Volume 77 Number 10 November 2017

THE IOWA LAWYER

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LONG-TIME IOWA LEGAL AID DIRECTOR STEPPING DOWN

Dennis Groenenboom reflects on his career and desire to make a difference

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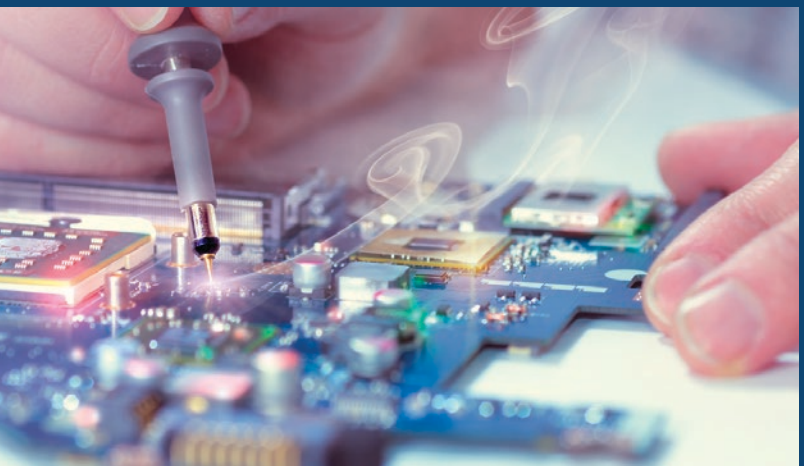

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The outgoing director of Iowa Legal Aid is stepping down after nearly 40 years of dedication to Iowa's statewide legal services organization. Pictured on the cover in the building housing the Iowa Legal Aid offices, Dennis Groenenboom discusses his desire to keep giving back, beginning on page 6.

Kudos

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

Michael Giudicessi, a partner at Faegre Baker Daniels in Des Moines, for being selected as the 2017 inductee into the "Heroes of the 50 States: State Open Government Hall of Fame." Giudicessi was nominated for the honor by the Iowa Freedom of Information Council. In his practice at FaegreBD, Giudicessi counsels businesses and represents them in court on employment and commercial issues. He is a member of the firm's labor and employment group and serves as senior partner of the five-lawyer Des Moines employment litigation team. The intent is to recognize individuals whose lifetime commitment to citizen access, open government and freedom of information, has left a significant legacy at the state and local levels.

Charles Damschen, for being named among the honorees of the Corridor Business Journal's 13th-annual Forty Under 40 Awards ceremony on Oct. 12 at the DoubleTree by Hilton in Cedar Rapids. The award ceremony honors outstanding young leaders in the Cedar Rapids/Iowa City area. Damschen is a partner at Hamilton IP Law, an Intellectual Property Law firm with offices in Davenport and Iowa City.

Iowa justices host MINK States Roundup

(Left) Chief Justice Mark Cady introduces OPR Director Tre Critelli during the MINK (Missouri, Iowa, Nebraska, Kansas) States Roundup 2017 meeting, held this year in Des Moines on Oct. 9-11. Critelli moderated a panel on changes in the practice of law, where representatives from each states' judiciary discussed issues experienced and solutions developed. (Right) Court representatives from Missouri, Iowa, Nebraska and Kansas gathered at the ISBA headquarters to take part in panel discussions on various judicial topics.

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Help yourself by helping others

All of us are familiar with the benefits of physical exercise. If we exercise regularly, we tend to be happier and to live longer. And for lawyers in particular, exercise is a way to relieve stress. But did you know studies show people get the same benefits when they give generously of themselves to help others and when they interact socially?

As just one example, a University of Buffalo study published in the American Journal of Public Health reported that "[W]hen dealing with stressful situations, those who had helped others during the previous year were less likely to die than those who had not helped others." The researchers concluded that giving assistance to others offers health benefits to the giver by buffering the negative effects of stress. As a side note, studies have failed to establish whether receiving support from others helps protect individuals from stress in the same way as giving support. It seems it really is better to give than receive.

A recent study by behavioral economists at the University of Zurich showed that generosity makes people happier, even if they are only a little generous. People who act solely out of self-interest are less happy.

I am not aware of any longevity studies specific to lawyers but I do know this—lawyers who do pro bono work feel better about themselves. Apparently, they can expect to live longer, too.

Here are four more reasons to consider finding time to join your fellow lawyers in providing pro bono services.

"For of those to whom much is given, much is required." *-President JFK*

Because of our training and experience, we lawyers are privileged to have the ability to advocate, problem-solve, strategize, conduct legal research, investigate facts, think logically and write and speak well. With privilege comes responsibility. There are, of course, many worthy opportunities for volunteer work outside the legal realm. But by putting our unique skill set to work for the benefit of others, we can expand access to justice for tens of thousands of Iowans who have nowhere else to turn. For this reason, Iowa Supreme Court Rule 32: 6.1 states that each lawyer should aspire to render at least 50 hours of pro bono legal services per year.

The need has never been greater

"A nation's greatness is measured by how it treats its weakest members." ~ Mahatma Ghandi

In Iowa, there are half a million people who live at or below 125 percent of the federal poverty level—for a family of four, roughly $30,000/year. That is the maximum income to qualify for help from Iowa Legal Aid, but many more Iowans can't afford to hire an attorney. Legal Aid closes roughly 25,000 cases annually. However, since the recession, a perfect storm of exploding demand and staff reductions due to funding cuts has forced Legal Aid to turn away or under-serve more than 10,000 Iowa families each year. Other legal service providers are facing similar challenges.

Gain valuable experience

Pro bono legal work frequently offers lawyers the opportunity to develop skills through experiences that for practical reasons are not available to them from paying work, and it can provide exposure to a wider range of subject matters. For lawyers looking to expand their experience or to hone critical skills, pro bono work can serve a training function. By providing occasions to interact directly with clients, pro bono helps develop such important interpersonal skills as client relationship building, effective face-to-face communication, active listening and management of expectations. Especially for new lawyers, volunteer service can lead to greater autonomy and earlier opportunities to formulate litigation strategy, draft pleadings, take depositions, argue motions, first-chair trials and gain other valuable work experience that builds skills and confidence.

Personal satisfaction

Quite simply, there is no better opportunity for a lawyer to have substantial and meaningful interaction with clients than through pro bono work. Seeing firsthand the impact your legal work can have on the lives of everyday people will remind you of the importance of your profession, and the hug you receive when you save a family from eviction will fill you with satisfaction and pride.

There are many ways for lawyers to volunteer. The easiest is through the ISBA's new Free Legal Answers project. This is an online, limited scope, legal "clinic" for low-to-moderate income Iowans who have questions about civil legal matters. The questions are posted on the Free Legal Answers website. Participating lawyers from across the state can at their own convenience review the questions and decide whether to provide a short response. For more information, go to iowa.freelegalanswers.org.

Other organizations to contact include:

Iowa Legal Aid, iowalegalaid.org (ILA has offices in Des Moines, Cedar Rapids, Council Bluffs, Davenport, Dubuque, Iowa City, Mason City, Ottumwa, Sioux City and Waterloo)

Polk County Volunteer Lawyers Project, pcbaonline.org/volunteer-lawyers-project/

Legal Aid Society of Story County, legalaidstory.com/

Legal Hotline for Older Iowans, hotline@iowalaw.org

Muscatine Legal Services, (563) 263-8663

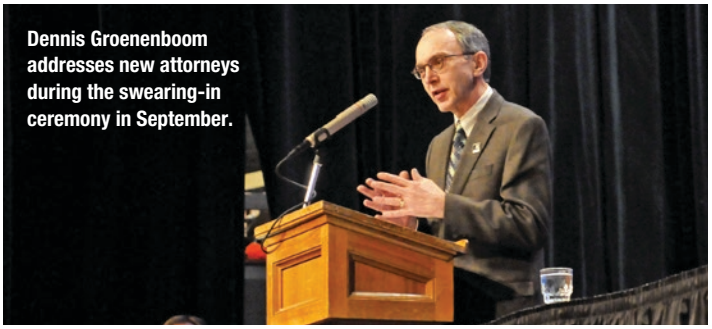
More opportunities avalible at iowabar.org/2017probono

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

Long-time head of Iowa Legal Aid stepping down

Dennis Groenenboom says he wants to 'work less, travel more,' but will keep his hand in the legal profession

By Steve Boeckman, Communications Director, Emeritus



Dennis Groenenboom addresses new attorneys during the swearing-in ceremony in September.

Some might say that the farm boy from Eddyville, who will retire as head of Iowa Legal Aid the end of this year or beginning of next, was born to do the job. The youngest of three boys realized while working on his undergraduate degree at Central College in Pella that being a lawyer was the ticket he needed to make a difference in people's lives – particularly people who were underprivileged.

"I understood in college that law school and being a lawyer was a way to make the world a better place," he says. "I was correct. Being a lawyer makes the world a better place if you're doing the right things."

Early on in law school, he determined that being a legal aid lawyer was a way to help the most vulnerable in society and the people who most needed legal assistance. He freely admits that, as a child growing up in the 1960's, he was influenced by the Vietnam War protests and the civil rights movement.

Fortunately, when he got out of law school in 1978, the Legal Services Corporation of Iowa was expanding, and was hiring "lots of people," he says. "Would I have been hired in a different situation? I don't know."

Today as he winds up nearly 40 years of dedication to Iowa's statewide legal services organization – more than 25 of those years as its executive director – he reflects on the progress that has been made and some of the challenges ahead for his successor.

Perhaps the most far-reaching achievement the organization has accomplished and continues to expand is, as he puts it, "that more entities, more people, more United Ways and other funding organizations recognize that the legal system is a way to address systemic problems. And if you don't use the legal system, you're not going to address those systemic problems efficiently."

Groenenboom says Iowa Legal Aid has contracts with 16 United Way agencies around the state that, in recent years, have really focused on trying to address systemic problems impacting the education, income and health of people in the communities they serve. The agencies have recognized they really can't address those systemic problems in communities if Iowa Legal Aid isn't at the table.

As an example, he cites the situation where individuals are subject to an illegal garnishment of wages. They are potentially going to lose their housing because they can't pay the rent, he explains. They may lose their cars because they can't make their car payments. They could end up homeless – all because of an illegal garnishment. If Iowa Legal Aid steps in and prevents that illegal garnishment, all of those actions are stopped.

A side benefit from the increasing recognition of how the justice system is critical to people's wellbeing is that individuals and communities overall are beginning to understand civics and, in particular, how the justice system works, he says. Iowa Legal Aid has worked with the bar association and the courts to educate citizens about the role of the justice system, which has increased that understanding.

Another major achievement is the impact Iowa Legal Aid has had on getting laws clarified for low-income people, Groenenboom says. He estimates that the agency has appealed dozens of cases to the supreme court or court of appeals over the years.

One such appeal involved Chapter 236 of the Iowa Code – the domestic abuse statute. At one time, judges were saying that each side had 15 minutes to present their cases in court to get a protection order. "We took that up on appeal, and the court ruled that people have to have sufficient time to present their cases," he said.

Another case involved a lower court ruling that said a domestic violence victim in a northern Iowa county who fled to southern Iowa for safety and filed for a protective order in southern Iowa had to return to the northern Iowa county to file. The appellate court reversed the decision and ruled that a victim should not be forced to return to the scene where the violence occurred to file for protection.

In still another case, the appellate court ruled that the eviction notice provisions in the statue dealing with landlord-tenant arrangements was unconstitutional because it wasn't really designed to give people fair notice that their housing was at risk. "We worked

with the ISBA, consistent with our federal regulations, and the legislation was changed."

Groenenboom cites the relationship Iowa Legal Aid has with the ISBA and with the courts as crucial to its work. He says that the agency tries to give back to both by being active. All Iowa Legal Aid attorneys are encouraged to be members of the ISBA, and to serve on committees and sections, and as presenters of CLE programs when appropriate.

Other achievements, he points to, include maintaining 10 offices around the state despite the budget crunches the organization has endured, and receiving glowing reports in 2015 from both the national Legal Services Corporation's (LSC) quality team and its compliance team.

Being able to maintain 10 offices (the organization had to close five others in the early 1980's) has been possible in part due to the virtual intake system instituted in the mid-2000s. With that system, intake staff can take calls from anywhere in the state, then refer those calls to the personnel best suited to handle whatever the issues are. For example, a person could call one of the toll-free phone numbers from Algona, have the call answered by someone in the Dubuque office and actually talk to an intake attorney in Des Moines.

"It makes us very available to people in rural Iowa," Groenenboom says. And, "since the vast majority of people we serve call instead of coming into our offices, our services are pretty equal around the state."

As far as challenges for his successor, Groenenboom says funding will continue to be a big one. At present, Iowa Legal Aid receives about 30 percent of its funding from LSC, about 30 percent from the state, and the remaining 40 percent from more than 90 other sources, including the Iowa Legal Aid Foundation started about 11 years ago. The approximately $9.5 million annual budget supports roughly 100 staff members comprised of about 60 lawyers, 20-25 support personnel and legal assistants.

The organization also depends on about 2,500 volunteer lawyers around the state, as well as numerous non-lawyer volunteers who help in various capacities, including as interpreters. Last year, Iowa Legal Aid helped people who spoke 44 different languages, he says.

