralize important information for our members. We continue to advocate on various issues for members, including keeping open county recorders'

offices for real estate transactions. The ISBA also has partnered with Iowa Legal Aid and the Polk County Bar Association Volunteer Lawyers Project to help support the COVID-19 Iowa Legal Information Hotline, which, to date, has received over 1,000 calls from Iowans struggling through this time.

Our sections and committees are an important part of the ISBA. These groups continue to meet virtually during this period. They provide forums and opportunities for practicing lawyers, government lawyers, in-house counsel, law professors and members of the judiciary to exchange insights and information over legal questions that are immune from the pandemic. Through our sections and legislative counsel, the ISBA continues to promote law reform in this state, pandemic or no pandemic.

## WELLNESS

The importance of wellness has become even more apparent during these trying times. The ISBA Well-Being Committee is working on initiatives to assist members, and the ISBA's Lawyers Assistance Program stands ready to assist members during this time of crisis and afterwards. Visit [iowalap.org](http://iowalap.org) for more information.

Our Young Lawyers Division also has been doing tremendous work to address issues important to the new practitioners including mentoring, practice development ([iowabar.org/YLDResources](http://iowabar.org/YLDResources)), law school debt and law school transparency.

This spring of 2020 is unlike other springs given the many uncertainties we face as a state and a profession. And yet, as was the case in 1918, the ISBA is well positioned and absolutely committed to serving the needs of Iowa lawyers. Please renew your membership so the ISBA can continue to be the association that supports Iowa lawyers.



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# 2020 ISBA ANNUAL MEETING GOES VIRTUAL

A MESSAGE  
FROM THE  
ANNUAL  
MEETING  
COMMITTEE  
CO-CHAIRS

We invite you to attend the 2020 ISBA Annual Meeting, which will be held May 18-22.

Over the last nine months, the ISBA Annual Meeting Committee worked diligently to prepare your annual conference. While this conference was originally scheduled to be held in June at the Prairie Meadows Conference Center, in combination with the Judges' Association and the Court Reporters' Association, we have made some required changes.

In the last several weeks, we determined that it would not be safe for us to gather in person for the ISBA Annual Meeting. We worked quickly to modify the format of the meeting from an in-person event to a series of webinars. We changed the date to the week of May 18 in hopes that members would be able to attend

during a time that courts were not operating at regular capacity. The awards ceremonies normally handled during luncheons and dinners will be held later, or virtually as permitted.

We are excited to offer several topics and speakers virtually. The registration fee has been reduced to \$125 for ISBA members, while maintaining the free registration for law students and lawyers in practice 1-3 years. We will be offering 26 hours of State CLE, 3.5 hours of Ethics and 1 hour of Juvenile Law, all of which can be watched from the safety of your own home.

Topics range from Ag Law on Monday, Family Law and Real Estate on Tuesday, Probate on Wednesday, Juvenile and Litigation on Thursday, and Elder Law and a YLD track on Friday. The Civil and Criminal Case Law Updates will be delivered by Court of Appeals

Judge Paul Ahlers on Monday.

We regret that we will not be able to see each other in person. The annual meeting is an educational event, but also a time for us to see old friends and share stories from the last year. We know how much the socialization means to everyone, but in order to make sure that continues for years to come, this year must be from a distance. We look forward to providing you with your continuing legal education. We also look forward to seeing you in person next year. Until then, stay safe and healthy.



**KATHY LAW AND CHRIS MOON,**  
ISBA Annual Meeting Committee Co-Chairs

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# 2020 ANNUAL MEETING

 GOES VIRTUAL

## May 18 — 22

Due to ongoing health and safety concerns from the COVID-19 pandemic, this year's Iowa State Bar Association Annual Meeting will be an **all-virtual** CLE experience.

### PROGRAM TRACKS:



Criminal Law



Probate



Ag Law



Family Law



Real Estate



Ethics



Litigation



Young Lawyers

**AND MORE!**

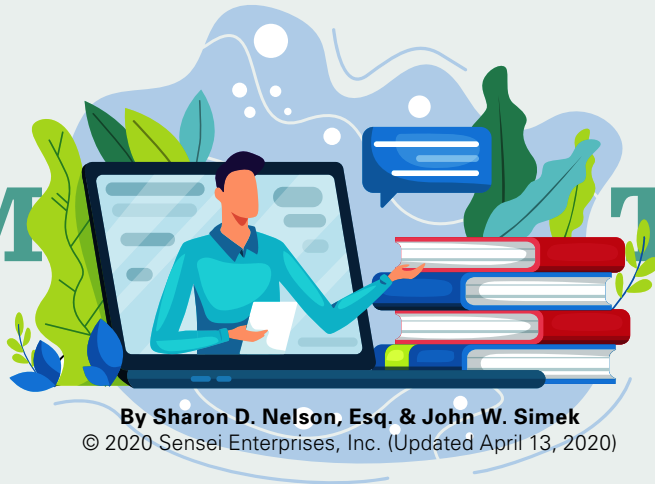


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# ZOOM TRAINING for lawyers



By Sharon D. Nelson, Esq. & John W. Simek  
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The coronavirus pandemic has forced a lot of lawyers to utilize video conferencing to “meet” with co-workers and clients. One of the most popular video conferencing platforms is Zoom. There are others, but we see Zoom as the choice of many lawyers, especially those in solo and small firms. While we can’t cover all the options and settings for Zoom, we’ll try to give our advice on the best way to use and secure Zoom for your firm.

The growth in Zoom usage has exploded. As of the end of December 2019, there were approximately 10 million free and paid daily meeting participants. In contrast, that number increased to over 200 million free and paid daily meeting participants in March of 2020. The boom in usage has squarely put the cross hairs on Zoom. Multiple security and privacy issues have been discovered and exposed by security researchers and journalists.

On April 1, Zoom CEO Eric Yuan announced that there would be a feature freeze for the next 90 days while resources are concentrated on fixing the “biggest trust, safety and privacy issues.” As Zoom has fixed more and more security defects, we believe it is a darn good videoconferencing solution for lawyers as long as they learn how to use it properly.

## EQUIPMENT

Zoom is extremely easy to use (for lawyers and clients!) and is available across multiple platforms and operating systems. You can use your mobile device with apps available for Android and iOS. There are desktop clients available for macOS, Windows and a bunch of Linux/Unix versions (e.g Ubuntu, Linux, CentOS, OpenSUSE, etc.).

To state the obvious, you will need some sort of camera to participate in a video conference call. Most modern-day laptops are equipped with a webcam for video calls. You can also use your iPad or smartphone. Another consideration is sound. The built-in

microphones for laptops or phones may not sound particularly good if you are on the receiving end. Consider using a headset (with microphone) or earbuds. You’ll be able to hear better, and so will all the other participants. Besides sounding better, headsets and earbuds help cut down on the ambient noise.

## PARTICIPATING IN A MEETING

We’ve participated in a slew of Zoom meetings over the years, but it sure feels like we’re now involved in one or two a day instead of one every several months. It seems obvious to us that you need to be in physical possession of the device you use to participate in a Zoom meeting. Apparently, a lot of attorneys don’t get the obvious or haven’t completely thought things through.

Many of us are working from home and may be remotely connecting to our computers at the office. If so, you’ll need to NOT remotely connect and must use your home computer, smartphone, iPad or some other device that you physically possess. If you try to participate in a Zoom meeting while remotely connecting to your office machine, it will be just as if you were sitting at your office desk. We can’t tell you the number of times we were looking at an empty desk chair.

All you need to do is have some way to access the meeting invite details from a physical device you have control over and which is in your possession. If the invite went to your firm’s email address, just access it from your smartphone (assuming you can get to your firm email from your phone); otherwise, just forward the message to a personal email account you can access from your home machine or other personal device. Remember...when participating in a Zoom meeting, the video camera must be able to “see” you and the microphone must be able to “hear” you.

We’ve also had experiences where

we couldn’t hear a participant, yet they were unmuted in Zoom. The likely cause is that the microphone is muted on the actual device they are using or the wrong microphone is selected. The key to checking if your computer microphone is muted varies by computer manufacturer and model.

## MEETING MANAGEMENT

While you are in a meeting, clicking the Participants icon in the bottom menu bar pops a panel to the right that shows all the participants for the

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meeting. You can see the status of the user's microphone (muted or unmuted) and status of their video cameras. Obviously, there will be no camera icon if the participant dialed in with a phone number. The participants panel is where the host can manage and control the participants. The host can 'mute all' or mute participants individually.

The host has other options as well, such as changing the name of the participant, stopping their video, preventing screen sharing and requesting a participant start their video. If enabled, the host can put the participant on hold, send them to the waiting room, etc.

When you click on a meeting link, you will be prompted to open the Zoom application. The default view shows the participants across the top bar with the speaker showing in the center panel. If someone else starts talking, the video will shift to that speaker. If you have more than a handful of participants, it is difficult to see who is in the meeting. Taking your mouse to the upper right corner of the screen will give you the option to change the view to gallery. The gallery view shows all participants in their own square with the speaker's box having a yellow outline. The outline will bounce around to the various speakers and is less annoying than the speaker's video constantly being switched out.

Zoom has released an update that will be most visible to those hosting meetings. There is now a new Security icon in the lower menu that replaces the Invite button. The icon allows the host to quickly and easily find and enable/disable security features. When you click the icon, hosts and co-hosts will be able to lock the meeting, remove participants, restrict a participant's ability to perform some actions (rename themselves, share

screens, etc.) and enable the Waiting Room even if it's not already enabled.

## FEATURES

The primary function of Zoom is to facilitate video conferencing. It supports video and audio transmission for each connected user over the internet. There's also a dial-in number for audio only connections. Some people use Zoom as an audio conference bridge so that users won't have to incur potential long-distance phone charges.

You can also configure Zoom to allow file transfers and screen sharing. The presenter can mute all the attendees and share PowerPoint slides from a computer desktop. There is also a whiteboard feature which participants can annotate for all to see.

There are a lot of meeting controls available to the host. As an example, you can control the audio of the participants. All participants can be muted when they first join the meeting. Audible tones can "announce" the joining of a participant. Sessions can be recorded.

A helpful feature for mediators is the Breakout Room feature, which is disabled by default. You create the rooms and then assign participants to a specific room. When the host opens the breakout rooms, each participant gets a notice to move to the room. Each room is isolated from the others, just like you would be in a real mediation. The participants can take advantage of the Zoom features (e.g. screen share, chat, etc.) among everyone in the room. The host and co-host can freely move among the breakout rooms. However, that feature only works for the host at this time. The co-host must be assigned a room, but the host can move them among the various rooms as needed.

Of course the mediator should be the one who hosts the meeting. We would not recommend allowing one of the parties to be the host in a mediation unless separate Zoom meetings were created for the appropriate participants, which would ensure separation of the parties. The disadvantage with separate meetings is that you can't easily move among the various rooms as you would in a real physical mediation.

You can record Zoom meetings too. The paid subscriptions offer local and cloud recording. The Pro plan includes 1GB of cloud recording storage. You can add more storage space for an additional fee. We would highly recommend not recording to the cloud. Cloud recording means Zoom stores the recording and manages it. Local recording means you have control over the distribution of and access to the recording. One downside is that local recording is not available in the iOS or Android app. You must use a computer to be able to record locally.

Another concern is the issue of encryption. Encryption is not possible for the recorded information. The good news is that local recording is only available for the host unless the host allows participants to record locally.

When configuring Zoom, do not enable the cloud settings or automatically record. It is possible to record without the host, but we would recommend against it. Prior to initiating a local recording, make sure the option is enabled. Login to your account from a browser and go to Settings and then the Recording tab. Make sure the "Allow hosts and participants to record the meeting to a local file" is enabled. You can also configure the host to allow the participants to record locally.

To start a recording, click on the Record button in the bottom menu. Select the "Record on this computer" choice. The host and participants will see a visual indicator in the upper left to indicate that recording is in progress. There will be an audio notification too if you have configured it. You can stop or pause the recording at any time during the meeting. Once the meeting is over, the recording will get converted and downloaded to your computer. The host needs to stay connected to the internet during the entire download process. The default location to save the recording is in the Zoom folder in the host user's Documents folder.



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Once all the intended participants have joined, close the meeting. You do this by selecting “Manage Participants” icon in the bottom menu and then click “More” at the bottom of the panel or by clicking the new Security icon. Select the “Lock Meeting” to prevent anybody else from joining. As you can see, the intent is to create as many barriers as possible to prevent unintended attendance to your meeting. So-called “trolls” have a way of joining for mischievous reasons, including Zoom-bombing with inappropriate content, without those barriers.

## COST

There is a free version of Zoom, but there is a 40-minute limit per meeting that has three or more participants. The Pro version is the most popular for solo and small firm attorneys. The cost is \$14.99/month per host account. (The host is the one who schedules the meeting.) Each session is limited to 24 hours (don’t invite us) and you can have up to 100 participants. There are additional admin controls as well. If you pay annually, the cost is \$149.90 (\$12.49/month). The next level up is the Business subscription, which is \$19.99/month per host and requires a minimum of 10 hosts. There are a lot of enterprise features available with the business plan such as a vanity URL and the ability for on-premise deployment.

