Criminal Law
Section K

Case Law Update

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IOWA CASE LAW UPDATE

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ADMINISTRATIVE LAW

When Agency Action Is Given Preclusive Effect

Ghost Player, LLC v. Iowa Dept. of Economic Develop., 906 N.W.2d 454 (Iowa 2018)
Due to the fact that the agency was not acting as an adjudicator in a previous proceeding in which the agency granted a tax credit, the agency's tax credit determination was not entitled to preclusive effect in subsequent litigation seeking to revoke the tax credits. The agency was not acting as adjudicator in the previous action because there was no adversarial process with the adversaries making argument and proving their cases to a neutral third party. Instead, the agency was acting more like a tax accountant than an adjudicator.

No Remand To Agency If Statute Found Ambiguous

New Midwest Rentals v. Ia. Dept. of Commerce, 910 N.W.2d 643 (Iowa App. 2018)
When no party appeals from a judicial review decision finding a statute ambiguous, the agency, on remand, was not authorized to reconsider the issue of whether the statute was ambiguous. Even though the finding of ambiguity was binding, the agency's interpretation of the ambiguous statute as prohibiting a manufacturer of any alcohol beverage from having an ownership interest in any business authorized to sell alcohol beverages at retail was not illogical, irrational or wholly unjustifiable. Denial of beer permit to such prohibited person did not violate procedural due process or equal protection clauses.

DOT Versus Cities – Traffic Cameras

City of Des Moines v. Iowa Dept. of Transportation, 911 N.W.2d 431 (Iowa 2018)
The DOT did not have authority from the legislature to issues rules regulating automated traffic enforcement systems. The DOT's grants of authority are in other areas and do no support the DOT's rules. Any general authority of the DOT over "regulation and improvement of transportation" is too broad to sustain the rules – particularly in light of the specific grants of authority in other areas.

Registration of Electronic Gaming Devices

Banilla Games v. Iowa Dept. of Inspections, 919 N.W.2d 6 (Iowa 2018)
Agency properly interpreted Iowa Code Chapter 99B in determining that the outcome of electronic game device play was not primarily determined by skill or knowledge of the operator. Therefore, the games had to be registered. The agency did not prejudice the substantial rights of the game manufacturer and seller based upon an irrational, illogical, or wholly unjustifiable application of law to fact. The agency did not prejudice the substantial rights of the manufacturer and seller unreasonably, arbitrarily, capriciously, or through an abuse of discretion.

APPELLATE PROCEDURE

Right of Appeal Versus Certiorari

Vance v. Iowa Dist. Ct. for Floyd County, 907 N.W.2d 473 (Iowa 2018)
No right of appeal exists from a magistrate's extension of a no contact order in a simple misdemeanor case. Likewise, Rule 2.73 does not authorize any form of discretionary review. The most appropriate method to address the extension of a simple misdemeanor no contact order, or a district court's appellate ruling on such extension, is through a petition for writ of certiorari.

ATTORNEY DISCIPLINE

Misappropriation of Client Funds

Sup. Ct. Atty. Disciplinary Bd. v. Guthrie, 901 N.W.2d 493 (Iowa 2017)
Revocation was imposed for several violations involving misappropriation of client funds. Violations included: (1) billing and withdrawing from a retainer for appeal work that was never done and that was claimed to have been done after the attorney knew the appeal had been dismissed by the opposing party; (2) billing for a lengthy phone call with opposing counsel that never occurred; and (3) billing for reviewing a file received from a prior attorney of the client when the file had not been received when the work was claimed to have been done. Since the attorney did not have a colorable future claim to misappropriated funds, revocation was imposed.

Loans From Clients

Sup. Ct. Atty. Disciplinary Bd. v. Lynch, 901 N.W.2d 501 (Iowa 2017)
Six-month suspension for attorney borrowing money from clients while failing to advise the clients to obtain independent counsel, failing to obtain the clients' written informed consent, continuing to represent the clients after borrowing the money, and failing to disclose the attorney's perilous financial situation. Aggravating factors included the repeated nature of the loan requests by the attorney, the serious economic harm to the clients (the loans went unpaid), and the experience of the attorney. Mitigating factors included a lack of disciplinary history, a lengthy history of serving the community, performance of pro bono legal services, and the self-reporting of the violation and otherwise taking responsibility for the misconduct and cooperating with the investigation.

Loans From Clients II

Sup. Ct. Atty. Disciplinary Bd. v. Powell, 901 N.W.2d 513 (Iowa 2017)
Two-year suspension for attorney borrowing money from the administrator of an estate during the time the attorney served as the designated attorney for the estate. An attorney representing an estate can owe ethical duties to the estate's fiduciary, particularly when the fiduciary sought out the attorney's services. Since the terms of the loan transaction were not fair or fully disclosed, the client was not advised in writing of the desirability of seeking and given reasonable opportunity to seek the advice of independent legal counsel, and the client did not give informed consent in writing, a violation occurred. Aggravating factors included harm to the client (unpaid loan resulting in a collection suit) and a pattern of unethical conduct over the last decade. Justice Wiggins dissented, calling for revocation.

Neglect in Probating an Estate

Sup. Ct. Atty. Disciplinary Bd. v. West, 901 N.W.2d 519 (Iowa 2017)
Sixty-day suspension for lack of diligence in probating an estate. Violations included incompetence (no experience in probate matters without seeking outside expertise), lack of diligence (resulting in multiple delinquency notices), failing to respond to the Board, conduct prejudicial to the administration of justice (wasting judicial resources in having to deal with delinquencies and failing to respond to the Board), taking fees without prior approval, taking full payment of fees prior to filing the final report and paying the estate costs, and failing to keep the client reasonably informed. Mitigating factors included the attorney's health issues, community service, pro bono work, acceptance of responsibility, and voluntary pledge to not take on another probate matter. Aggravating factors included a prior private admonition and harm to the client.

Failure to Reconcile Trust Account Each Month

Sup. Ct. Atty. Disciplinary Bd. v. Smith, 904 N.W.2d 154 (Iowa 2017)
Public reprimand for reconciliation problems with trust account. Attorney maintained individual client trust account records on handwritten ledger cards, but failed to regularly reconcile those records with bank records. This resulted in an inaccurate answer to questions on the annual Client Security Commission questionnaire, but, since the inaccuracy was negligent and not intentional, no violation was found with regard to this issue. When an audit revealed a substantial trust account deficit in one client account, the attorney immediately wrote a check to cover the deficit and no client suffered harm. Violation occurred due to attorney's failure to reconcile the trust account for each client every month. Mitigating factors included lack of prior discipline, cooperation with the auditor, the commission, and the Board, admission of the violation, lack of harm to clients, and considerable charitable contributions to the

community and profession. The only aggravating factor was the attorney's lengthy experience.