Groenenboom is optimistic that Iowa Legal Aid's service to low-income Iowans will continue under a new executive director, largely because of its culture of representing people in a comprehensive manner. In addition, he is optimistic because of the aforementioned partnerships with various organizations that have led to a greater recognition of the importance of having a legal entity involved in issues. He expects that recognition to continue increasing the number of programs involving Iowa Legal Aid.

A recent example is the Parent Representation Project in Black Hawk County, which will be expanded soon to Dubuque and Linn Counties. Iowa Legal Aid was approached about two years ago by a judge, the state public defender, the Iowa Judicial Branch's Children's Justice Initiative and the Iowa Department of Human Services to be part of a team effort to get children out of the juvenile court system faster, and to prevent them from entering the juvenile court system.

"Partnerships and working in collaboration with others are keys to our longer term success and viability – not just ours as an organization, but ours as a judicial system and ours as a state," Groenenboom says. "Legal Aid is a cog in that success, but we're an important cog."

What's in the future for him personally?

"The main way I answer that is 'I want to work less and travel more,'" he laughs.

Top of the list for traveling includes visiting national parks, although he has been to Europe several times and has taken several cruises. He also wants to travel to South America, particularly to Machu Picchu in Peru.

He isn't giving up entirely his decades-long legal career, however. He hopes to visit other legal aid programs as part of the national LSC quality assessment team – the team that gave Iowa Legal Aid high praise in 2015.

He'd also like to do some part-time consulting work with not-for-profits in the state. "I think not-for-profits are vital to the wellbeing of communities, and I think they often don't get the respect they deserve and the support they need," he says.

Then there's his gardening hobby and the Thoreau Center, a neighborhood event center he owns with Scott Hartsook. He's planning to devote more time to both of those endeavors as well.

Groenenboom acknowledges that, except for Pat McClintock, he is the first to go of the five-person team that basically has been responsible for the overall program the last 25 years. These other people "complimented me in many ways because they were strong in areas where I was weak," he says. "It's useful to have the person who sits in my chair be able to have input into who sits in those other chairs. When we know there will be a transition in the program because of age, I think it makes sense for me to be the one making that opportunity available to my successor."

Groenenboom addresses the ISBA Board of Governors at its recent fall meeting.

He reviews items that need to be accomplished with Arlys Kness, his long-time assistant and one of the five senior individuals who have been responsible for the organization's successes.

Supplemental plan:
Practical application of Iowa Court Rule 39.18

By Gordon Fischer and Mackensie Graham

The word "optional" applies to so many situations in everyday life. Expedited shipping? Optional, but wanted. Chocolate torte after dinner? Optional, but incredibly hard to pass up. Life insurance? Technically optional, but highly advantageous.

Iowa Court Rule 39.18 contains two tiers. While the rule's first tier is mandatory, the second tier is optional. This article discusses and dissects the second, optional tier.

Unlike that delicious dessert, the optional elements of Iowa Court Rule 39.18 may be tempting to forego. However, just as life insurance is seen as all but necessary, the second tier of Iowa Court Rule 39.18, once examined, is easily seen as smart and makes good sense. A supplemental plan isn't mandated, but you want and need it nonetheless.

Three of four

This article marks the third in a series of four articles focusing on practical application of Iowa Court Rule 39.18. The first article focused on Iowa Court Rule 39.18's requirements, e.g., tier one. (You can read, "If something goes wrong, your practice will do right: Practical application of Iowa Court Rule 39.18," in the September 2017 issue of The Iowa Lawyer.)

The second article recommended actions to create, implement and maintain a successful business succession plan. (You can read, "Eight simple steps for succession success: Practical tips for law firm succession planning under Iowa Court Rule 39.18," in the October 2017 issue of The Iowa Lawyer.)

Review of tier one, the mandatory requirements

Again, Iowa Court Rule 39.18 has two tiers. Tier one is mandatory; Iowa lawyers must make certain preparations for their own death or disability.

In short, all active Iowa lawyers in private practice must:

1. Identify and authorize each year either an Iowa lawyer, or Iowa law firm, or a "qualified attorney-servicing association," to serve as the attorney's designated representative(s).

   (a) Authorization should grant the designated agent the authority to perform certain tasks necessary to protect the interests of the planning attorney's clients. Tasks can include notifying clients of planning attorney's change in circumstance, administering the trust account, reviewing client files, and determining what actions are necessary to protect the client's interests.

2. Maintain a current list of active clients, in a location accessible by the designated representative(s).

3. Identify for the designated representative(s):
   (a) the designated custodian;
   (b) location of electronic and paper files and records; and
   (c) the location of passwords and other security protocols required to access the electronic files and records.

Note that the custodian can be a different person or entity than the representative(s). While the representative must be either an Iowa lawyer(s) in good standing or a qualified organization, the custodian need not be either.

The enforcement mechanism for Iowa Court Rule 39.18 could not be more serious. Each year, Iowa lawyers must certify they are meeting the rule's requirements by answering several questions in the Annual Client Security Questionnaire provided by the Iowa Client Security Commission.

Boiled down, an Iowa lawyer in private practice must designate an authorized representative and a custodian, provide them the location of both the client list and client files, and make these accessible. No succession planning beyond this is required.

Tier two: Above and beyond

The second tier of Iowa Court Rule 39.18, the non-mandatory provisions, is contained in a single, short paragraph:

39.18(3). Supplemental plan. An attorney

> "None of us knows when our time will come or when an unfortunate event may occur. Optimally we would all live to a ripe old age with our legal practice successfully passed on to a worthy successor or sold for maximum value at retirement. Alas, life often doesn't work in pure harmony with our best laid plans, so the "optional" supplemental plan should be securely in place and understood by all those closely invested."

in private practice may prepare a written plan that is supplemental to the designation and authority in the annual client security questionnaire. The supplemental written plan may designate an attorney or entity to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks. The supplemental written plan also may nominate an attorney or entity to serve as trustee if proceedings are commenced under the provisions of Iowa Court Rules 34.17 [suspension due to disability] or 34.18 [death, suspension, or disbarment of practicing attorney].

Obvious benefits of a clear, detailed and written plan

Every Iowan is unique; so is every lawyer and every law practice. This is why the optional provision under Iowa Court Rule 39.18 is so important. A one-size plan does not (cannot possibly!) fit all. Thus, tier two encourages lawyers to craft a supplemental plan – most likely, not just one document, but a set of documents – that provides duties and operations specific to their practices. At its core, tier two of Iowa Court Rule 39.18 invites Iowa lawyers to color in the details and expand well beyond the basic fundamentals of the first tier. While not required, you want and need a supplemental plan, for many reasons.

Firm size and assets

A supplemental plan is helpful regardless of a law firm's financial value. Some solo practitioners may feel they don't have enough assets to justify a succession plan. In my experience, however, many business owners actually undervalue their own businesses. In any case, just like everyone should have a will regardless of amount of wealth, the same goes for lawyers and succession planning.

On the other side of the spectrum, some solo firms may feel as if they are, in common parlance, "too big to fail." That is, the firm is comprised of several lawyers, with only one lawyer as equity partner; s/he owns the Firm. Should sudden disaster strike the equity partner, there are still several lawyers who understand the practice, know the clients and client files and can fill in, right? However, just because several lawyers still remain, many issues need to be addressed: Who can buy the firm, at what price, who decides and who runs the firm in the interim? Even a "large solo" firm needs a written plan.

Benefits of a supplemental plan

The benefits of a supplemental plan are legion. Your financial institution no doubt will appreciate the fact you have a supplemental plan. So will your malpractice insurance carrier. Having a detailed supplemental plan should bring you peace of mind, and also peace of mind to your family and your firm's employees. A supplemental plan can show your clients you care to the utmost about their well-being. In fact, it can even be a marketing point to clients and potential clients.

Let's focus on three major benefits: defining key terms; avoiding client confusion (or worse); and agreeing on the exact contours of the relationship between the designated attorney and practicing attorney.

Defining key terms

Often, the terms that rules and statutes don't define are as interesting as the terms they do define. Iowa Court Rule 39.18 defines only three terms: "qualified attorney-servicing association," "law firm" and "attorney in private practice."

Immediately you'll note definitions for two terms are conspicuously absent: "death" and "disability." These are the very conditions which trigger Rule 39.18.

"The authority of the attorney or entity designated under this rule takes effect upon the death or disability of the designated attorney." Iowa Court Rule 39.18(1)(d) (emphasis added). While true that the

designated attorney/entity may apply to the chief judge of the judicial district for an order confirming the death or disability of the designating attorney, neither the attorney nor judge can cite the rule itself for further explanation of these two key words. Rule 39.18(1)(d).

The term "death" may seem clear cut. But is it really? What if I go kayaking one beautiful spring day and the kayak is found two days later stuck in some weeds, but I am never found? What if a solo practitioner goes backpacking through Utah, but is never seen again? What is a reasonable time period under Rule 39.18 for the designated attorney/entity to apply to the chief judge for an order confirming death? What is a reasonable time period under Rule 39.18 for the chief judge to issue an order confirming death?

Far more ambiguous, however, is the term "disability." Lawyers know this term is defined any number of ways in any number of areas. There is the meaning of disability under the Americans with Disabilities Act Amendments, in workers compensation statues, in Social Security law and in insurance policies, to name just a few.

Then there is the division between "short-term" versus "long-term" disability and how each should be handled. An attorney who survives a serious car accident, but is badly injured, may fall into one of a few categories, i.e., suffering from a short-term disability, a long-term disability and unknown, so may make a full recovery, but may not.

Of course, there is the sometimes thorny issue of who decides whether disability exists or not. Should a family member

decide? A colleague? Family physician? Some combination? What about obtaining second or even subsequent opinions?

Fortunately, we need not wring our hands in worry over the myriad issues raised by the term "disability" and how it should be applied under Iowa Court Rule 39.18. Instead, the planning attorney and the designated attorney can simply fashion a supplemental plan which defines disability in a mutually agreeable way. Should there still be a dispute, the judge has a textual basis for a just decision.

Last full measure of devotion to clients

What happens to your clients if there's no clear plan in place? What if there is ongoing litigation? Clients can end up being the biggest losers in a situation of an attorney's unexpected death or incapacitation. Lawyers who meet the mandatory requirements of Iowa Court Rule 39.18 will, yes, have an updated client list. The designated planning attorney will know to communicate the news of death or incapacitation to your clients, but will have no clear directive on what is to be done with each client.

Consider the hypothetical where you're taking a much-needed vacation. You're going to leave your minor child with an in-home babysitter—maybe a relative or a trusted nanny—who can also housesit. You wouldn't leave the sitter without a clear outline of your child's routine, sleep

schedule, expectations and allergies. You also wouldn't leave the sitter without notes on the nuances of your home, like what the alarm and garage codes are. Why wouldn't you just fly off without these clear detailed instructions communicated to the sitter? Because you want things taken care of in a particular way that fits your standards by a person you trust. Similarly, you do not want to leave your clients, and confidential information, up to guesswork, potential misplacement or misuse.

Ultimately, a smooth transition for clients following your death or disability demonstrates caring, competence and professionalism.

Bound by the plan

Abraham Lincoln supposedly once said that a lawyer should always get a retainer agreement from the prospective client. "In this way, the client knows he has a lawyer and the lawyer knows he has a client."

Another way of making the same point: You represent a widget factory. A buyer presents herself wanting 10,000 widgets, quite a large order. The factory and buyer have done business before, are on friendly terms and don't anticipate any problems, as there haven't been any in the past. Still, would you be comfortable advising the factory to name an agent, and the buyer name an agent, with the details to be worked out after the sale? Of course not! No lawyer in Iowa would give such advice. Instead, you'd want – indeed, insist upon —a written agreement with specifications about price, delivery, quality and dispute resolution.

A supplemental plan establishes that each attorney, both the planning and the designated, knows each is bound by the plan in place. Putting the plan in writing and having each party agree means mutual reassurance. Further, the supplemental plan minimizes the chance of misunderstanding by establishing the scope of responsibilities for each attorney.

The rules, they are a-changin'

None of us knows when our time will come or when an unfortunate event may occur. Optimally we would all live to a ripe old age with our legal practice successfully passed on to a worthy successor or sold for maximum value at retirement. Alas, life often doesn't work in pure harmony with our best laid plans, so the "optional" supplemental plan should be securely in place and understood by all those closely invested.

If you haven't already started, it's best to begin now as all of the provisions, both mandatory and optional, can entail substantial time, energy and communication with your selected custodian and designated representative. There is no hard and fast due date for tier two provisions, considering they're optional, but if you're going to tackle the mandatory requirements you may as well address both tiers at once.

Great resources

Incredibly helpful forms were authored by The Iowa Trust & Estate Counsel, and in particular, Laura Jensen and Travis Cavanaugh of Simmons Perrine Moyer Bergman PLC. What a tremendous service to Iowa lawyers! The forms include:

1. Law Practice Succession Agreement;
2. Sample Will Provisions and Sample Revocable Trust Provisions;
3. Durable Limited Power of Attorney for Management of Law Practice; and
4. Consent Action.