We’re confident the pro plan is more than adequate for most law firms. If you need more than one host, just purchase an additional pro plan subscription.

## CONFIGURATION SETTINGS

We’re not going to go through all the various ways you can use or control Zoom. Assuming you have purchased a Zoom subscription, we will make some suggestions for configuring and using Zoom in a more secure fashion.

First, make sure you are using the most up-to-date version of Zoom. If you have previously used Zoom, you probably already have Zoom installed. To manually download the latest version, launch the Zoom application, log in to Zoom and click on your user icon in the upper right (it probably has your initials). Select “Check for Updates” and follow the instructions.

Consider changing some of the default settings prior to scheduling the meeting. The first one is screen sharing. The default is to allow all

participants to screen share. That means anyone can share their screen with inappropriate content. You definitely want to change the default to set screen sharing to host only.

Another setting is to require a meeting password. You can configure Zoom to include the password in the meeting invite or you can distribute the password separately.

A related default password setting is to require a password for those joining by phone as well. Zoom has changed the default settings in a recent release. As a security measure, passwords are now required for all meetings including those using your Personal Meeting ID. Even though it is now the default, check your settings to make sure passwords are required for all participants, including those just using a telephone.

It would be nice if everyone in the meeting used their video cameras so you could verify who they are. However, some participants may not want their cameras turned on or they call in using a telephone. There is another Zoom setting to prevent someone from changing a display name to indicate they are someone else. When you are in the meeting, go back to the managing participants panel and click on “More” again. Make sure that the “Allow Participants to Rename Themselves” is unchecked.

An additional step to prevent the display of inappropriate content is disabling virtual backgrounds. Go to the “Setting” section in Zoom and select the “In Meeting (Advanced)” choice. Disable the “Virtual background” option. This will prevent someone from displaying an inappropriate image as their background. Having said that, you may consider allowing participants to utilize virtual backgrounds. Virtual backgrounds are useful to “hide” the

clutter of your surroundings or to show a pleasant scene. We would suggest leaving virtual backgrounds enabled unless you experience abuse. If you are particularly paranoid, disable them.

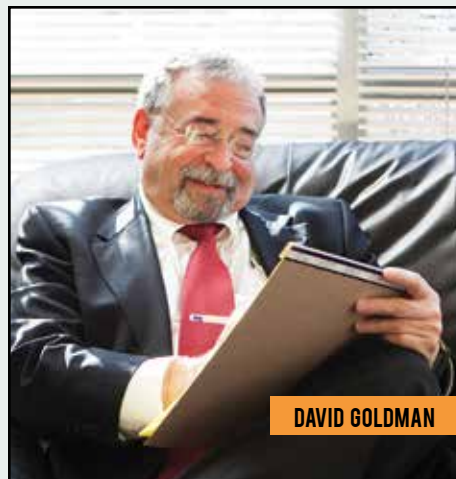
Control when the meeting starts. Don’t let the participants join the meeting before you do. Who knows what could be going on before you connect? In the “Schedule Meeting” section of “Settings,” turn off the “Join before host” option. An alternate control mechanism is the Waiting Room feature. Participants connecting prior to the host are held in the waiting room. The host then admits the participants individually or all at once.

Enabling the Waiting Room feature automatically disables the “Join before host” option. While some are recommending using the Waiting Room feature, independent research lab Citizen Lab is not. Citizen Lab has found a serious security issue with Zoom’s Waiting Room feature and is working with Zoom to fix the issue. Until a patch is released, don’t use the Waiting Room feature and make sure you have a password for every meeting, which is now the default setting.

If you are particularly paranoid about what someone might pop up or write on a screen, you should turn off annotations and whiteboard in the “In Meeting (Basic)” section.

Consider turning on “Allow host to put attendee on hold” in the “In Meeting (Basic)” section. This will allow you kick people out of the meeting if necessary. Hopefully, you won’t have to do that, but it’s a good idea to have the option if needed.

Two other settings to disable deal with the user experience at the end of the meeting. We find it particularly annoying to have survey questions or ratings appear after visiting a site or at the end of a webinar, etc. Be nice to your



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participants and turn off the Feedback to Zoom and Display End-of-Meeting Experience Feedback survey settings.

## SCHEDULING

It is highly recommended NOT to use your Personal Meeting ID (PMI) when scheduling meetings. Your PMI is a constant value and never changes. Once it is known to someone else, they could connect to the meeting whether they have been invited or not. Of course, requiring a password for PMI meetings will help, but our recommendation is to not use PMI – period. Allowing Zoom to automatically generate the meeting ID is a more secure option. This means that each scheduled meeting will have a unique meeting ID. This greatly enhances the security of using Zoom.

Another available security setting when scheduling a meeting is to require registration. You must have a paid Zoom subscription to require registration. Meeting registration means the participants register with their email address, name and questions. There are some predefined questions such as Phone, Industry, Job Title, Address, etc. You can also create your own custom questions.

The registration option is not available in the Zoom app when scheduling meetings. You must schedule your meeting using a web browser in order to select the Registration Required option. The default is to automatically approve all participants after they complete the registration. You may want to change the setting to manually approve participants for the meeting. After registration is approved (manually or automatic), the participant will receive information on how to join the meeting. Meeting registration is another good way to further restrict meeting participants and help prevent Zoom-bombing.

## ACCOUNT SECURITY

Just like any other service you use, your password should be strong and not easily guessed. In addition, two-factor authentication (2FA) should be enabled. It still amazes us that the default is not set to require 2FA. You enable 2FA for your Zoom account by selecting “Security” in the “Admin” section, under “Advanced.” Turn on the “Sign in with Two-Factor Authentication” option.

## VIDEO CONFERENCE ETIQUETTE

When you are participating in a Zoom meeting, mute yourself so that other participants don’t hear all your background noise and potential disruptions. Barking dogs, ringing doorbells, spouses yelling, etc. do not leave a very professional impression. Unmute yourself when you have something to say. A very fast way to temporarily unmute yourself is to press the space bar. Releasing the space bar mutes you again.

While we’re at it, become familiar with hotkeys and keyboard shortcuts for Zoom. There are a lot of them. Zoom has a help article that discusses hotkeys and keyboard shortcuts for the various operating systems. <https://support.zoom.us/hc/en-us/articles/205683899-Hot-Keys-and-Keyboard-Shortcuts-for-Zoom>

Don’t forget where you physically sit during the video conference. If your back is to an open window, the brightness may make you difficult to see. Light sources (lamps, skylights, etc.) behind you will have the same effect. Objects behind you may be distracting too. Think about what the person on the other end is seeing.

Another etiquette consideration is positioning of your video camera. If you have a separate USB webcam, position it at face level pointed directly at you.

If you use the webcam in your laptop, make sure the laptop is elevated to have a straight view of your face. Set your laptop on a few books to get it higher if needed. The last thing you want is the camera looking upward exposing your nostrils. Not pretty.

## PRIVACY

You need to understand that Zoom is constantly being criticized for its collection of data. It’s rare that we come across an attorney who has actually read the Terms of Service, Acceptable Use or Privacy Policy. The Terms of Service for Zoom is 13 pages, which may take you a little time to plow through. The interesting thing is that Zoom just updated its privacy policy on March 18. Coincidence or was it in response to the sudden spike in users flocking to Zoom?

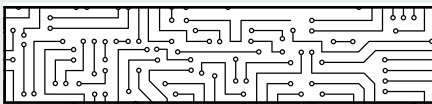
Bottom line...Zoom collects a lot of data from users about their devices, activities and data shared/transferred. Consumer Reports pointed out that advertising campaigns could be developed from the videos and chat messages. Like Facebook, Zoom could use facial recognition technology against all the recorded videos.

To be fair, Zoom has clarified and changed some of its past practices. As an example, Zoom removed the Facebook SDK (Software Development Kit) in the iOS client and reconfigured it to prevent unnecessary collection of device information. Previously, Zoom would send data about participants and used LinkedIn to match people. If a participant had a LinkedIn Sale Navigator account, they could access the other participants LinkedIn details without the participant knowing. Zoom has since disabled the feature.

A major difference with Zoom is the amount of control hosts have over participants and their activities. We’ve already discussed some of the recommended configuration settings to restrict what participants can do. Director of privacy and technology policy at Consumer Reports, Justin Brookman, said, “Zoom puts a lot of power in the hands of the meeting hosts. The host has more power to record and monitor the call than you might realize if you’re just a participant, especially if he or she has a corporate account.”

## ENCRYPTION

Security of Zoom meetings is a major concern of millions of users. Some companies and agencies have banned



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the usage of Zoom. Some companies are asking their employees not to use Zoom but haven't banned it outright. Some think that competing products are more secure and should be used instead. We believe the truth is somewhere in between. Recently, Zoom clarified their architecture and encryption schemes. The major criticism is the lack of end-to-end encryption despite Zoom's earlier claims. Zoom was using the term end-to-end encryption in a way that is not the commonly accepted definition. Busted.

Zoom explained its encryption in a blog post on April 1. "To be clear, in a meeting where all of the participants are using Zoom clients, and the meeting is not being recorded, we encrypt all video, audio, screen sharing and chat content at the sending client, and do not decrypt it at any point before it reaches the receiving clients."

Zoom clients include your computer running the Zoom app, a smartphone running the Zoom app and a Zoom Room, which are really only seen in large firms and enterprises. Essentially, your traffic is encrypted if all participants are using the app on a computer or smartphone. In that case, the user content is inaccessible to Zoom's servers or its employees.

The exposure for most people is when someone participates via a telephone call and not with the app or if the meeting is being recorded. Zoom cannot guarantee full encryption in those cases. There are other situations where full encryption may not be possible, but they are not commonly experienced by most lawyers. If you are really concerned about making sure that your Zoom meeting is as secure as it can be, require that all participants use the computer audio and do not allow telephone participation.

For those worried if Zoom can "tap" your session like a traditional communication channel, Zoom response is: "Zoom has never built a mechanism to decrypt live meetings for lawful intercept purposes, nor do we have means to insert our employees or others into meetings without being reflected in the participant list."

Zoom did not clarify the technical details for its encryption implementation. Without getting totally in the weeds, Zoom's encryption methods are not nearly as good as they should be. A single AES-128 key is shared among all participants. Zoom also uses AES in ECB mode, rather than a stronger industry standard. Certainly, using AES-256 in

a more secure industry standard mode would be preferred. Recent actions by Zoom would indicate they are working on improving the security of Zoom to include improving encryption. Let's hope we get to see true end-to-end encryption using AES 256 soon.

## ETHICAL TO USE ZOOM?

Despite the media histrionics over Zoom's shortcomings, those shortcomings are shrinking day by day as security measures and privacy safeguards are implemented. We certainly believe that a lawyer's duty of competence (Model Rule 1.1) and the duty of confidentiality (Model Rule 1.6) are met if the lawyer has taken the time to understand the basic features of Zoom, including all security features.

## FINAL WORDS

Zoom has become extremely popular. It is extremely easy to use even for those not technically inclined. Performance is good and there are lots of features to use. There are also features that can go awry.

The jury is still out as to whether Zoom can be trusted or not. Are its intentions pure or did they just get caught? Certainly, we've seen some major improvements in the platform. We would certainly like to see an improvement in the encryption and we need more time to assess Zoom's transparency promises.

Despite the concerns with Zoom's privacy and security, there is a practical side to using technology in your law practice. While it is desirable to control the encryption keys, the reality is that you can't always do that today. A lot of technology providers hold a master decryption key and could technically decrypt your data. Dropbox and Apple's iCloud are two that come immediately to mind.

Another reality is that you can't really control what you cannot see at the

other end of your communication. It doesn't matter if you are using Zoom, Webex, GoToMeeting or calling on your iPhone. You have no control over what the person on the other end is doing. They could have software installed that is recording your entire conversation and capturing video. More old school is to record with a separate device such as a voice recorder or even taking a video with your smartphone. Bottom line...nothing is 100 percent secure.

For now, we don't see any problem using Zoom for your video conferencing needs as long as the subject matter is not extremely sensitive. Be smart in how and when you use it. Spend a little time to become familiar with the capabilities of Zoom, especially if you are the one hosting the meetings.



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The Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”) is the largest economic relief bill in U.S. history, intended to mitigate the impact of the economic crisis caused by the COVID-19 pandemic by providing financial assistance to individuals and businesses. Since its enactment on March 27, much of the focus for Iowa businesses has been the Paycheck Protection Program, a program to provide small businesses with cash flow assistance through federally guaranteed loans which may be ultimately forgiven.