Assisting Clients in Bank Fraud in Real Estate Transactions

Sup. Ct. Atty. Disciplinary Bd. v. Springer, 904 N.W.2d 589 (Iowa 2017)
Two-year suspension for assisting clients in bank fraud by being involved in real estate closings in which forms providing false information were used. Attorney represented a client that bought homes in foreclosure and then quickly resold the homes for a profit. Fraudulent forms represented that the client supplied the purchase funds when, in reality, the purchase was stalled until the client received the funds from the resale, which were then used to fund the purchase. Attorney violated rules prohibiting assisting clients in criminal or fraudulent conduct, requiring withdrawal from representation that would result in violating a rule of professional conduct, prohibiting making false statements of material fact to a third party, prohibiting knowingly failing to disclose a material fact when necessary to avoid assisting a criminal or fraudulent act, and prohibiting committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, and fitness to practice law. Attorney's federal conviction for bank fraud was given preclusive effect in establishing several of the violations. Mitigating factors included absence of disciplinary history, activity in the community, cooperation with the Board, respect in the legal community, and the volume of loan closings without violations. Aggravating factors included the nature of the violations that involved dishonesty, the number of dishonest transactions (i.e., seven), the length of time over which the dishonest transactions occurred (i.e., two years), level of sophistication and experience with respect to the types of transactions involved, and efforts to minimize responsibility by denying misconduct. Justice Wiggins called for revocation.

Misrepresenting Status of Case & Preparation of Fraudulent Decree

Sup. Ct. Atty. Disciplinary Bd. v. Barry, 908 N.W.2d 217 (Iowa 2018)
One-year suspension for misrepresenting the status of a client's divorce case for fourteen months (e.g., saying it had been filed and served upon the opposing party when the action had not been filed) and preparing a fraudulent dissolution decree, including attaching a signature page bearing a judge's signature from an order in a different case. Violations included lack of diligence, failure to keep client reasonably informed, failure to promptly comply with reasonable requests for information, engaging in a criminal act that reflects adversely on honesty, trustworthiness, or fitness as a lawyer, conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct prejudicial to the administration of justice. Forging of the court order was the most egregious of the violations. Mitigating factors included acknowledgment of wrongdoing, cooperation with the Board, entering a stipulation, and waiving a hearing, even though the remorse and cooperation came on the coattails of the clerk's

discovery of the fraudulent decree. Community service work and the attorney's depression were also mitigating factors. Aggravating factors included dishonesty, perpetuation of the deception, history of a prior admonition, harm to the client, and vulnerability of the client.

Revocation for Misappropriation of Client Funds

Supreme Ct. Atty. Disciplinary Bd. v. Suarez-Quilty, 912 N.W.2d 150 (Iowa 2018)
Although numerous violations were admitted, revocation was imposed for misappropriating client funds without a colorable future claim to the funds. Misappropriation included charging $5000 to a client's credit card when the attorney knew the client was challenging the bill and had not authorized the credit card transaction and failing to return $630 that the client had paid for expenses advanced by the attorney, which expenses were later returned to the attorney, who kept the money. While there may have been a colorable future claim to the $5000, there was no colorable future claim to the $630. Therefore, revocation was imposed without consideration of mitigating or aggravating factors.

Financial Transactions With Clients

Supreme Ct. Atty. Disciplinary Bd. v. Hamer, 915 N.W.2d 302 (Iowa 2018)
Six-month suspension for a number of violations. Violations included: (1) concurrent conflict of interest in representing both a lender and borrower in a transaction without full disclosure and informed consent (being involved in the negotiation of the terms of the loan are not required for a violation to occur); (2) arranging loans from a client to entities the attorney owned or in which the attorney had an ownership interest without showing good faith and full disclosure; and (3) acting deceitfully in presenting a client with an unitemized bill with an undisclosed substantial bonus and then refusing to provide the client with an itemization for five years. Mitigating factors included impressive record of community service and lack of disciplinary history. Aggravating factors included lengthy career, continued professed lack of understanding that the attorney's actions violated ethics rules, and the fact that numerous violations were committed over a period of years.

Neglect, Missing Court Hearings, & Trust Account Violations

Supreme Ct. Atty. Disciplinary Bd. v. Turner, 918 N.W.2d 131 (Iowa 2018)
One-year suspension imposed for multiple violations. Violations included: (1) neglect by failing to exercise due diligence by repeatedly failing to attend hearings; (2) neglect by failing to communicate with clients to inform them of court hearings, resulting in three clients being arrested and bankruptcy proceedings being dismissed; (3) neglect by failing to expedite litigation by missing various filing deadlines and failing to file proper documents, resulting in delays and dismissals; (4) trust account violations by failing to deposit client funds in a separate trust account; (5) trust account violations

for failing to deposit retainers in a trust account (fee contract that provided that payments "vest upon receipt" demonstrated an attempt to avoid the obligation to deposit retainers, and was an impermissible nonrefundable retainer); (6) trust account violations by failing to notify clients of withdrawals of money deposited in trust; (7) trust account violations for failing to keep adequate check registers, client ledgers, client invoices, and notices and accountings; (7) incompetence by failing to properly handle bankruptcy filings and cases; (8) unreasonable fees by not properly establishing a flat fee, not properly establishing a retainer or agreement, and not properly setting a cap on fees when the fee agreement called for weekly payments until the completion of the case regardless of whether work was done; (9) filing a frivolous claim in bankruptcy; (10) lack of candor toward tribunals by making false assertions to various judges; (11) failing to provide information to the board; (12) misconduct involving dishonesty by providing false information on annual filings and providing false information to the auditor of the attorney's trust account; (13) conduct prejudicial to the administration of justice for some of the above-noted violations and conduct that resulted in attorney being held in contempt of court in three counties; and (14) violations related to failure to provide records to auditor and delays in producing other records. Mitigating factors included inexperience, depression and ADHD (for which the attorney was receiving treatment), and acceptance of responsibility.

Delays in Handling Estate and Fees Without Court Approval

Supreme Ct. Atty. Disciplinary Bd. v. Kowalke, 918 N.W.2d 158 (Iowa 2018)
Revocation imposed for conduct surrounding handling of an estate. Violations included neglecting essential responsibilities, withdrawing attorney fees without court authorization, depositing funds into the attorney's business account rather than trust account, failing to deliver client funds when ordered by the court, knowingly making a false statement to the court in a report, and converting client funds for the attorney's own use. Conversion of client funds with no colorable future claim to the funds resulted in the sanction of revocation. Conversion of client funds included taking additional funds from the estate account after already having taken the full amount of fees the attorney would have been allowed to take with court approval (which approval was not sought) and taking additional funds for the attorney's own use and to pay other clients.

Public Defender Billing Issues

Supreme Ct. Atty. Disciplinary Bd. v. Mathahs, 918 N.W.2d 487 (Iowa 2018)
Laches is an allowable defense to disciplinary proceedings, but evidence did not support allegations of prejudice, so laches defense did not apply. Sixty-day suspension imposed for excess fee and mileage claims submitted to the State Public Defender. Time records read in conjunction with hours claimed of over 3000 hours

in one year established violation in the form of unreasonable fees. Claiming that the overbilling was caused by secretarial mistakes resulted in another violation for failing to properly supervise staff. Mitigating factors included full cooperation, acknowledgment of responsibility for the errors, high quality of services provided to indigent clients, amount of community service and pro bono work, and taking corrective action. Aggravating factors included prior discipline, the length of time of the misconduct, and the burden the misconduct placed on the State Public Defender and the board.

