



THE IOWA LAWYER

November 2018 V 78 N 10

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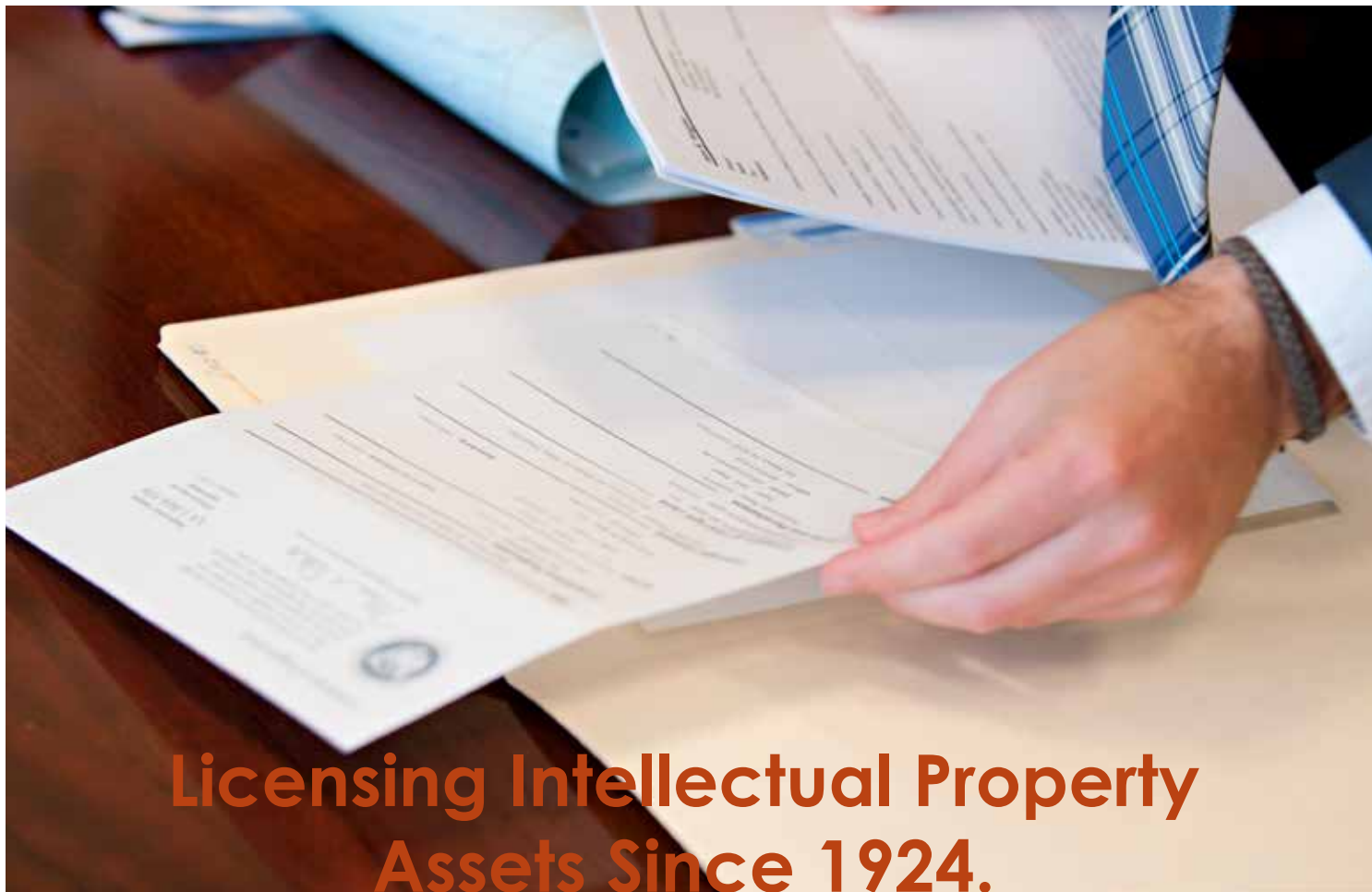
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Amy Skogerson and Andrea McGinn are leading the way for cutting edge law practices designed to provide unbundled legal services in an age of self-determination. **PAGE 8**



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

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November 2018



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*Photos by:
Heather Schroeder
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TOM LEVIS, PRESIDENT

THE THANKSGIVING EFFECT

Like many of you, I am from a politically mismatched family. My wife, Wendy, warns me every year before Thanksgiving to avoid discussing politics with certain members of her family. I usually follow her advice... but sometimes it's really hard. Like the year Wendy's brother began talking about the unusual weather we'd been experiencing and I said something about climate change...Wendy could have killed me.

This Thanksgiving might be an especially difficult year for politically mismatched families. The Kavanaugh spectacle, the 2018 election, President Trump's tweets are just a few of the current topics that can get tempers flaring. Can Iowa lawyers and their families happily share Thanksgiving with those friends and relatives on the other end of the political spectrum, especially when Thanksgiving falls just a couple of weeks after a contentious election?

According to a "Science Journal" article published earlier this year,* in 2016 politically matched families spent four hours and 42 minutes together at Thanksgiving. Politically mismatched families spent only three hours and 45 minutes together. In mismatched families with high political advertising exposure, the mismatched families spent only three hours and 11 minutes together.

The Science Journal authors concluded that more than 48 million hours were lost in 2016 when Thanksgiving guests from precincts that voted for Donald Trump cut short their visits to hosts in precincts that voted for Hillary Clinton. Another 35 million hours were lost when visitors from Clinton precincts arrived late or departed early from homes hosted in Trump precincts. The Science Journal authors call this recent phenomenon the "Thanksgiving Effect." I say it's a shame. As president of the Iowa bar, I

say Iowa lawyers need to lead the way to civility at Thanksgiving.

First of all, let me put the current political climate in proper perspective. As all of you know, Thanksgiving is a national holiday that celebrates a time in our history when two different cultures, the Plymouth colonists and the Wampanoag Indians, happily shared a successful harvest feast. But, in fact, the first Thanksgiving in 1621 was terribly traumatic. In the previous year, the Pilgrims lost half of their friends and families to starvation. By 1621, 90 percent of the Wampanoag Indians had died from disease brought to America by Europeans. Yet, despite these incredible tragedies, the Pilgrims and Native American Indians happily celebrated together for over three days!

In 1863, just four months after the battle of Gettysburg, President Lincoln established Thanksgiving as a national holiday. Could there have been a more politically difficult time in the history of America? Yet, President Lincoln wanted Americans to enjoy a holiday, and they did.

Thanksgiving has always occurred after controversial events. World War I, the Great Depression, World War II, the Civil Rights movement and Vietnam, were all highly contentious political periods in American history, yet Americans still celebrated Thanksgiving with their families.

We lawyers are trained to see both sides of an argument. We are often called upon to zealously represent repugnant clients. Dealing with crazy Republicans or crazy Democrats is a piece of cake compared to what we deal with on a daily basis. This year, as president of the Iowa Bar, I am calling on all Iowa lawyers to lead their families and friends to political peace and harmony at Thanksgiving. At the dinner table I want you to start by sharing the advice of my grandmother who once told the

Levis clan there are three things not to be discussed at Thanksgiving: politics, religion and our weight! Grandma knew what she was talking about. You can do it. Remember, you are a lawyer.

By the way, whose idea was it to hold elections just a couple of weeks before Thanksgiving?

GIVING THANKS

Thanksgiving is a time when we give thanks for all that we have been blessed with in life. In my 65 years, I have been blessed with a lot. I have a wonderful family including a few politically mismatched relatives. My mismatched relatives put perspective in my life and, for that, I am grateful. I am blessed to work in a law firm with marvelous lawyers and staff, including my legal assistant, Allie Newberg, who puts up with my daily shenanigans without complaint. I need to thank her more often.

As I write this letter, I have been Bar president for only about three and a half months, but I don't need more time to know that I am blessed with a great Board of Governors, a group of wise officers, a spectacular group of innovative YLD leaders, hundreds of lawyer volunteers and an incredibly talented executive staff. But no organization runs as well as the ISBA without people who are rarely seen on the cover of the Iowa Lawyer magazine. So, at this Thanksgiving, I want to thank those employees who provide incredible contributions to this organization. We are blessed to have them. They deserve our thanks.

Thank you **Paula Murphy Puck** for your skills at coordinating special projects; we always seem to be having one, so you rarely have a moment to relax. Thank you **Zach Zuber** for being the first and always-smiling face you see when you arrive at the ISBA office, and for your skills at coordinating

membership relations. Thank you to our newest employee, **Hank Hanson**. We are incredibly lucky to have Hank. In the weeks and months ahead, Hank will be out to visit you to see what more the ISBA could do for you.

Thank you **John Wheeler** for coordinating Iowa's mock trial competition that is the gold standard for mock trial programs in America. He is probably our best recruiter for new lawyers. Thank you **Christy Cronin** for organizing and coordinating hundreds of marvelous CLE programs every year. I don't know how you do it! Thank you **Melissa Higgins, Steve Boeckman** and **Virginia Sipes** for creating and publishing the monthly Iowa Lawyer Magazine. Until I became president, I had no idea of the effort that goes into publishing our monthly magazine. Thank you also for ISBA's daily/hourly social media posts that are viewed by thousands of Iowa lawyers as well as many non-lawyers.

Thank you **Chris Fritz** for your marketing skills and your creativity.

Every organization needs someone with creative talents and the ISBA has a great one in Chris. The ISBA building would be in trouble without **Jim Jessen**. Our building is over one hundred years old, but thanks to Jim, it runs every day like a finely oiled machine. Jim is also the employee who prints the tens of thousands of documents you see at nearly every ISBA function. Stop in his office someday and see the amazing equipment he operates. **Tuyet Vouthilak Cavan** takes care of the day-to-day financial books of the ISBA. Because of her talents, the ISBA is in great shape financially. In this day and age, no organization runs without a talented IT department. Thank you **Brian Hegg** and **Dewey Cantrell** for keeping our information technology up to date and for keeping it all running.