However, the CARES Act also provides other sources of economic aid for businesses through new tax programs and modifications to current tax provisions. While the CARES Act includes a number of income tax provisions, this article will focus on two employment tax provisions which provide immediate relief to businesses.

## EMPLOYEE RETENTION TAX CREDIT

Section 2302 of the CARES Act provides for an employee retention tax credit (“Employee Retention Credit”). An “eligible employer” will be allowed a refundable credit against the employer portion of employment taxes for each calendar quarter in an amount equal to 50 percent of the “qualified wages” paid to each employee from March 13 through and including Dec. 31. The amount of qualified wages which may be taken into account for this credit for all quarters is limited to \$10,000 per employee in the aggregate, resulting in a maximum credit of \$5,000 per employee.

An employer who receives a loan under the Paycheck Protection Program is not eligible to claim the Employee Retention Credit and will be subject to recapture of the credit if it claimed the credit before or after receiving the loan. Other details regarding eligibility for this credit, calculation of qualified wages and limitations are summarized below.

## ELIGIBLE EMPLOYERS

An eligible employer is any employer carrying on a trade or business during 2020 which meets either the “governmental order” test or the “reduced gross receipts” test. Eligibility is determined on a quarterly basis. An organization described in 501(c) of the Internal Revenue Code may qualify as an eligible employer under either test, and the requirements relating to a “trade or business” will apply

to all operations of the organization.

Under the “governmental order” test, an employer is eligible if operation of its trade or business is partially or fully suspended during the quarter due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19. For example, an employer operating a restaurant subject to a governmental order prohibiting in-person dining but permitting take-out would meet this test. However, an employer operating a grocery store exempted from a governmental order restricting food service, gathering size or travel outside the home would not meet this test, even if its business was impacted by such governmental order (though the employer may be eligible under the reduced gross receipts test).

Under the “reduced gross receipts” test, an employer is eligible in the first quarter of 2020 in which its gross receipts are less than 50 percent of the gross receipts for the same quarter in the prior year, and continues to be eligible each quarter thereafter until the quarter after the quarter in which the employer’s gross receipts are more than 80 percent of gross receipts for the same quarter the prior year. For example, if the employer’s gross receipts for each quarter in 2020 as a percentage of gross receipts for each of the same quarters in 2019 are 50 percent, 37 percent, 81 percent and 70 percent, the employer would become eligible beginning in the second quarter (i.e., the first quarter its gross receipts fell below 50 percent of the prior year) and would no longer be eligible in the fourth quarter (i.e., the quarter after its receipts increased to above 80 percent of the prior year).

Governmental employers are not eligible employers. Also, self-employed individuals are not eligible for this credit for their self-employment services or earnings.

## QUALIFIED WAGES

“Qualified wages” include wages and compensation paid by an eligible employer to employees from March 13 through and including Dec. 31 and the employer’s “qualified health plan expenses.”

For eligible employers that had an average of more than 100 full-time and full-time equivalent (“FTE”) employees during 2019, qualified wages include only wages paid to retained employees for

time such employees are not providing services. The wages are not to exceed the amount an employee would have been paid for working an equivalent duration during the 30 days immediately prior to the period in which the employer met either the governmental order test or the reduced gross receipts test. For example, an employer who pays an employee for working 40 hours per week but only requires the employee to work 15 hours per week may include wages paid to the employee for 25 hours per week as “qualified wages.”

For eligible employers with an average of 100 or fewer full-time employees during 2019, qualified wages include all wages paid to employees either during the period of time in which the eligible employer meets the governmental order test or during the calendar quarter in which the eligible employer meets the reduced gross receipts test. For employers meeting the governmental order test but not the reduced gross receipts test, only wages paid during the period of time to which the governmental order applies are considered qualified wages.

Qualified wages also include the amount of the eligible employer’s “qualified health plan expenses.” Qualified health plan expenses include the amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent that such amounts are excluded from the gross income of employees (which generally includes all employer-provided coverage under a group health plan). The portion of such expenses included in computing the Employee Retention Credit is the amount properly allocable to qualified wages. The IRS has not published much guidance on how qualified health plan expenses are properly allocated for purposes of the Employee Retention Credit, though it has published helpful guidance in its FAQs with respect to the allocation of qualified health plan expenses for purposes of the sick and family leave credit under the Families First Coronavirus Response Act (“FFCRA”).

The Joint Committee on Taxation stated that the authority granted by the CARES Act to the Secretary of the Treasury permits the secretary to treat qualified health plan expenses as qualified wages in a situation in which there are no other qualified wages paid by the eligible employer. This

situation may arise for employers that are continuing health care coverage for furloughed employees. The IRS has not published guidance on this issue.

Other rules and limitations apply in determining qualified wages:

- The maximum amount of qualified wages per employee is \$10,000.
- For purposes of determining whether an eligible employer had more than 100 full-time/FTE employees during 2019, certain aggregation rules will apply which may result in persons being treated as a single employer.
- Special rules apply to exclude the wages of related parties.
- No “double dipping” with other tax credits taken by the employer, such as the work opportunity tax credit.
- Qualified wages do not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.

**CREDIT; PROCEDURES**

An eligible employer will report the amount of total qualified wages and related credits for each calendar quarter on its federal employment tax return (Form 941 or equivalent form). The IRS will update the federal employment tax return forms and related instructions prior to the due date for the second quarter 2020 to permit the required reporting. The current Form 941 includes a note to taxpayers that, for purposes of the Employee Retention Credit, qualified wages paid between March 13 and March 31 will be reported on the second quarter 2020 Form 941.

The Employee Retention Credit is applied against the employer’s portion of social security taxes under Section 3111(a) of the Code, and the portion of taxes imposed on railroad employers under section 3221(a) of the Railroad Retirement Tax Act (collectively, the “employer’s share of social security taxes”). If the amount of the credit for that quarter exceeds the employer’s share of social security taxes on all wages paid to all of the employer’s employees for that quarter, the excess will then be applied to offset any remaining tax liability on the federal employment tax return and the amount of any remaining excess will be reflected as an overpayment on the

return and refundable to the employer.

The Employee Retention Credit provides immediate financial relief for eligible employers by permitting employers to utilize the credit in advance by accessing federal employment taxes required to be deposited with the IRS and, if necessary, by requesting an advance of the credit. An eligible employer that pays qualified wages to its employees in a quarter before it is required to deposit federal employment taxes with the IRS for that quarter should first reduce its federal employment tax deposits for wages paid in the same quarter by the maximum allowable credit. If the anticipated credit exceeds the deposits for that quarter, eligible employers may file Form 7200, Advance Payment of Employer Credits Due to COVID-19, to claim an advance refund for the amount of the credit in excess of federal employment tax deposits. Eligible employers must account for the reduction in deposits and any advance credits taken by filing Form 7200 when filing federal employment tax returns. Employers will not be subject to penalty for failing to deposit federal employment taxes relating to qualified wages in a calendar quarter if certain conditions are satisfied.

**DEFERRAL OF EMPLOYMENT TAX DEPOSITS AND PAYMENTS**

Section 2302 of the CARES Act provides another source of immediate relief for employers and self-employed individuals. This provision of the CARES Act permits employers to defer the deposit and payment of the employer’s share of social security taxes and permits self-employed individuals to defer payment of the equivalent of the employer’s social security portion of SECA taxes, in each case that would otherwise be due during the period beginning on March 27 and ending on Dec. 31. Half of the amount of deferred taxes will be due on or before Dec. 31, 2021, and the remaining amount of deferred taxes will be due on or before Dec. 31, 2022.

Any employer and self-employed individual is eligible for the deferral described above; however, any employers or self-employed individuals who received a loan under the Paycheck Protection Program become ineligible to continue deferring the deposit and/or payment of such taxes the day after receiving a decision from the lender that

the loan has been forgiven. Any taxes deferred through such date will continue to be deferred and will be due on the applicable dates as described above.

Employers and self-employed individuals will not need to make a special election to take advantage of the tax deferral under Section 2302 of the CARES Act. The IRS will revise the federal employment tax return forms (Form 941 or equivalent forms) and related instructions for second quarter 2020 to permit employers to reflect the deferred deposits and payments on such return.

For more detailed information on this tax deferral and the Employee Retention Credit, see the CARES Act; IRS FAQs and other IRS guidance at <https://www.irs.gov/coronavirus/coronavirus-and-economic-impact-payments-resources-and-guidance>; and the Joint Committee on Taxation, *Description of the Tax Provisions of Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (JCX-12-20)*, April 22, 2020.

**OTHER BUSINESS TAX PROVISIONS**

The CARES Act contains a number of other business tax provisions, most of which are modifications to tax provisions implemented by the Tax Cuts and Jobs Act of 2017, including modification of limitations on charitable deductions (Section 2205), modifications to limitations and carrybacks for net operating losses (Section 2303), elimination of loss limitations for pass-thru businesses (Section 2304), acceleration of alternative minimum tax credit (Section 2305), increased business interest expense deduction (Section 2306), establishment of 15-year depreciable life for qualified improvement property (Section 2307) and temporary exception from excise tax for alcohol used to produce hand sanitizer (Section 2308). Taxpayers will need to carefully consider the impact of business tax provisions in the CARES Act and evaluate opportunities to utilize these benefits during the time periods available.

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# ALTERNATIVES TO IN-PERSON MEETINGS FOR IOWA NONPROFIT CORPORATIONS

By Willard L. Boyd III

**W**ith the COVID-19 pandemic, there is a question of how nonprofit corporations are to proceed with various matters including member meetings and boards of directors meetings. Iowa nonprofit corporations are governed by the Revised Iowa Nonprofit Corporation Act (“Iowa Nonprofit Act”), which provides various means by which members and boards of directors are able to take action without holding an in-person meeting.

## VIRTUAL OR TELEPHONIC MEETINGS OF MEMBERS

The Iowa Nonprofit Act provides that the articles of incorporation or bylaws of a nonprofit corporation may provide that an annual or regular meeting of members is not required to be held at a geographical location if the meeting is held by means of the internet or other electronic communication technology in a manner pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrent with the occurrence of the proceedings, vote on matters submitted to the members, pose questions and make comments. Iowa Code section 504.701(7). The same rule applies for special meetings of members. Iowa Code section 504.702(6). Notices of meetings may be communicated in person, by mail, other method of delivery, or by telephone, voice mail or other electronic means. If these forms of notice are impracticable, notice

may be communicated by a newspaper of general circulation in the area where published or by radio, television or other form of public broadcast communication. When electronically transmitted, the notice needs to be sent to the member in a manner authorized by the member. Iowa Code section 504.142.

## VOTING OF MEMBERS — ALTERNATIVES TO IN-PERSON VOTING AND VOTING BY VIRTUAL OR TELEPHONIC MEETINGS

There are various ways for members to vote without attending a meeting in person or a virtual or telephonic meeting. They include voting by written ballot or proxy as well as by written consent.

### ○ WRITTEN BALLOT

Unless prohibited or limited by the articles or bylaws of a nonprofit corporation, any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter. A written ballot must (1) set forth each proposed action and (2) provide an opportunity to vote for or against each proposed action. Approval by written ballot is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes

that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot need to do all of the following: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the corporation in order to be counted. Unless prohibited by the articles or bylaws, a written ballot may be delivered and a vote may be cast on that ballot by electronic transmission, including email. Iowa Code section 504.708.

### ○ PROXIES

Unless the articles or bylaws of the corporation prohibit or limit proxy voting, a member or the member’s agent or attorney in fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission (such as email). Iowa Code section 504.715.

### ○ WRITTEN CONSENT

Unless limited or prohibited by the articles or bylaws of the nonprofit corporation, action required or permitted under the Iowa Nonprofit Act can be approved by the members of the corporation without a meeting of members if the action is approved by members holding at least 80 percent of the voting

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power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least 80 percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporation action. A written consent may be submitted by a member through electronic transmission, which includes email. Iowa Code section 504.704.

### VIRTUAL OR TELEPHONIC MEETINGS OF BOARD OF DIRECTORS

The Iowa Nonprofit Act provides that unless the articles or bylaws provide otherwise, a nonprofit corporation board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. Iowa Code section 504.821(3).

### ACTION BY EMAIL

Under the Iowa Nonprofit Act, a board may take action pursuant to a written consent signed by all of the directors. The written consent may be signed and transmitted electronically. The Iowa Nonprofit Act does not expressly address email voting. Still, a board is able to use email communication for purposes of complying with the written consent requirements of the Iowa Nonprofit Act.

This means that each director needs to consent to the proposed course of action. An email vote in which not all of the directors vote in the affirmative is not effective under the Iowa Nonprofit Act. It needs to be unanimous. It is also necessary that each director “sign” the consent and deliver it to the corporation. Iowa Code section 504.822. Under the Iowa Nonprofit Act, the term “sign” is defined to include an “electronic signature.” Iowa law defines an “electronic signature” very broadly to mean an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. With such a definition, a director could electronically “sign” a consent in a variety

of ways. Iowa Code section 504.141.