Neglect & Conversion of Client Funds

Supreme Ct. Atty. Disciplinary Bd. v. Moran, 919 N.W.2d 754 (Iowa 2018)
Revocation for neglecting client matters, failing to communicate and consult with clients, failing to provide clients with information about their cases, failing to deposit fees into a client trust account, failing to comply with requests for information during the disciplinary proceedings, and converting client funds (failing to meet the attorney's burden to show a colorable future claim to funds the attorney received for work the attorney did not perform). Attorney collected a number of flat fees, did not deposit the funds in trust, and then failed to perform work and communicate with clients, resulting in harm to clients.

Premature Probate Fees

Supreme Ct. Atty. Disciplinary Bd. v. Saunders, 919 N.W.2d 760 (Iowa 2018)
Thirty-day suspension for billing and collecting the second half of the attorney's probate fee before work was completed on an estate and the final report had been filed. Not only was taking the premature fee a violation, but not depositing that fee in the attorney's trust account constituted another violation. The main aggravating factor that caused the misconduct to warrant suspension rather than a public reprimand was the fact that the attorney had received a public reprimand for essentially the same type of misconduct only a year-and-a-half before the misconduct in this case. An additional aggravating factor was experience. A mitigating factor was cooperation.

CIVIL PROCEDURE

Statute of Limitations on Contempt Actions

DM&E Railroad v. Dist. Ct. v. Louisa County, 898 N.W.2d 127 (Iowa 2017)
An application to show cause used to enforce an injunction is an "action" under Iowa Code Section 614.1 and is an action founded on a judgment, making it subject to the 20-year limitation period of Section 614.1(6). The 20-year period began when the

judgment was entered in 1977. Consequently, this contempt proceeding brought in 2013 was time barred.

Distribution of Unclaimed Class Action Settlement Funds

Zaber v. City of Dubuque, 902 N.W.2d 282 (Iowa App. 2017)
Whether the trial court can use the *cy pres* doctrine to distribute unclaimed funds from a class action settlement to *cy pres* recipients is an issue of first impression. Iowa Rule of Civil Procedure 1.274(3) does not provide for such distribution. However, the parties' settlement agreement, which allowed such distribution, gave such authority to the trial court even when IRCvP 1.274(3) would otherwise have applied. Trial court did not abuse its discretion in distributing the remaining funds to four charitable organizations as *cy pres* recipients, rather than returning the funds to the City or the State (by escheat).

Error Preservation on Burden of Proof & Amendment to Conform to Proof

In the Matter of the Estate of Workman, 903 N.W.2d 170 (Iowa 2017)
Son contested his mother's will and codicils favoring siblings. Will contestant failed to preserve error on his claim that the burden of proof shifted to the benefitted persons to show freedom from undue influence once a confidential relationship is established. Arguing for this burden shifting as part of resisting a motion for summary judgment did not preserve error when will contestant failed to object to jury instructions that did not include his desired statement of the burden of proof. Also, trial court did not abuse its discretion in refusing will contestant's request at the close of evidence to amend pleadings to conform to the proof to challenge older wills and codicils than the ones pled. The proposed amendment to conform to the evidence would have changed the issues and unfairly prejudiced the defending party, as the amendment would have required a different line of questioning and proof to address all wills and codicils rather than the ones pled. Iowa Rule of Civil Procedure 1.457 does not require the trial court to grant a motion to amend when the movant seeks to amend based upon trial testimony that the movant knew or should have known about beforehand.

Issue Preclusion – Special Interrogatory Answers By Jury

Linn v. Montgomery, 903 N.W.2d 337 (Iowa 2017)
Husband's claim for defamation was dismissed via summary judgment on statute of limitations grounds. After trial to jury on wife's loss of consortium claim related to the claimed defamation of the husband, a special interrogatory answer by jury found no defamation of husband even during the periods before the statute of limitations expired on the husband's claim. As a result, the Court did not address husband's assignment of error on the statute of limitations issue, concluding that issue preclusion would have negated the need for a new trial even if the trial court erred on the

summary judgment ruling (i.e., since the jury found no defamation, it did not matter that the claim was dismissed on statute of limitations grounds).

Obligation to Instruct – Statute of Limitations Defense

Shams v. Hassan, 905 N.W.2d 158 (Iowa 2017)
Whether a claim is barred by the statute of limitations should be determined by the fact finder, unless the issue is so clear it can be resolved as a matter of law. Trial court has the duty to fashion a correct jury instruction on a subject not covered by other instructions when a party provides an incorrect instruction on that subject. Even though the instruction as proposed by the defendant did not correctly set forth the law on the statute of limitations defense, it was sufficient to put the trial court on notice that the trial court needed to prepare a proper instruction on the issue.

Rule 1.413 Sanctions

First American Bank v. Fobian Farms, Inc., 906 N.W.2d 736 (Iowa 2018)
In a quiet title action, party that benefited from a scrivener's error was found to have violated Rule 1.413 for asserting frivolous claims and pleadings. Trial court abused its discretion in imposing sanctions that included all fees and expenses claimed by the aggrieved party. The sanction was excessive because: (1) the amount was greater than needed to deter similar misconduct; (2) the award included fees incurred before the violating party filed its frivolous pleadings as well as additional fees incurred resolving nonfrivolous claims; and (3) the trial court improperly based its sanction in part on the violating party's letter to the Supreme Court. Deterrence – not compensation – is the primary goal of sanctions under Rule 1.413, so the Court reduced the sanction from $145,427 to $30,000. Two dissenters argued against the sanction because it was imposed against a non-lawyer party rather than the party's attorney.

Order of Trial on Equitable Versus Legal Claims

Westco Agronomy Company, LLC v. Wollesen, 909 N.W.2d 212 (Iowa 2018)
Trial court did not err in holding a jury trial first in a case involving damage claims with some potentially lurking equitable issues. Even if equitable remedies were still viable heading into trial, the trial court had the discretion to deal with those matters later, after the jury returned its verdicts on the legal claims.

Discovery of Investigative Reports in PCR Proceeding

Powers v. State, 911 N.W.2d 774 (Iowa 2018)
In postconviction relief proceeding, prisoner convicted of sexual assault sought discovery of law enforcement investigative reports that involved claimed false reports against others by the victim. In a 4-2 decision, trial court abused its discretion in

refusing to allow discovery of the reports. Claimed lack of relevance did not justify quashing subpoenas, as admissibility of the reports is not required to be shown before discovery is allowed. Since evidence of the prisoner's guilt was not overwhelming and hinged largely on the victim's testimony, prisoner was entitled to discovery of the investigative reports. Trial court also erred by ruling that the reports were inadmissible, as that decision was premature. The dissenters would have blocked the discovery because they involved claimed events of dishonesty by the victim after the prisoner's trial, so the events could not be newly-discovered evidence.

Time Deadline for Seeking Writ of Certiorari from Board of Adjustment Ruling

Burroughs v. Davenport Zoning Bd. of Adjustment, 912 N.W.2d 473 (Iowa 2018)
In seeking writ of certiorari from a decision of the board of adjustment, the controlling time deadlines are those set forth in Iowa Code Section 414.15, not the deadlines set forth in Iowa Rule of Civil Procedure 1.1402 (generally dealing with petitions for writ of certiorari). The time for appeal from a zoning decision runs from the date of the decision, regardless of the alleged adequacy of any findings of fact. The timeframe set by Section 414.15 begins upon "filing" the decision. This requires the decision to exist in some documentary form, not just orally. The filing can be electronic, so the board's decision is "filed" when posted on the board's website. However, unapproved minutes posted on the website is not a filing of the decision. Filing only occurs when the minutes have been approved and posted on the website.