You have probably seen **Lisa Hanson** at ISBA events pouring beer or wine and making sure every attendee is happy. In case you didn't know, Lisa is the person who schedules and coor-

dinates every ISBA event, whether at the Bar headquarters or elsewhere, and Lisa is always there when the event is over to clean up. Lisa, thank you.

Mary Hill is director of membership and is the ISBA's liaison for the Iowa Bar Foundation. Mary has been a wonderful employee for over 41 years and the ISBA would struggle without her talents. The ISBA staff is listed with photos and contact information on the next page. Never hesitate to contact them if you need something.

Have a wonderful Thanksgiving.

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CHANGING THE WORLD ONE UNBUNDLED LEGAL SERVICE AT A TIME

Amy Skogerson and Andrea McGinn are leading the way for cutting edge law practices designed to provide unbundled legal services in an age of self-determination

Families gathered to wait for their adoption hearings in the century-old courthouse in downtown Des Moines on a busy Saturday in November, along with thousands of other families at courthouses across America. Andrea McGinn helped coordinate the local 2014 National Adoption Day event because she wanted to see families' dreams become realities.

While McGinn sat in a full second floor courtroom, Amy Skogerson was noticeably moved as she described how her client, a stepparent petitioner, turned his life around to become a good father and a valuable member of his community. After Adoption Saturday, McGinn found an opportunity to meet Skogerson and introduced herself: "My name is Andrea. I want to change the world and I know that you'll think I can."

McGinn planned to set up her own solo law practice after law school and wanted someone to be available to mentor her as she started out. In lieu of paying rent to Skogerson at first, McGinn proposed that she perform contract work for her. In no time, McGinn built her own book of business and in June 2017, she was awarded a scholarship to participate in the Association of Family and Conciliation Courts (AFCC) conference in Boston.

The two lawyers rented a car and drove to Cape Cod after the conference



Amy Skogerson and Andrea McGinn are pictured here with the historic bank vault from the original Van Meter Bank. The vault served as inspiration for The Law Shop's storefront, logo and brand. The Law Shop Team also includes Cynthia Bahls, associate attorney, and Dee House, chaos coordinator, and two law clerks.

Photos by: Heather Schroeder Photography

and talked about how they could make a law practice partnership work. "We started looking for every possible way that we could incorporate unbundled legal services into our own law firm and how we could make something different, special and accessible," said McGinn.

"We realized how we were all competing for the same 40 percent of clients that are paying traditional fees," Skogerson said. "We created The Law Shop to be a 100-percent unbundled legal services firm," she said. "After just one year, our success is showing that lawyers can provide competent, affordable unbundled family law services that people of all socioeconomic backgrounds value."

HELPING AS MANY PEOPLE AS POSSIBLE WITH UNBUNDLED LEGAL SERVICES

Unbundling, also referred to as limited scope representation, is a delivery model for legal services that began to emerge over three decades ago during the growth of pro se representation throughout the United States.¹ A 2016 study of the National Center for State Courts revealed that an estimated 75 percent of civil cases in the state courts have, at the least, one pro se party. The growing percentage of pro se litigants in

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family law matters in Iowa courts has not been measured per se. However, judges, attorneys and court personnel experience the shift first-hand on a daily basis.

"By all accounts, at least 60 percent of all dissolution of marriage cases today have at least one party who is pro se," said Tom Levis, The Iowa State Bar Association's president. "We are talking about thousands of pro se litigants every year. The unfortunate consequence of this phenomenon is that pro se litigation is clogging our court sys-

tem, have many, many clients who are in this middle ground," said Skogerson. "They can come to us for one unbundled legal service and maybe end up paying for their entire case as they go."

Sara's experience speaks to many of the people who feel stuck. She is a college graduate who works at a full-time job during the day, Monday through Friday, and has a second job that she works on evenings and weekends to help provide for her 13- and 15-year-old daughters.

"When I got divorced 10 years ago,"

marketing plan and designing the way that we deliver our unbundled legal services."

The Law Shop logo is an adaptation of the top of the building that Erik Skogerson, Amy's husband, built. It was inspired by the design on the top of the historic Van Meter Bank vault inside. "Our logo is reminiscent of an old bookstore. We have always valued our client's stories," said Skogerson.

McGinn said: "Last Spring, we went to the first ever AFCC training

"By all accounts, at least 60 percent of all dissolution of marriage cases today have at least one party who is pro se. We are talking about thousands of pro se litigants every year. The unfortunate consequence of this phenomenon is that pro se litigation is clogging our court system as judges and court staff are forced to help pro se litigants. I believe there is an antidote to this judicial crisis. It is called unbundled legal services. Amy Skogerson and Andrea McGinn are showing us the way with their new law practice appropriately called The Law Shop." – Tom Levis, The Iowa State Bar Association's President

tem as judges and court staff are forced to help pro se litigants. I believe there is an antidote to this judicial crisis. It is called unbundled legal services. Amy Skogerson and Andrea McGinn are showing us the way with their new law practice appropriately called The Law Shop."

When asked why people choose the unbundled legal services that The Law Shop provides, Skogerson said: "Unbundled has been sold as a type of legal service for people who cannot afford more, and that is 100 percent false. My very first clients that we served under The Law Shop were both six-figure income earners. They were both educated and articulate and found their way through the pro se forms on their own. They got stuck on child support and asked for help with their worksheet. I ended up working with the wife and she came back to ask if we could draft the final stipulation. She was thrilled with the ability to have the a la carte service option and pay a flat rate for services that she needed."

How many lawyers refer people to pro bono programs or nonprofit legal service providers knowing that there is a very high likelihood that they will not get the legal services they need - either because they do not qualify for the services or because there are not enough resources available? "We

Sara said, "we agreed to work together to support our daughters financially. As they grew, raising them began to cost more and I struggled day in and day out."

For years, Sara thought about seeking help from a lawyer. When she called for initial consultations, she did not think that she could afford the help she was offered or that it could make enough of a difference for her even if she could pay for it.

Sara said: "After I heard about unbundled legal services and met with Amy, I decided to get limited scope legal services to modify support for and custody of my daughters. I still struggle financially after the modification but it's less of a hardship. I don't have hard feelings in terms of asking my daughters' father to pay more, only to hear 'now is not a good month,' for example. Now, I have the confidence to make clearer financial decisions; there is an aspect of fairness that has finally been implemented, and for that, I am grateful."

CREATING A PRACTICE FOR THE AGE OF SELF DETERMINATION

"We created The Law Shop to give people the power to make a choice on their own about how much they want us involved," said McGinn. "We did not invent unbundled legal services, but we have spent the past year creating our

devoted to building a successful unbundled family law practice. We met Brian Galbraith, founder of Galbraith

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Family Law Professional Corporation and a leader in collaborative family law services in Canada and internationally. We really like his practice model and we asked him to be our business consultant. As we continue working with him we are learning how we want to organize our firm and provide quality services.”

“Amy and Andrea are on the cutting edge of legal practice,” said Galbraith. “I was amazed to hear them speak of their commitment to providing unbundled services to their community. Providing unbundled legal services is the future of the practice of law and they are already there. I admire their courage, forward thinking and success.”

“Our goal is to help as many people as possible and that includes our colleagues. A good portion of what we know we learned from other people’s willingness to share what they know with us. We are looking forward to being able to offer trainings for other attorneys. By doing so, we are going to be able to reach that much more of the population that wants and even desperately needs legal services,” said McGinn.

An expansion project is already underway. Erik Skogerson is the designer and builder, and Andrea’s husband, Nick McGinn, owner of Advanced Plumbing, is doing all of the plumbing work. Nearly all of the materials and architectural details for the seven professional offices, conference room and lower level were Amy’s husband’s

brainchild and “a labor of love, from the partially exposed brick walls to the handmade interior barn doors and custom shiplap walls,” said Skogerson.

“As Andrea and I always say, the most important part of this space is the energy we bring into it. We are very protective of the positive energy we’ve created here and we believe clients feel it, so our physical surroundings are really an extension of the way we want our clients to feel when they’re here,” said Skogerson.

Erin, a first grade teacher, heard about The Law Shop’s “kitchen table” dissolution service that provided her with an efficient and financially manageable option to have The Law Shop prepare and shepherd all the necessary documents through the court system properly after she and her then husband agreed on the terms of their divorce (i.e. kitchen table negotiations). The service was completed at a flat-fee rate. “They really wanted to know my story, it was important to them and that was important to me,” said Erin.

At the front of The Law Shop, in the midst of the expansion project, there is a sign that was originally made for “Skogerson Law, P.C.” The sign was given to Amy by her client at the adoption



The Van Meter Bank, now The Law Shop by Skogerson McGinn LLC, on Grant St. in the early 1920s.

hearing where McGinn first witnessed Amy’s unique style of practice. The sign, now updated, reads, “The Law Shop by Skogerson McGinn LLC.” Every client may not know Skogerson and McGinn’s story, but The Law Shop is finding limitless opportunities to know and be a part of their stories.

The recent article, “Unbundled Legal Services: At the tipping-point?” by Sara Smith and Will Hornsby, published by the American Bar Association, is available online for more information about the growth of LSR, consumer demand for unbundled services, lawyers’ supply of those services, and programs designed to stimulate the use and provision of this model.