Although emails can be very helpful to ensure quick communications to directors and to receive board of director approval on actions, it is extremely easy for such communications to be less formal than other types of communications. For example, a board chair might seek action from the board by asking the other directors what they think about a certain issue and treat it as board action if the other directors are supportive in their responses. If the proposed course of action is not clearly stated, there is risk of a dispute as to whether the board actually took action or what action was taken. Thus, it is important to present a proposal in a manner similar to how it would be presented in an in-person or telephonic meeting.

An example would be sending the board the proposed resolution: “Resolved, that the board of directors approves the filing of the application for tax-exempt status with the Internal Revenue Service.” Such email also might request that each director send a reply email stating, “I hereby consent to the resolution” and, in order to meet the “sign” requirements, type the director’s name below such statement.

Action by email is to be treated in the same manner as board action at an in-person or telephonic meeting from a record keeping standpoint. As a result, any email action should be included as part of the minutes of the nonprofit.

Finally, although it is possible to effectuate action of the board via email, it is important to recognize that this is not the preferable way for a board to act. A board is most effective when directors are able to consult and exchange views. This is accomplished through in person or telephonic or other virtual meetings of the board. For this reason, email voting is often viewed as an alternative only when it is not possible to have the board meet either in person or by telephone or other virtual means.



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# COVID-19: Give medical professionals room to care for the sick without being worried about medical malpractice lawsuits

By James A. Benzoni, Attorney at law, assisted by Dr. Thomas E. Benzoni, D.O (Emergency Room Doctor) and Judge Albert Habhab (former Chief Judge of the Iowa Court of Appeals)

With COVID-19 rampant around the world and here at home, people are trying to help and support each other, even as we keep our careful social distance. However, there are among us certain persons who are voluntarily putting their lives on the line for us all every single day – and increasingly so as the pandemic becomes more intense. These persons are the medical professionals who staff our hospitals, emergency rooms and intensive care units (ICU) – the doctors and nurses and paramedics and support staff who are working tirelessly around the clock to stem the tide of this pandemic and save as many lives as possible.

In the midst of this crisis, with the already acute shortage of proper medical personal protective equipment (PPE) and necessary ventilators and respirators, these heroic personnel are going about their daily work with a courage, fortitude and spirit of self-sacrifice normally seen on the front lines during war. And they are doing it at incredible risk to themselves.

It is a well-established fact that in China, Italy and Spain, the places where this pandemic has hit hardest, medical personnel were disproportionately among the victims of this virus. Of course, this is not to be wondered at, for these same professionals are the ones who are personally exposed to the COVID-19 virus every day while caring for the sick and suffering and dying – at extreme risk to themselves, and by extension, to their own immediate families.

This not the first time that we have witnessed such heroic service and self-sacrifice by the health care profession. It was widely present during the recent Ebola outbreak in Africa, and right here at home during the AIDS outbreak in the 1980s and early 1990s – at a time when HIV/AIDS was not even understood, and research had not even started in finding workable treatments. How many medical professionals gave their lives treating the sick during these and other outbreaks can only be guessed at.

Like law, teaching and ministry, the medical profession is one of the learned professions. Doctors in modern society are accorded respect by the rest of society, and held to a higher standard. This higher standard includes medical malpractice. And it is the legal profession, we as lawyers, who hold doctors to this higher standard.

Thus, the question becomes, in times like these, is the regular standard of ordinary negligence appropriate for pandemics like COVID-19? Put another way, is the regular standard of ordinary negligence **morally or ethically** – or even **legally** – supportable in times like these?

I recently heard a radio interview of a nurse dealing with COVID-19, who had to keep reusing the same N95 mask for patient after patient, because there simply were no more N95 masks available. In that searing interview, that nurse voiced her fear of the very real possibility that she might bring this disease home to her own family, with the potential resulting havoc – including possible deaths – that could occur.

These are not idle fears. These fears have already been vividly borne out in this COVID-19 pandemic. Already several emergency room physicians in the United States treating COVID-19 patients have contracted the disease themselves and were in critical condition, needing the very ventilators they were previously using to assist others to breath. One of the first Chinese doctors to sound the alarm is now dead of the disease – at the age of 34. An article in the online Emergency Medicine magazine Medscape states:

*Now, nurses and doctors report to work knowing that we will likely become infected. ...While we don't know the exact virulence of this disease, the evidence is clear that some of us will become ill and die. It's a numbers game.<sup>1</sup>*

And this is the reality that America's health care professionals are facing on a daily basis – with the threat each day increasing at geometric proportions. Indeed, the lack of N95 face

masks has become so common that medical professionals are discussing the pros and cons of Do-It-Yourself mask making in the richest and most advanced country in the world.<sup>2</sup>

In fact, the situation is getting so dire, that the Center for Disease Control and Prevention (CDC) has even suggested: "...where facemasks are not available, HCP [health care professionals] might use homemade masks (*e.g., bandana, scarf*) for care of patients with COVID-19..."<sup>3</sup>

If the situation was not so serious, it would seem to be a scene right out of Saturday Night Live. But it is not. It is real. And it is here.

So, in this context, we as lawyers must face the very real moral and ethical question: Can we rightly demand that medical professionals continue to serve the people while we hold them to the same standard of care that we expect during regular times, when there is no crisis?

To put the matter in perspective: If my spouse or parent or sibling or child is stricken with COVID-19 and needs emergency care and ICU treatment, while there are many others also desperately seeking the same such treatment, would I want that medical professional concerned about medical malpractice coverage as he or she struggles to intubate my child or parent or spouse, perhaps at the same time struggling to suction out the bloody foam oozing from the mouth and nose of the patient in the bed crowded next to my own relative's bed in the overflowing so-called isolation unit?

Indeed, if the medical professionals are already questioning the wisdom of the unparalleled self-sacrifice that they are already being called upon to make, can lawyers' responsibility continue to hold them to the same standard of care that existed in less trying times?

That is not to say that medical personnel can do whatever they want. There is still a legal standard of care called "gross negligence" that can apply within ethical and moral limits.

Black's Law Dictionary defines gross negligence in the following manner:



*Gross negligence consists of a conscious and voluntary act or omission which is likely to result in grave injury when in face of clear and present danger of which alleged tortfeasor is aware.*

"Ordinary negligence" is based on the fact that one ought to have known the results of his acts, while gross negligence rests on the assumption that one knew the results of his acts, but was recklessly or wantonly indifferent to the results. The distinction between "ordinary negligence" and "gross negligence" is that the former lies in the field of inadvertence and the latter in the field of actual or constructive intent to injure.<sup>4</sup>

This is the standard that we of the legal profession must adopt, if we are to hold ourselves to the same high standards which the medical profession so obviously is adhering to in the midst of this crisis. Above all, if the medical professionals are putting their very lives on the line, we of the legal profession can do no less.

There is another related aspect to this, although not unique to medical malpractice. Money has ever been the bane of the legal profession. As Paul so insightfully

tells us: "For the love of money is the root of all evil..." 1 Timothy 6:10. To be sure, the legal profession is not alone in this failing. Yet, we as lawyers have always been called to a higher standard. We lawyers are the Jedi Knights, fighting for truth and justice throughout the galaxy. In authoritarian countries all over the world, lawyers are routinely jailed and even tortured and killed for standing up for the rights of the oppressed. Here in America, we lawyers enjoy unparalleled access to ease and comfort and wealth.

I would like to think that I am as brave and caring as the emergency room doctors and ICU nurses who are actively assisting and caring for the victims of COVID-19. However, my safe practice in courtrooms is hardly on par with putting my life on the line to care for those affected by this disease.

Those medical health professionals must be able to do their work without being concerned whether they will face a lawsuit over whether they properly intubated a COVID-19 patient in the midst of a crowded emergency room or overflowing ICU. I believe that we of

the legal profession owe this deference to our brothers and sisters who are on the front lines of this pandemic. And I believe that we owe it to ourselves, if we are to truly remain the Jedi Knights that we are called to be, fighting to preserve truth and justice throughout the galaxy.

## FOOTNOTES

1. J. Mandrola, MD; **COVID-19 and PPE: Some of Us Will Die Because of the Shortage**, published in : [https://www.medscape.com/viewarticle/927206?nlid=134609\\_3901&src=wnl\\_newsart\\_200320\\_MSC-PEDIT&uac=13408DN&implID=2318924&faf=1](https://www.medscape.com/viewarticle/927206?nlid=134609_3901&src=wnl_newsart_200320_MSC-PEDIT&uac=13408DN&implID=2318924&faf=1)
2. See E. Sohn, **DIY Masks: Worth the Risk? Researchers Are Conflicted**, published in *Medscape Emergency Medicine*, March 20, 2020, found at: [https://www.medscape.com/viewarticle/927259?nlid=134609\\_3901&src=wnl\\_newsart\\_200320\\_MSC-PEDIT&uac=13408DN&implID=2318924&faf=1#vp\\_2](https://www.medscape.com/viewarticle/927259?nlid=134609_3901&src=wnl_newsart_200320_MSC-PEDIT&uac=13408DN&implID=2318924&faf=1#vp_2)
3. See Coronavirus **Disease 2019 (COVID-19); Strategies for Optimizing the Supply of Facemasks**, found at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html>
4. *Black's Law Dictionary*, West Publishing Co., St. Paul, Minn. 1979; "Negligence", p. 932 (some citations omitted; emphasis added).

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# Virtual mediation can work well with proper preparation

By Kimberly Stamatelos

Watching the law shifting amidst COVID 19, I am taken back to 1987. That was the year I returned to Iowa from practicing law in Dallas, Texas, excited about a new concept I'd learned about. It was mediation, and law was about to shift.

Back then, I traveled all over Iowa, then all over the Midwest, trying to get people excited about mediation, schlepping big poster boards that I kept in the trunk of my car. When applying for CLE credits I was careful to clarify it was mediation not meditation I was talking about. The response I got was mixed.

I've since learned that I'm one of 2.5 percent of the population who are innovators. We are people who like to take

risks, try new things in business and hang out with other innovators. Early Adopters (13.5 percent of the population) realize that whether or not they like the innovation, adopting it will help them maintain position. The Early Majority (34 percent) don't adopt until they see everyone else doing it and figure they should get on board or be left behind. The Last Majority (34 percent) are naturally skeptical and come along kicking and screaming. Laggards (16 percent) vocally complain and highlight flaws with innovation, saying "it will never work." Acceptance to my message of mediation in those early days tracked those categories.

I've continued being an innovator, launching the online divorce platform

UnHitchUs.com in 2019 and automating my law practice, working remotely for weeks at a time doing virtual mediation and parenting coordination. I've plugged into the legal tech community and have been excited about how technology is changing the law. But none of us ever in our wildest dreams imagined the changes we are seeing coming overnight, as a result of COVID-19.

The first question every lawyer reading this should ask themselves is this: Where will I be on the adaptation scale for virtual mediation? I have calls and coffee dates with endless numbers of lawyers asking me how to build a successful mediation practice. The truth is, I don't know the answer for people who decided to do it 35 years after it first got going.

The window for virtual mediation is now open. If you want to get out there, now's the time.

The possibilities are endless for ways to serve our clients through mediation in new and exciting ways. If there were skeptics among us before, this pandemic has forced us to break free of old paradigms and think more creatively about where the law will go from here. I have mediated several cases by video chat both as a mediator and as an advocate and we are getting cases settled.

I'm delighted to share the highlights of what I know, so far.

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**1 Mindset.** It's critical to have a growth mindset about technology. It's a stereotype to think that millennials and other young people are techie and that boomers are not. When I first started following legal tech and future of the law reports, I bemoaned to my adult children that I was incompetent around technology. "Mom, the difference between you and us is that you don't press buttons because you think you will break things. We just push things and scope around until we figure it out."

Bingo! That mindset set me free. Now I dive in and explore. I welcome you to have that same openness to using technology in mediation.

**2 Meeting the clients where they are.** Not every client will feel secure around technology. Automatically pushing them into an online or virtual mediation may be "too much too soon." Keep in mind telephone mediation is still alive and well.

Many clients (and lawyers) feel they need to have webcams, microphones and fancy gadgets to do this type of mediation, and that's not necessary. Most smart phones work well for mediation and most humans have smartphones, even those who qualify for pro bono mediation. Participants can use most platforms like Zoom, Google Hangouts, FaceTime, Skype and others from their phones. Often there is an app they can download. Work with your clients to identify their comfort level and willingness to use technology knowing phone instead of video is a solid option too. Make sure your mediator knows and understands your client's limits.

**3 Set up your work station.** I like to have all my gadgets handy. I have my desktop to run the mediation but have my laptop, iPad and phone nearby. I also have folders of handouts that I typically use in mediation in case I need to scan and send to the clients if I can't pull them up during a screen share quickly. Make sure you have everything fully charged and that you are near an outlet with charging cords in case the mediation goes long and you run down on power. Wearing earbuds is a great idea to minimize noise, but be sure to have them fully charged.