Statute of Limitations – Enforcing Judgment of Appellate Court

TSB Holdings v. Board of Adjustment, 913 N.W.2d 1 (Iowa 2018)
Overruling Dakota, Minnesota, & Eastern Railroad v. Iowa District Court, 898 N.W.2d 127 (Iowa 2017), the limitations period in Iowa Code Section 614.1(6) runs from the date when the cause of action accrues, which in the case of an injunction may be the date when the violation of the injunction occurs.

Timing of Objections to Improper Closing Argument & Allocation of Fault Issues

Kinseth v. Weil-McLain, 913 N.W.2d 55 (Iowa 2018)
In cases in which closing argument is reported, a party's motion for mistrial based on the remarks of opposing counsel during closing arguments is considered timely if made before the case is submitted to the jury. Counsel for the aggrieved party is not required to interrupt opposing counsel's argument with objections in order to preserve the right to ask for a mistrial. Arguments highlighting that defense experts relied on studies that were sponsored by Defendant and how much defense experts are paid to testify on behalf of asbestos manufacturers were not improper and did not violate the order in limine. However, arguments referencing how much Defendant paid for graphic exhibits and how much was spent defending the lawsuit violated the order in limine and were improper. The comments were prejudicial, so a new trial was

warranted. Defendant was not judicially estopped from challenging compensatory damage verdict based on comments made during the punitive damage phase in which defense counsel argued that Defendant had received the message the jury had sent (in setting the compensatory damage award) and Defendant would be paying that amount, so no punitive damages were necessary. Defendant did not introduce enough evidence that Plaintiff was exposed to asbestos contained in valves manufactured by a different company to justify including that other company in the allocation of fault on the verdict forms. Bankrupt asbestos manufacturers were "released parties" under Section 668.3, so those manufacturers were properly included on the allocation-of-fault verdict form.

COMMERCIAL LAW

(No Cases)

CONSTITUTIONAL LAW

Abortion Waiting Period

Planned Parenthood v. Reynolds ex rel. State, 915 N.W.2d 206 (Iowa 2018)
In a 5-2 decision, applying the strict scrutiny standard, Iowa Code Chapter 146A, which prohibits an abortion being performed for a 72-hour period after the pregnant woman goes to a doctor, is unconstitutional as it violates the Due Process and Equal Protection clauses of the Iowa Constitution.

CONTRACTS

Disclaimers of Warranties – Parol Evidence

Cannon v. Bodensteiner Implement Co., 903 N.W.2d 322 (Iowa 2017)
In a UCC Article 2 case, written contract for purchase of a used tractor included disclaimers of warranties. Although the contract contained no integration clause, there was no evidence to show that the written contract was not fully integrated. Parol evidence rule prohibited the buyer from claiming that a verbal warranty was made. The claimed oral warranty would not aid in interpreting the purchase agreement. Rather, it was an attempt to replace or reverse the written disclaimers. The disclaimers contained in the written agreement negated any express warranties allegedly made by the seller to the buyer before the contract was signed.

Guarantors Not Third Party Beneficiaries of Lease & Contractual Interest Rate

Davis v. American Int'l Bridge, Inc., 910 N.W.2d 621 (Iowa App. 2017)
Tenant's guarantors sued landlord, as claimed third-party beneficiaries of the lease, for damages based on a claim that the tenant defaulted on lease because landlord failed to repair a leaky roof and an adjoining parking lot of the restaurant property. Landlord counterclaimed for damages for nonpayment of lease obligations. Since lease evidenced no intention to benefit the guarantors, guarantors were not third-party beneficiaries of the lease, even though they stood to share in profits of the restaurant. Even if the landlord failed to fix faulty roof and parking lot, this would constitute "failure of consideration" and not "lack of consideration," so it would not make the lease agreement unenforceable. Interest on judgments is calculated at the rate set by Section 668.13, which provides that judgment interest, when set by contract, will be the rate set by the contract, provided the rate does not exceed the maximum allowable by Section 535.2. Section 535.2(7) states that Section 535.2 does not apply to a charge for late payment of rent. Therefore, landlord was entitled to interest on its judgment against the guarantors at the contractual rate of 10.47125% (10% interest compounded monthly).

CORPORATIONS

(No Cases)

CRIMINAL LAW

Second Degree Robbery Versus Third Degree Robbery

State v. Ortiz, 905 N.W.2d 174 (Iowa 2017)
In trial for Robbery in the First Degree, failure to instruct on the difference between the two lesser included offenses of Robbery in the Second Degree and Robbery in the Third Degree was error. Since evidence was insufficient to show that Defendant intended to inflict serious injury, evidence was insufficient to support Robbery in the Second Degree conviction. Statutes defining Robbery in the Second Degree and Robbery in the Third Degree are not unconstitutionally vague as applied to Defendant even if Defendant's actions could be punished under either statute.

Definition of "Exposure" to Support Indecent Exposure Charge

State v. Lopez, 907 N.W.2d 112 (Iowa 2018)
In the statute prohibiting Indecent Exposure (Section 709.9), the term "expose" is undefined. Finding the term to be ambiguous, the Court holds that Section 709.9

does not criminalize one's transmission of a still image of one's genitals or pubes via text message. Two concurring justices noted that there was no "exposure" because it was the transmission of a previously-recorded image, but if the unwanted exposure had been via a real-time electronic connection such as a security camera, FaceTime, or Skype, the statute would be violated.

Timing of Sex Offender Registration Upon Temporary Lodging

State v. Coleman, 907 N.W.2d 124 (Iowa 2018)
In a 5-2 decision, the Court resolves ambiguous language in Section 692A.105 and determines that the legislature intended for registered sex offenders to provide notification of a change to temporary lodgings within five business days of that change, not within five business days after the offender has been at temporary lodgings for five business days, as urged by Defendant. Dissenters argued the rule of lenity required adopting Defendant's interpretation.

Level of Knowledge of Getaway Driver Accomplice

State v. Henderson, 908 N.W.2d 868 (Iowa 2018)
A getaway driver cannot be convicted of aiding and abetting First Degree Robbery under the dangerous weapon alternative without proof that the getaway driver knew or intended that the robbery would involve a dangerous weapon.

Hugs as "Sexual Conduct"

State v. Wickes, 910 N.W.2d 554 (Iowa 2018)
Teacher's repeated hugging of a student were more than hugs intended to comfort and reassure the student such that they constituted "sexual conduct" and supported a conviction for Sexual Exploitation By A School Employee. Messages in which the teacher shared intimate details about the teacher's marriage and sexual frustrations and discussed the teacher's desires for physical affection from the student contributed to the finding. Dozens of hugs and thousands of messages supported the finding that the teacher engaged in a "pattern or practice or scheme of conduct to engage" in sexual conduct so as to enhance the charge to a felony. This statutory requirement does not require multiple victims or a certain period of time.