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Helping Others Grieve

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I meet with individuals and families each week who tell me about things they are celebrating, like retirement, weddings, births, anniversaries, and other wonderful events. I also have clients who tell me sad stories about losing loved ones, divorces, dementia, difficult family relationships, and much more. Last year, I attended a conference and heard Amy Florian speak about her studies of grief, and I became passionate about helping those around me who are grieving.

In Amy Florian's book *No Longer Awkward*, she describes different types of losses people grieve. A material loss could be a house that burns down, a car stolen, or a failed business venture. A relationship loss could be the death of a family member, divorce, infidelity, or dissolution of a business partnership. An intrapsychic loss is the loss of a dream or hope, like infertility, unfulfilled goals, or parenting a child with disabilities. Someone who is aging, experiencing dementia, or has a sudden injury has a functional loss. A role change loss is a promotion or demotion, an adult child caring for aging parents, or becoming an empty nester. Finally, a routine loss could be retirement, becoming a parent, moving into a retirement community, or starting graduate school or night classes.

Even though we all experience loss at some point, most of us do not know how to respond appropriately when someone else is enduring a difficult situation. I learned a few things that can help in these situations:

Don't make comparisons. If you experienced a similar difficult situation, it is probably not going to help this person feel better. Only share your story if they ask for it. Be present and listen to the person grieving.

Ask open-ended questions. Don't say, "I am sorry," and walk away. Be present and ask them what they wish people knew about what they are going through.

Don't look for the silver lining or say, "Be grateful that your situation is only this bad." Instead, be compassionate and listen. Often, it is best to just listen instead of offering advice.

Help even if they don't ask for help: make a meal; send flowers; send a card; buy groceries; or offer to make phone calls. Often, people won't ask for help when they need it most.

When in doubt on what to say or how to act with a grieving person, just give them your presence; listen to them; and be compassionate.



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WHY DOES YOUR TRIAL TEAM NEED A JURY CONSULTANT?

By Jeff Goodman and Julie Spillane

Back in the late 1980s and early 1990s, it came into vogue to ask an opposing party whether they wanted to mediate a case rather than seek resolution by a jury trial. Back then, mediation was far less common and an expense that was reserved for the bigger cases. Since that time, however, the number of trained mediators has multiplied, the courts and bar association have actively encouraged it and an overwhelming number of disputes have been resolved through mediation.

Today, we are seeing yet another shift, and the question on many people's minds has morphed to: "Have you considered submitting your case to a focus group or a mock jury?" for evalu-

ation or resolution. Over the next 25 or 30 years, I predict that the use of focus groups or mock juries will become nearly as commonplace as mediation is now. There are many reasons for this, including:

- Jury trials are expensive, and few people can afford the cost.
- Jury verdicts are unpredictable. Even the best cases can result in verdicts that are disappointing to a plaintiff or a defendant — or worse yet, a verdict that is surprising to a plaintiff or a defendant.
- Correspondingly, clients do not benefit from (and in some cases grow frustrated with) their inability to have some form of adjudication (i.e., closure) that assures them that their disputes were fairly heard and decided, and the results were just. And regardless of whether they win or lose, some litigants yearn to know how jurors (citizens/laypeople, not lawyers or retired judges) would decide their cases.

How many of you—as trial lawyers—have interviewed jurors after a case was decided to learn why you won or lost? The question you should ask yourself is: Why wait to ask the jury those questions after they have deliberated and rendered their verdict, rather than posing those same questions to a focus group or mock jury in advance of trial to learn the real concerns of laypeople about your case.

A Mediation on Steroids™ provides a forum for the adverse parties and their counsel to present their evidence and arguments to groups of mock jurors (i.e., four to six groups of jurors who will render separate verdicts) so they can evaluate the results from those juror groups.

Jury consulting exercises provide manifold benefits for all involved parties, including:

PERSPECTIVE

A jury consultant will challenge your trial team to view the case from different perspectives. For even the most experienced attorneys, it is all too easy to get mired down in, and preoccupied by, the voluminous details required to prepare a trial — in other words, to miss the forest for the trees. Members of a trial team can also get caught up in a certain myopia as they discuss the case amongst themselves, using only their clients or colleagues as sounding boards.

A jury consulting exercise offers a fresh perspective that enables your trial team to discover alternative strategies that may never have occurred to it otherwise. The jury consultant functions as a dedicated partner who helps a trial team see the vast realm of possibilities when it comes to arguments, ideas, techniques and strategies that may serve to persuade a jury.

WILL IT PLAY IN PEORIA?

The goal of a mock jury exercise (i.e., a focus group or mock trial) is to enable you, the trial lawyer, to craft a case that is strong enough to persuade virtually any group of people, regard-

THE SCOPE OF JURY CONSULTANT SERVICES

Jury consultants offer a comprehensive suite of services, including but not limited to: focus groups, mock juries, shadow juries, written jury questionnaires, jury research, jury selection, discovery strategies, deponent evaluation and preparation, consultative services for direct and cross-examinations of witnesses, thematic development for opening and closing statements, trial strategy, post-trial juror interviews, trial graphics, statistical analysis, venue evaluation, community attitude surveys, and input on trial and appellate briefs.

While mediation is still a useful tool, it cannot simultaneously address these concerns like a jury consulting exercise can. Jury consultants provide your trial team with a truncated, virtual jury consulting event that allows you to test your concepts and trial strategies, take the guesswork out of trial preparation and gain insights into the outcome at trial.

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**Winning Trials Before
(And After) Trials**
(Live Webinar)

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**Risk Assessment and
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December 10

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December 14

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Opening Statements**
(Live Webinar)

December 31

**Confidentiality: A Review
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less of demographics. In other words, will your case play not just in central Illinois, but in anyone's Peoria? The result of a jury consultant exercise should be to craft the most persuasive case for any tribunal, rather than merely tailor a case to the demographics and community data of the jury panel counsel hopes to face at trial. Even following the execution of your allotment of peremptory strikes and strikes for cause, the make-up of your jury is, to some degree, unpredictable. Why leave the outcome of your case to chance? Equip yourself to play in Peoria — anyone's Peoria! Craft a trial presentation that enables you to win no matter who is on your jury.

HOW TO WIN

Lawyers want to know: "Will I win my case?" The better question is: "How do I win my case?"

No one can tell you with certainty whether or not you will win your case at trial, because there will only be one jury who will ultimately make that decision. However, engaging in a mock jury exercise will reveal the information a jury may rely upon in its decision-making process. This is invaluable insight that vastly increases the likelihood of a favorable outcome.

LISTEN TO JURORS

Jurors think differently from lawyers. Jurors process information differently and, in some cases, are guided to conclusions by their own biases and heuristics. Too often, the questions that seem elementary or obvious to the trial lawyer turn out to be the most important ones to jurors. Likewise, lawyers too often learn what the jury considered to be the pivotal evidence only after hearing the verdict. A jury

consultant exercise can assist the trial team in discerning the difference between evidence that is important to the lawyer but unimportant to the jury (or vice versa), or what questions remain unanswered by the trial team's presentation.

Jury consulting exercises can also help you test your hypotheses and help the trial lawyer identify his/her own blind spots in advance of the trial presentation. Advocates oftentimes

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Partner

miss crucial information when they are unabashed in their convictions about what is right and wrong, what is proven and what is not and what is important and what is insignificant. The omniscient view—the assumption that you, the trial lawyer, know better than the jurors chosen to decide your dispute—can be a fatal flaw.

These common mistakes can be the trial lawyer's Achilles heel. A jury consultant can preclude these problems by helping you formulate the case presentation for virtually any jury. The thought processes of a group of jurors is impossible to predict, and efforts to "read the minds" of jurors (as opposed to presenting evidence and learning what they think about it) may jeopardize the outcome of your case. Juror consulting exercises are tailored to reveal case-specific information that will assist you in presenting your case and influencing a jury's verdict.

MARSHAL INFORMATION WISELY

While a trial team labors for weeks or months over a case, jurors have a fraction of the time to comprehend the facts of the case. Nonetheless, we expect jurors to serve as patient, attentive witnesses who must comprehend and digest massive amounts of information in a short period of time. Many times, jurors hear hours of testimony about documents that are flashed up on a screen and aren't given to them until the end of the case during their jury deliberations, which makes it difficult for them to follow the case and absorb information as testimony is presented.

With this in mind, it is imperative to

present your evidence at trial in ways that best equip the jurors to reach the verdict you or your client desires. A focus group or mock jury exercise provides the ideal forum for the trial team to road test its arguments and see how they are perceived and acted upon by jurors.

MAKE THE COMPLEX SIMPLER

A jury consultant helps lawyers understand how to present complex legal issues in a concise, simplified way so jurors can not only understand the case better, but can be more easily persuaded to a decision that involves complex facts.

DEMAND MORE OF YOURSELF

Preparing for a focus group or mock jury exercise will summon your trial team to prepare and present an opening statement on behalf of your client and on behalf of your opponent. Becoming acquainted with your adversary's perspectives compels you to explore and discover more about your case than ever before. A mock trial calls upon you to prepare for the full rigors of a trial and a verdict — all the way up to a dress rehearsal ahead of the day of reckoning — leaving you thoroughly prepared. With such extensive prep-work on both sides of the case, you have the opportunity to identify potential roadblocks and address them well ahead of trial.

A lawyer's analysis of a case—including the gathering of the facts and the application of law to those facts—is not unlike the clinical judgment a doctor makes after diagnostic testing of a patient's condition. In some

cases, doctors can gain all they need to know by asking the right questions and evaluating a patient's answers. But sometimes the best way to evaluate a patient's condition is through cutting-edge testing or even exploratory surgery. A jury consultant exercise equips you – the trial lawyer – with this level of diagnostic assessment. Indeed, such sophisticated forms of testing may initially seem more expensive or even cost-prohibitive, but when you consider the actual cost curve of preparing a case for trial, a focus group or mock trial conducted in the earlier stages of a case can save your client a substantial amount of time, money, inconvenience and heartache.