You don't need to buy expensive equipment. For example, scanning can be done with apps on your phone such

as Genius Scan or Turbo Scan. Pictures on telephones can also work, and be texted or emailed. Making sure you have backups also allows you to quickly call a participant on the phone if you lose connection or need to regroup if things go wrong. Be sure you have collected all phone numbers and emails before the commencement of the mediation.

Make sure your background looks professional and that the lighting is good. I'm not a fan of fake backgrounds, which often make the silhouette of the person talking from in front of them look blurry. You must have enough bandwidth in your internet, and even wifi has to be secure. You might consider plugging directly into your modem or getting ethernet.

Software for online signatures can be helpful. Adobe, Docusign and Hellosign are options. Remember you can still use the "print, sign, scan and send back" option or even just email something to the client and have them email back, "I approve and give permission to sign" return email.

Our state now allows online notary and it's not costly to set up. I found DocVerify to be a good option. Remember, you can't have someone hold up a document and sign while you watch, and then you notarize it with your traditional notary stamp. The Iowa Secretary of State has details on this notary option and you must register there to perform virtual notary.

**4 Move forward with confidence.** Whether mediator or lawyer, there is no need to apologize for online mediation, like it's an inconvenience. Move forward as though this is the new normal. The obstacles that are presenting now are based less on the technology and more on the uncertainty of our lives and the economy. How can you mediate issues

such as lost wages, child support or medical treatment for injuries, with uncertainty in our healthcare systems and current levels of unemployment?

It's time for mediators to be creative and offer ideas for solutions. Those mediators who have fallen into the habit of being a "water carrier" back and forth have a chance to be breakout stars who work hard to help parties find solutions by following these guidelines:

- ▶ Make sure you know how to use your chosen technology inside and out.
- ▶ Understand how to screen-share documents, how to move clients into private rooms so you can call a lawyers' caucus, and make sure you designate breakout rooms without accidentally leaving the disputing parties in a room by themselves.
- ▶ Make sure you know the technology as well as the mediator. You may have to assist if a mediator is in over his or her head, in a way that doesn't erode the confidence in the process. In some instances, you can do that in a confidential chat only to the mediator that is available on the screen in real time.

**5 Recognize that online focus is harder for everyone.** Staring at a screen puts your brain into a different place than sitting in a comfortable conference room picking up body language and sipping coffee together. For those of us who rely on our empathic skills to bond with clients we are not able to pick up on those cues as readily.

Eye contact is also more difficult. If you look on the screen at the person who is talking instead of into the camera on



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your computer, you don't appear to be making eye contact. Experiment with your settings on the computer to determine what works best. "Gallery view" is often a better option than "speaker view" to be able to read the dynamics. You may want to turn off access to seeing your own profile, as that can be distracting.

Conversely, recognize that your body language matters too. If you move your seat closer to the screen you may seem out of proportion and like a giant, just as if you move your chair back which makes you smaller and appear less in charge of the process. Keeping yourself in a position of welcoming and attentive presence is a full-time job online, whether you are the mediator or an advocate.

**6 Take care of your physical body.** Get up and walk around when you can between caucuses, and encourage clients and lawyers to do the same when you are caucusing with the other party. Sitting in a chair for several hours is draining in ways that you may not recognize. Have refreshments or snacks available and encourage participants to do the same.

**7 Be sure your Agreement to Mediate is updated.**

For example, some phrases I've added to mine are:

A video/virtual mediation will not be exactly the same, and may not be as complete, as a face-to-face service. There could be some technical problems that affect the video session. Mediators use systems that meet recommended

standards to protect the privacy and security of the video mediation; however the mediator cannot guarantee total protection against hacking or tapping into the video mediation by outsiders. This risk is small, but it does exist.

All third parties who are able to hear matters discussed in video mediation shall be disclosed to the mediator at the commencement of the mediation and shall sign the Agreement to Mediate if asked to do so by the mediator.

The parties understand that if they or others in the room during a virtual mediation record all or part of the mediation session the recording will not be admissible in court and the recording party could be subject to other sanctions from the court.

I like to have the mediation agreement signed ahead of time and sent to the mediator before the session to avoid delays and awkward coordination of signatures at the beginning of the session.

In your opening presentation make sure that you identify people within earshot who can hear the mediation. In one of my first virtual mediations years ago I realized a few hours in, that one party's significant other had been there the entire time, sitting outside of my vantage point. Now I ask up front.

Also, recognize that there are many ways people can record the mediation. Emphasize in your agreement and opening that recording is prohibited. Moving forward, we have to rely on trust and integrity to a higher degree because we are not in the same room as the parties to see what is going on.

**8 Competence.** Now more than ever it's important to be a competent mediator. If you haven't been trained in a comprehensive classroom 40-hour training, now is not the time to decide you will set up as a mediator. There is a reason this has been the standard of training for the past 40 years. Good mediation is grueling work and short cuts don't work. In fact, it's a good idea to take advantage of online mediation training even if you have been a "brick and mortar" mediator for years.


**9 Additional resources.** There are great resources available. For technology, Zoom is a popular platform and it has extensive tutorials online. Some videos help you customize your platform such as adding your firm logo in the virtual waiting room. For actual mediation-related guidance, Mediate.com has terrific resources and online training courses. Remember your fellow mediators are available for troubleshooting and sharing ideas.

Make sure you get paid for your work as an online mediator. LawPay can give you links for clients to enter a credit card at the conclusion of the mediation. Other payment methods are Venmo (I use Venmo to pay staff instead of issuing payroll checks) or Paypal. Make sure you set out your payment expectations clearly before the mediation begins.


Most important, don't worry. The changes in the law are coming fast and furiously at a time when we have anxiety about many other things. There will always be people who want to sit across the desk from their wise lawyer when social distancing is over. And in-person mediation will still be preferred. There is room for all ways and styles of practice. Emotional intelligence, empathy, active listening and the "counselor at law" skills we have can't be duplicated by a computer. The legal profession is alive and well and will thrive in years to come.

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# SUMMER CLERKSHIPS DURING COVID-19

By **Kristen Shaffer**, ISBA Young Lawyers Division Secretary

One of the quintessential parts of a law student's legal education is a summer clerkship. Summer clerkships provide law students with hands-on legal experience outside the classroom. Clerkships also provide law students the opportunity to meet and network with practicing attorneys, learn more about the firm or organization where they are employed and observe attorney work-life balance. The importance of summer clerkships for law students cannot be underscored enough. Summer clerkships are equally as valuable for employers for recruitment, retention and succession planning. As attorneys and firms are adjusting to the new normal in light of COVID-19, it is important to keep in contact with your summer clerks and begin planning how to structure their clerkships if the current circumstances continue into the summer.

Typical assignments for law student clerks include research, writing and attending hearings with attorneys. Due to COVID-19, most attorneys are working from home and attending hearings by telephone and video conference. Fortunately, the work typically assigned to law students can be completed remotely. Additionally, clerks will still have the opportunity to attend hearings with attorneys by phone and video conference.

Another important aspect of summer clerkships is attending bar association lunches, meetings and continuing education programs. To date, spring bar events are being held by telephone conference, postponed or canceled. Law students will not have the normal opportunities to network with the legal community, so try to provide as many meaningful opportunities as you can this summer.

Here are a few ways legal employers can implement their summer clerk programs during the COVID-19 pandemic while working remotely:

- ▶ Ensure that summer clerks have the hardware and software they need to work remotely, and set up a time for them to pick-up what is needed to work remotely during the summer.
- ▶ To introduce the clerks to your office, schedule "Zoom" lunches, breakfasts, coffees or virtual happy hours with members of your office or firm. Keep in mind that the clerks have been doing this

for almost an entire semester, so they're likely used to communicating through teleconferencing tools. Try to make the experience as normal as possible for them

- ▶ Take clerks out to lunch and other meals. While it is not possible to do that in-person, consider ordering takeout that your clerks and attorneys can pick-up on their own. Perhaps after picking-up their meals, they can get together for a "Zoom" call.
- ▶ Assign projects to clerks that can be completed while working remotely.
  - ▶ Legal research projects
  - ▶ Draft memos, pleadings or other documents
  - ▶ Draft articles for your website on current legal issues
- ▶ Invite clerks to attend telephone and video hearings/trials.
- ▶ Assign a mentor to the clerk as you would do in a normal office setting.
- ▶ Schedule regular telephone or video calls with clerks.
- ▶ Ask associates, if you work in a firm with associates, to take the lead in planning afternoon virtual social gatherings to make the clerks feel welcome to the office.

If your office is considering canceling summer clerkships, consider other alternatives such as shortening the length of the clerkship, employing clerks for discrete tasks only, inviting clerks to

social "events," and introducing clerks to other lawyers in the community.

Additionally, if you have a summer clerk who will need to make local housing arrangements for the summer, talk to them early about the potential structure and timeline of their clerkship to ensure they can obtain housing for the duration of their clerkship. This is the time of year they will need to negotiate summer leases.

Law students are expecting changes to their clerkships due to COVID-19. They are prepared to adjust start/end dates or work remotely, but still look forward to their summer experience.

As a final note, on behalf of the entire Young Lawyers' Division and all of its law student members, thank you for your flexibility this summer. Law students will forever remember their summer experiences, and they will particularly remember the compassion and care that their summer employer exhibited during these unprecedented times.



**Kristen Shaffer** is an attorney at Shuttlesworth & Ingersoll, P.L.C.

Other contributors to this article include Shannon Holmberg, Associate Attorney at Davis Brown Law Firm; Kathryn Atkinson Overberg, Director of Career Development at Drake University Law School; and Abhay Nadipuram, Vice President, Government Relations and Legal Counsel for the Iowa Hospital Association and YLD President.

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# New justice brings drive and passion

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By Melissa Higgins,  
Communications  
Director

MATT MCDERMOTT  
APPOINTED TO IOWA  
SUPREME COURT

Calls, messages and friends showing up to yell “congratulations!” from their cars.

That is the extent of celebration allowed during a global pandemic, even for the most significant professional achievement of Matt McDermott’s life – an appointment by the governor as Iowa’s newest Supreme Court justice. Plans for a swearing-in ceremony and public reception are on the backburner.

Instead, McDermott signed a written oath and will assume the bench from the safety of his home’s basement office at the end of April. It is the same location where he has worked remotely over the last month to wind-down his practice at Belin McCormick, the Des Moines law firm where he worked for 17 years. The office was already shut down before McDermott learned the news about his appointment in late March. That meant no opportunity to hug colleagues and thank mentors. No in-person goodbyes at all.

“With social distancing, there hasn’t otherwise been an opportunity for any of that. It’s just the situation we are living in. I understand and accept that. There will be time for all of that later,” McDermott said.

McDermott’s practice at Belin focused on civil and criminal trials and appeals, representing companies across various industries including financial services, biotechnology, health care, agriculture, energy, real estate and manufacturing.

“I’ve enjoyed the private practice immensely,” he said. “There are many parts of it I will miss a great deal. I’ll miss helping my clients solve problems and collaborating with my colleagues, but ultimately I’m so excited for this next journey and excited to dig in and start doing this work.”

McDermott said that donning a judge’s robe was always something in the back of his mind.

“The challenge of it attracted me,” he said. “Being a private practice lawyer and being in the courtroom and arguing in front of the supreme court, it was always something that was a draw for me – thinking someday it might be a possibility (to be an appellate judge). It seemed like the timing was right to finally put my name in. I thought I had perhaps developed the tools that readied me for this kind of role, and I wanted to pursue it.”

McDermott’s interest in a potential legal career began early while growing up in Carroll. He said it was the small-town atmosphere that fostered the idea.

“Growing up, my dad sold feed to farmers and my mom worked as a clerk at a local store and played the organ at our church. I didn’t have any lawyers in my family, but in high school I did about every activity they offered, one of which was speech and debate. I really enjoyed that. I always enjoyed reading and writing and speaking, so it seemed as though my skillset was leading me

toward a career as a lawyer,” he said.

McDermott spent his youth working as many small-town Iowa kids do – detasseling, walking beans, working at Hy-Vee and doing construction. He was the field director at the Little League one summer.

“All of those things have an impact on you. All the jobs you had, the activities. The thing coming out of Carroll was the ability to be involved in a lot of different things. That is something I’ve continued to carry with me – wanting that balance of being active and being involved and contributing to the community.”

McDermott attended college at the University of Iowa, then law school at the University of California, Berkeley. He saw it as an opportunity to see another part of the country.

“Growing up one of seven kids, we didn’t go on vacations to far-away destinations. I was 21 before I even went on a commercial airline. That was when I interned in Washington, D.C. at Sen. Grassley’s office. It was the only significant time I spent outside of Iowa. So, I decided for law school I wanted to see another place. I really enjoyed going to school (at Berkeley).”

McDermott had a job offer at a prestigious multinational firm in New York City after law school, but instead decided to begin his career back in his home state, at Belin McCormick.