Proof of Mailing – Driving Status Offenses

State v. Williams, 910 N.W.2d 586 (Iowa 2018)
In a 4-2 decision, while the question of whether the DOT mailed a notice of revocation to the defendant may be relevant to whether the defendant's license was barred, it is not an actual element of the offense. Admission of the abstract of the defendant's driving record showing he was barred was sufficient to prove the element.

Ongoing Criminal Conduct – Standards

State v. Banes, 910 N.W.2d 634 (Iowa App. 2018)
A series of commercial burglaries over a few days does not, in itself, support a conviction for Ongoing Criminal Conduct. Since there was no evidence of a continued threat of future criminal conduct, evidence was insufficient to support the conviction. The fact that Defendant was unemployed is insufficient to support the continuing-basis element of the offense.

Factual Basis for Burglary – Deceit to Gain Entry

State v. Brown, 911 N.W.2d 180 (Iowa App. 2018)
Deception of the landlord to gain entry into apartment is sufficient to establish a constructive breaking so as to support a factual basis for guilty plea to Burglary.

Fraud in Fact Versus Fraud in the Inducement to Consent

State v. Kelso-Christy, 911 N.W.2d 663 (Iowa 2018)
In a 4-2 decision, the identity of a sexual partner is not a collateral matter. Therefore, deception as to the identity of a sexual partner is fraud in fact and not fraud in the inducement such that consent to sexual contact is negated.

Felony-Murder Rule Applied to Juveniles

State v. Harrison, 914 N.W.2d 178 (Iowa 2018)
In a 4-2 decision, the felony-murder rule does not violate the Iowa or United States Constitutions when applied to juvenile offenders pursuant to a theory of aiding and abetting. Sentencing juvenile offenders convicted of felony-murder, whether they were the principal actor or aided and abetted, to life imprisonment with immediate parole eligibility is constitutional under both constitutions. Sentence of life with immediate parole eligibility for felony-murder is not grossly disproportionate to the underlying crime, so an "as applied" challenge failed. Since Robbery in the Third Degree was not an existing crime at the time of this defendant's offense, the defendant was not entitled to a jury instruction differentiating between felony robbery and misdemeanor robbery. Also, the act of robbery is sufficiently independent from the act of killing such that felony robbery does not merge into murder under the Heemstra standards.

Instructions on General & Specific Intent

State v. Benson, 919 N.W.2d 237 (Iowa 2018)
As a matter of first impression, Child Endangerment is a general intent crime. Evidence was sufficient to sustain convictions for Assault Causing Bodily Injury and Child Endangerment in spite of the defendant's defense that he was using corporal punishment to correct behavior. Giving jury instructions on both general and specific

intent without informing the jury as to which form of intent applies to which charge rendered the instructions confusing and misleading such that a new trial was required. The stock jury instruction on specific intent correctly states the law on specific intent.

CRIMINAL PROCEDURE

Implicit Bias, References to "Victim," Racial Diversity of Jury Pool

State v. Plain, 898 N.W.2d 801 (Iowa 2017)
While encouraging trial courts to be proactive in addressing implicit racial bias, there is no mandated singular method of doing so, so trial court's refusal to give a requested implicit bias instruction was not error. Three concurring justices would require an implicit bias instruction if requested. In a 5-2 portion of the ruling, repeated and systematic reference to the complaining witness as "victim" in closing argument was error, although not so prejudicial to warrant reversal. Dissenters would leave it to the trial court's discretion whether reference to "victim" is inappropriate and argued that appellate resources should not be devoted to declaring specific standards on such issues. Overruling precedent, the Court holds that it is no longer appropriate to rely exclusively on the "absolute disparity test" in assessing the racial diversity of jury pools. Parties challenging jury pools on the ground that they are unrepresentative may now base their challenges on multiple analytical models. Even though Iowa statutes do not provide a procedure for accessing information to determine how juries are compiled (necessary to meet the third prong of the test, which is to show that systematic exclusion of the group caused the underrepresentation of the group), access to the information is constitutionally required. Since Defendant requested the information, but did not get it, the conviction was conditionally affirmed with directions for remand to develop the record regarding claimed underrepresentation.

Earned Time Credit After Failing to Participate in Sex Offender Treatment

State v. Iowa Dist. Ct. for Jones County, 902 N.W.2d 811 (Iowa 2017)
Applying stare decisis and noting that the Department of Corrections cannot overrule prior rulings by administrative fiat, the Court holds that the Department of Corrections cannot forfeit previously-accrued earned time based on a sex offender's refusal of or removal from the sex offender treatment program. Inmate only begins to lose earned time after refusing to attend sex offender treatment, but will not lose any previously-accrued earned time.

Sex Offender Registration While Appeal Is Pending

Maxwell v. Iowa Dept. of Public Safety, 903 N.W.2d 179 (Iowa 2017)
In a case of first impression, a unanimous court holds that a person convicted of a sex offense that requires sex offender registration is required to register as a sex

offender under section 692A.103(1) upon his conviction of the sex offense and release on bond, notwithstanding his appeal. The stay of execution on the criminal judgment during the appeal did not delay the automatic administrative registration requirement for convicted sex offenders, and release on the appeal bond constituted a "release from incarceration" within the meaning of section 692A.103(1).

Resentencing of Juveniles – Mandatory Minimums

State v. White, 903 N.W.2d 331 (Iowa 2017)
Defendant was a juvenile at time he committed Robbery in the Second Degree, carrying a mandatory minimum sentence of 7 years. After State v. Lyle, Defendant was brought back for resentencing on the issue of whether he was required to serve the 7-year minimum before being eligible for parole. Reversing the district court decision to enforce the minimum, a divided court (4-3) held that the critical conclusions drawn by the district court at the resentencing were not grounded in science, but rather on generalized attitudes of criminal behavior that may or may not be correct as applied to juveniles. Therefore, Defendant was entitled to be resentenced in light of State v. Roby. Dissenters criticized the lack of clarity being provided to the trial courts as to what standard to apply.

Expungement of Companion Cases

State v. Doe, 903 N.W.2d 347 (Iowa 2017)
Iowa Code Chapter 901C provides for expungement of the criminal record in a "case" when the "case" contains one or more criminal charges in which an acquittal was entered for all criminal charges or in which all criminal charges were dismissed. Noting that the term "case" is ambiguous, a unanimous court holds that "case" refers to a single numbered legal proceeding. Therefore, Defendant was entitled to expungement of a companion simple misdemeanor charge that was dismissed even though the charge was factually related to indictable charges in another "case" in which Defendant pled guilty to one of the amended charges.

Waiver of Language Interpreter

State v. Gomez Garcia, 904 N.W.2d 172 (Iowa 2017)
Defendant had a right to waive a language interpreter, even when an interpreter was used in pretrial proceedings. The waiver must be knowing, voluntary, and intelligent, and an on-the-record colloquy should be conducted. Trial court did not abuse its discretion by ordering a standby interpreter over Defendant's objection, especially when the trial court offered to give a cautionary instruction regarding the presence of the interpreter and to allow Defendant to remove an earpiece if Defendant was distracted by the interpreter.