Jeff Goodman is a trial lawyer with GOODMAN LAW, P.C. and he is also the President of HARBINGER jury consultant, Inc.
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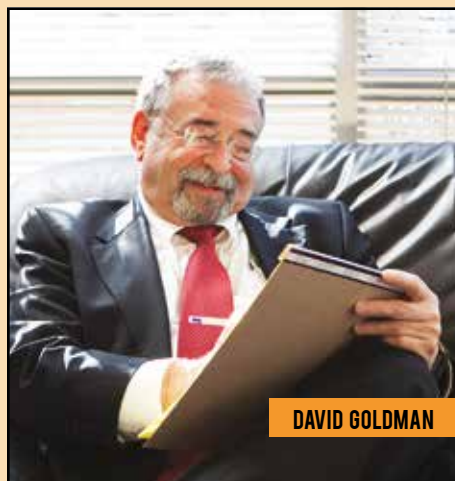
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References Available On Request



GENDER MATTERS

An ongoing search for practical solutions to address and eliminate bias, harassment, discrimination in the Iowa legal profession

By Leslie Behaunek, Tim Hill, Andrea Mason, Lindsay Vaught

Time's up. #MeToo. Lean in. Intersectionality. Simple words and phrases with incredibly complex origins.

Although these terms were coined and discussed nationally with regard to instances of sexual harassment, discrimination and bias in the workplace in general, the Iowa legal community unfortunately is not immune from these problems. Over the last two years, a number of attorneys and judges from across the state have been researching, discussing and presenting on the topic of harassment, discrimination and bias in the Iowa legal profession — specifically with regard to sex and gender.

In an effort to gain insight into the experiences of Iowa attorneys and judges on a broader scale, The Iowa State Bar Association promulgated a survey during the fall of 2017. The survey was designed to obtain both quantitative and qualitative feedback about the prevalence of harassment, discrimination and bias in the Iowa legal profession in the last five years. Over 300 Iowa attorneys and judges provided responses to the survey questions.

FALL 2017 SURVEY RESULTS

Survey participants were asked whether, in the past five years, they have “experienced or witnessed behavior that [they] felt demonstrated harassment or discrimination on the basis of gender, or other forms of gender bias, in the practice of law.” Of the

male respondents, approximately 35 percent answered “yes.” Of the female respondents, approximately 84 percent answered “yes.”

The survey also yielded hundreds of qualitative responses providing examples of harassment, discrimination and biased behavior experienced, or witnessed, by Iowa attorneys and judges in Iowa and the effects of those experiences. A short list of experiences shared by survey respondents shows a spectrum of conduct:

- Referring to the woman attorney as the court reporter, secretary or office manager, and asking her to make copies or bring coffee.

- Referring to woman attorney or judge as “honey,” “kiddo,” “dumb blonde,” “little lady” or “girl.”

- Partners asking the woman attorney to handle all of the briefing in cases but refusing to allow her to argue in court because she’s “inexperienced,” while allowing similarly-situated male counterparts (or male attorneys with less experience than the woman attorney) to handle both the briefing and in-court arguments in similar cases.

- Judges assuming the male attorney will be arguing a motion, even if the woman attorney has been the main signatory on the pleadings or is the attorney known to have expertise on the issues in the case.

- Women attorneys and judges

being frequently interrupted by men in the room.

- Women attorneys having their ideas or input ignored or discounted until a male attorney says the same thing and is praised for “his” idea.

- Clients or opposing counsel refusing to take advice from or negotiate with a woman attorney and instead requiring the male attorney on the case to engage in such discussions.

- Women judges described as whiny, bitchy, or difficult, while male judges exhibiting the same behaviors are described as predictable, judicial, exhibiting leadership.

- Male attorneys with less experience and less tenure promoted over women attorneys, with the explanation that the man “seemed more confident.” Woman attorney was instructed to find another job if she wasn’t happy with the decision.

- After being reminded of woman attorney’s name, judge stated in front of attorney’s client that he should have remembered when he saw her “pretty blue eyes.” When story was shared with a male attorney colleague, the colleague stated, “you should be flattered.”

- Male judges and attorneys commenting on women attorneys’ attire or physical appearance; one respondent reported she was told she was “too pretty to be an attorney.”

- Male attorney, who was the boss in the office, showed porn and other inappropriate pictures to younger woman attorney and other women in the office.

- Woman attorney was propositioned more than once and told she could gain benefits by “being more friendly.”

- Woman attorney reported being inappropriately touched by her boss.

- Opposing counsel told woman attorney in front of his male client that if she didn’t do what he wanted in the case he would take her back into the federal courtroom and “spank her.”

Overt harassment and discrimination are damaging to women attorneys and the legal profession as a whole, but

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such acts need not be egregious to have a harmful effect. As stated by ISBA Past-President Stephen Eckley in his April 2018 President's Letter: "subtle forms of gender bias, repeated many times over long periods by many male lawyers, have serious cumulative, harmful effects and are every bit as damaging to women attorneys as actionable sexual harassment."

After reviewing the responses provided by Iowa attorneys and judges, multiple panel presentations were held at the ISBA Federal Practice Seminar, the Polk County Women Attorneys' Annual CLE, and the ISBA Annual CLE to discuss the concerns raised in the survey and continue the conversation to find solutions to address and eliminate harassment, discrimination and bias in the Iowa legal profession. These panels included men, women, attorneys, judges, millennials, Gen-Xers and baby boomers.

After reviewing the survey results and talking to his women colleagues, panelist and attorney Tim Hill realized that he had been "oblivious to all of this" for over 27 years as a practicing attorney in Chicago and Iowa. He had never witnessed any overt sexist acts at the law firms where he practiced, and he worked around "equally sharp, demanding and top-notch men and women attorneys, all of whom I believe would not tolerate inequality."

The survey responses and the stories shared by Tim's colleagues brought to light the fact that bias, harassment and discrimination are, in fact, pervasive and concerning problems in the Iowa legal profession. Tim's "aha" moment similarly was experienced by many of the male attorneys and judges who have served as panelists or attended these presentations over the last year.

PAST AND PRESENT

We know there is a problem (or problems) to address. In order to focus on potential solutions, it's necessary to take a step back and look at where these problems originated. Women did not attain the constitutional right to vote until 1920 in the United States. In the 1980's, a prominent Atlanta law firm argued before the U.S. Supreme Court that the law firm should not

have to consider women for partnership because of the firm's right to free speech (*Hishon v. King & Spaulding*, 467 U.S. 69 (1984)). The court held unanimously in that case that "[i]nvidious discrimination . . . has never been accorded affirmative constitutional protections." Women have, throughout American history, been fighting for equal representation, an equal voice in the room and an equal seat at the table.

Men — specifically white men — have enjoyed a majority (and, at various points of time, all) of the positions of power in the legal profession in Iowa, though the demographics are slowly changing. In law schools today, first-year enrollment is essentially equal between men and women, and women comprise 46 percent of leadership positions on law reviews in the top 50 law schools.¹ In the overall profession, however, men comprise 64 percent of the legal profession; women hold only 18 percent of equity partner positions; women hold approximately 20 percent of corporate general counsel positions for Fortune 500-1000 companies; and women comprise only 31 percent of law school deans.² Additionally, women attorneys earn 10 percent less than men, and women equity partners make 20 percent less than their male counterparts.³

BIAS INTERRUPTERS

The American Bar Association's Commission on Women in the Profession and the Minority Corporate Counsel Association have been working on

potential solutions that law firms and companies can implement to address implicit bias in the legal profession. To that end, the ABA and MCCA recently published a detailed report⁴ with findings from a 2016 survey of in-house and law-firm lawyers' experiences with regard to four types of bias which have been documented in social science: Prove-it-Again, Tightrope, Maternal Wall, and Tug of War. Descriptions and examples of each type of bias can be found in the full article and the executive summary.⁵

The study found that women and persons of color reported higher levels of bias than white men in each of the following areas: getting hired, receiving fair performance evaluations, receiving mentoring, receiving high-quality assignments, accessing networking opportunities, being paid fairly and receiving promotions. Women of color often reported the highest levels of bias.

In addition to reporting the findings from the study, the report proposed solutions. Recognizing that implicit bias training and women's initiatives often do not achieve the sought-after results, the report proposes changes to business systems to "interrupt bias" and control whether the organization acts on stereotypical assumptions. For law firms, the report provides tools to interrupt bias in the areas of hiring, assignments, performance evaluations and partner compensation.⁶ For in-house departments, the report provides tools for interrupting bias in hiring, assignments, performance



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evaluations and compensation.⁷ Each “toolkit” begins with metrics to help identify where bias exists — essentially, the toolkits provide guidelines to help organizations look for bias, because you can’t change what you can’t see.

SURVEY TO ASCERTAIN CURRENT, POTENTIAL TOOLS

In order to continue the conversation amongst the members of the Iowa bar and ensure we are identifying and putting into action tools to prevent and/or address gender bias, harassment and discrimination in the Iowa legal profession, a new survey has been created by the ISBA Federal Practice Committee Diversity Taskforce in collaboration with the ISBA Diversity and Inclusion Committee. The purpose of this second survey is to identify how these issues are currently being addressed by individuals and organizations within the profession, and to ascertain potential tools to address these problems that could be implemented by individuals, organizations, courts and bar associations. We encourage all attorneys and judges in Iowa to participate in this survey, which will be open from Nov. 1 until Jan. 1. You can access the survey electronically here: <https://www.surveymonkey.com/r/2018GenderBias>.