These forms are available in both PDF and Word formats at The Iowa State Bar Association website: http://www.iowabar.org/?page=SuccessionPlanning

Reviewing these forms is a must for those starting a supplemental plan.

Another great resource

A "must watch" on this topic is an on-demand video CLE, for sale by The Iowa State Bar Association, for $50. Access it on the bar's website at: https://iowabar.site-ym.com/store/ViewProduct.aspx?id=9224238.

The video features a quartet of extremely knowledgeable lawyers: Paul Wieck, (former director, Office of Professional Regulation); Tre Critelli (director, Office of Professional Regulation); and, again, Laura Jensen and Travis Cavanaugh (Simmons Perrine Moyer Bergman PLC). The CLE is two-hours long.

The final fourth

In the December-January issue, the fourth and final piece of this series will focus on the opportunities for positive change Iowa Court Rule 39.18 may hold, not only in the legal profession, but for the state of Iowa as a whole. Is it possible that Rule 39.18 may unleash a torrent of philanthropy?

Gordon Fischer is proud to have practiced Iowa law for over 20 years. He welcomes discussion of any aspect of Iowa Rule 39.18, estate planning, and/or business succession planning with you. His email is gordon@gordonfischerlawfirm.com and his cell is 515-371-6077.

Mackensie Graham works as chief content officer at Gordon Fischer Law Firm, P.C. She's an Iowa native, graduate of Drake University School of Journalism and Mass Communication, and holds a master's degree in public policy from the University of Northern Iowa. She is in the process of applying to law school.

How "Trial Lawyer" became an oxymoron

A lament for the disappearance of civil jury trials

By Wood R. Foster, Jr.

By 2012, most sources suggest, fewer than 2 percent of all federal civil cases went to trial, with less than 1 percent being tried to a jury. Civil jury trials are literally on the brink of extinction. This article, originally published in Minnesota Bench & Bar, traces their decline and explores what's been lost in the process.

As I look back over my 45 years of a Minneapolis-based practice, almost all of it in the civil trial/litigation arena, including cases in both state and federal courts in Iowa, it is hard not to notice that there are increasingly few role models for the would-be trial lawyer as time goes on. If we are honest with ourselves, we have to admit that most of the traditional role models for trial lawyers have either been fictional, such as Atticus Finch, Perry Mason and Alicia Florrick (The Good Wife), or are no longer practicing lawyers, such as Abraham Lincoln, Clarence Darrow, Thurgood Marshall, Melvin Belli and Ralph Nader. And even among those icons, most are remembered for their criminal defense, not civil trial, work.

Even in an area as large as the greater Twin Cities, if you ask a litigation-focused colleague to identify two or three currently practicing Minnesota civil trial lawyers whose reputations precede them, the question will generally be met with a long pause, followed by tentative reference to a handful of veterans who have retired or are nearing retirement. In my experience most Minnesota lawyers (whether or not they consider themselves trial lawyers) are hard-pressed to name even a single publicly prominent and currently active civil trial lawyer, let alone one whose career is etched in the public imagination. It's only a guess, but I suspect the same is true in Iowa.

There is a reason for this. Trials–real civil jury trials–hardly ever happen anymore. "Trial lawyer" does not mean what it used to mean. I strongly suspect that every currently practicing lawyer who thinks of himself or herself as a trial lawyer knows exactly what I am talking about.

As I thought about this, I really thought I had stumbled onto a topic that needed a closer look. But I soon discovered I am very late to this party—the dearth of civil jury trials has been a steady topic in legal academia and in the realm of bar activism for a very long time. Much to my surprise, I stumbled across a 1974 piece in the ABA Journal by Minnesota Federal District Court Judge Edward J. Devitt, in which the very title of the article reflected his own view: "Federal Civil Jury Trials Should be Abolished"(!) Compulsory use of juries, he opined,

> *"…is an unnecessary, time consuming, and costly appendage to our system of justice and does not well serve either the litigants or the public. Judges in the federal system are at least as well qualified as juries of lay people—probably better qualified—to decide issues of fact and law fairly."*

The persistent backlog of cases in federal court, Judge Devitt said, "is caused largely by the number of civil jury trials required by the 7th Amendment. Certainly," he contended, "we cannot continue just to add more judges and build bigger courthouses."[1] And though the great weight of published opinion that can be found on this topic seems to relegate the late Judge Devitt to a lonely minority, the great weight of experience has proved Judge Devitt's views prescient if not popular.

The brink of extinction

The sad fact is that the civil jury trial is almost gone, and not just in federal courts. The phenomenon is national, and has almost reached the point that the civil jury trial will soon be a memory shared only by grizzled veterans, and will only rarely (and apparently reluctantly) be experienced by today's litigators.

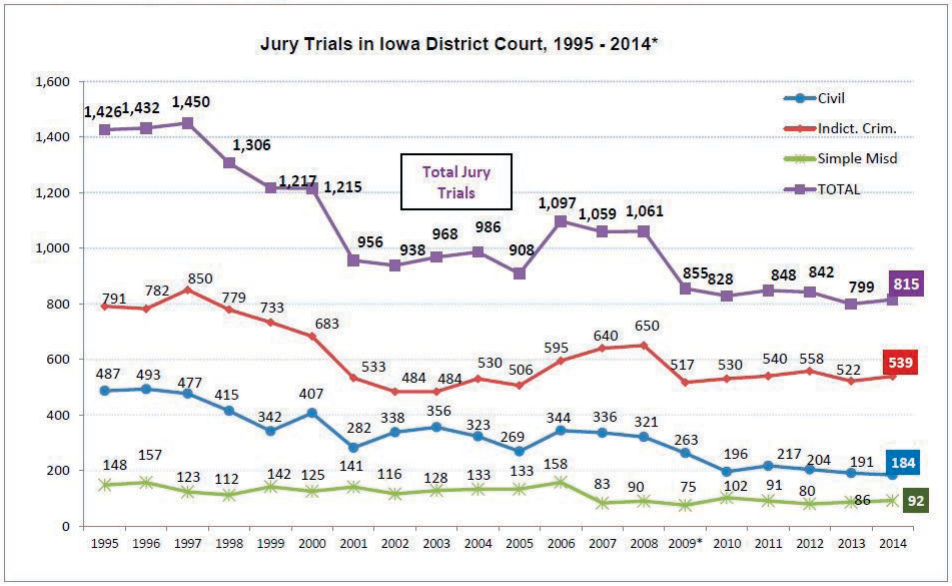
The numbers are a little startling. As of 2012, most sources suggest that fewer than 2 percent of all federal cases went to trial, with less than 1 percent being tried to a jury.[2] Civil jury trials are literally on the brink of extinction.

An October 2015 Minneapolis Star Tribune article reported on a $9.1 million medical malpractice plaintiff's verdict by a Hennepin County jury, won by a Robins Kaplan lawyer. What jumped out at me was the newspaper's report that this record-setting verdict was the only one of the 50 largest malpractice awards ever reported in Minnesota that resulted from a jury trial.[3] (More recently, a second jury award was added to the top 50—again by the Robins firm—with a record verdict of $20 million in the case of a woman who died after giving birth.[4])

The demise of jury trials is not unique to Minnesota. The ISBA reported that in 2014 only 184 jury trials were tried to conclusion in the entire state, with only 60 percent of the state's counties reporting more than three jury trials, and thirteen reporting none at all (see chart on next page).

My purpose is not to explore the pros and cons of jury trials per se, but rather to look at this sad phenomenon in terms of its impact on all lawyers at a time when the profession is experiencing changes at so many other levels. One heritage we have always had in common is the history of trials and trial lawyers, the methodology and procedure of trials and evidence (which every single one of us studied in law school), and the very language of the courtroom in general. We have thus inherited a collective self-image, even if many of us are not frequently immersed in lawsuits or courts. When non-lawyers think about lawyers, the vague image in their heads is almost certainly someone arguing in a court of law. After all, Abraham Lincoln—who, like Clar-

2014 stats are final; compiled by State Court Administrator's Office, Des Moines, IA (Updated: March 18, 2015)



ence Darrow, never attended a law school—is reputed to have tried literally thousands of jury cases in his career as a lawyer; don't we all want to ride those coattails to some extent?[5]

No one has captured this phenomenon more colorfully than Iowa Federal District Court Judge Mark W. Bennett in a 2014 article entitled "Obituary: The American Trial Lawyer, Born 1641—died 20??" which appeared in the ABA publication Litigation:

"The American trial lawyer (ATL), who, in innumerable ways enhanced the lives of so many Americans and made the United States a fairer, healthier, safer, more egalitarian and just nation, passed away recently. Although a precise age is uncertain, ATL is believed to have been at least 371 years old at the time of death.…

"The autopsy determined that ATL most likely died from a long term, progressive illness exacerbated by a slow, debilitating virus ...commonly known as Celotex-Anderson-Matsushita syndrome. The death certificate also lists... a surge of "litigation industry" cancer cells – replacing healthy trial lawyer skill cells;… the vanishing civil jury trial….; a genetic mutation of the civil justice system that came to be known as "ADR;"... [and] the inability of courts to implement reforms that would have reduced the enormous cost of getting cases to trial and enabled ATL to go off life support…."[6]

Judge Bennett's blistering obituary identifies ATL's surviving heir as "American Litigator (AL)", who is "the bastard child of ATL and ADR." The judge explains that "ALs do not try cases; ALs "litigate' them." ALs, he suggests, are defined by their lack of actual jury trial experience despite the fact that they "spew courtroom jargon to clients and opposing counsel as if they were real trial lawyers." But ALs are frauds, the judge asserts, because

"They file motions…and bill endless hours for developing untested and unrealistic trial strategies…generating Everest-like mountains of paper. They are paper tigers. They never work alone, always traveling in packs. As trial dates approach, their relentless bravado evaporates into unlimited excuses to settle."

Nor can we fail to notice that ALs prefer to travel in packs. It is very common to see several attorneys in the courtroom during the argument of a motion, for example. A classic example of the pack instinct occurred as I was preparing this article, when one of my partners attended oral argument before an 8th Circuit panel relative to an interim defense appeal of class certification in a large case. No fewer than eight lawyers sat at opposing counsel's table, though only one spoke!

Gamesmanship

In my own 45-year practice, weighted during the last two decades toward class and collective actions, I noticed all of these things. Since the late 1990s, jurisdiction, venue and discovery requests, however ordinary, were more and more frequently opposed and, where possible, interlocutory appeals were filed that could consume a year or more. New technologies led to defense production of hundreds of thousands or even millions of pages of useless information in response to discovery requests. These pages were located and selected not by lawyers but instead either by computers and IT specialists, either or both of which might be located in another country. Today it is simply a fact that trials, like total eclipses, only rarely happen.

Experienced trial lawyers know that 90 percent of everything that happens in discovery never makes it into court, says prolific Texas lawyer Stephen Susman, which is another way of saying that 90 percent of what happens in discovery is not important to the case outcome. Today's litigators, he argues, "try to determine whether any particular [litigation] practice is beneficial to their side while being detrimental to the other side," which in turn rests on the assumption that "if the other side likes it, I don't," and vice versa.[7]

Small wonder that most large-scale civil cases are settled. Long before trial is even a possibility, the judge is sick to death of the endless motions. He or she orders mediation, often more than once, and sometimes related not to case resolution, but only to discovery issues. In federal court, jurisdictional, procedural and discovery issues are often delegated to a magistrate judge for resolution, and the latter's resolution(s) are then re-litigated before the judge by the losing side. Most judges are quite persistent—and never ambiguous—about their desire to see the case "go away." Trial lawyers know that they ignore such "desires"

at their peril. This kind of judicial pressure, coupled with the enormous out-of-pocket expenses that now characterize nearly all complex civil cases, give clients on both sides of the case endless reasons to mediate or otherwise settle.

One result of the disappearance of trial lawyers is the advent of another new breed of lawyer: the mediator. At hourly rates that compare with rates charged by most law firms, large numbers of former judges and some former litigators now travel from conference room to conference room, patiently explaining to litigants—and "litigators"—why trial is a bad idea and "splitting the baby" is a good one. Mediators' personal success and reputations are heavily dependent on their success at settling yet another case that will never be presented to a jury.

The litigation cycle has come to be measured in years, not in months; in my own experience, most federal and state "rocket docket" initiatives did not succeed. And not all judges are temperamentally or intellectually up to the challenge of presiding over the increasingly complex pretrial process. One judge in my own experience sat on a class certification motion from 2004 until 2008! A 10-year lifespan is not unusual for a large case today; the nationwide multidistrict Fed Ex Driver employee status litigation that emerged intact in 2016 from a series of interim appeals was originally commenced in 2003 and is still going strong! Though a settlement has finally been reached and approved, fights over attorneys' fees in several jurisdictions threaten to increase this litigation's age beyond its current 14 years.

So who and where are the real trial lawyers of today? Can we really deny that Judge Bennett is spot on? We "American Litigators" are increasingly dividing, re-dividing and sub-dividing ourselves into narrower and narrower categories of specialization. Individuals and entire firms specialize and sub-specialize in medical malpractice, environmental, land use, automobile, product liability or corporate malfeasance cases. The trend reminds me of the old rhubarb about the definition of a true specialist—someone who knows more and more about less and less until (s)he knows almost everything there is to know about almost nothing at all.