Striking Jurors for Cause – New Procedure When Denied

State v. Jonas, 904 N.W.2d 566 (Iowa 2017)
Four justices conclude that the trial court abused its discretion by refusing to strike a juror for cause after the juror repeatedly expressed actual bias against the defendant based on sexual orientation, both in a questionnaire and during voir dire. Juror is not rehabilitated by persistent questioning regarding whether the juror would follow instructions of the court. Since the juror did not sit on the jury due to use of a peremptory challenge, resolution of the issue of prejudice to the defendant was necessary. Adopting a new procedure, in order to show prejudice when the trial court improperly refuses to disqualify a potential juror and thereby causes a defendant to expend a peremptory challenge, the defendant must specifically ask the court for an additional strike of a particular juror after the defendant's peremptory challenges are exhausted. Where a defendant makes such a showing, prejudice is presumed. Since this defendant did not identify an additional juror who the defense sought to remove from the jury through the exercise of an additional peremptory challenge, no prejudice was shown.

Authority to Hear Postconviction Relief Requests

Franklin v. State, 905 N.W.2d 170 (Iowa 2017)
Prisoner claim that the failure to offer sex offender treatment program earlier in his term of incarceration has the effect of extending his incarceration is a claim for postconviction relief under Section 822.2(1)(e). Therefore, the district court has the authority to hear the case.

Delay in SOTP Properly Addressed in Postconviction Relief

Belk v. State, 905 N.W.2d 185 (Iowa 2017)
In a 5-2 decision, an inmate may pursue postconviction relief remedies pursuant to Iowa Code Section 822.2(1)(e) when alleging an unconstitutional denial of the prisoner's liberty interest based on the Department of Corrections' failure to offer sex offender treatment programs ("SOTP") when completion of SOTP is a necessary prerequisite to parole. Dissenters asserted that challenging policy in this fashion is an administrative appeal that must be pursued under the procedures set forth in Iowa Code Chapter 17A.

Guilty Plea Process Must Disclose Surcharges

State v. Weitzel, 905 N.W.2d 397 (Iowa 2017)
Surcharges are a form of punishment. Therefore, the surcharges must be disclosed during a plea colloquy or in any written waiver thereof. In a 5-2 decision, failure to disclose surcharges is a failure to actually comply with Rule 2.8(2)(b)(2) and is also a

failure to substantially comply with the rule. The proper remedy for violation of the rule is mandatory, automatic reversal.

Beginning of Special Sentence After Consecutive Sentences

Melton v. State, 905 N.W.2d 589 (Iowa App. 2017)
Prisoner was sentenced to three consecutive terms of incarceration for three separate offenses for a total term of incarceration not to exceed five years. One of the convictions triggered the special sentence to be imposed for sex offenders pursuant to Iowa Code Section 903B.2. Iowa Code Section 901.8 provides that the consecutive sentences merged into a single, continuous sentence. Therefore, prisoner's "sentence" for the "underlying criminal offense" was not completed and the special sentence did not begin until the discharge of the single, continuous term of incarceration not to exceed five years.

Effective Date of Surcharges – No Specific Jury Finding on Date of Offense

State v. Lopez, 907 N.W.2d 112 (Iowa 2018)
Iowa Code Section 911.2B, which imposes a surcharge upon conviction for stalking and other crimes, went into effect on July 1, 2015. Defendant was convicted for stalking based on jury instructions alleging behavior between April 3 and August 2 of 2015. The jury was not instructed to make a finding as to the dates on which the stalking occurred and returned a general verdict of guilty. Since there was no way to determine whether the jury based its verdict on conduct occurring before or after the date the surcharge went into effect, *ex post facto* principles prohibited imposition of the surcharge.

Propriety of Prosecutor's Closing Arguments & Proving Enhancements

State v. Coleman, 907 N.W.2d 124 (Iowa 2018)
Prosecutor's comments in closing that the defense wanted to "blow a lot of smoke around the law" and the defense would "hide behind a cloud of assumption" was not prosecutorial misconduct because they were made to attack the defense's theory of the case rather than defense counsel personally. Even if the comments amounted to misconduct, they were isolated enough that they were not prejudicial. Trial counsel was not ineffective for failing to object to prosecutor's references to the power "to do justice" and "do what is right." Such comments, while arguably diverting the jury from deciding the case on the evidence, were not glaringly improper because they echoed the jury instructions and were designed to undermine the theory of the defense. Trial counsel was not ineffective for not objecting to prosecutor's comments calling attention to the failure of the defense to present exculpatory evidence. Prosecutors may properly comment on such failure to present exculpatory evidence so long as it is not phrased to call attention to the defendant's own failure to testify. Finally, second offense enhancements are treated the same as habitual offender

enhancement which must follow the procedure set forth in State v. Harrington, 893 N.W.2d 36, 47 (Iowa 2017), which is comparable to the guilty plea colloquy. The State is not required to prove that prior convictions were entered with counsel unless the defendant first raises that claim as a defense. Two concurring justices found prosecutorial misconduct based on the prosecutor's comments, but found no prejudice.

Failure to Advise of Surcharges – Ineffective Assistance

State v. Delacy, 907 N.W.2d 154 (Iowa App. 2017)
After reaching a plea agreement that reduced his exposure from 154 years in prison to 20 years in prison, Defendant entered Alford pleas to two C felony sex offense charges involving a minor. During the plea colloquy, Defendant was not informed of the 35% surcharge or the $100 surcharge that applied to one of the charges. Although Defendant filed a motion in arrest of judgment, Defendant did not raise the surcharge issue in that motion. Since Defendant did not raise the issue via motion in arrest of judgment, the Court refused to hear the issue on direct appeal. The only way to challenge the deficiency was via an ineffective assistance of counsel claim. The Court preserved the ineffective assistance claim for postconviction relief.

Authority of Magistrate to Extend No Contact Order & Burden of Proof

Vance v. Iowa Dist. Ct. for Floyd County, 907 N.W.2d 473 (Iowa 2018)
Magistrate that issued no contact order as part of sentencing in a simple misdemeanor case has authority to issue an order extending the no contact order, even though the recital of magistrate authority in Section 602.6405 does not mention Chapter 664A. The magistrate's authority over simple misdemeanor cases includes the authority to extend a no contact order pursuant to Chapter 664A. To avoid extension of the no contact order on request of the State, the burden of proof is on the defendant to show by a preponderance of the evidence that the defendant no longer poses a threat. Given the evidence that the defendant had not violated the no contact order and did not pose a threat to the protected parties, there was not substantial evidence to support the magistrate's finding that the defendant continued to pose a threat and there was substantial evidence supporting a finding that the defendant was not a continued threat. In spite of this ruling, the Court noted that mere compliance with the no contact order is not, by itself, sufficient to foreclose extension of the order, and that would particularly be the case if the original conduct involved violence or threats of violence.

Colloquy for Enhancement of Offenses Due to Prior Convictions

State v. Brewster, 907 N.W.2d 489 (Iowa 2018)
The procedure for determining a prior conviction for purposes of enhancing a charge, in this case OWI Second Offense, is the same as for determining prior convictions for

purposes of enhancing sentencing for habitual offender status as set forth in State v. Harrington, 893 N.W.2d 36 (Iowa 2017). Here, the colloquy was insufficient because the trial court: (1) failed to inform Defendant that admitting the prior conviction would result in Defendant being sentenced for OWI Second instead of OWI First; (2) failed to advise Defendant that the prior OWI could only be used to enhance the charge if Defendant was represented by or had properly waived counsel in connection with the prior offense; (3) failed to inform Defendant that an admission of a prior offense could expose Defendant to up to two years for OWI Second and a minimum sentence of 7 days; (4) failed to fully inform Defendant of trial rights that would result from an admission of the prior offense; and (5) failed to advise Defendant that Defendant must file a motion in arrest of judgment in order to challenge the admission based on defects in the enhancement proceeding.