If you prefer to submit survey responses on paper, contact Harry Shipley at hshipley@iowabar.org.

The only way the conversation about these issues is going to end is if we all, collectively, work to address these problems on a broader scale. As Eckley urged in his letter last April, “[i]f we join together, persistent effort from each of us will bring about transformative change that is long overdue.” It’s time “to level the playing field for women, finally and going forward.”⁸

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¹American Bar Association Commission on Women in the Profession, *A Current Glance at Women in the Law*, January 2017, available at https://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_january2017.authcheckdam.pdf.

²Id.

³Id.

⁴American Bar Association Commission on Women in the Profession and the Minority Corporate Counsel Association, *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession*, Executive Summary, September 2018, available at <https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf> (full report and toolkit available online for ABA members).

⁵Id.

⁶Id. at pp. 15-30.

⁷Id. at pp. 31-45.

⁸Peggy Noonan, *Wall Street Journal*, Opinion, December 2-3, 2017.



Leslie Behaunek is a civil and appellate litigation attorney at Nyemaster Goode in Des Moines.



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Sixty-Day License Suspension

Mathas was licensed in Iowa in 2001, and has largely practiced as a solo practitioner in Marengo. The Attorney Disciplinary Board filed its underlying complaint against Mathas in 2017, and Mathas filed a motion to dismiss based on laches. He argued the misconduct occurred more than four years prior and he self-reported, and the board's delay in bringing the complaint prejudiced his ability to defend himself. The motion was denied, and the board and Mathas then stipulated to the following relevant facts and rule violations:

In Oct. 2001, Mathas entered into a contract with the Iowa State Public Defender (SPD). The contract specified he would provide legal services to indigent adults and juveniles in 19 Iowa counties. SPD required the submission of General Accounting Expenditure (GAX) forms to receive payment, which detailed the services performed and itemized expenses. The GAX also included a certification that the form was accurate.

In early 2013, SPD wrote to Mathas about concerns with excessive recorded hours and mileage expenses; for instance, Mathas had claimed more than 3,000 hours for FY2010. Mathas met with SPD, and explained it was the fault of an inatten-

tive legal secretary. The legal secretary's ex-husband had been murdered, and he did not want to fire her. He admitted he had made single trips for multiple clients and erroneously billed each client the total mileage. Mathas self-reported to the board, and SPD did not renew his contract.

The first rule violation was Rule 32:1.5(a) (prohibition against unreasonable fees). The court agreed Mathas' mileage expenses for two years "far exceed" what he could "reasonably claim," including seeking expenses multiple times for the same trip. While Mathas gave some explanations for excessive billing, he ultimately conceded to some over – or double-billing.

The second rule violated was Rule 32:5.3(b) (responsibilities regarding nonlawyer assistance). The court found Mathas failed to reasonably supervise his secretary; they had no billing system, Mathas knew his secretary's personal situation lessened her mental state and attentiveness at work, and he had allowed her to continue to prepare his GAX forms after catching a mistake. He ultimately failed to ensure his GAX forms were accurate, and thus violated the rule.

In deciding the sanction, the court noted Mathas took responsibility for his misconduct, did not engage in misrepresentation and deception, took corrective action, and no criminal charges resulted.

Another mitigating factor was the high quality of Mathas' legal representation, as well as his community service and pro bono work. Aggravating factors considered were the high amount of funds taken from SPD, a previous public reprimand (although the misconduct was not similar) and the fact Mathas could have prevented the excessive billings, which caused SPD and the board "numerous hours" to analyze. The court issued a 60-day suspension.

ROYCE D. TURNER

September 14, 2018

No. 18-0352

One-Year Suspension

Turner was licensed in 2013, and began a solo practice in Polk County. Turner suffers from ADHD and depression, but takes medications for these conditions. This case arises from his representation of "many clients," which the court organized into counts.

Count I – Untimely Response. Turner failed to respond to a complaint until the fourth time the board sent him a copy and threatened interim license suspension.

Count II – Phillip and Jackson Representations. Both retained Turner to represent them in criminal matters, and paid Turner upfront. Turner did not deposit the funds in a trust account, because he was not "familiar with the trust account process." Turner failed to appear in two of the four matters for Phillips, and failed to appear in Jackson's matters after filing belated motions to continue, causing the court to issue arrest warrants for Jackson.

Count III – Bankruptcy Cases. Turner took on several bankruptcy cases, although he was "not as familiar as he should have been" with bankruptcy law. In these matters, Turner committed rule violations and failed to attend hearings which resulted in a number of rebukes from judges, dismissals and other sanctions.

Counts IV – VII, X & XI – Criminal Representations with Missed Appearances, Arrest Warrants and Sanctions. In one, the court ordered Turner to "implement a docket-control system to track key deadlines and obligations" and fined him \$250.

Count VII – Contempt. Turner



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represented a client at trial, and the jury became deadlocked. The judge was unable to contact Turner, and declared a mistrial. The judge found Turner in contempt and ordered community service. At a status hearing, the judge discovered Turner had not complied, and ordered him to jail time if he could not complete the hours in two months. Turner completed the community service, but never paid costs as ordered.

Counts VIII & IX – Robinson and Dean Representations. In Robinson’s criminal case, Turner failed to attend a pretrial conference. After an arrest warrant was issued, Turner failed to appear for the second day of trial and the judge declared a mistrial. Turner failed to appear at a show-cause hearing regarding his absence. The court issued a contempt warrant, and Turner was arrested. He never paid the ordered jury costs and the fine ordered by the court. For Dean, Turner failed to attend his arraignment or file a written arraignment, resulting in an arrest warrant.

Count XII – Client Trust Account Audit. In his 2014 Client Security Commission statement, Turner falsely answered “yes” to the questions regarding trust accounts and the deposit of retainers. In 2015, Turner answered “N/A” to the same questions. An audit began in 2015, and Turner provided “minimal responses” and identified a non-IOLTA account for his client trust account. Eventually, the commission issued a Notice of Delinquency and investigated further. Turner took the position that because most of his clients agreed to pay “vested” fees, placing the funds in a client trust account was not necessary. He also stated he did not create or maintain retainer agreements, invoices, accounting or notices for several clients. Documentation showed Turner did not establish flat fees or caps, charged “appearance fees” and failed to maintain client trust account reconciliations or statements.

In its decision, the court found Turner violated numerous rules with his bankruptcy and criminal clients, including for lack of due diligence (Rule 32:1.3); lack of client communication, consultation and keeping clients informed (Rule 32:1.4(a)); and failing to reasonably expedite cases (Rule 32:3.2). The court also found multiple trust account rule violations, including under Rule 32:1.5(a), (c), and (f) for failing to

keep a separate trust account and to keep complete records. Turner’s practice of accepting “vested” fees to deposit into an operating account was inappropriate and constituted a prohibited nonrefundable special retainer; ignorance of the trust account rules was not a valid excuse. The court also found Turner violated rules on competence for representing bankruptcy clients without the requisite legal knowledge; charging an unreasonable fee for seeking a weekly payment without a cap or flat fee; candor with the tribunal for making false claims about a bankruptcy client’s credit counseling; and for providing false information to the board, amongst other violations.

The court engaged in a long discussion of aggravating and mitigating factors and found a one-year suspension was appropriate. Prior to reinstatement, Turner must also pay all pending court sanctions, fees and costs; complete five hours of CLE on law firm management and five hours of CLE on ethics; and submit an expert medical opinion on the fitness to practice law.

TODD W. KOWALKE

September 14, 2018

No. 18-0906

License Revocation

Todd Kowalke was licensed in 1994, and practices in Cresco. He is also a CPA. This matter arises from Kowalke’s representation of the coexecutors of an estate.

Kowalke and the coexecutors entered into a fee agreement stating Kowalke would accept a fee equal to the amount in Iowa Code sec. 633.197, which allows personal representatives to be allowed “reasonable fees” as determined by the court. However, “almost from the

beginning,” Kowalke “neglected essential duties,” including late filing of the probate inventory and initial interlocutory report. Kowalke also reported the same remaining work on interlocutory reports filed in 2012, 2013, 2014 and 2015, without closing the estate.

During the pendency of the estate, the coexecutors deposited estate funds into Kowalke’s trust account. He withdrew from the funds “on several occasions,” and without court authorization. In 2016, Kowalke withdrew an additional \$10,000 for personal use, and \$23,000 to cover expenses relating to other client matters.

In 2017, Kowalke filed another interlocutory report. The district court threatened to remove him as counsel, and ordered the estate closed by July 31, 2017. Kowalke failed to comply. He was removed as counsel two months later.

By October 2017, the new attorney filed an application for \$35,407.06 in estate funds from Kowalke’s trust account. Kowalke at first failed to respond, and then informed the court he did “not have the money.”

In its opinion, the court did not recite the rules violated, but concluded Kowalke “neglected essential responsibilities, withdrew attorney fees without court authorization, deposited funds into his firm business account rather than trust account, failed to deliver client funds when ordered by the court, and knowingly made false statements to the court in a report. Most significantly, however, Kowalke converted client funds for his own use,” on multiple occasions. The court stated it was “axiomatic that we revoke licenses of lawyers” who convert client funds entrusted to them, and revoked Kowalke’s license.



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INVESTMENT PORTFOLIOS: GOOD VS. BAD

By Gail E. Boliver

Each of us should have a plan for our investment portfolio. There is a good plan and a bad plan for your portfolio. The financial industry publishes general guidance for establishing a core investment portfolio.¹

A plan begins with two key components: investment objective and risk tolerance. Investment objective is what your purpose is for the portfolio. Is the portfolio for your retirement, college fund or other goal? Coupled with the investment objective is another fundamental – your risk tolerance. Risk tolerance provides a framework for the appropriate types of products and their associated risk.