Is it unfair to characterize modern complex litigation as an extended (and very expensive) form of gamesmanship? The game, of course, consists of jurisdictional challenges, venue challenges, Rule 12 motions, burdensome (and serial) discovery requests, burdensome (and serial) discovery responses, serial motions objecting to the discovery and the discovery responses, Daubert motions, appeals of magistrate judges' rulings, interlocutory appeals on class certification rulings, directed verdict motions and more. Tactics have essentially replaced trials as the modern method of resolving major disputes.

So it's hardly surprising that trials have disappeared. Worse yet, the settlement agreements that terminate large cases more and more frequently contain confidentiality clauses that prevent the public from getting any idea of how much was paid, how serious the alleged wrongdoing might have been, or even from knowing that a settlement has been reached. This confidentiality in turn stifles public attention to—and discussion of—disputes that sometimes have important public policy implications.

Given the new generation of tactics, it is hardly surprising that judges take every opportunity to "get rid" of major cases before trial so they can focus on the plethora of small matters that come before them daily, many involving pro se litigants and criminal defendants whose cases do not interest "serious" trial lawyers.

Lawyers are by no means solely responsible for the demise of the civil jury trial. Business-backed lawmakers have played a major role—and for obvious reasons. Plaintiffs, after all, are a thorn in the side of business, and always have been. After protracted legislative battles ultimately won by business/defense interests, many types of cases, including the entire securities law arena, now face arbitration and can never

be the subject of a jury trial. And while arbitration's proponents argue that arbitration reduces the number of cases that might clog a docket, it cannot be denied that enforcement of the nation's securities laws has been taken almost entirely out of the hands of federal courts and placed in the hands of business-friendly arbitrators. Stare decisis and judicial supervision now play virtually no role in the enforcement of these laws; nor does the arbitration process offer the safeguards of a jury trial, let alone meaningful review by an appellate court. Reported cases on securities law violations since the early 1990s are almost non-existent.

Nor do courts deplore or resist the (now) almost universal use of arbitration clauses and "no-class-action" clauses in consumer contracts, which were the subject of an exhaustive three-part study by the New York Times in November 2015.[8] These clauses, which the courts have upheld, have undermined consumer rights generally because the amount at issue when a bank or a utility or a large service provider misleads or cheats a customer is often small relative to a single customer, but very large when all customers are considered.

Conclusion

The tone of my thoughts on this subject is obviously curmudgeonly. I feel lucky to have been in active practice at a time when jury trials were still a reasonably regular feature of the trial practice. I understand that plenty of lawyers take a dim view of plaintiffs' lawyers in general and plaintiffs' class action lawyers in particular.

But the underlying point is inescapable: Many of us became trial lawyers because we grew up with a romanticized view of the history, value and efficacy of the American jury system, in which randomly selected citizens played a major part in resolving disputes of all kinds. The role models (fictional or otherwise) that we all observed as we grew up and thought about venturing into the legal profession have pretty much disappeared.

Nothing on the horizon suggests that jury trials—particularly on the civil side—will return any time soon. The trend is exactly the opposite.

1. 60 ABA Journal 570 (1974)

2. See, e.g., Galanter, "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts," Journal of Empirical Legal Studies 1 (2004): 462–63, 489 (1.8% of total dispositions in 2002); Administrative Office of the United States Courts Judicial Business of the United States Courts annual publications from 2000-2010 (1.1% in 2010). See, generally, Rebecca Love Kourlis and Dirk Olin, "Rebuilding Justice: The Importance of Trials," Voir Dire • Spring 2012.

3. Minneapolis Star Tribune, 10/17/2015, "Paralyzed Minnesota mechanic awarded $9.1M in malpractice verdict" http://www.startribune.com/paralyzed-minnesota-mechanic-awarded-9-1-million-in-malpractice-verdict/333412061/

4. Minneapolis Star Tribune, 8/29/2017, "Twin Cities jury awards $20M in malpractice case for woman who died after giving birth" http://www.startribune.com/jury-awards-20m-in-malpractice-case-for-woman-who-died-after-giving-birth/442132653/

5. Joseph F. Anderson Jr., "Where Have You Gone, Spot Mozingo? A Trial Judge's Lament over the Demise of the Civil Jury Trial," Federal Courts Law Review 4 (2010): 102.

6. Litigation, Vol 39, No.2, Spring 2013.

7. Trial by Agreement: How Trial Lawyers Hold the Key to Improving Jury Trials in Civil Cases, by Stephen D. Susman and Thomas M. Melsheimer

8. Part 1 of the series, and links to the other two installments, can be found at https://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html?mcubz=1

IN MEMORIAM

Olivia Suhair Farah, 37, of Greensboro, North Carolina, died May 18. Farah was born in 1979 in Jordan. She received her J.D. from Elon School of Law.

Paul Thomas Michael, 71, of Alexandria, Virginia, died Sept. 14.

Michael was born in 1946 in Chicago, Illinois. He received his J.D. from Creighton University School of Law. He began his career as a trial attorney at the Department of Justice. He then spent several years in private practice representing Eastern Airlines before returning to public service at the Department of Energy.

Patrick Roby, 70, of Cedar Rapids died Sep. 25.

Roby was born in 1947 in Bremerhaven, Germany. He received his J.D. from the University of Iowa College of Law in 1972. He began practicing with Shuttleworth and Ingersoll, where he became a partner. In 1993 he joined the firm of Elderkin and Pirnie as a senior partner. In 2000, his daughter Paula also joined the firm, and they tried many cases together.

Arnold Van Etten, 87, of Dubuque died Aug. 19.

Van Etten was born in Havana, Illinois. in 1930. He graduated from the University of Iowa College of Law. Arnie started practicing law with Kintzinger Law Firm and remained a partner until retiring a few years ago, after more than 50 years of supporting, counseling and guiding countless clients, who often became lifelong friends.

Wood R. Foster, Jr. practiced law in Minneapolis from 1968 through 2013, most of it as a litigator with the Siegel Brill firm. He served as 1999 president of the Minnesota State Bar Association and spearheaded the preparation of a 400 page history of the practice of law in Minnesota from 1849 to 1999. In 2017 he was awarded the MSBA's Lifetime Achievement Award. As a retiree, he works one day each week with a Habitat for Humanity crew.

Ensuring equal justice for Limited English Proficient (LEP) persons in Iowa's courts


By John Goerdt, J.D., Deputy State Court Administrator, and Ernest Nino-Murcia, Federally certified Spanish court interpreter

Iowa is currently home to about 149,000 foreign born immigrants, which is 244 percent more than the 43,300 foreign born residents in 1990.[1] Since 2010, these immigrants have accounted for more than 40 percent of the state's population growth.[2] They now comprise about 4.3 percent of the state's population and 5.4 percent of its workforce.[3] This dramatic increase in foreign born immigrants has naturally led to a similar increase in the number of court cases involving parties or witnesses with limited English proficiency (LEP). Providing equal access to justice for LEP persons is a challenge for both the courts and the attorneys who represent LEP litigants. Meeting that challenge requires the courts and attorneys who represent LEP clients to use competent court interpreters.

A competent court interpreter is able to interpret everything that is said during any legal proceeding completely and accurately, without adding, omitting or changing the meaning of words or phrases.[4] To achieve this level of proficiency, an interpreter should have:

- College-level vocabularies in both languages
- Knowledge of a broad range of legal, technical and slang terms in both languages
- Exceptional memory and verbal skills to recall long sentences by witnesses and then interpret the sentences completely and accurately into the other language

Why is it so important that an interpreter interpret everything completely and accurately? The stakes can be very high for LEP litigants, who might be facing prison, deportation, loss of parental rights, eviction from their home or substantial financial liabilities. Inaccurate or incomplete interpretation can mislead a judge or jury and result in wrong decisions.

What the Iowa courts have done to enhance access to justice for LEP persons

Iowa's judicial branch began addressing the growing need for qualified court interpreters in 2004 when it established a Roster of Court Interpreters, a list of interpreters on the Iowa courts' website who have successfully met at least the following basic qualifications:

- Completed a two-day court interpreter orientation program
- Passed an extensive test of general English vocabulary and legal terms,
- Passed a text on court interpreter ethics
- Passed an oral proficiency interview conducted by ALTA Language Services [5]

Interpreters who have completed only these basic requirements are listed on the roster as Class C – uncertified, the entry level classification. Interpreters who completed some additional training and testing requirements, but have not passed the rigorous certification testing requirements, are listed as Class B – noncertified. Only those interpreters who have met the basic roster requirements and who have passed a rigorous oral court interpreting examination are listed on the roster as Class A – certified, the highest interpreter classification.

Besides establishing a roster of court interpreters in 2004, the supreme court adopted a new court rule that requires the courts to appoint the highest-classified interpreter who is reasonably available when an interpreter is needed for a court proceeding, and requires the courts to give preference to interpreters who are listed on Iowa's roster of court interpreters.

Two years later, the judicial branch began offering the nationally-recognized court interpreter certification exams developed by the National Center for State Courts (NCSC) to test interpreters in 18 different oral languages.[6] At that time, there was only one certified Spanish court interpreter in Iowa. Today, Iowa's Roster of Court Interpreters includes 32 certified Spanish interpreters, one certified Bosnian/Serbian-Croatian interpreter, three certified French interpreters, one certified Mandarin interpreter, one certified Somali interpreter, and four certified American Sign Language

court interpreters. The roster also includes 43 interpreters of various languages who have completed the court interpreter training program and the basic vocabulary and ethics tests, but have not passed a nationally recognized court interpreter certification exam. (Note: Iowa's Roster of Court Interpreters is available on the Iowa courts' website at: www.iowacourts.gov – in the Office of Professional Regulation / Court Interpreters section.)[7]

In 2015, the supreme court took another important step toward improving the quality of interpreting services for LEP persons by adopting significant new requirements in Chapter 47 of the Iowa Court Rules regarding the appointment and management of court interpreters and translators. One critical change in the court rules requires the courts (with a few exceptions) to appoint a certified interpreter if the interpreter is available and resides within 150 miles of the location where the court proceeding will occur. In addition, the revised court rules also require the courts to do a national search (not just within 150 miles), if necessary, to locate a certified court interpreter for any indictable criminal case and any termination of parental rights case. Under the previous court rules, a court had to appoint the highest qualified interpreter who was "reasonably available," but the rules did not define what that meant, so courts in some counties that did not have a certified interpreter nearby almost never appointed a certified interpreter. These new requirements have substantially increased the use of certified court interpreters.

What attorneys can do to enhance access to justice for their LEP clients

Rules 32.1(4)(a) and (b) of the Iowa Rules of Professional Conduct require attorneys to obtain the "informed consent" of their clients when any decision about their case must be made and to explain matters to their clients so their clients can make "informed decisions." Consequently, when representing an LEP client, an attorney is ethically obligated to use a competent interpreter to ensure the client is accurately "informed" about the facts and circumstances involved in the client's case. The attorney also needs to accurately understand what the LEP client has said throughout the attorney-client discussions. While it is strongly recommended that attorneys use certified court interpreters throughout the representation process (if the language is one of the 18 oral languages for which there is a certification exam),[8] use of a certified interpreter is critical for depositions and for the negotiation and explanation of the terms of a dispositive document (e.g., settlement agreement or written guilty plea).

For many in-office discussions with an LEP client, an attorney can employ an interpreter from a remote location via conference call. This will often significantly reduce travel costs. In addition, if an attorney needs the interpreter to interpret written documents for an LEP client, the documents can be scanned and emailed to a remote interpreter, thereby reducing interpreter costs.

It is tempting to use bilingual office staff or friends or family members of the LEP client to interpret out-of-court encounters. Although they might be bilingual, family and friends of an LEP client rarely have college-level vocabularies or the requisite memory skills to be competent legal interpreters. They also have a conflict of interest, which might lead them to interpret the LEP client's statements in a manner that the family member or friend perceives to be most favorable to the LEP client. Furthermore, LEP clients charged with criminal offenses might be less likely to make personal or embarrassing statements in front of someone they know or, if they do make such statements, their friend or family member might not completely and accurately interpret those statements out of shame or a desire to not embarrass the LEP client.

In the case of bilingual office staff, it bears noting that proficiency in English and the applicable foreign language, including knowledge of many legal terms, is merely a starting point for the skillset required of a competent court interpreter. The cognitive skills required to retain and accurately render long questions and answers, for example, are essential to facilitating communication, and wholly separate from the ability to understand or speak a given language. Additionally, only interpreters who have been trained and tested in interpreter ethics and protocol understand: (1) the need to interpret everything being said without summarizing or simplifying the message and (2) the ethical obligations not to provide legal advice to the LEP client and not to reveal the contents of attorney-client communications.