“I really wanted to work with clients and feel like I was developing my skills in court and with clients at an earlier stage in my career than I would have been able to there (in New York). I think that turned out to be very true in my case. I was able to get opportunities to develop that I wouldn’t have otherwise gotten in a big city.”

Early in his career, McDermott got involved in the ISBA Young Lawyers Division, as a representative on the executive council and eventually as an officer. He served as YLD President in 2008-2009.

“It was a great opportunity to meet newer lawyers from all over the state and get involved in projects that were very meaningful and had an impact on the practice of law and peoples’ lives in Iowa. And terrific people. That is what

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Boston Marathon

I remember most about my time with the YLD: Meaningful public service

projects with the best people you could ever meet," he said.

Public service and community involvement continue to be a passion of McDermott's. He is currently president of the Board of Iowa Legal Aid, though he will have to step down early due to his judicial appointment.

He is also very active in homelessness issues – serving as chair of the Polk County Homeless Continuum of Care Board, a body tasked with developing the overarching strategies and funding allocations to solve homelessness in Central Iowa. He is past-president of the board of directors at Central Iowa Shelter & Services, the largest homeless shelter in Iowa.

He serves on the United Way of Central Iowa Chair's Cabinet. In 2017, the United Way awarded him its Individual Volunteer of the Year Award. But because judges are not ethically allowed to be involved in fundraising, he will have to step away from most of that volunteer work.

"I think getting to do good by being a good justice, and the public service aspect of judicial work, will make not doing some of those volunteer activities easier to bear. I've greatly enjoyed all of the work I've done for non-profits, but this new role will give me a different outlet for public service," he said.

He has his active children to keep him plenty busy as well. McDermott and his wife, Heather, have three children: Sydney, age 10; Connor, age 8; and Maren, age 6. They are in 5th, 3rd and 1st grade – and are all currently homeschooling due to the pandemic. Heather works for Principal Financial and has also been working from home.

McDermott describes his family as "sporty" and musical. "They're always singing," he said, and they play violin, guitar and piano. McDermott himself plays piano, guitar and harmonica and used to be in a band with other local attorneys.

"What we lacked in talent, we



United Way

made up for in volume," he said, with a laugh. "We played some non-paying gigs, but primarily our sounds were best heard in one of our basements."

All three of his children are involved in baseball or softball, basketball and soccer.

"Whatever that season's sport is, they're playing it. Our driveway sees a lot of different sports over the course of a year," he said.

McDermott enjoys staying physically active too. When he's not running a law practice and a busy family household, he's just running. McDermott caught the "marathon bug" about 12 years ago, spurred mainly by some eye-opening family health events.

"My dad had a heart attack when he was 40. Then one of my brothers had a heart attack when he was 40. I'm 10 years younger than him, and I thought I needed to start doing more cardio. So, I signed up for a triathlon class at the YMCA and really liked the running part. I ran the Dam-to-Dam race in Des Moines and thought I should next try to do a marathon. I really got interested in running and had a goal of trying to qualify for the Boston Marathon."



Family Easter

Left: McDermott poses at the finish line of the Boston Marathon in 2013, one day before the bombing that happened at that very spot. McDermott ran the Boston Marathon that year but was not harmed.

Middle: The McDermotts volunteer regularly with United Way, and the whole family gets involved.

Right: The McDermott family: Matthew and Heather with their children – Sydney, age 10; Connor, age 8; and Maren, age 6.

He did qualify for Boston, but still was not satisfied. He continues to work on reducing his marathon time.

McDermott has run 17 marathons now and has run his last 11 in under three hours.

He trains outside when possible – waking up at 5 a.m. to get runs in before the kids wake up. When he can't be outside, he's on the treadmill, watching TV to pass the time. He recently finished the entire Ken Burns "Civil War" documentary and re-watched the shows Game of Thrones and The Wire.

"But my favorite thing to watch is boxing, of all things. It is something you don't have to focus intently on, but there is enough action to keep your attention. So, I frequently watch old boxing matches while running."

In addition, he goes to the running track – working through various track programs in an effort to improve his speed.

"I'm not sure why I do that. The Olympics aren't going to come calling for me at this stage in my life. But I have this belief that I can get faster and better, so I keep working at it."

It is the same drive and discipline he says he will bring to this new career on the bench.

"I plan to try to do what I've always done," he said. "To listen and learn, then put my head down and work very hard."

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# Iowa's three-step test for prior bad acts

*"It is fundamental to American jurisprudence that a defendant must be tried for what he did, not for who he is."<sup>2</sup>*

By Brett Wessels, Pottawattamie Assistant County Attorney<sup>1</sup>

**E**videntiary rules prohibit specific instances of conduct from inferring guilt ("propensity inference") unless a non-character purpose exists. This controversial rule is colloquially known as prior bad acts and codified by Iowa Rule 5.404(b).

Iowa's three-step test for admitting a prior bad act is heavily litigated. In the last 10 years, Iowa case law on prior bad acts appears to exceed all six neighboring states.<sup>3</sup> This article outlines Iowa's test with a focus on criminal defendants.

## PRELIMINARY CONSIDERATIONS

**Motion in Limine.** Rule 5.404(b) excludes specific instances of conduct that negatively impacts a defendant's character. This conduct can range from criminal conduct to legal behavior, such as merely holding a firearm.<sup>4</sup> While 5.404(b) does not require notice, the Iowa Supreme Court suggests filing a pre-trial motion in limine. The trial judge can rule on the issue before or during trial. This ruling can also potentially preclude referencing the prior bad act until admissibility is determined during trial.<sup>5</sup>

**Iowa Code § 701.11.** In 1994, Federal Rules of Evidence 413 and 414 were controversially enacted allowing prior acts of sexual abuse solely for a propensity inference. In 2003, Iowa enacted § 701.11 mirroring those rules.

The Iowa Supreme Court subsequently determined that § 701.11 is unconstitutional when offering a prior act against a non-victim solely for a propensity inference,<sup>6</sup> but constitutional when involving the same victim. Therefore, § 701.11 is applicable if a prior act of sexual abuse involves the same victim and 5.404(b) applies when involving a non-victim. The coverage of § 701.11 and 5.404(b) appears redundant since neither allow propensity evidence.<sup>7</sup> That established, 5.404(b)'s three-step test will be examined.

## 1. NON-CHARACTER PURPOSE

Identifying a non-character purpose

requires understanding propensity. If a prior act establishes a criminal disposition or propensity, the jury may infer the defendant acted in conformity with this character. This reasoning has been described as: "Once a drug dealer, always a drug dealer."<sup>8</sup>

However, a non-character purpose can circumvent a propensity inference. The applicability of a non-character purpose is case sensitive and relies heavily on judicial discretion. 5.404(b) lists the non-character theories of motive, opportunity, intent, preparation, plan, knowledge, identity and absence of mistake or accident. This list is considered non-exhaustive.

*State v. Putman* illustrates how a non-character purpose can turn on a few key facts. In *Putman*, the defendant was convicted of sexually assaulting a young child. During trial, evidence the defendant possessed child pornography was admitted for the non-character purpose of identity.

The child pornography admissibility was appealed. The Iowa Supreme Court acknowledged that possessing child pornography and sexually assaulting a child are generally similar. However, the charged crime and prior act must be *strikingly similar* to establish identity.<sup>9</sup> This analysis requires a detailed juxtaposition to see if the two are peculiarly similar.

Ultimately, the court concluded the two were strikingly similar since the pornography literally depicted an adult sexually assaulting a child of similar age as the victim. Furthermore, the sexual assault's violent nature resembled the charged crime. Therefore, identity was an applicable non-character purpose.

One additional requirement is that a non-character purpose must address a *legitimate* issue. One common example is a defendant previously assaulting a subsequent murder victim, since this establishes the nature of their relationship. However, a legitimate issue can arise organically during a motion in limine, voir dire, opening statement or cross-examination.<sup>10</sup>

A prior act cannot address an uncontested matter. If a prior drug conviction is offered to establish knowledge of marijuana, the defendant's knowledge (or lack thereof) of marijuana must be contested. If the defendant only contends the marijuana belonged to his roommate, the defendant's knowledge of marijuana is likely uncontested. If a non-character purpose is articulated and addresses a legitimate issue, the next step is the clear proof requirement.

## 2. CLEAR PROOF REQUIREMENT

Iowa only requires enough evidence to prevent speculation. This step was added in 2014 and often receives cursory analytical treatment.<sup>11</sup> For example, a credible victim testifying can suffice even without an arrest, photograph, medical record, or corroboration.<sup>12</sup> The standard in other jurisdictions includes proof beyond a reasonable doubt (Texas), clear and convincing evidence (Nebraska), or a preponderance of the evidence (Illinois, federal courts). However, sufficiency of evidence might be most effectively argued in the third step's balancing test.

## 3. PREJUDICIAL EFFECT VS. PROBATIVE VALUE

*"Analyzing and weighing the pertinent costs and benefits [of admitting prior acts evidence] is no trivial task. Wise judges may come to differing conclusions in similar situations."*

- *McCormick on Evidence*, § 185<sup>13</sup>

A prior bad act's prejudicial effect cannot substantially outweigh the probative value. This balancing test examines the degree of proof, inflammatory potential, egregiousness, remoteness and whether the evidence is needed.<sup>14</sup> These factors, coupled with judicial discretion, help determine whether the prior act could cause a decision based on inflammatory or emotional considerations.

**Hypothetical.** A hypothetical illustrates the entire test. Assume that Defendant Mark ("Mark") is charged with assaulting Bob and evidence is offered that Mark previously assaulted



Bob. The prior assault occurred 11 months earlier and resulted in minor injuries. Bob did not file a police report on the previous assault and there are no witnesses. The first step is identifying a non-character purpose.

**Non-character purpose.** Significantly, Mark's prior assault involved the same victim. Generally speaking, a prior bad act against the *same victim* is more likely to have a valid non-character purpose since this establishes the nature of a relationship, can be contextually helpful, and can establish motive and intent in the present case. This rationale is why O.J. Simpson's prior domestic assaults were admitted in Simpson's murder trial.

The analysis changes if Mark assaulted a *non-victim*. Mark and Bob constitute the principle relationship and assaulting a non-victim is irrelevant to this relationship. Furthermore, Mark's non-victim assaultive intent cannot be transposed to prove Mark's intent with Bob. Similarly, this is why Iowa disallows a prior drug transaction for proving intent in a presently charged drug prosecution.

The victim and non-victim dichotomy also applies in the sexual abuse context. If Mark is charged with sexual abuse and a prior act is against the *same victim*, the principle relationship is involved. This can be helpful in establishing the nature of the relationship and potentially evinces motive and intent. If Mark's prior act against a *non-victim* is offered, this again is irrelevant to the principle relationship. Although still potentially admissible under 5.404(b), motive and intent are likely inapplicable.

Nevertheless, Mark's prior assault likely demonstrates motive and intent. Assuming Bob's testimony satisfies the clear proof requirement, the next important step is examining prejudicial effect.

**Prejudicial effect.** Mark's prior assault implicates several probative factors. First, offering a *single* assault is less prejudicial than several assaults. Second, the assault occurring 11 months ago likely avoids remoteness. Third and fourth, Mark's prior assault is no more serious than his current charge ("comparative enormity") and Bob's injuries are insignificant. Consequently, the prior assault is not particularly inflammatory.<sup>15</sup>

There are at least two prejudicial factors. First, the prior act and the charged crime are similar. Similar conduct risks confusion and heightens a propensity inference risk.<sup>16</sup> In Aaron Hernandez's murder trial, the

prosecution unsuccessfully offered evidence that Hernandez shot another individual. Since Hernandez was on trial for allegedly shooting the victim, this similarity created prejudicial risk.

Second, the prior assault has very little evidence. However, case law suggests these prejudicial factors are unlikely to substantially outweigh the probative value. Therefore, Mark's prior assault is likely admissible under 5.404(b). If convicted, Mark's appellate options then hinge on proper error preservation.

## PRESERVATION OF ERROR

This article concludes with two observations on error preservation. First, know if admissibility was definitively ruled on during the pre-trial stage.<sup>17</sup> Generally, a motion in limine does not preserve error and a timely objection is needed. For example, an objection is needed if the judge states during the pre-trial phase that no final ruling exists or that "everything will be subject to objection."<sup>18</sup> Alternatively, an objection during trial is not needed if the judge has definitively addressed admissibility.<sup>19</sup> Since this is a final ruling, error is preserved.