MARKET BASICS

When you consider investing, you may believe the “market” is the equivalent of gambling. It is not gambling. The market generally refers to the U.S. equity (stock) market, which is typically referred to by three well-known indexes: Dow, S&P and the NASDAQ. Each of the indexes have certain financial standards before companies can be listed on the exchange. (Yes, companies can financially blow up – e.g. Enron, and that relates to risk tolerance.)

There is also another “market” – the debt (or bond) market. The debt market has historically provided balance, stability and reduced volatility for a portfolio. (With interest rates at historic lows, the debt market now

has increased risk/volatility. The Federal Reserve sets the interest rates for bank loans, which provide money to borrowers, and banks set rates for borrowers and depositors.)² Generally, the Barclay’s Capital Aggregate Bond Index is used as a debt (or bond) market measure for performance.

THE BEGINNING PORTFOLIO

Establishing a portfolio begins with defining an “asset allocation.” Think of your portfolio as a pie chart. What percent of the pie should you designate for equities and debt? Generally, the core financial portfolio is made up of stocks, bonds and cash. Stocks can be individual stocks, mutual funds, Exchange Traded Funds (ETF’s) or sub-accounts in variable annuities. Bonds can be composed of similar types of products.

Once you establish an asset allocation are you done? No. For example, if your portfolio asset allocation is 50/50, you could have just one stock and one bond. This would be a very high-risk portfolio. Why? The equity market as defined by the S&P has 11 sectors (or cross sections of the economy). By selecting just one stock, your portfolio has a one-eleventh portion of the economy.

Let’s look at two equity stocks. Wells Fargo (WFC) and Principal Financial Group (PFG). In October of 2007 the stocks were priced at \$39.80 and \$69.72 respectively. But by March of 2009 they had plummeted to \$8.61 and \$6.08.

On August 17, 2018, WFC was priced at \$58.86 and PFG at \$55.72. (Recall that 2008-09 was the steepest recession since the Great Depression.)

The lesson learned is that diversification is required to reduce risk in both the equity and debt markets. Instead of investing in a single stock or bond, you might have invested in the total stock market or total bond market using an index fund. These types of funds invest across the entire equity and debt sectors (pieces of the economy). To further diversify the portfolio, you could add an international component such as an international or global index fund. (Some financial theories suggest large U.S. companies are global. However that could exclude some international companies like Samsung, Alibaba, Orange and others.)

Historically, equities have returned 10 percent, corporate bonds 6 percent, treasuries 5.5 percent and cash 3.5 percent. Since the 2008-09 recession, these hundred-year averages have been much lower. For example, your savings account likely paid below one percent until recently when the Federal Reserve began raising interest rates, and now pays approximately two percent

There are tools available at FINRA (Financial Industry Regulatory Authority), Fidelity, Vanguard and others to calculate your retirement income based on the assets available in your portfolio (excluding other assets such as your home, car and other non-financial assets).

GOOD VS. BAD PORTFOLIO

There are a number of people who offer financial advice. Generally, there are three types of advisors: 1) Registered Representative, also referred to as stock brokers, financial advisors or similar titles. These persons are licensed by FINRA and are subject to required supervision. 2) Investment Advisors. These persons may or may not be licensed by FINRA. 3) Bank Trust Officers. Bank trust officers usually operate under an agency contract through a broker-dealer or as a trustee

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of a trust. A trust employee may or may not be a FINRA representative.

A FINRA-licensed person will be covered by a “suitability” standard or, if the account is a qualified retirement account, a “fiduciary duty” standard. The SEC has proposed that all FINRA advisors be covered by a fiduciary standard, but President Trump has delayed the issue for non-qualified brokerage accounts. The industry has fought hard to reject this obligation. Disputes are resolved through mandatory FINRA arbitration.

An investment advisor representative (IAR or IA) is held to a fiduciary standard with regard to a customer (investor). If an investment advisor mismanages an account, the investor will be required to bring the claim to court (unless either an account agreement calls for arbitration, or the advisor is a FINRA-associated member).

Trusts have a contractual duty (usually defined in the management agreement) or a fiduciary duty standard if the account is a qualified (retirement) account or a trust.

Insurance-licensed advisors can sell limited products for investments (fixed income products) and claim a portion of the financial advice business. This advisor may hold FINRA licenses and insurance licenses.

GOOD PORTFOLIO

Let’s assume a person in his/her 20’s with an investment objective of growth and a moderate risk tolerance (over 10-year timeline, not retirement and no need for income.) An asset allocation of 70-20-10 (equity/bonds/cash) would initially be suitable. If market conditions or other goals change, a new asset allocation may be considered. This goal could be achieved by placing 70 percent of the account value in a total stock market index fund, 20 percent in a total bond market fund, and 10 percent in a money market fund (potentially, three mutual funds).

The asset allocation for a young person can be heavily weighted in equities because of the person’s youth (longer earning capacity time-line) and ability to weather financial storms. This same asset allocation would be unsuitable for an 80-year old because that person is

not likely able to recover from a major downturn in equities given the shorter time horizon. (See WFC and PFG examples earlier).

BAD PORTFOLIO

Portfolios can be mismanaged no matter what the market conditions. If you employ an advisor and your portfolio underperforms as compared to an appropriate index, you may be told: 1) It’s your fault (even though you are paying a fee to get financial advice because you have no idea how to organize a portfolio or select investments). Or, 2) It’s the “market’s” fault (referring to the 50 percent fall in equities in the 2008-2009 downturn, the investor was in his 70’s with a retirement account, and a long list of other excuses.³

Looking at the account statements might reveal excessive trading (churning, among other issues). One would see this on income tax schedule D. It would be a long list of short-term trades. But excessive trading could include annuities and those would not be seen on Schedule D. The investor is likely to say – ‘I was told the restrictions ran out, or there is a new and better annuity, or there are more choices...’ The reality is that annuities are meant to be long-term products in part because of the high commissions paid by the investor and surrender fees which correlate to the commission paid to the salesperson.

The account statement might also reveal that the portfolio is unsuitable because of improper asset allocation for the investor’s investment objective

and risk tolerance. Or, the portfolio is unsuitable because the products selected included a concentration of high-risk private placements, or products concentrated in one or two of the 11 S&P sectors, or stocks and bonds were selected with an inappropriate risk classification such as speculative equities or below-investment-grade bonds.

Next: Part 2 discusses the various types of improper portfolios including excessive fees, private placements, variable annuities and other products.

¹See the Financial Industry Regulatory Authority website: www.finra.org and view “For Investors” “Products and Professionals” – 6 topics. Similar to the Bar Association, FINRA governs the conduct of registered representatives (licensed persons) and Broker-Dealers (firms). FINRA is a self-regulatory organization (SRO) that is supervised by the Securities and Exchange Commission (S.E.C.).

²See Greider, W (1987) “Secrets of the Temple” for a history of the Federal Reserve.

³See Allaria, Joe, CFP (June 25, 2018) “5 Reasons Why Your Portfolio Isn’t Performing Well”



Gail E. Boliver, JD, MBA, MS has represented investors and brokers for more than 27 years, including over 60 arbitrations in multiple states. He practices in Marshalltown. See www.boliverlaw.com.



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IN MEMORIAM

John W.D. Hofmeyer, 95, of Waterloo died August 28. Hofmeyer was born in Orange City in 1922. He served for three years in the U.S. Navy and then graduated from the University of Iowa Law School in 1953. In 1954 he began his law practice at Hofmeyer & Anthony Law Firm. He practiced for almost 60 years, retiring in 2013.

Peter J. Peters, 88, of Council Bluffs died Sept. 26. Peters was born in 1930 in Omaha, Nebraska. He received his J.D. from Creighton University Law School in 1952 and served two years as a JAG officer in the U.S. Army. He moved from Omaha to Council Bluffs in 1954 to practice law with his grandfather, John Jacob Hess, and his older brothers, John and Douglas. Hess had started the law firm that is now the Peters Law Firm in 1896. Pete continued to practice trial law until his retirement in 2005. He served as Pottawattamie County Attorney from 1960-1964.



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TRANSITIONS



CHALIK

Peter J. Chalik and **Alexis Warner** have joined Whitfield & Eddy Law in Des Moines.

Chalik graduated from the University of Iowa College of Law in 2016. He joins the firm after two years as a law clerk for Chief U.S. Magistrate Helen C. Adams at the United States District Court for the Southern District of Iowa. He represents financial institutions in commercial litigation including creditor rights and bankruptcy.

Warner graduated from Drake University Law School in 2017. She joins the firm after one year as a law clerk for Iowa Supreme Court Justice Edward Mansfield. She is a member of the firm's litigation practice group with an emphasis in family law and labor and employment law.



WARNER



YIN SOWATZKE

Tina G. Yin Sowatzke has joined McKee, Voorhees & Sease PLC in Des Moines as an intellectual property attorney in the biotechnology & chemical practice areas. She received her J.D. from Drake University and was recently nominated for the Blackstone American Inn of Court.

Alec J. Maas has joined the law firm of Deneffe, Gardner & Zingg, P.C. in Ottumwa as an associate. He received his J.D. from Drake University Law School in May 2018.

Aimee Lowe has joined Goosmann Law Firm's Omaha, Nebraska, office. Lowe will provide strategic counsel to companies of all sizes as chief legal officer, including contract negotiations, audit and internal operations, intellectual property, employment law and commercial real estate deals.



MAAS



LOWE



BROWN

Camille Brown joined Moore, Heffernan, Moeller, Johnson & Meis, L.L.P. in Sioux City. She was awarded her J.D. from the University of South Dakota School of Law in 2017. Brown currently focuses her practice in the areas of family law, estate planning and corporate law.