Attorneys also need to understand that using an incompetent interpreter to facilitate communications with an LEP client could be the basis for a claim of ineffective assistance of counsel. In Ledezma v. State, 626 N.W.2nd 134, 149 (Iowa 2001), the Iowa Supreme Court stated:

"Trial counsel may breach a duty owed to his client through the ineffective assistance of an interpreter. When an intermediary,

such as an interpreter, is the only means of communication for a defendant and his attorney, any deficient conduct on the part of the intermediary can be imputed to an attorney as ineffective assistance. Inaccurate and incomplete translations of attorney-client communications by an interpreter are an example of deficient conduct of any intermediary giving rise to an ineffective assistance of counsel claim."

In a post-conviction relief case in 2013,[9] an Iowa attorney had relied on his bilingual secretary to interpret a guilty plea agreement for the LEP client, which the LEP client signed. However, in court testimony in the post-conviction relief action, the secretary admitted that she did not understand some of the legal terminology in the guilty plea, so she skipped those terms. She also said she did not always provide an exact interpretation for LEP clients, but would choose different words and phrases based on her perception of an LEP client's education and ability to understand concepts. Given this testimony, the court judge found the secretary to be an incompetent court interpreter and, citing the Iowa Supreme Court's ruling in the Ledezma case, found that the attorney had thereby provided ineffective assistance of counsel.

How to locate qualified court interpreters

The first place to look when seeking a qualified, preferably certified, court interpreter is Iowa's Roster of Court Interpreters, which is available on the Iowa courts' website (www.iowacourts.gov). It lists interpreters according to their level of qualifications: Class A - certified, Class B - noncertified (completed more training and/or testing than the minimum roster requirements, but has not passed the certification exam), and Class C – noncertified (meets the minimum training and testing requirements to be on the roster).

If the client speaks a language for which there are no interpreters on Iowa's roster, an attorney should look at the "Interpreter Search Resources" page that is also available on the Iowa courts' website (in the Office of Professional Regulation/Court Interpreters section). It provides links to the rosters or registries of state-approved court interpreters in our neighboring states and several other states.

If an attorney exhausts those resources and still has not found a competent interpreter for the language spoken by the LEP client, the attorney can contact the office of state court administration (SCA) via email (court.interpreter@iowacourts.gov). SCA personnel will email a request for an interpreter of the specified language to a listserve of court interpreter program managers in all 50 states, and they will forward referrals back to the attorney who submitted the request to SCA.

Pursuant to Iowa Court Rule 47.3(2), if an attorney will need a competent court interpreter for an LEP client during a court proceeding, the attorney must file an Application for Appointment of a Court Interpreter. The application form is available on the Iowa courts' website (www.iowacourts.gov), in the Office of Professional Regulation/Court Interpreters section. After receiving the application, court personnel are required to locate and schedule interpreters for all court proceedings in that case, and the court will enter an order appointing an interpreter and setting the interpreter's fee. In addition, ICR 47.13(5) requires an attorney to file an Application for a Written Translation of Court-Related Material and Appointment of a Translator if the attorney believes a client needs a written translation of a court-related document (i.e., a verbal interpretation of the written document would not be sufficient for meeting due process requirements). This application form is also available on the courts' website (at http://www.iowacourts.gov/Administration/Court_Interpreters/Forms/). The court will then enter an order appointing a translator and setting the fee.

Conclusion

The courts and attorneys are committed to fulfilling their shared mission to ensure that justice is administered equally to all persons. Insisting on the use of certified or other highly qualified interpreters and translators is the only way to fulfill that mission in cases involving LEP parties and witnesses.

1. See Migration Policy Institute data on trends in the foreign born population in Iowa from 1990 to 2015 at:

https://www.migrationpolicy.org/data/state-profiles/state/demographics/IA

2. See James Q. Lynch, "Immigrants Propping Up Iowa Population Growth," Cedar Rapids Gazette (Oct. 11, 2017).

3. See Heather Gibney and Peter Fisher, "Immigrants in Iowa: What New Iowans Contribute to the State Economy," The Iowa Policy Project, Iowa City (2014), p.1.

4. See the Code of Professional Conduct for Court Interpreters and Translators in Chapter 48 of the Iowa Court Rules, Canon 1: Accuracy and Completeness.

5. The ALTA oral proficiency interview requirement was added in 2015. ALTA Language Services is a nationally known language testing and training company located in Atlanta, GA. The interpreter must achieve a score of 11 on a 12 point scale to pass the test.

6. The oral language court interpreter certification exams test a person's ability to completely and accurately interpret in a court proceeding. The exams use pre-recorded segments of realistic court proceedings. The interpreter's performance during the exam is digitally recorded by a test proctor. The digital recording is sent to two certified and court interpreters trained and approved the NCSC to conduct the grading or rating of the oral interpretation exams. To pass the certification exam an interpreter must correctly interpret at least 70% of all the scoring units (identified in advance by the creators of the exams) in each of the three parts of the exam (witness interpreting, continuous interpreting of the closing argument, and interpretation of the two written documents).

7. The Iowa courts' website (www.iowacourts.gov) will be substantially reorganized in the coming one to two months, so the specific web addresses for court forms and other materials will change at that time, but the address of the Iowa courts' home page (www.iowacourts.gov) will remain the same.

8. The 18 languages for which there are court interpreter certification exams are: Arabic, Bosnian/Serbian/Croatian, Cantonese, Tagalog (Filipino), French, Haitian Creole, Hmong, Ilocano, Khmer, Korean, Laotian, Mandarin, Polish, Portuguese, Russian, Spanish, Turkish, and Vietnamese.

9. See Garcia-Ortega v. State of Iowa, Buena Vista County, PCCV028491, Ruling on Application for Postconviction Relief (Dec. 16, 2013).

ISBA celebrates National Pro Bono Week

ISBA celebrates National Pro Bono Week with virtual legal clinic event in UI Law Commons.

On Monday, Oct. 23, The ISBA celebrated 2017 National Pro Bono Week with the second IA Free Legal Answers Young Lawyers Division Mentoring Program/ Virtual Clinic event. During the event held in the new University of Iowa College of Law commons area, YLD leaders, IA Free Legal Answers volunteer attorneys and UI College of Law Citizen Lawyer Program student volunteers answered clients' civil legal questions. The attorneys and students made an immediate, positive impact in a short time as they answered each-and-every question in the IA Free Legal Answers question queue.

IA Free Legal Answers is part of a nationwide, ABA pro bono initiative, and is designed like a virtual walk-in legal clinic where qualified clients post civil legal questions to the secure website.

If you are interested in signing up to volunteer, want to co-host a virtual legal clinic event or would like more information, please send an email to Attorney-IA-FLA@iowabar.org.

ISBA Past President Bruce Walker and Legal Access Committee Chair Eric Goers attended a ceremony recognizing the pro bono work of Iowa Law's Pro Bono Society on Friday, Oct. 27, to cap off National Pro Bono Week. The event, where Assistant Public Defender Julia Zalenski was also a featured speaker, honored students who reported at least 15 service hours in the last semester and 1Ls who organized and participated in the First Year Service Challenge, which encourages first-year Iowa Law students to help out in the local community. This year, Iowa Law's entering class completed nearly 200 hours of community service.


Iowa Law students recognized by ISBA for pro bono work.

Transitions Submissions: To submit a transition item, please follow the same style published here and keep submissions short and to the point. The focus of the announcement should be on the individual involved, not the law firm.

Please include a high-resolution (300 dpi) color photo of the individual in the ".jpg" format and the announcement as plain text or as a Microsoft Word ".doc."

E-mail submissions to communications@iowabar.org. Include office phone number and name of person furnishing the copy. Questions? Please call 515-697-7864.


Clarke


Corpstein

Tansha Clarke, Colin Grace, Sean Corpstein, Benjamin Erickson, Michael Currie and Jaclyn Zimmerman have joined Grefe & Sidney, P.L.C. in Des Moines.

Clarke received her J.D. from Drake University Law School in 2017 where she was an associate editor of the Drake Law Review and served as an extern for Iowa Supreme Court Justice Edward Mansfield. Clarke will practice in the trial division of the firm.

Corpstein received his J.D. from the University of Iowa College of Law in 2017. He joins the firm following his clerkship for U.S. District Court Judge Leonard T. Strand. Corpstein practices in the trial division of the firm.


Currie


Erickson


Grace


Zimmerman


Martino


Miers

Currie received his J.D. from the University of Iowa College of Law in 2014, where he served on the Iowa Law Review. He formerly practiced law at the Nyemaster Goode law firm in Des Moines. Currie practices in the trial division of the firm.

Erickson received his J.D. from Drake University Law School in 2015. Prior to joining the firm he practiced at the Ball, Kirk & Holm firm in Waterloo, and clerked for the Fifth Judicial District. Erickson practices in the trial division of the firm.

Grace received his J.D. from the University of Iowa College of Law in 2016, where he was a member of the National Moot Court Team. Grace practices in the trial division of the firm.

Zimmerman received her J.D. from Western State College of Law in 2009. She is a certified mediator and collaborative attorney. She brings many years of family law experience to the firm. Zimmerman practices in the family law division of the firm.

Laura Martino has been named a member at Grefe & Sidney, P.L.C. in Des Moines. She received her J.D. from the University of Iowa College of Law in 2003. Before joining the firm, she clerked for the Seventh Judicial District, practiced with the Brown Winnick law firm in Des Moines, and worked in the renewable fuels industry. She has a wide array of experience in civil litigation, and practices in the trial division of the firm.

Aaron M. Miers has joined Brooks Law Firm, P.C., Rock Island, Illinois. He received his J.D. from the University of Iowa College of Law in 2017. He has worked at the U.S. Embassy in Brussels, Belgium and the Ministry of Foreign Affairs for the Republic of Kosovo in Prishtina, Kosovo. Miers is a published author in Transnational Law and Contemporary Problems, a journal of the University of Iowa College of Law. His practice areas will focus on general litigation and immigration law.


Carney


Hale


Story

Joel Carney and William J. Hale have joined the Goosmann Law Firm in the new Omaha, Nebraska, office.

Carney joins the firm as managing partner. He received his J.D. from Creighton University School of Law and has over 17 years of experience as a litigation attorney with a wide range of experience in all realms of the dispute process involving creditor's rights, bankruptcy, and litigation.

Hale joins the firm with seven years of experience working in the security industry handling investigations, reporting, consumer relations and settlements. He will focus his practice on business and intellectual property litigation. He received his J.D. from Creighton University School of Law.

Thomas D. Story, Brandon J. Cole, Kelli J. Orton and Katie E. McKain have joined BrownWinick Law Firm in Des Moines as associates.

Story received his J.D. from Drake University Law School in 2016. Prior to joining BrownWinick, he served as the judicial law clerk for Chief Justice Mark S. Cady of the Iowa Supreme Court. He has a general practice including, but not limited to, litigation, employment, agricultural, environmental, construction, health law and intellectual property law.

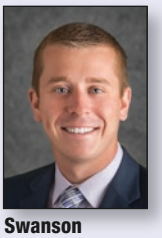

Cole


Orton


McKain


Dickhut


Boettcher


Swanson

Cole received his J.D. from the University of Iowa College of Law in 2017. He has a general practice including, but not limited to, agribusiness, banking, business and corporate law, corporate finance and securities law, growth capital, health law, startups and energy.

Orton received her J.D. from Drake University Law School in 2017. She has a general practice including, but not limited to, real estate, estate planning, agribusiness and business and corporate law.

McKain received her J.D. from Drake University Law School in 2012. She has a general practice including, but not limited to, real estate, business and corporate law, construction and employment and labor law.

Sarah M. Dickhut has joined McKee, Voorhees & Sease, PLC in Des Moines as an intellectual property attorney. She received her J.D. from the University of Iowa College of Law. She has published several articles in law journals around the country; her research interests center primarily on the intersectionality between intellectual property law and pharmaceutical patent enforcement, complex litigation, and international law.

Kaitlin T. Boettcher has joined Moore, Heffernan, Moeller, Johnson, and Meis, LLP in Sioux City. Kaitlin earned her J.D. from the University of Iowa College of Law in 2017. She currently provides general practice for the firm including family law, employment law, estate planning and litigation.

Brody D. Swanson has joined Peters Law Firm, PC in Council Bluffs an associate. He joined the firm in August after graduation from Drake University Law School. He focuses his practice on estate planning, wills, trust, probate, real estate, family and business law.


McPartland

Molly McPartland has joined Kids First Law Center in Des Moines as a staff attorney. She received her J.D. from the University of Iowa College of Law in 2014. Prior to joining Kids First, she served as a law clerk to the Honorable John A. Jarvey of the United States District Court for the Southern District of Iowa and as a law clerk to the Honorable Jane Kelly of the United States Court of Appeals for the Eighth Circuit.


Merschman

Alexandria A. Merschman has joined Gray, Hodges & Associates, PLC in Ankeny as an associate. She received her J.D. from Drake University Law School in 2017. She will practice in real estate, business law, and estates, wills and trusts.


Curnow

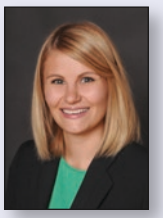
Ross Curnow has joined Hopkins & Huebner in Des Moines as an associate. He earned his J.D. from Drake University Law School. Curnow will practice primarily in business and corporate law, wills and trusts.


Detweiler

Caleb Detweiler has joined Honohan, Epley, Braddock & Brenneman, L.L.P. in Iowa City as an associate. He received his J.D. from Valparaiso University School of Law in 2017. He will maintain a general practice with the firm that includes immigration law.