Credit for Probation After Discovery That Probation Is Not An Option

State v. Jepsen, 907 N.W.2d 495 (Iowa 2018)
Defendant was sentenced for two crimes, one of which was a forcible felony. Although not statutorily eligible for a suspended sentence on the forcible felony, the prison sentence was suspended and Defendant was placed on probation. When the error was discovered, the illegal sentence was set aside and Defendant was sent to prison. In a 4-3 decision, protections against Double Jeopardy required Defendant to be given credit against the prison sentence for all time spent on probation (two of the justices in the minority concurred with giving Defendant some credit, but dissented from giving full credit).

Standards for Disqualification of Defense Counsel

State v. Mulatillo, 907 N.W.2d 511 (Iowa 2018)
State asked for a Watson hearing to try to disqualify defense counsel because defense counsel previously represented an individual for a brief time that was going to be called to testify about controlled buys the individual conducted with the defendant. Counsel of defendant's choice can be disqualified if an actual conflict or a serious potential for an actual conflict exists. The party moving for disqualification bears the burden to establish the conflict. Substantial evidence did not support trial court's decision to disqualify counsel. Hearsay statements from the attorney representing the informant about defense counsel's alleged involvement in negotiating the informant's cooperation did not overcome defense counsel's statements that his representation of the informant was brief and did not involve any discussion of working for the task force to reduce the informant's charges. The fact that the State, which had the burden, did not call the former prosecutor or any member of the drug task force to testify that defense counsel negotiated the informant's buy activity further contributed to the finding of lack of substantial evidence.

Sentencing Statute Change Not Applying Retroactively

Clayton v. Iowa Dist. Ct. for Scott County, 907 N.W.2d 824 (Iowa App. 2017)
Prisoner conceded that amendment of robbery statute to reduce mandatory minimum applied prospectively only, but argued that the legislative decision to not apply it retroactively violated Equal Protection clauses. Applying rational basis analysis, the Court found prisoner was not similarly situated to a "person not yet convicted" of robbery, so there was no Equal Protection violation. Even if prisoner was similarly situated, there was a rational basis for not applying the law change retroactively.

PCR Dismissed for Failure to Prosecute

Villa Magana v. State, 908 N.W.2d 255 (Iowa 2018)
PCR counsel failed to take necessary action to prevent dismissal under Rule 1.944. PCR client was "constructively without counsel" during the period of inactivity that led to dismissal. Even though counsel unsuccessfully sought reinstatement, the dismissal was the result of ineffective assistance of counsel in avoiding dismissal. The ineffective assistance claim was considered even though it was not raised until the reply brief.

Juvenile Offenders – Life Sentences

State v. Zarate, 908 N.W.2d 831 (Iowa 2018)
Defendant committed First Degree Murder while a juvenile. The 2015 amendments to Iowa Code Section 902.1(2) gave three sentencing options: (1) life without parole; (2) life with eligibility for parole after a specified number of years; and (3) life with immediate eligibility for parole. The first option violates the Iowa Constitution. The remaining two options are constitutional. The sentencing factors set forth in Iowa Code Section 902.1(2)(b)(2)(a)-(v) are not categorically unconstitutional. However, use of the factors must include using the five factors set forth in Lyle as mitigating factors and consideration of any potentially aggravating factors must not be used so as to overwhelm the mitigating factors. Trial court abused discretion in imposing a mandatory minimum sentence before eligibility for parole based on trial court's belief that there "should be a minimum period of time [for imprisonment] for somebody that takes the life of another individual."

Actual Innocence – Postconviction Relief

Schmidt v. State, 909 N.W.2d 778 (Iowa 2018)
In a 4-3 decision, overruling prior case law, the Iowa Constitution allows freestanding claims of actual innocence under the postconviction relief statute, so applicants may bring such claims to attack their pleas even though they entered their pleas knowingly and voluntarily and even though such attacks are extrinsic to the pleas. To succeed, the applicant must show by clear and convincing evidence that, despite the evidence

of guilt supporting the conviction, no reasonable fact finder could convict the applicant of the crimes for which the sentencing court found the applicant guilty in light of all the evidence, including the newly-discovered evidence. The PCR claim was also not time-barred because the recantation of the victim (i.e., the new evidence) occurred less than three years before the PCR claim was filed.

Mandatory Prison for Sexual Exploitation By A School Employee

State v. Wickes, 910 N.W.2d 554 (Iowa 2018)
A defendant convicted of Sexual Exploitation By A School Employee when the victim is under the age of 18 is not eligible for a deferred judgment or suspended sentence. A five-year prison sentence for the offense did not violate Cruel and Unusual Punishment Clauses of either constitution just because the illegal conduct involved only hugs.

Tampering With Witness As Basis For Postconviction Relief

Moon v. State, 911 N.W.2d 137 (Iowa 2018)
In assessing whether the "ground of fact" exception to the statute of limitations on a PCR claim applies, the applicant is not required to show the ground of fact would likely or probably have changed the outcome, which is the standard for relief based on newly-discovered evidence. Only the potential to qualify as material evidence that probably would have changed the outcome is required, which permits mere impeachment evidence to be considered in determining whether the ground of fact exception applies. Since there was a genuine issue of material fact of whether the applicant could have raised the ground of fact earlier and there was a nexus shown between the impeachment evidence and the applicant's conviction, summary dismissal on statute of limitations ground was not proper. On the merits, State's failure to disclose the fact that murder accomplice who was given a deal to testify against the applicant had asked another witness to lie about the accomplice's involvement was not a Brady violation because it was not material to the issue of guilt (the third prong of a Brady violation) because the tampered-with witness did not testify and the evidence would have only been useful for impeachment of the accomplice, who was repeatedly impeached in various other ways anyway.

Youthful Offender Prosecution in District Court

State v. Crooks, 911 N.W.2d 153 (Iowa 2018)
In a good review of the procedure for prosecuting juveniles as "youthful offenders" versus "as an adult," the Court holds that Iowa Code Section 232.45(7)(a) unambiguously permits the juvenile court to waive jurisdiction over a 13-year-old charged with Murder in the First Degree to allow prosecution in adult court as a youthful offender. Procedures set forth in Iowa Code Sections 232.45(7)(a) and 907.3A – when applied to allow waiver of juvenile court jurisdiction to prosecute an

offender who was thirteen years old at the time of the crime as a youthful offender in district court – do not violate the cruel and unusual punishment clauses of the Iowa Constitution. Likewise, application of those Code provisions to permit imposition of a 50-year sentence with immediate eligibility for parole to the offender when the offender reached the age of 18 does not violate the cruel and unusual punishment clause of the Iowa Constitution, because the statutes require appropriate factual findings for discretionary, individualized waiver, and sentencing determinations. Trial court did not abuse its discretion in imposing prison sentence and, since there was immediate eligibility for parole, no hearing on the *Miller/Lyle* factors was required.