Corrin Hatala recently joined the Davis Brown Law Firm in Des Moines as an associate attorney in the business division. Prior to joining Davis Brown, Corrin practiced at the BrownWinick Law Firm for three years. She serves on the Young Lawyers Division Executive Council of The Iowa State Bar Association and is a member of the 2018-2019 class of the Greater Des Moines Leadership Institute.



HATALA



CARLSON

Alyssa Carlson and **Alex Hofer** have joined O'Connor & Thomas P.C. in Dubuque.

Carlson received her J.D. from the University of Iowa College of Law in 2018. Her practice will focus on business law, family law, health law and related civil litigation.

Hofer received his J.D. from the University of Iowa College of Law in 2018. His practice will focus on criminal law, civil litigation, employment law, copyright law, property law and business law.



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Prof. Sonja West

University of Georgia School of Law

Prof. Sonja West served as a judicial clerk for U.S. Supreme Court Justice John Paul Stevens and is now a frequent commentator on constitutional law, media law and the U.S. Supreme Court for various news media outlets such as The New York Times, The Washington Post, The Wall Street Journal, The Economist, Reuters and National Public Radio.

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CIRCULATION STATEMENT FOR 2018

[illegible]

| "Pre-2008" Fee | | "New Fee" as of 1/1/2008 (see Note 1) | |
|--------------------------------|-----------|---------------------------------------|-------|
| "Pre-2008" Charge | | "New Fee" Charge | |
| "Pre-2008" Basis of Assessment | | "New Fee" Basis of Assessment | |
| 1 | 1990-1999 | 0.015 | 0.015 |
| 2 | 2000-2004 | 0.020 | 0.020 |
| 3 | 2005-2009 | 0.025 | 0.025 |
| 4 | 2010-2014 | 0.030 | 0.030 |
| 5 | 2015-2019 | 0.035 | 0.035 |
| 6 | 2020-2024 | 0.040 | 0.040 |
| 7 | 2025-2029 | 0.045 | 0.045 |
| 8 | 2030-2034 | 0.050 | 0.050 |
| 9 | 2035-2039 | 0.055 | 0.055 |
| 10 | 2040-2044 | 0.060 | 0.060 |
| 11 | 2045-2049 | 0.065 | 0.065 |
| 12 | 2050-2054 | 0.070 | 0.070 |
| 13 | 2055-2059 | 0.075 | 0.075 |
| 14 | 2060-2064 | 0.080 | 0.080 |
| 15 | 2065-2069 | 0.085 | 0.085 |
| 16 | 2070-2074 | 0.090 | 0.090 |
| 17 | 2075-2079 | 0.095 | 0.095 |
| 18 | 2080-2084 | 0.100 | 0.100 |
| 19 | 2085-2089 | 0.105 | 0.105 |
| 20 | 2090-2094 | 0.110 | 0.110 |
| 21 | 2095-2099 | 0.115 | 0.115 |
| 22 | 2100-2104 | 0.120 | 0.120 |
| 23 | 2105-2109 | 0.125 | 0.125 |
| 24 | 2110-2114 | 0.130 | 0.130 |
| 25 | 2115-2119 | 0.135 | 0.135 |
| 26 | 2120-2124 | 0.140 | 0.140 |
| 27 | 2125-2129 | 0.145 | 0.145 |
| 28 | 2130-2134 | 0.150 | 0.150 |
| 29 | 2135-2139 | 0.155 | 0.155 |
| 30 | 2140-2144 | 0.160 | 0.160 |
| 31 | 2145-2149 | 0.165 | 0.165 |
| 32 | 2150-2154 | 0.170 | 0.170 |
| 33 | 2155-2159 | 0.175 | 0.175 |
| 34 | 2160-2164 | 0.180 | 0.180 |
| 35 | 2165-2169 | 0.185 | 0.185 |
| 36 | 2170-2174 | 0.190 | 0.190 |
| 37 | 2175-2179 | 0.195 | 0.195 |
| 38 | 2180-2184 | 0.200 | 0.200 |
| 39 | 2185-2189 | 0.205 | 0.205 |
| 40 | 2190-2194 | 0.210 | 0.210 |
| 41 | 2195-2199 | 0.215 | 0.215 |
| 42 | 2200-2204 | 0.220 | 0.220 |
| 43 | 2205-2209 | 0.225 | 0.225 |
| 44 | 2210-2214 | 0.230 | 0.230 |
| 45 | 2215-2219 | 0.235 | 0.235 |
| 46 | 2220-2224 | 0.240 | 0.240 |
| 47 | 2225-2229 | 0.245 | 0.245 |
| 48 | 2230-2234 | 0.250 | 0.250 |
| 49 | 2235-2239 | 0.255 | 0.255 |
| 50 | 2240-2244 | 0.260 | 0.260 |
| 51 | 2245-2249 | 0.265 | 0.265 |
| 52 | 2250-2254 | 0.270 | 0.270 |
| 53 | 2255-2259 | 0.275 | 0.275 |
| 54 | 2260-2264 | 0.280 | 0.280 |
| 55 | 2265-2269 | 0.285 | 0.285 |
| 56 | 2270-2274 | 0.290 | 0.290 |
| 57 | 2275-2279 | 0.295 | 0.295 |
| 58 | 2280-2284 | 0.300 | 0.300 |
| 59 | 2285-2289 | 0.305 | 0.305 |
| 60 | 2290-2294 | 0.310 | 0.310 |
| 61 | 2295-2299 | 0.315 | 0.315 |
| 62 | 2300-2304 | 0.320 | 0.320 |
| 63 | 2305-2309 | 0.325 | 0.325 |
| 64 | 2310-2314 | 0.330 | 0.330 |
| 65 | 2315-2319 | 0.335 | 0.335 |
| 66 | 2320-2324 | 0.340 | 0.340 |
| 67 | 2325-2329 | 0.345 | 0.345 |
| 68 | 2330-2334 | 0.350 | 0.350 |
| 69 | 2335-2339 | 0.355 | 0.355 |
| 70 | 2340-2344 | 0.360 | 0.360 |
| 71 | 2345-2349 | 0.365 | 0.365 |
| 72 | 2350-2354 | 0.370 | 0.370 |
| 73 | 2355-2359 | 0.375 | 0.375 |
| 74 | 2360-2364 | 0.380 | 0.380 |
| 75 | 2365-2369 | 0.385 | 0.385 |
| 76 | 2370-2374 | 0.390 | 0.390 |

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Message from ISBA President Tom Levis on LawPAC



On Monday, Sept. 24, I went to my first LawPAC meeting. Although I had contributed to Iowa LawPAC in the past, I had never attended any of the LawPAC Board meetings and frankly, never paid attention to how the board made campaign contributions. Because this is an election year and I am the current president of the Bar, I thought I'd crash the meeting and see how LawPAC spends its money. The meeting was a lot more than I expected.

The meeting started at 10 a.m. at the ISBA office. The board is composed of five Democrat lawyers and four Republican lawyers and one independent. Tom Henderson and Martha Shaff were unable to attend the meeting. So, at the Sept. 24 meeting, the board members present were Dan Holm, Elizabeth Reynoldson, Jay Willems, Jeff Courter, Martin Peterson, Michael Mahaffey, Sarah Kleber and Sharon Greer. Also attending the meeting were legislative counsel, Jim Carney, Doug Struyk and Jenny Dorman, and ISBA executive officers, Harry Shipley and Dwight Dinkla.

The meeting lasted over four hours! I had no idea it would last so long. At the end of the meeting, the board contributed \$44,250 dollars to both Democrat and Republican legislative candidates. But I will tell you, those contributions were not agreed upon until after the LawPAC board questioned Democratic leaders (Senate Minority Leader Janet Petersen and Representative Jo Oldson), and Republican leaders (Senate Majority Leader Jack Whitver and House Majority Leader, Chris Hagenow) and not until after the board fully vetted each individual candidate.

With few exceptions, the board favored lawyer legislators, whether Republican or Democrat. For instance, in House District 30, Democrat lawyer, Kent Balduchi is running against Republican lawyer Brian Lohse. The board recognized that one of these two lawyers will lose the election, but the board agreed that because they are both lawyers, they deserve LawPAC support. LawPAC gave Kent and Brian equal amounts of money. If I heard it

once during the board meeting I heard it a dozen times, "If a lawyer is willing to step to the plate and run for office, LawPAC needs to support him or her."

Although I knew board members Mike Mahaffey and Jeff Courter were Republicans and Dan Holm and Jay Willems were Democrats, I really didn't know the politics of the rest of the members of the board. But in the end, Mahaffey and Courter were amazingly supportive of giving money to quality Democratic candidates and Willems and Holm were amazingly supportive of giving money to quality Republican candidates.

Compared with other PACs with hundreds of thousands of dollars, the Iowa LawPAC is pretty small. The day I attended, the board spent a little over \$44,000. The candidates receiving the most money were primarily lawyers although it helped if the candidate was a legislative leader. After authorizing the contributions on the 24th, the total LawPAC contributions this year were \$90,550.

Frankly, despite the small size of the LawPAC contributions, I was absolutely amazed that Senate Majority Leader Whitver, House Majority Leader Hagenow, Senate Minority Leader Petersen and longtime House leader Oldson spent several hours of their time meeting with the lawyers of LawPAC. It clearly showed me that our legislative leaders respect The Iowa State Bar Association and its legislative team, not only for the money the candidates receive from LawPAC, but also for the leadership Iowa lawyers provide to state government. As Bar president, that makes me very proud.

If you haven't contributed money to LawPAC, I'd encourage you to do so. Any amount will be appreciated. But, whether you're a Democrat or Republican, I can assure you that our little LawPAC does a very nice job of supporting quality candidates on both sides of the aisle. You can be confident that if LawPAC supports a candidate it's because the candidate will be a quality legislator.