Bishop

Jenna Bishop has joined the Ahlers & Cooney law firm as an associate. She received her J.D. from Drake University Law School. She will practice in the public law area, with a focus on economic development and urban renewal for Iowa's cities and counties.


Ransom

Alexandria M. Ransom has joined Simmons Perrine Moyer Bergman PLC in Cedar Rapids as an associate. Ransom clerked for the firm during the summer of 2016 and is now joining the firm's estate planning practice.

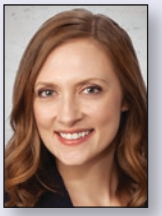

Schier

Joshua P. Schier has joined the Cray Law Firm, PLC, as a partner. Schier is a 2014

graduate of the University of Iowa College of Law. He maintains a general practice, with an emphasis in business, criminal, family, juvenile and municipal law.


Babinat

Adam Babinat has joined the law firm of O'Connor & Thomas, P.C. in Dubuque as an associate. He received his J.D. from Drake University Law School.


Rogers

Kristy Dahl Rogers and Olivia N. Kilgore have joined Fredrikson & Byron's Des Moines office.

Rogers is an associate in the litigation group. Prior to joining Fredrikson & Byron, Rogers served as a law clerk to the Honorable Robert W. Pratt of the Southern District of Iowa and the Honorable David S. Wiggins of the Iowa Supreme Court.


Kilgore

Kilgore is an associate in the bank & finance and mergers & acquisitions groups. Prior to practicing law, Kilgore was an engineer for an international developer and manufacturer of medical devices.

Disciplinary OPINIONS

Kim Marlow West
September 15, 2017
No. 17-0420
Sixty-Day License Suspension

Kim West has practiced law in Iowa since 1983, working as a public defender in Cerro Gordo, Story, and Polk Counties until 2002. At that time, West began a solo private practice in criminal law. This action arises from West's representation in a probate matter, with all facts and violations stipulated to before the Supreme Court.

In October 2007, William Rumme hired West to handle his mother's estate. West had no prior experience handling estates, and did not take steps to gain expertise. Rumme paid West a $1,000 fee, which was deposited without court authorization in contravention of statute. After filing a petition for probate of the will, West filed the inventory and interlocutory reports late, and never responded to multiple delinquency notices for the final report. West also failed to communicate with the estate executor, causing the executor to try to file the final report and communicate with the judge without West's involvement. West failed to respond to the executor's attempts to reach him, or keep the executor informed. Based on the lack of proper administration, the estate remains open.

In considering violations, the Supreme Court agreed West violated Rule 32:1.1 (competent representation) for assuming the representation with no prior experience in probate or taking steps to seek outside expertise. The court also found a violation of Rule 32:1.3 (diligence) for "repeatedly fail[ing] to perform the legal obligations he assumed in probating the estate," including meeting deadlines and timely closing the estate. The court also found a violation of Rule 32.8.1(b) (failing to respond to a disciplinary authority) for ignoring the majority of the Attorney Disciplinary Board's letters regarding delinquencies in the probate estate. The court also found a violation of Rule 32:8.4(d) (conduct prejudicial to the administration of justice) for causing the court to issue multiple delinquency notices in the probate matter, procrastinating for years in probating the estate, failing to respond to board communications, and prematurely receiving the entire fee to handle the estate. Finally, the court found additional violations of Rule 32.15(a) (probate fees) and Rule 32:1.4(a)(3) (communication with clients) for accepting the attorney fee at the outset of his representation and failing to communicate with the estate executor.

In determining sanctions, the court considered the mitigating and aggravating factors. Mitigating factors were West's health issues in the relevant time period, West's community service and pro bono work and West's recognition of his wrongdoing. West also took "voluntary remedial measures" in promising never to take another probate matter. Aggravating factors were that West had received a previous admonition in 2012 for failing to keep a client reasonably informed, the harm to the estate and its beneficiaries and West's experience in the practice of law. The court imposed a sixty-day license suspension, along with an order for West to refund his $1,000 attorney fee.

Rodney Howard Powell
September 15, 2017
No. 17-0254
Two-Year License Suspension

Rodney Powell is 70 years old, and has been practicing law in Iowa since 1973. This action arose from a probate matter, in which Powell was accused of obtaining a $20,000 loan from the administrator of an estate during the time he served as the estate's attorney.

Specifically, the administrator was the beneficiary of a $40,000 life insurance policy on the decedent, which was deposited in Powell's trust account. Upon Powell's request, the administrator agreed to loan Powell $20,000 of the proceeds. Powell withdrew the funds before a written loan agreement was executed. Powell then prepared the loan documents, and the administrator was not represented by independent counsel. Powell made only sporadic payments, and the administrator eventually brought a breach of contract suit against Powell for failing to repay the loan.

The Supreme Court found multiple ethical violations, emphasizing concern over a client's right to expect loyalty and independent judgment from its attorney. The court found that Rule 32:1.8(a) (improperly entering into a business transaction with a client)

furthers this right in three ways, by (1) requiring the terms of any business transaction, including a loan, with a client to be fair, (2) requiring the attorney to advise the client to obtain independent counsel, and (3) requiring the client's informed consent. Powell argued this rule did not apply to him because he represented the estate, not the administrator. The court rejected that argument, finding that Powell owed an ethical duty to the estate's fiduciary, as well as the estate. Because Powell failed to meet any aspect of Rule 32:1.8(a), it found it unnecessary to consider other violations at issue and turned to sanctions.

Because Powell had been repeatedly disciplined for violating the Iowa Rules of Professional Conduct in the past, the court imposed a two-year suspension of his license. Powell had been previously sanctioned for trust fund violations, the unethical collection of attorney fees, charging excessive attorney fees, and failing to make an accounting before withdrawing fees from his trust account. This disciplinary history caused Justice Wiggins to dissent, arguing that Powell's inability to refrain from improperly accessing client funds warranted a revocation of his license.

Lawrence L. Lynch
September 15, 2017
No. 17-0193
Six-Month License Suspension

Lynch has been a licensed attorney in Iowa since 1971 and practiced his entire career in Iowa City. He maintains a small general-practice firm where he is the named partner. Lynch had real estate investments and previously owned several rental properties in Iowa City.

This action arose because Lawrence Lynch borrowed a total of $177,000 in a series of loans from long-time clients. Lynch failed to instruct the clients to obtain independent counsel once he borrowed the money. Lynch did not obtain written informed consent from his clients, and continued to represent them after he borrowed the money. Lynch also failed to disclose his poor financial situation to his clients. Lynch self-reported this incident, and stipulated to the facts and ethical rules violated. The only dispute is Lynch's sanction.

In determining Lynch's sanction, the Supreme Court considered three aggravating factors. The first was the fact Lynch had requested a series of loans from his clients over the course of years. Second, was the serious economic harm that resulted to Lynch's clients, because they lost the $177,000 in loans to Lynch and spent an additional $13,000 on attorney's fees to attempt to collect the unpaid loans. The last aggravating factor for the court was Lynch's experience. Lynch has been an attorney for over 40 years and should have known the ethical issues his conduct created.

The court also found several mitigating factors. The court noted that Lynch had no prior disciplinary actions, is active in the community, has performed pro bono work and self-reported the violations. The court found that Lynch's cooperation with the investigation and his acceptance of responsibility were also mitigating factors. Despite the fact the court found Lynch took advantage of his relationships with his clients for his own personal gain, it did not find that Lynch committed any type of fraud.

The court imposed a six-month license suspension as the appropriate sanction.

Luke D. Guthrie
September 15, 2017
No. 17-0879
License Revocation

Luke Guthrie has been licensed to practice law in the state of Iowa since 2006. At the time of the conduct giving rise to this action, he was practicing at Roberts, Stevens, Prendergast, and Guthrie, in Waterloo.

In November 2015, Guthrie was arrested for domestic abuse assault for assaulting his girlfriend, to which he eventually plead guilty. He informed his law partners he was self-admitting into a substance abuse treatment program and took a leave of absence. During his absence, the firm became aware of other potential ethical violations committed by Guthrie, terminated Guthrie's partnership and informed Guthrie he needed to self-report. He did so.

In addition to the arrest, there were billing/trust account issues in three matters. In the first matter, Guthrie represented a client in a modification action, and the opposing party filed a notice of appeal. After the client deposited funds in the firm's trust account, the opposing party dismissed the appeal. Without notifying the client of the dismissal, Guthrie billed 8.6 hours of unperformed work on the appeal brief/filings, and withdrew fees from the trust account. In the second matter, Guthrie billed a client for a 1.5-hour telephone conference with opposing counsel which never occurred, and again withdrew fees from the trust account. In the third matter, Guthrie represented a family law client and billed her for discovery and file review he could not have performed. In all matters, the firm reimbursed the clients the withdrawn fees.

The Supreme Court first considered the ethical violations relating to the misappropriation of client funds, and specifically Rule 32:8.4(c) (dishonesty, fraud, deceit, or misrepresentation). The court held there was clear and convincing evidence Guthrie knowingly misappropriated funds in the first matter, when he billed for unperformed work and withdrew funds for unearned fees after the appeal was dismissed. Even when questioned by staff, Guthrie stated the client would not ask to see the work and continued with the misappropriation. The court found the other two matters were "debatable."

In discussing sanctions, the court noted that "[t]here is no place in our profession for attorneys who convert funds entrusted to them," and that license revocation is usually appropriate when an attorney has no colorable claim to the fees. For this reason, the court did not consider it necessary to discuss other potential rule violations or mitigating factors. However, the court did note that (1) the ethical violations occurred over a one-month period in which Guthrie's substance abuse was at its peak, (2) Guthrie took steps to address this problem, and (3) Guthrie had maintained sobriety. However, the court found that while Guthrie should be "commended" for these positive steps, license revocation was still the appropriate sanction.

PUBLISHER'S NOTE: To submit an ad to CLASSIFIED ADVERTISING, please follow the style of the ads appearing here, indicate the classification where you want your ad to appear and state how long the ad is to run. Each ISBA member receives two free entries annually, except for "Positions Available" ads. Those ads must be posted in the ISBA's Career Center to qualify for publication in the magazine. Once posted in the career center, they will be published in the magazine one time for each posting. Corporate and government attorney members of the association receive the same free privileges for their business, non-employer-related ads. If you have questions, call the Communications Dept. at 515-697-7898. E-mail your copy to communications@iowabar.org. The number appearing in parentheses after each ad indicates the volume and the number of the issue when the ad will be pulled from the magazine. (AL) refers to paid ads. (TF) indicates internal or "house" ads that run indefinitely.

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POSITIONS AVAILABLE

ATTORNEY – *Duncan, Green, Brown & Langeness P.C., Des Moines –* Trust and estate administration, estate planning, and/or trust and estate litigation. Flexible and alternative work arrangements, full time or part time, will be considered. The qualified applicant will be an experienced trusts and estates practitioner licensed to practice law in Iowa. Experience in one or more listed practice areas. To apply visit http://careers.iowabar.org/jobs/10342240/attorney.

IT MANAGER – *Ahlers & Cooney, P.C., Des Moines –* Seeking an IT manager. The firm emphasizes teamwork, excellent client communications and the use of technology. The IT manager is responsible for the overall functionality, maintenance and performance of the firm's technology to meet the goals and objectives of the firm. The position supports an 80-user virtual network. The IT manager oversees the IT staff members and monitors their tasks. To apply visit http://careers.iowabar.org/jobs/10333500/it-manager

PARALEGAL II – *GuideOne Insurance, West Des Moines –* Seeking an experienced paralegal. Our ideal candidate will be a self-starter, flexible with multiple work-styles, and has four years of in-depth experience with legal documents and protocol. This individual will provide substantive paraprofessional and administrative support to GuideOne's staff litigation counsel and prepare new legal documents such as correspondence, pleadings and medical chronologies. To apply, visit http://careers.iowabar.org/jobs/10346444/paralegal-ii

ATTORNEY – *Lynch Dallas, P.C., Cedar Rapids –* Seeking an associate or shareholder-level attorney with a minimum of one-year experience practicing in some or all of the following areas: business/corporate law, tax, estate planning and probate, and real estate. Ideal candidate must have a strong work ethic and excellent analytical, interpersonal, writing and research skills. Competitive salary and benefits. Please send cover letter and resume to Amy L. Reasner, Lynch Dallas, P.C., PO Box 2457, Cedar Rapids IA 52406-2457 or to areasner@lynchdallas.com.

EXECUTIVE DIRECTOR OF THE LEGAL CLINIC AND EXPERIENTIAL PROGRAMS – *Drake University Law School, Des Moines –* Seeking applications for the position of executive director of the Drake Legal Clinic and Experiential Programs, and professor/associate professor of law. The precise level of the hire will depend on the candidate's qualifications. This is a 12-month position, beginning in the 2018-2019 academic year. This position will be tenure-track or long-term contract, depending on the candidate's qualifications and preferences. Candidates should send a letter of interest, a complete CV, teaching evaluations (if available) and the names and addresses of at least three references to the search committee chair Professor Mark Kende at mark.kende@drake.edu.