Furthermore, a final ruling should be on the record. If a judge conclusively admits a prior bad act off the record, counsel may forget to object on the record and the 5.404(b) issue is not preserved for appeal. If this occurs, a potential remedial measure is an immediate post-trial record. If in agreement, the attorneys and judge should state they believed a final ruling was given and proceeded accordingly.<sup>20</sup>

Second, a 5.404(b) objection needs specificity. Since 5.404(b) requires the trial court to make explicit findings regarding the balancing test, the

grounds for objection must be clear.<sup>21</sup> Consequently, the objection should explicitly mention prior bad acts, prior acts, or Rule 5.404(b).<sup>22</sup> Iowa case law shows insufficient objections including relevancy, cumulative or arguing against probative value.<sup>23</sup>

## NOTABLE IOWA SUPREME COURT CASE LAW

*State v. Sullivan*, 679 N.W.2d 19 (Iowa 2004). *Sullivan* overruled precedent by disallowing a prior drug transaction to prove intent in a current drug prosecution. *Sullivan* determined this to be impermissible propensity evidence. Previously, Iowa permitted such evidence for proving intent and Iowa's approach now differs from several federal jurisdictions.

*State v. Taylor*, 689 N.W.2d 116 (Iowa 2004). *Taylor* is well-cited in the domestic assault context. In affirming admissibility, the defendant's prior domestic abuse was considered "highly probative" of motivation and intent.

*State v. Cox*, 781 N.W.2d 757 (Iowa 2010). Iowa's § 701.11 initially allowed prior acts of sexual abuse solely as propensity evidence. Two years earlier, the court held § 701.11 constitutional when the prior acts involved a victim. However, the question remained whether this applied to non-victims. *Cox* addressed non-victims and held this propensity evidence to be unconstitutional.

*State v. Richards*, 879 N.W.2d 140 (Iowa 2016). *Richards* addressed whether a self-defense claim makes intent an uncontested issue. Defendant was charged with domestic abuse assault and asserted self-defense. *Richards* held that self-defense does not make intent uncontested, since the defendant's intent to prevent harm is still an issue.



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## THEORY

## GENERAL PRINCIPLES

## MOTIVE

Motive supplies the reason for committing the crime. The defendant's state of mind must be clearly contested since motive is not normally a criminal element. Iowa has allowed motive to show need for money for drugs, racial animus, revenge and avoiding criminal charges as a motive.

## INTENT

Distinguishing a non-character purpose from propensity evidence can be difficult for intent. This demonstrates the defendant acted deliberately, not accidentally. Intent and motive are often applicable in prior bad acts involving the same victim. Intent is narrowly applied and closely scrutinized as a non-character theory.

FLIGHT  
(UNLISTED)

The full name is 'flight or concealment to prove a defendant's consciousness of guilt.' This narrowly applied non-character purpose acknowledges that flight may evince consciousness of guilt. Iowa only allows admissibility if supporting consciousness of guilt for the specific crime charged. A helpful case is *State v. Wilson*, 878 N.W.2d 203, 216-219 (Iowa 2016).

## IDENTITY

The prior bad act and charged crime must be strikingly similar, which then shows the defendant's modus operandi. This requires examining and comparing the peculiar circumstance of the prior bad act and the charged crime.

COMMON  
SCHEME/PLAN

The smaller acts must be related to the charged offense. This can be evidence of a similar crime, by the same person, which have a connection. The evidence must show a connection and not just illustrate a pattern of conduct.

## FOOTNOTES

1. Brett Wessels, Assistant Pottawattamie County Attorney. This Article is dedicated to author's Uncle, Chip Wochomurcha. The author defers to the opening lines of Uncle Chip's obituary: "The Lord received a jolt of energy and a one of kind personality when Chip Wochomurcha passed away Sunday. Friends and family would say there was never a dull moment when Chip was around. He made strangers into friends, was constantly moving from one thing to the next, and always willing to stop long enough to laugh or be laughed at."
2. *U.S. v. Foskey*, 636 F.2d 517, 523 (D.C. Cir. 1980) quoting *U.S. v. Myers*, 550 F.2d 1036, 1044 (5th Cir. 1977).
3. According to a WestLaw search of "prior bad acts" results: Illinois (192), Missouri (106), Nebraska (46), Iowa (196), Minnesota (165), Wisconsin (110), and South Dakota (77).
4. If the uncharged conduct forms a continuous transaction with the charged crime, 5.404(b) does not cover the conduct as a prior bad act. This is called the 'inextricably intertwined doctrine' and should be applied infrequently. *State v. Nelson*, 791 N.W.2d 414, 420 (Iowa 2010).
5. *State v. Langley*, 265 N.W.2d 718, 721 (Iowa 1978).
6. *State v. Cox*, 781 N.W.2d 757, 762 (Iowa 2010).
7. 7 Iowa Practice Series, Evidence § 5.404:6.
8. *United States v. Miller*, 673 F.3d 688, 700 (7th Cir. 2012).
9. A fascinating non-Iowa illustration is on Netflix's award-winning documentary, *The Staircase*. The documentary followed Michael Peterson's murder trial after his wife was found dead at the bottom of a staircase. The prosecution presented a similar death occurring seventeen years earlier in Germany, which was ruled accidental by German authorities. The prosecution was able to use the death as a prior bad act.
10. *State v. Jurrens*, 839 N.W.2d 676 (Iowa Ct. App. 2013) (motion in limine did not support the non-character theory as a contested issue); *State v. Haskins*, 573 N.W.2d 39, 45 (Iowa Ct. App. 1997) ("As early as voir dire, the nature of the shooting as intentional or accidental was at issue."); *State v. Duncan*, 710 N.W.2d 34, 44 (Iowa 2006) (counsel indicated during voir dire that there would be evidence creating a particular contested issue).
11. *State v. Richards*, 879 N.W.2d 140 (court concluded in one sentence the testimony was clear proof); *State v. Frederick*, No. 18-2082, 2019 WL 6358437, at 3 (Iowa Ct. App., 2019) (appellant conceded the witness's testimony satisfied standard).
12. *Putman*, 848 N.W.2d at 9.
13. 1 *McCormick on Evidence* § 185, at 647-48 as cited in *State v. Rodriguez*, 636 N.W.2d 234 (Iowa 2001).
14. Other factors include whether a cautionary jury instruction was provided, the need for the evidence, the scope of testimony, the need to reconcile conflicting testimony, and whether a judge or jury was the trier of fact. See *State v. Taylor*, 689 N.W.2d 116, 124-125 (Iowa 2004).
15. *State v. Reynolds*, 765 N.W.2d 283, 292 (Iowa 2009) (finding the admission of eleven prior acts to be not harmless); *State v. Zeliadt*, 541 N.W.2d 558, 561 (Iowa Ct. App., 1995) (finding elapsed time of eleven months to not negate rational or logical connection); *State v. Larsen*, 512 N.W.2d 803, 808 (Iowa Ct. App. 1993) (the prior act of attempted murder of three people was no more reprehensible than the charged crime of a nighttime bombing of a prosecutor's house).
16. *State v. Redmond*, 803 N.W.2d 112, 126 (Iowa 2011).
17. *State v. Derby*, 800 N.W.2d 52, 57 (Iowa 2011).
18. *State v. Baccam*, 912 N.W.2d 856 (Iowa Ct. App. 2018) (trial court cautioning that motion in limine is not a final ruling and an offer of proof is still necessary).
19. *State v. Sandusky*, 829 N.W.2d 192 (Iowa Ct. App. 2013).
20. *State v. Bean*, 839 N.W.2d 675 (Iowa Ct. App. 2013) (stated in a footnote that parties discussion after trial established the motion in limine ruling as final).
21. *State v. Elliott*, 806 N.W.2d 660, 675 (Iowa 2011).
22. *State v. Gailey*, 767 N.W.2d 421 (Iowa Ct. App. 2009) (Objection was insufficient for not mentioning 'prior bad acts' or the specific rule).
23. *State v. Mulvany*, 603 N.W.2d 630 (Iowa Ct. App. 1999); *State v. Baccam*, 912 N.W.2d 856 (Iowa Ct. App. 2018) (unpreserved error when defense only objected to lack of probative value and cumulative).



## Drake University Law School welcomes Nick Roby to the Drake Legal Clinic as the new director of the Entrepreneurial and Transactional Clinic

**N**ick Roby has practiced in Iowa for more than 30 years. Most recently, he was special counsel with Davis Brown Koehn Shors & Roberts, P.C. He has extensive experience in business transactions and substantial experience representing non-profit organizations. Roby previously served as president of BH Companies.

### Are you originally from Iowa?

I grew up just north of the Des Moines city limits in a very blue-collar neighborhood. My dad was a machinist at the Firestone plant. He went over 20 years without missing a day of work. My mom was everyone's most-loved food service worker at my elementary school.

### What led you to law school?

I began telling my family that I was going to law school when I was in grade school. I really did not have any clue then what higher education was. At the time, absolutely no one in my immediate or extended family had ever enrolled in college. In undergrad, I studied accounting and economics which led to my interest in tax, business associations and commercial transactions in law school and practice.

### What cases are the students in your clinic working on this semester?

We have about 50 active cases, with more on our waiting list. Some of our clients are small start-up charities. For example, one provides housing for recently released women inmates, another one operates a new youth sports league. We also represent larger, more established charities. On the for-profit side, we are helping form business organizations such as a food truck, bookkeeping service and car repair shop. In most cases, it would be impossible, or very difficult financially, for these clients to engage private practice lawyers. And, in other cases, the charities would be forced to use funds that would otherwise directly provide community services.

### As an experienced attorney, what would you say makes participating in a clinic a valuable part of a legal education?

The clinic is a fabulous opportunity to get a head start on experiencing the real-life practice of law. Our clients look to the student lawyers for advice and counsel on a variety of business and transactional legal issues. Interacting with your clients and developing an attorney-client relationship is a special thing and something you cannot experience in the conventional classroom.

### Why is pro-bono work important to you?

It's all about social justice. Providing underserved and under-resourced individuals access to the tools and services they need to open doors and improve their station in life is critically important. Legal services such as those

we provide at the clinic is a part of that for those seeking to start a new business.

### What do you enjoy outside of work?

We frequently host family gatherings on the weekends. We have seven grown children and enjoy having a lot of our family close by. We also love to travel. Last year we traveled to Peru to hike in the Andes Mountains and visited Machu Picchu. I am also a big Chicago Cubs fan. I try to watch or listen to most games, or at least an inning or two.

### What is something someone would be surprised to learn about you?

I survived the Chicago Marathon. I'm not a natural long-distance runner, so it was a real challenge. My wife was nice enough to train and finish the race with me.

### What is a book or books that have inspired you?

My wife might tell you that my favorite book is the Internal Revenue Code and, admittedly, I do have my nose in that text quite a bit. I do really enjoy U.S. historical biographies. I am well on my way to having covered all the U.S. presidents. Especially inspiring and motivating are the stories of those who rose from very modest beginnings to lead the country. My favorites include Harry S. Truman, *A Life*, by Robert H. Ferrell and President Carter by Stuart E. Eizenstat. Truman dropped out of his two-year business college and was forced to close his failing store along the way to his eventual ascent to the presidency. That should inspire and motivate anyone.

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### About the Drake Legal Clinic

The Drake Legal Clinic is housed in the 40,000-square-foot Neal and Bea Smith Law Center. It is supported by a \$4.5 million federally funded endowment that ensures continued service to students and the community. As of spring 2020, the Drake Legal Clinic offers eight clinical programs.

(Source for interview:  
Drake University Law School)



**AUTM ELECTS NEBEL TO BOARD OF DIRECTORS**

The Association of University Technology Managers (AUTM), a global non-profit whose members support the commercialization of academic research through intellectual property protection, start-up formation and industry-academia collaborations, has elected **Heidi S. Nebel**, Managing Member of McKee, Voorhees & Sease, PLC, to its Board of Directors. Heidi is the Chair of the MVS Biotechnology & Chemical practice group.



**MORELAND ELECTED PRESIDENT OF IOWA ACADEMY OF TRIAL LAWYERS**

At the General Meeting of The Iowa Academy of Trial Lawyers on Feb. 28, the election of officers was made as follows:

President - **Michael J. Moreland, Ottumwa**

Vice President - **John C. Gray, Sioux City**

Secretary/Treasurer - **David L. Brown, Des Moines**

Newly-elected board members are **Edward J. Keane**, Sioux City, District 3 and **Randall C. Stravers**, Oskaloosa, District 8.

**IN MEMORIAM**

**John Scott Hoff**, 73, of Lake Forest, Illinois, died May 23, 2019. Hoff was born in Des Moines in 1946. He served in the U.S. Air Force and received his J.D. from S.W. University in Louisiana. In 1976, Hoff moved to Chicago, Illinois, joining the firm of Lord, Bissell & Brook, working in aviation litigation. He formed his own law practice in 1981 and merged The Hoff Law Group with Cremer & Spina in 2016.

**Charles R. Coulter**, 79, of Iowa City, died March 24. Coulter was born in Muscatine in 1940. He received his J.D. from the University of Iowa College of Law. He joined the law practice of Stanley, Bloom, Mealy and Lande, which later became Stanley, Lande and Hunter; in Muscatine in 1965. He focused on corporate law, real estate law, wills and estate planning.