HELP IOWA LAW PAC, AND GET A COOL SHIRT!

Show your ISBA pride and at the same time support its lobbying efforts by making an individual contribution to the Iowa Lawyers' Political Action Committee (Iowa LawPAC). With a LawPAC contribution of \$20, donors will receive this t-shirt designed by the ISBA. There are a limited number available on a first-come, first-served basis.

All contributions benefit Iowa LawPAC. Its first priority is to support lawyer-legislator candidates, especially those who are members of the ISBA and have supported Iowa LawPAC prior to running for office. **To buy a shirt, go to:** iowabar.org/store.



POSITIONS AVAILABLE

ASSOCIATE ATTORNEY – Harned & McMeen, Marengo, IA – Well-established central Iowa general practice law firm also serving as a part-time prosecutor's office seeks associate attorney with 0 to 5 years of experience to join the practice. Primary areas of practice include income tax preparation, probate, estate planning, wills, real estate, family law and prosecution of criminal cases. Firm is centrally located within 30 minutes of Iowa City and Cedar Rapids. Interested candidates should send cover letter, resume, transcript and references in confidence to Tim D. McMeen, Harned & McMeen, PO Box 267, Marengo, IA 52301, or email to mcmeenlaw@netins.net.

COMPLIANCE COORDINATOR – University of Iowa, Iowa City, IA – The University of Iowa's Office of Equal Opportunity and Diversity (EOD) is seeking a full-time compliance coordinator to join their team. The compliance coordinator will assist with the investigation and resolution of university complaints alleging discrimination, sexual harassment, and/or violence. This position will also design and evaluate educational programs relating to discrimination, sexual harassment, and violence. Applicants must attach a cover letter and current resume that clearly address how they meet the listed qualifications of this position. For questions or additional information, please contact sharon-beck@uiowa.edu. To apply for this position, visit our website at <http://jobs.uiowa.edu/> and search for Requisition #18000852 under the Admin/Professional group.

WORKERS' COMPENSATION ASSOCIATE ATTORNEY – RSH Legal, P.C., Cedar Rapids, IA – RSH Legal, a firm dedicated to representing injured people, is seeking to hire an associate attorney to represent our workers' compensation clients. 2 years of experience in this practice area is preferred, but not required. For more information and instructions on how to apply, please visit: <https://www.fightingforfairness.com/employment/work-comp-attorney/>

ASSOCIATE ATTORNEY – Rawlings, Ellwanger, Mohrhauser, Nelson & Roe, L.L.P., Sioux City, IA – An established "AV" rated law firm in Sioux City is seeking to hire an attorney to work in the areas of business, real estate, probate and estate planning. Candidates will be organized and possess excellent writing and oral skills. We offer competitive salary, 401(k), health insurance, CLE and bar dues. Confidential inquiries, including resume, should be sent to: Kathleen Roe, 522 4th Street, Suite 300, Sioux City, IA, 51101, or to kroe@rawlings-law.com.

ASSOCIATE ATTORNEY – Califf & Harper, P.C., Moline, IL – Califf & Harper, established in 1870, seeks to hire an Associate Attorney with a strong academic background and excellent writing skills. We are looking for candidates who are energetic, self-moti-

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CORPORATE COUNSEL – Mittera Group, Des Moines, IA – Seeking an attorney to serve as corporate counsel and be a business advisor and provide practical, business-oriented legal advice and counsel, including appropriate risk assessment, to those company division(s), regions and corporate functions from time to time. To apply, visit <http://careers.iowabar.org/jobs/11563763/corporate-counsel>

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SENIOR COUNSEL – Transamerica, Cedar Rapids, IA – This position sits within the Law Department's Transactional Law Group which is responsible for the majority of the transactional, technology, intellectual property and tax matters of the company. This group works in close partnership with others in the law department, compliance

department and the procurement teams to support the needs and goals of the Transamerica Companies within North and South America. To apply, visit <http://careers.iowabar.org/jobs/11585807/senior-counsel>

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MUNICIPAL ATTORNEY – Hopkins & Huebner, P.C., Des Moines, IA – The ideal candidate will provide advice to a broad range of clients including municipalities, developers, private and public corporations on a range of municipal matters. Applicants must have municipal law experience, including planning, zoning and land use experience. To apply, visit: <http://careers.iowabar.org/jobs/11586004/municipal-attorney>

EXCHANGE OFFICER – IPE 1031, Des Moines, IA – IPE 1031 is a leading and highly respected national provider of like-kind exchange services. We are seeking an attorney to work with taxpayers and their advisors in structuring Section 1031 exchange transactions. No experience with exchange transactions is necessary. To apply, visit <http://careers.iowabar.org/jobs/11585814/exchange-officer>

LAW CLERK(FULL-TIME) – Hupy and Abraham, S.C., P.C., West Des Moines, IA – Hupy and Abraham S.C., an AV-rated personal injury law firm is looking for a motivated law clerk for the West Des Moines office. Our law clerks are generally responsible for supporting the attorney by performing a wide range of tasks to assist in the litigation process. To apply, visit <http://careers.iowabar.org/jobs/11589229/law-clerk-full-time>

ASSOCIATE ATTORNEY – Confidential employer, West Des Moines, IA – seeking an experienced litigation attorney (2-5 years' experience) for its office located in West Des Moines. Candidates should have at least two years of practice primarily in civil litigation. Excellent research and writing skills are required and trial experience is preferred. Iowa bar admission required. All applications will be handled confidentially. To apply, visit <http://careers.iowabar.org/jobs/11594183/associate-attorney>

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is looking to expand, with the opening of the firm's new Ames office. This new associate attorney would be expected to practice in the areas of family law, real estate, business law, estate planning and general county seat-practice type of work. Please submit a cover letter, resume and list of three references to John Flynn at 615 Story Street, P.O. Box 219, Boone, IA. You may also email the required information to johnflynn@jordanmahoney.com

ASSOCIATE ATTORNEY – McEnroe, Gotsdiner, Brewer, Steinbach & Rothman, P.C., West Des Moines, IA – McEnroe, Gotsdiner, Brewer, Steinbach and Rothman, P.C. is looking to hire an associate attorney. All candidates must have at least 2 years of experience. Attorneys with an established practice, looking to expand their capabilities are ideal. Preferred practice areas include Probate, Tax, Bankruptcy, or Workers Comp. A general practice lawyer would also be a good fit. Send resumes to Daniel Rothman at drothman@mcenroelaw.com

ASSISTANT COUNTY ATTORNEY – Jasper County, Newton, IA – Seeking an Assistant County Attorney to represent the State of Iowa and Jasper County in the professional, aggressive and ethical handling of assigned cases, investigations and criminal matters filed in Jasper County. Applications are available online at www.co.jasper.ia.us or can be picked up at the Human Resources Office located in the lower level of the County Annex Building at 115 N 2nd Ave E in Newton. Applications, cover letter and resume must be completed and received no later than 4:30 PM on Monday Nov. 26 to be eligible for the selection process. Applications/resumes can be delivered in person to the Jasper County Human Resources Office or mailed, emailed or faxed to the one of the following: Jasper County Human Resources, 101 1st Street North, Newton, Iowa 50208, Email: hr@co.jasper.ia.us, Fax #: (641) 787-1101

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Bradshaw, Fowler, Proctor & Fairgrave, P.C., Attention Scott Wormsley, 801 Grand Avenue, Suite 3700, Des Moines, Iowa 50309-8004, or email to wormsley.scott@bradshawlaw.com.

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TRIAL ATTORNEY – Nationwide Insurance, Des Moines, IA – We are looking for an insurance defense attorney to join our team. Someone with a background in subrogation, direct representation, workers comp. Someone who can manage a case from beginning to end and is able to adapt to a paperless office. Provides legal representation for clients in matters of significant importance and/or risk. Reviews and evaluates assigned cases. Prepares and tries cases in all courts and agencies. Independently works on matters that are complex in nature. To apply, visit <http://careers.iowabar.org/jobs/11498627/trial-attorney>

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David McCoid

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

“Service,” whether to his profession, his community or his family, is an integral part of David McCoid’s DNA. The Mount Pleasant solo practitioner has been serving all these constituents almost since his admission to the Iowa Bar 50 years ago.

His daughter Laura remembers him working on the county fair board when she was a small child. He continued that involvement, serving as board secretary for 37 years.

The University of Missouri School of Law graduate added more volunteer activities to his CV as he grew in the legal profession and his practice. He served for six years on the District 8B Judicial Nominating Commission. He also served on the Iowa Supreme Court Grievance Commission for eight years, and on the Board of Directors of Magistrate Judges another eight years.



McCoid receives a certificate and pin from incoming President Tom Levis at the ISBA-sponsored luncheon for 50-year members during the association’s 2018 annual meeting in June.

Twenty-three years ago he joined the Mount Pleasant School Board where he still serves. And, he became a member of the Iowa Wesleyan University (IWC) Board of Trustees where he also still serves. In fact, he provides legal services to IWC, serving as general counsel without pay, according to his daughter.

Although he dedicated time and talents to the larger community, he also gave significant time to his children. When they were little, he helped them with homework. “He also spent many hours tossing balls to us to teach us how to play basketball, softball and baseball,” Laura recalls.

McCoid’s contributions have been recognized by the Mount Pleasant community, and by the legal profession. He was awarded Outstanding Young Man of the Year in 1969 from the Jaycees, and awarded Outstanding Citizen of the Year in 2003 by the Mount Pleasant Chamber of Commerce. He was honored by the ISBA last June at the 2018 Annual Meeting for his 50 years as an Iowa attorney.

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