ASSOCIATE ATTORNEY – *Confidential Employer, Boone –* Central Iowa AV-rated law firm located in county seat town seeks associate to work primarily in civil litigation. Duties would include handling discovery, brief writing including appellate briefs, depositions and trial work. Candidate must have interest in long-term relationship leading to partnership. Applicant must have three-to-five years experience as a practicing lawyer with some emphasis in the litigation area. To apply visit http://careers.iowabar.org/jobs/10288189/associate-attorney

ASSOCIATE ATTORNEY – *McEnroe, Gotsdiner, Brewer, Steinbach & Rothman, P.C., West Des Moines –* Seeking an additional associate attorney. All candidates must have at least two years of experience, no exceptions. Attorneys with an established practice, looking to expand their capabilities are ideal. Preferred practice areas include probate, tax, bankruptcy, workers comp or appeals. Send resumes to Daniel Rothman at drothman@mcenroelaw.com

ATTORNEY – *Hartung & Schroeder, L.L.P., Des Moines –* Seeking experienced attorney with complementary practice background to join a growing general practice firm in the heart of downtown Des Moines. Experience in probate, real estate, bankruptcy, tax, and/or employment law is preferred but not required. An "of counsel" position may be negotiated with the right candidate. All inquiries will be held confidential. Contact Brad at schroeder@handslawfirm.com.

ATTORNEY – *Brady Preston Gronlund PC, Cedar Rapids –* Seeking an associate with two years or less experience to work primarily in litigation, as well as in other practice areas. Competitive salary and benefits. Please send cover letter, resume, transcript and salary requirement in con-

fidence, to Ann Gronlund, Brady Preston Gronlund PC, 2735 1st Avenue SE, Cedar Rapids, IA 52402 or by email to AGronlund@BPGLegal.com.

ASSOCIATE DIRECTOR, PROCUREMENT – *Cambridge, Fairfield* – Seeking an associate director – procurement who will serve as the single point of contact for all procurement activities and vendor contract management. To apply, visit http://careers.iowabar.org/jobs/10359414/associate-director-procurement

SPACE AVAILABLE

OFFICE SPACE AVAILABLE – *Waterloo* – Downtown office space available for 1-2 lawyers and staff. Services include reception, internet, access to printers/scanners/copiers/fax, telephone, conference room, kitchenette and parking. For more information contact Jenny at 319-234-0535 or jenny.zabel@mccrindlelaw.com.

OFFICE SPACE AVAILABLE – *West Des Moines* – Office space available for lawyer and staff. Services include access to printer/scanner/copies/fax, conference rooms, kitchenette and parking. For more information contact Wendy at 515-224-4999 or wendy@tdufflaw.com.

OFFICE SPACE AVAILABLE – *Davenport* – Downtown office space available for 1-4 lawyers and staff. Services include access to conference rooms, kitchenette, and free client parking on the street. Within blocks of the Scott County Courthouse and Davenport City Hall in a well-maintained historic bank building. For more information contact John T. Flynn at 563-322-2681 or email johnflynn01@aol.com, or Joshua Cobie at 563-322-2681 or email jcobie.law@qwestoffice.net.

FOR SALE

SOLO LAW PRACTICE/OFFICE SHARE – Retiring sole practitioner selling rural general law practice in growing southeast Iowa community. Primary practice areas include probate, tax preparation, small corporations and LCs, wills and real estate. Seller will continue for time necessary for effective transition to buyer(s). Price negotiable. Installment terms available. Office share arrangement also considered. For more information please write: The Iowa State Bar Association, Code 866, 625 East Court Ave., Des Moines, IA 50309-1904, or email at isba@iowabar.org. Please include Code 866 on the envelope if mailing and in the subject line if emailing.

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

STOREFRONT PRACTICE – Owner of storefront law practice, at same location in central Iowa for more than 50 years, is considering retirement. Core practice areas include probate, real estate, estate planning, small business entities, criminal, divorce and tax preparation. Owner currently has a substantial court-appointed case load in both state and federal courts. The core business and location provide an opportunity for a confident, industrious, client-oriented attorney to mold a practice to suit his or her interests. All terms negotiable. For more information please write: The Iowa State Bar Association, Code 867, 625 East Court Ave., Des Moines, 50309-1904, or email at isba@iowabar.org. Please include Code 867 on the envelope if mailing and in the subject line if emailing.

SERVICES OFFERED

Lawyers, especially solo practitioners, seeking help with drafting documents to comply with IA Court Rule 39.18. Fair rates & personalized service; I'll make it as easy for you as I can. Compliance must be completed before 2018, so now is the time to act! Email gordon@gordonfischerlawfirm.com

SERVICES AVAILABLE – At trial, when the stakes are high, expert witness testimony can give you the edge. RSM's financial advisory professionals work with counsel and participate in trials and depositions as expert witnesses in financial and valuation disputes. Our team of experts have significant experience in a full range of industries, and can provide trial exhibits and expert reports. To build and support your case, we use databases of industry financial metrics and trade associations, recognized texts on damages, academic research, electronic databases and financial modeling. Zach Eubank, Director in the financial advisory services group at RSM, provides expert testimony and consulting related to complex commercial litigation, intellectual property infringement litigation, lost profits, commercial damages, business disputes and valuation disputes. Contact Zach at 515-281-9394 for your expert witness needs.

Thanks to speakers – *October 2017*

Medicaid Eligibility for Nursing Home and In-Home Services (Live Webinar)
October 3, 2017
Sponsored by The Iowa State Bar Association Elder Law Section
Scott Hartsook, Attorney at Law, Iowa Legal Aid's Legal Hotline for Older Iowans

Globalism and Managing Risk (In-person or Live Webinar)
October 5, 2017
Sponsored by The Iowa State Bar Association International Law Section
Henry Marqaurd, General Counsel, Stanley Consultants, Inc.
Don McConnell, General Counsel, Risksmart Advisors Inc.
Tom Wallich, Partner, Cozen O'Conner

Probate Meets the Farm - Preventing Problematic Proceedings (Live Webinar)
October 9, 2017
Co-sponsored by Iowa State University Center for Agricultural Law and Taxation and the Agricultural Section of The Iowa State Bar Association.
Patrick B. Dillon, Dillon Law P.C.

The Top 5 Mistakes You are Making with Your Trust Account Right Now (Live Webinar)
October 10, 2017
Sponsored by The Iowa State Bar Association Solo and Small Firm Section
Tom Boyle, CPA and Co-founder, TrustBooks

IP Issues in Divorce Cases (Live Webinar)
October 11, 2017
Sponsored by The Iowa State Bar Association Intellectual Property Law Section
Alexander Johnson, Hamilton IP Law

Ins and Outs of International Law (Live Webinar)
October 12, 2017
Sponsored by The Iowa State Bar Association YLD Professional Development Committee
Rachel Morgan, Brown Winick

Iowa Farm Leases - Legal and Tax Considerations (Live Webinar)
October 12, 2017
Co-sponsored by Iowa State University Center for Agricultural Law and Taxation and the Agricultural Section of The Iowa State Bar Association.
Kristine Tidgren, Assistant Director, Iowa State University Center for Agricultural Law & Taxation

Iowa Rural Property Disputes - Legal Conflicts on the Plains (Live Webinar)
October 13, 2017
Co-sponsored by Iowa State University Center for Agricultural Law and Taxation and the Agricultural Section of The Iowa State Bar Association.
Kristine Tidgren, Assistant Director, Iowa State University Center for Agricultural Law & Taxation

Depression and the Impact on the Person and the Profession (Live Webinar)
October 16, 2017
Hugh Grady, Director, Iowa Lawyers Assistance Program

2017 Labor and Employment Law Seminar
October 20, 2017
Sponsored by The Iowa State Bar Association Labor and Employment Law Section
Rick Autry, Employment Appeal Board
Leslie Behaunek, Nyemaster Goode PC
Sen. Nate Boulton, Hedberg & Boulton P.C.
James Carney, Carney & Appleby PLC
Lori Chesser, Davis Brown Law Firm
Paige Fiedler, Fiedler & Timmer P.L.L.C.
Susan Freed, Davis Brown Law Firm
Hon. Rebecca Goodgame Ebinger, United States District Judge, Southern District of Iowa
Jeffrey Noble, Polk County Attorney's Office
Emily Pontius, Fredrikson & Byron PA
Wilford Stone, Lynch Dallas PC
Molly Weber, Iowa Attorney General's Office
Prof. Ellen Yee, Drake Law School
Jill Zwagerman, Newkirk Zwagerman, PLC

Arbitration by Choice: An Overlooked Option (Live Webinar)
October 26, 2017
Sponsored by The Iowa State Bar Association Corporate Counsel Section
Michael Pitton, Pitton Law PC
Marsha Ternus, Marsha Ternus Law

2017 Family Law Seminar
October 26-27, 2017
Sponsored by The Iowa State Bar Association Family and Juvenile Law Section
Sara Baker - DHS Wapello County
Hon. Nancy Baumgartner, Senior Judge, District 6
Wayne Bergman, Assistant Attorney General
Billy Claywell, Solution Focused
David Cox, Bray & Klockau PLC
Brian Crotty, HDH Advisors, LLC
Charles Damschen, Hamilton IP Law PC
Diane Dornburg, Carney & Appleby PLC
Jerry Foxhoven, DHS
Samantha Gronewald, Sullivan & Ward PC
Debra Hockett-Clark
Tami Hoffman, DHS
Ashley Hopkins, Four Oaks Cedar Rapids
Hon. Chad Kepros, District Court Judge, District 6
Rae Kinkead, Simmons Perrine Moyer Bergman PLC
Hon. Henry Lathom II, District Court Judge, District 7
Jim Meade, Meade Law Firm
Andrea McGinn, The Law Shop by Skogerson McGinn LLC
Jim Nally, BCC Advisers
Hon. Eliza Ovrom, District Court Judge, District 5C
Laurie Parrish, Miller Pearson Gloe Burns Beatty & Parrish PLC
Joseph Pavelich, Spies, Pavelich & Foley, LLC
Ellen Ramsey-Kacena
Wendy Rickman, DHS
Marlis Roberts, Robberts & Kirkman, LLLP
Laurie Schipper, Executive Director Iowa Coalition Against Domestic Violence
Shannon Shaw, Shaw Business Valuation and Litigation Support Services, LLC
Wendy Sheetz, DHS
Arnold Shienvold, Riegler Shienvold & Associates
Amy Skogerson, The Law Shop by Skogerson McGinn LLC
Hon. Nancy Tabor, District Court Judge, District 7
Karen Thalacker, Correll Sheerer Benson Engels Galles & Demro PLC
Tara van Brederode, Attorney Disciplinary Board
Anita Ventrelli, Schiller DuCanto & Fleck LLP
Mario Ventrelli, Ventrelli Simon, LLC
Hon. Colin Witt, District Associate Judge, District 5C

Attorney-Client and Work Product Privilege (Live Webinar)
October 30, 2017
Sponsored by The Iowa State Bar Association YLD Professional Development Committee
Abhay Nadipuram, DavisBrown Law Firm

ISBA CLE Calendar

iowabar.org/calendar

November 17
Restrictive Covenants in Iowa – 101
(Live Webinar)

November 27
Non-profit Basics
(Live Webinar)

November 28
The Judicial Application Process
(In-person or Live Webinar)

December 1
eCommerce and Intellectual Property Law Seminar
(In-person or Live Webinar)

December 4
Ethics and Effective Appellate Advocacy
(Live Webinar)

December 6-8
Bloethe Tax School
Des Moines Marriott Downtown
Des Moines

December 14
Legal Ethics: Ten Tips to Avoid Trouble
(Live Webinar)

December 15
Federal Practice Seminar
Embassy Suites Hotel
Des Moines

December 19
Guardianship and Conservatorship Law and Practice
(Live Webinar)