**Frank Bryson Hill**, 84, of Tarpon Springs, Florida, died June 11, 2019. He was born in 1934 in Detroit. He served in the U.S. Army and received his J.D. from Wayne State University, focusing on trademarks and patents. In 1978, Hill and family moved to Muscatine, taking a position at Bandag corporation as patent and trademark counsel. He was a member of the American Bar Association, State of Michigan Bar Association and The Iowa State Bar Association.

**Edward Harvey, Jr.**, 90, of Creston, died April 7. Harvey was born in Creston in 1930. He served in the U.S. Air Force during the Korean War and received his J.D. from Creighton University. After being admitted into both the Nebraska Bar and Iowa Bar he returned to Creston for a short time working with attorney Deg Reynolds. In 1960, Harvey

moved to Osceola where he practiced law with Ward Reynoldson and Bob Kilmar. He returned to Creston in 1966 and joined Tom Mullin, Don Mullin and Bill McLaughlin. Harvey was a 50-year member of the ISBA.

**Gordon J Forsyth**, 91, of Estherville, died March 13. Forsyth was born in Oskaloosa in 1928. He served in the U.S. Army and received his J.D. from the University of Iowa College of Law. In 1954, he moved to Estherville and began practicing law. During his career, he served as the part-time Emmet County Attorney, long-time Estherville City Attorney and was a general practice lawyer who represented generations of northwest Iowans. He was a member of The Iowa State Bar Association, the American Bar Association, and served on the Iowa Supreme Court Grievance Commission and other committees.

**WELLNESS CORNER**

**PHYSICAL WELLNESS**

This area of physical well-being includes the ability to maintain and improve the functioning habits of your body through healthy eating, active living and adequate rest.

**PHYSICAL ACTIVITY**

**V. EXERCISE**

Exercise is a structured program of activity designed to achieve a certain goal. Physical activity is anytime the body moves and uses energy. Exercise is a form of physical activity, but physical activity doesn't require exercise. Strive for physical activity every day.

**BENEFITS OF PHYSICAL ACTIVITY**

You will sleep better, have a decreased risk of disease, feel physically better, notice

improved mental health and feel improved strength to safely perform activities and physical tasks.

**MUSCLE HEALTH, JOINT HEALTH AND HEART HEALTH**

Increase your physical activity by doing something your body wants to do right now. Stretch your tight muscles, flex your muscles against resistance or get your heart rate up. Pay attention to your body's response so you don't overdo it.

**PHYSICAL ACTIVITY GUIDELINES**

According to the Centers for Disease Control (CDC), adults should do a cumulative amount of moderate-intensity activity for 2.5-5.0 hours a week. Or a cumulative amount of vigorous activity for 75 minutes to 2.5 hours a week. The CDC also recommends muscle-strengthening activity on two or more days a week for additional health benefits.

**WHAT TO DO**

Choose an activity appropriate for your current fitness level. If you are just starting,

move at a low intensity and increase over time. Find ways to move more often to be active without thinking about it. Take a morning walk or bike (instead of drive) to locations within one mile of your house.

**TIPS TO TRY**

(summarized from the University of Minnesota-[www.takingcharge.csh.umn.edu/set-goal](http://www.takingcharge.csh.umn.edu/set-goal))

- Be flexible - If you don't meet your goal, modify it instead of calling it failure.
- Be positive - Work towards something rather than against it.
- Be concrete - Write a specific task or deadline to produce feelings of accomplishment.
- Be harmonious - Goals should not disrupt your life in a negative way.

*The information for this monthly column is provided by the ISBA Well-Being Committee and the YLD Wellness Committee. Additional resources can be found on [iowabar.org/wellbeing](http://iowabar.org/wellbeing).*

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**Associate Attorney** – Foss, Kuiken, Cochran & Helling, P.C., Fairfield, IA – Foss, Kuiken, Cochran & Helling, P.C., a well-established general practice law firm in Fairfield, is looking to add the right candidate as a full-time associate attorney with the intention of fostering a long-term relationship. Our practice involves a wide range of opportunities in the areas of estate and business planning, business transactions, corporate, probate, tax, real estate, banking, civil litigation and family law. *Cover letter and resume with references requested. Please send to [lhelling@fkgclaw.com](mailto:lhelling@fkgclaw.com).*

**Assistant City Attorney** – Litigation – City of Des Moines, Des Moines, IA – Provides professional legal representation for the City of Des Moines; works independently with minimal supervision; performs related work as required. Performs professional legal work related to the enforcement of traffic violations, other simple misdemeanors, civil infractions and general litigation. This position is subject to the Des Moines Municipal Code residency requirement which would require you to live within the limits of the City of Des Moines no later than seven months after appointment to the position and you must maintain that residency while employed in this position. *To apply, visit <https://careers.iowabar.org/jobs/13371881/assistant-city-attorney-litigation>.*

**Chief Legal Officer** – The Iowa Clinic, West Des Moines, IA – The Iowa Clinic is searching for a dynamic chief legal officer to lead the process for the development, implementation, administration and monitoring of the organization's comprehensive risk management program. The chief legal officer serves in an advisory capacity to the board of directors, management and physicians on risk management and compliance issues. Works closely with outside legal counsel and the medical malpractice carrier in investigating claims and developing defense strategies. *To apply, visit <https://careers.iowabar.org/jobs/13527062/chief-legal-officer>.*

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**Attorney interested in an office share arrangement.** Great potential opportunity for a solo practice attorney with an established clientele or a new attorney just out of law school. Low overhead. Nice space. Office located just east of Valley West Mall in West Des Moines. Great location. Lots of parking. *If interested, email [nphifer@walkelaw.com](mailto:nphifer@walkelaw.com).*

## FOR SALE

**STORE FRONT PRACTICE** – Owner of store front law practice, at same location in central Iowa for more than 50 years, is considering retirement. The office is located within 45 minutes of the Polk County Courthouse. Core practice areas include probate, real estate, estate planning, small business entities, criminal, divorce and tax preparation. Excellent opportunity for a confident, industrious, client-oriented attorney with a strong transactional background to mold a practice to suit his or her interests. All terms negotiable. *For more information please write: The Iowa State Bar Association, Code 871, 625 East Court Ave., Des Moines, 50309-1904, or email at [isba@iowabar.org](mailto:isba@iowabar.org). Please include Code 871 on the envelope if mailing and in the subject line if emailing.*

## SERVICES OFFERED

**MEDIATION** – Former Justice Michael J. Streit who served for over 27 years on the bench is offering mediation and arbitration services.

Streit was appointed as a district court judge in 1983 where he served the Fifth Judicial District. In 1996 he was appointed to the Iowa Court of Appeals and in 2001 to the Iowa Supreme Court where he served until 2010. *For information and scheduling please call 515-244-3500 or 515-247-4708.*

## PERSONAL

If depression, stress, alcohol or drugs are a problem for you, we can help. We are a non-profit corporation offering attorneys free help in a totally confidential relationship. We are the Iowa Lawyers Assistance Program. Under order of the Iowa Supreme Court, all communication with us is privileged and private. Our director is a former lawyer, and a recovering alcoholic and drug addict. He is a trained substance abuse counselor. We cannot help unless you call – 515-277-3817 or 800-243-1533 – or message (in confidence) [help@iowalap.org](mailto:help@iowalap.org). All you have to do is ask us to contact you. No other details are necessary. We will call you. The Iowa Lawyers Assistance Program also can provide speakers for local bar associations.

# TRANSITIONS



**Coyreen Weidner** has joined Moore, Corbett, Heffernan, Moeller & Meis, L.L.P. in Sioux City as an associate attorney. Weidner earned her J.D. from Willamette University College of Law. From 1997 to 2007, Weidner served as an appointed magistrate with the Oregon Tax Court, where she was one of the first women to sit on the court. Weidner will have a general practice at the firm, with a focus on property tax valuation appeals, appellate cases, business transactions and estate planning.

# Spotlight ON Service

## LAW FIRM ISSUES CHALLENGE TO OTHER ATTORNEYS

*"Do all the good you can."*

The Des Moines law firm of McKee, Voorhees & Sease, PLC (MVS) has begun an effort to show appreciation for healthcare workers on the front lines of fighting COVID-19. On Monday, April 6, the law firm donated 100 box lunches from Main Street Café in Ankeny to hospital staff at Broadlawns Medical Center in Des Moines. Now organizers would like to challenge all Iowa attorneys to consider similar donations or to help in whatever way they can in their community during the COVID-19 crisis.

"This is a small measure to show our

immense appreciation for all that our healthcare workers do in helping everyone who has been affected by COVID-19," said Heidi S. Nebel, Managing Member of MVS.

"Not only are we showing appreciation to these healthcare professionals, but also local restaurants being impacted by this crisis. Together we each can do our small part to help others during this pandemic," said Kirk M. Hartung, Member, MVS.

If you or your firm is organizing a similar effort, please let ISBA staff know by emailing [communications@iowabar.org](mailto:communications@iowabar.org).



## Two ways you can help your community during the COVID-19 pandemic

+ Assist the ISBA in providing limited scope pro bono assistance through the COVID-19 Free Legal Advice Hotline. Iowa Legal Aid is hosting the hotline and working closely with The Iowa State Bar Association and the Polk County Bar Association's Volunteer Lawyers Project to get all Iowans access to

the key legal information and advice they need during this crisis. If you are interested in volunteering, please contact ISBA Director of Innovation and Outreach Virginia Sipes at [vsipes@iowabar.org](mailto:vsipes@iowabar.org).

+ The ISBA Public Relations Committee is coordinating a monetary donation on behalf of the

ISBA for the Food Bank of Iowa, which serves 55 Iowa counties through 625 partner agencies. Please consider donating through the ISBA team donation page at: <https://give.foodbankiowa.org/teams/13748-the-iowa-state-bar-association>



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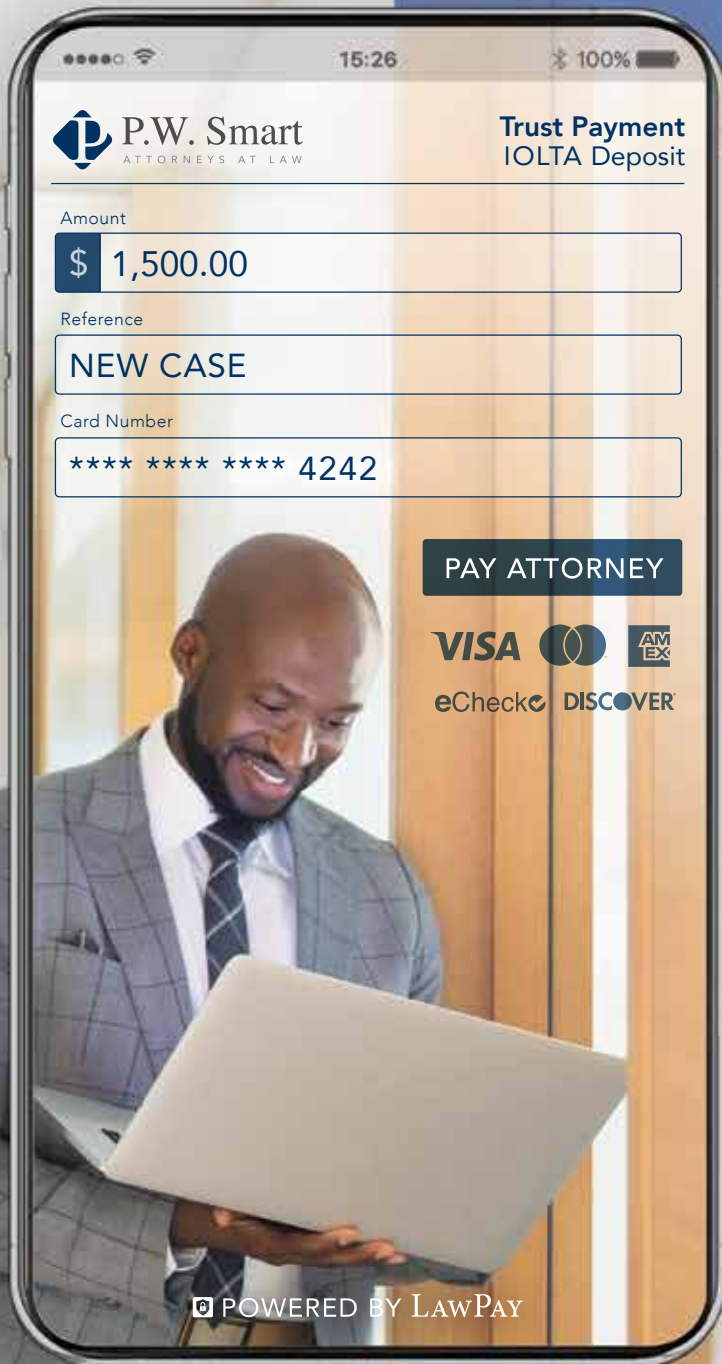
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