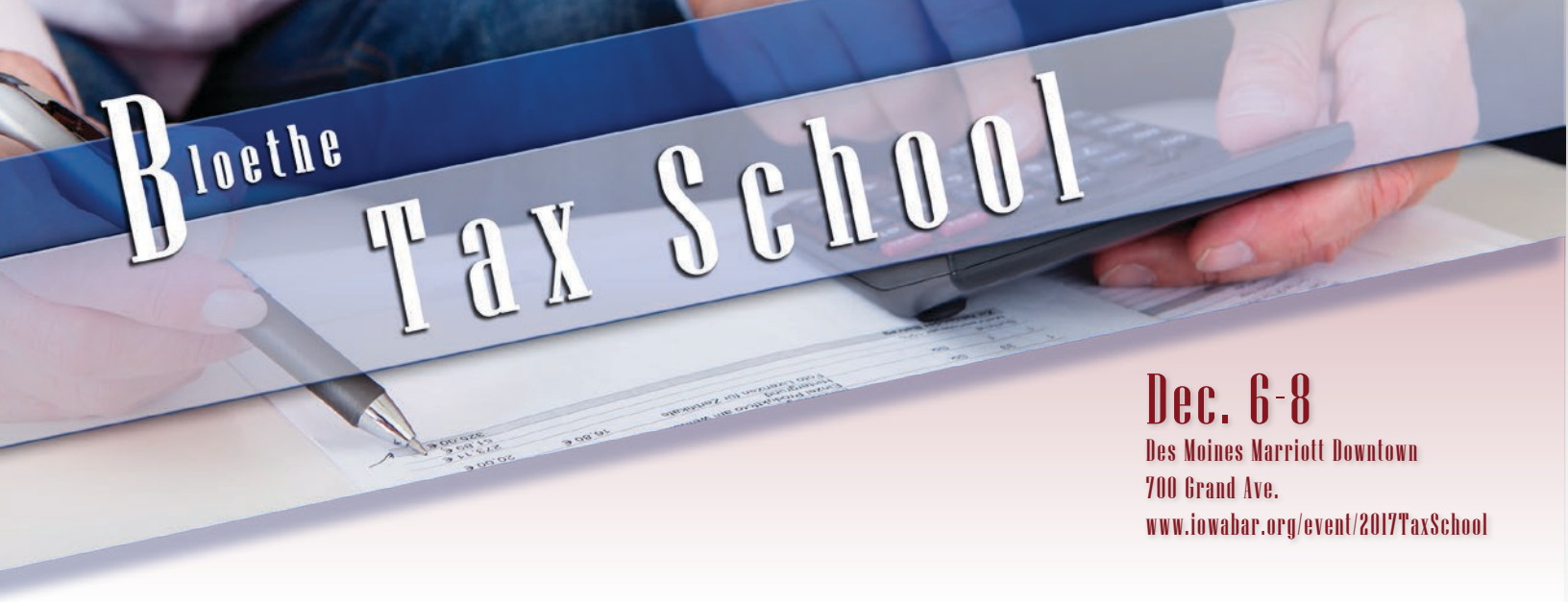
December 20
Learning from Other's Mistakes
(Live Webinar)

eCommerce and Intellectual Property Law Seminar
(In-person or Live Webinar)

December 1 • 8:30 AM - 5 PM
In-person attendance takes place at the ISBA Headquarters in Des Moines

This highly anticipated seminar, which is presented by the ISBA eCommerce and Intellectual Property Law sections, offers attendees the insight needed as legal professionals in the ever-evolving world of technology. The session focuses on prominent technology news topics and the importance of each within the legal profession.

iowabar.org/event/2017eCommIPSeminar



Name: _____ **Member #:** _____ **Phone #:** _____

Address: _____ **City, State, Zip:** _____

E-mail: _____

REGISTRATION FEES AND MATERIAL INFORMATION

Prices below reflect the early-bird registration fees. Registering after December 4 will result in a $50 late fee being added on to your registration fee amount (material fees excluded). Registration includes a copy of the materials in an electronic format only. If attending the seminar and also wanting seminar materials in a hard copy format, please select the appropriate registration option below and also select the "Full Set of Materials" option (cost is $60 for attendees). Non-attendee options also available. Lunch is not provided with registration.

Attendee Options

___ **ISBA Tax Section and Tax Committee Members (Years of Practice: 1-5)** - $190
___ **ISBA Tax Section and Tax Committee Members (Years of Practice: 6+)** - $260
___ **ISBA Members (Years of Practice: 1-5)** - $205
___ **ISBA Members (Years of Practice: 6+)** - $275
___ **Non-ISBA Members** - $365
___ **Para-Professionals** - $120
___ **Friday Only: ISBA Members** - $165
___ **Friday Only: Non-ISBA Members** - $200
___ **Law Students** - Free

___ **Full Set of Materials** - $60 (only electronic materials included with registration)

Track Preference (Friday Only): ___ Standard Track ___ Fiduciary Track
Complimentary Tax School Reception (Sponsored by the Dickinson Law Firm): ___ Yes, I will attend ___ No, I will not attend

Non-Attendee Options

For those not attending the seminar, but still interested in purchasing the seminar materials, please select from the options below.

___ **Electronic Version of Materials** - $75
___ **Tax School Outlines** - $125
___ **Tax Manual without Electronic Version of Materials** - $150
___ **Full Set of Materials (does not include electronic version of materials)** - $250

Method of Payment: ___ Check enclosed Check Number _____ ___ CLE Season Pass
___ Master Card ___ Visa ___ American Express

Credit Card #: _____ **Exp. Date:** _____

Cardholder Signature: _____

Special Considerations (dietary, hearing, vision, etc.): _____

Return registration form to: ISBA CLE, 625 E. Court Ave., Des Moines, Iowa 50309 or fax (515) 243-2511
For questions: phone (515) 697-7874 or e-mail cle@iowabar.org
Cancellation policy: Registration refunds will be issued only if written notification is received by the Bar Office by November 29, 2017. Written notification can be mailed, faxed or e-mailed to the bar office.

Federal Practice Seminar

December 15
Embassy Suites Hotel • Des Moines, IA
iowabar.org/event/2017FederalPractice

8:00 - 8:30 - Registration

8:30 - 9:30 - Article III Judges Panel - Moderator: Emily Hughes, Associate Dean for Faculty and Academic Affairs, Professor and Bouma Fellow in Law, University of Iowa College of Law

9:30 - 10:30 - U.S. Magistrate Judges Panel - Moderator: Laurie Doré, Ellis and Nelle Levitt Distinguished Professor of Law, Drake University Law School

10:30 - 10:45 - Break

10:45 - 12:00 - The Current U.S. Supreme Court - Keynote Speaker: Linda Greenhouse, Joseph Goldstein Lecturer in Law and Knight Distinguished Journalist in Residence, Yale Law School

12:00 - 1:00 - Lunch (Lunch is not provided with registration. Cost for lunch is an additional $25)

12:15 - 1:00 - A Retrospective on the Practice of Law in Iowa - Speaker: Hon. Linda R. Reade, U.S. District Court Judge, Northern District of Iowa

1:15 - 2:15 - Civic and Criminal Breakout Sessions (please select session preference when registering)

Civil: Civil Jury Project and Jury Trial Innovations - Speaker: Stephen D. Susman, Susman Godfrey L.L.P.

Criminal: New Policies/Procedures Under the New Administration - Speaker: TBA

2:15 - 2:30 - Break

2:30 - 3:30 - Gender Bias in the Legal Profession - Moderator: Hon. Helen C. Adams, U.S. Magistrate Judge, Southern District of Iowa

3:30 - 4:30 - Ethics: Addiction and Mental Health in the Legal Profession - Speaker: Patrick Krill, Krill Strategies, Former Director of the Hazelden Betty Ford Foundation's Legal Professionals Program

Registration Form: Federal Practice Seminar

Name: _____ **Member #:** _____ **Phone #:** _____

Address: _____ **City, State, Zip:** _____

E-mail: _____

REGISTRATION FEES
Prices below reflect the early-bird registration fees. Registering after December 13 will result in a $50 late fee being added on to your registration fee amount.

___ ISBA Members - $195
___ YLD Members (Years 1-3) - $150
___ Non-ISBA Members - $325
___ Law Students - Free

Lunch (not provided with registration): ___ Yes, I would like a provided lunch (add $25 to registration fee) ___ No, lunch is not necessary

Please select breakout session: ___ Civil ___ Criminal

Method of Payment: ___ Check enclosed Check Number _____
___ Master Card ___ Visa ___ American Express ___ CLE Season Pass

Credit Card #: _____ **Exp. Date:** _____

Cardholder Signature: _____

Special Considerations (dietary, hearing, vision, etc.): _____

Return registration form to: ISBA CLE, 625 E. Court Ave., Des Moines, Iowa 50309 or fax (515) 243-2511
For questions: phone (515) 697-7874 or e-mail cle@iowabar.org
Cancellation policy: Registration refunds will be issued only if written notification is received by the Bar Office by December 8, 2017. Written notification can be mailed, faxed or e-mailed to the bar office.

Iowan wins American Bar Association Armed Forces Law Committee award

By Lt Col Daniel Schoeni

From left to right: Air Force Judge Advocate Lt. Gen. Christopher F. Burne, Sam Maizel, the new chair of the American Bar Association's Standing Committee on Armed Forces Law, Lt. Col. Daniel Schoeni and his parents Kathryn and Gary Schoeni.

Every year the American Bar Association's Standing Committee on Armed Forces Law considers nominees from each of the uniformed service's JAG Corps for the Keithe E. Nelson Distinguished Service Award. The award's namesake, Major General Keithe E. Nelson, of South Dakota, served as the Air Force's ninth Judge Advocate General (1988-91). The award recognizes publications "that further the professional excellence of military law and status of lawyers in the Armed Forces."

I was honored to receive this recognition last summer. Though my wife, Alicia, and our recently adopted daughter, Audrée, were abroad with family and unable to attend the award ceremony, my parents, Gary and Kathryn Schoeni, of Douds, traveled to New York and joined me at the eponymous Keithe E. Nelson luncheon held during the ABA Annual Convention on August 11.

The Air Force Law Review published the award-winning article, entitled "Defense Offsets: Beyond Economic Efficiency." This piece followed up on my George Washington University LL.M. thesis published in the Public Contract Law Review in 2015. (I had loads of surplus research from my thesis, and mostly wrote the article while housebound for nearly a week in early 2015 when 109 inches of snow fell on Boston and I was still stationed at Hanscom Air Force Base, Massachusetts.)

Air Force Lieutenant Colonel Matthew Burris won the same writing award in 2016, making this the second consecutive win for the Air Force. These back-to-back wins went unnoticed, however, since inter-service rivalry was finally put to rest with the passage of the Goldwater-Nichols Act in 1986.

I would be remiss if I failed to mention that a fellow Iowan and fellow Iowa Law alumnus was also honored that day: Major Nicholas Frommelt of Dubuque, received the Outstanding Young Military Service Lawyer Award from the ABA's Young Lawyer Division. Math isn't my strong suit, but two of the three awards going to Air Force judge advocates went to Iowans that day. Not bad.

U.S. Air Force Lt Col Daniel Schoeni is a graduate of Brigham Young University, the University of Iowa, and George Washington University, and is a Ph.D. candidate at the University of Nottingham. He clerked for the Hon. Jerry Larson of the Iowa Supreme Court. He has been on active duty since 2004, and is stationed at Twelfth Air Force (Air Forces Southern), Davis-Monthan Air Force Base, Arizona.

SPOTLIGHT. *on service*

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

This month, the PR Committee recognizes **Kirk Schuler and Ben Parrott**, who formed the Iowa-Central American Relief Effort (icare) as Drake University Law School students in 2005.

Icare's purpose is two-fold:

• To meet charitable goals in Central America. Icare has funded a women's health care advocate on behalf of impoverished women in Nicaragua since 2007.

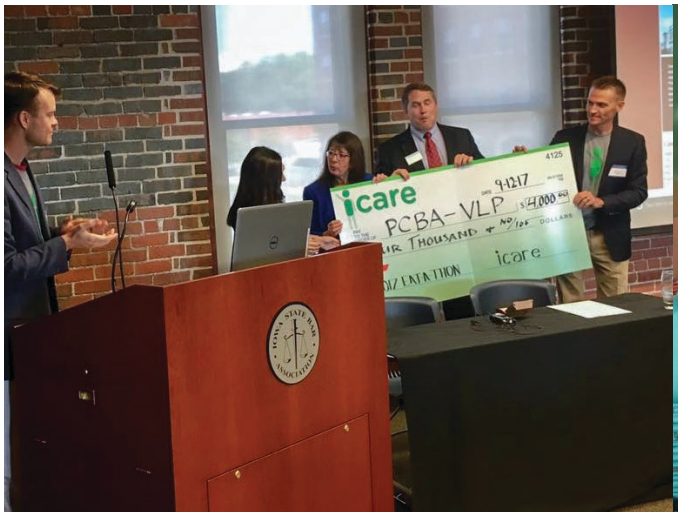
• To encourage Drake Law students and the legal community to do good in the community. Since 2013, icare has distributed over $20,000 to local Iowa charities.

Icare's primary fundraiser is a chicken-wing-eating competition called the EAT-A-THON. Eleven EAT-A-THONs have raised over $100,000 in pledged donations, and have benefited more than 30 local charities. The 2017 EAT-A-THON raised a record $19,540.

Icare is accepting nominations to fill the 12 spots for contestants at the 2018 EAT-A-THON tables. The only requirement is that the contestant be a lawyer and have an Iowa-based charity that they want to support. The goal is to get 12 contestants that can raise $5,000 or more for each of their chosen charities, to raise more than $50,000 total during the 2018 event. The event will be held in the Spring of 2018, but contestants will be chosen by the end of the year. Nominations can be emailed to directors@iowacare.org.

Kirk Schuler

Ben Parrott



(Left) Kirk Schuler and Ben Parrott present the Volunteer Lawyers' Project with an EAT-A-THON check for $4,000 in September, along with Maria Brownell, Carol Phillips and Nate Overberg. (Right) Kirk and Ben in Leon, Nicaragua with their first delivery of hospital bedding to a women's cancer clinic in 2007.

> "Ben and I always thought that lawyers (or even us as law students in 2005) had special responsibilities to our communities. As a result, we formed icare to fulfill our own responsibilities to the communities most important to us, and we created the EAT-A-THON to encourage other law students and lawyers to do the same."
>
> ***Kirk Schuler***