Violation of Plea Agreement – Bail Review & Recital of Plea

State v. Brown, 911 N.W.2d 180 (Iowa App. 2018)
Plea agreement called for the State to recommend probation. Prosecutor did not violate the agreement by resisting release with supervision after Defendant was placed back in custody after picking up a new charge following plea. Prosecutor did violate the plea agreement by merely reciting the agreement and Defendant's criminal history. The prosecutor must do more than recite the plea recommendation; the prosecutor must indicate to the court that the recommended sentence is supported by the State and worthy of the court's acceptance.

Forfeiture of Claimed Criminal Proceeds

Matter of Bo Li, 911 N.W.2d 423 (Iowa 2018)
Unlicensed practice of massage therapy is not a serious misdemeanor (since the statute prohibiting the activity only imposes a civil penalty) and thus cannot serve as the predicate offense for forfeiture proceedings. Although there was evidence suggesting that massage parlor was a front for prostitution, trial court's finding that the State had failed to meet its burden to prove owners' cash was the proceeds of prostitution was supported by substantial evidence, so cash of the owners of the parlor could not be forfeited.

Credit Toward Sentence for Time in Bridges Treatment Program

State v. Hensley, 911 N.W.2d 678 (Iowa 2018)
Since the Iowa Bridges Program involved more intensive supervision than work release and a highly structured environment comparable to a halfway house and participation at the program was an express term of probation, the program falls within the definition of "an alternate jail facility or community correctional residential treatment facility" set forth in Iowa Code Section 907.3(3). As a result, Defendant was entitled to credit toward Defendant's sentence for time spent in the program.

Bad Advice – Attachment of the Right to Counsel

Ruiz v. State, 912 N.W.2d 435 (Iowa 2018)
Defendant's counsel allegedly breached a duty by advising defendant to go to the DOT to apply for a driver's license (Defendant had previously registered vehicles under a different, bogus social security number). The application led to criminal charges and subsequent immigration problems. Since no charges had been brought and no investigation was underway when the allegedly bad advice was given, Defendant's right to counsel under the federal and state constitutions had not attached. Therefore, the claimed bad advice did not constitute ineffective assistance of counsel so as to require the setting aside of Defendant's conviction.

Freezing of a Defendant's Assets Before Trial

Krogmann v. State, 914 N.W.2d 293 (Iowa 2018)
In this postconviction relief case, a 6-1 decision holds that an order entered in the underlying case freezing Defendant's assets prior to trial was unlawful because there is no common law remedy permitting such an injunction and the asset-freeze application did not remotely resemble an application for an injunction under the Iowa Rules of Civil Procedure or comply with Iowa Code Section 910.10. Trial counsel's failure to insist on the trial court's ruling on the resistance to the asset-freeze application or insist on a hearing was ineffective assistance of counsel. In addition, the asset freeze violated Defendant's rights under the Sixth Amendment and the Iowa Constitution to be master of his own defense by allowing the State to monitor and control Defendant's expenditures on his own defense, preventing Defendant's posting of bail and being freed prior to trial to assist in his own defense, limiting Defendant's phone access while in jail by blocking access to funds, and preventing Defendant from hiring a jury consultant and other experts. Under Article I, Section 8, of the Iowa Constitution, this error was a structural error such that Defendant was not required to show actual prejudice in order to obtain postconviction relief and was entitled to a new trial with full, lawful access to Defendant's assets. Although granting a new trial, to avoid further issue if convicted again, the Court, declining to overrule State v. Clarke, 475 N.W.2d 193 (Iowa 1991), holds that application of the legal elements test is required and application of that test demonstrates that Willful Injury is not a lesser-included offense of Attempted Murder.

Competency Evaluations During Trial

State v. Einfeldt, 914 N.W.2d 773 (Iowa 2018)
In a 4-3 decision, trial court erred in not suspending trial to have an evaluation and hold a competency hearing. The record showed that Defendant wanted to stab her lawyer in the neck and kill him, believed her lawyer was turning written notes over to the prosecution, recently had heard buzzing noises, claimed to have been told by the FBI that she did nothing wrong, stated that she was worried about someone poisoning

the water, and had advised the trial court that she had a history of mental health issues including a diagnosis of paranoid schizophrenia yet was not compliant with prescribed drug therapy. Under these circumstances, an evaluation and a competency hearing should have been ordered.

Statute of Limitations – Claimed Ineffectiveness of PCR Counsel

Allison v. State, 914 N.W.2d 866 (Iowa 2018)
In a 4-3 decision overruling prior case law, where a postconviction relief ("PCR") petition alleging ineffective assistance of trial counsel has been timely filed within the limitation period of Section 822.3 and there is a successive PCR petition alleging postconviction counsel was ineffective in presenting the ineffective-assistance-of-trial-counsel claim, the timing of the filing of the second PCR petition relates back to the timing of the filing of the original PCR petition for purposes of Section 822.3 if the successive PCR petition is filed promptly after the conclusion of the first PCR action. Even though amended petition in the second PCR case was not officially authorized to be filed, since the trial court acknowledged the claims, the claims were preserved for appellate review. The claims in the amended petition should not have been dismissed via a motion to dismiss.

Multiple Offenses – Plea Stipulations That Contradict Record

Noble v. Iowa Dist. Ct. for Muscatine County, 919 N.W.2d 625 (Iowa App. 2018)
Defendant's stipulation that the conduct supporting Defendant's guilty plea to two different crimes was separate conduct is of no legal effect when the stipulation is contrary to the record. The record showed that Defendant's guilty pleas to Attempted Murder and Voluntary Manslaughter were based on the same act against the same victim (i.e., kicking the victim in the head with steel-toed boots) and violated the rule that a defendant cannot be convicted of both an attempted homicide and a completed homicide for the same acts directed against the same victim. Even though Defendant stated, as part of the plea colloquy, that he would not raise issues of merger, estoppel, or alleged inconsistency, such statements did not constitute a waiver to the objection raised on appeal and, even if they did, the waiver is unenforceable, as the parties cannot agree to an illegal sentence. Prosecutor is given the choice of remedy: (1) accept the annulling of the sentence for Voluntary Manslaughter and remand for resentencing on the remaining convictions; or (2) vacate all the convictions and the entire plea bargain and remand the case, allowing the State to reinstate any charges dismissed in contemplation of a valid plea bargain and file any additional charges supported by the available evidence.

Preserving Ineffective Assistance Claims

State v. Harris, 919 N.W.2d 753 (Iowa 2018)
When counsel fails to preserve error at trial, a defendant can have the matter reviewed as an ineffective-assistance-of-counsel claim either on direct appeal (if the record is sufficient) or in postconviction relief proceedings. If the ineffective-assistance-of-counsel claim in the appellate brief is insufficient to allow its consideration, the appellate court should not consider the claim, but it should not outright reject it. Therefore, Court of Appeals erred by not only refusing to consider the ineffective-assistance-of-counsel claim, but denying it on its merits due to failure to preserve error.

DEBTOR / CREDITOR

Contribution Claims Against Co-Guarantors – Source of Funds

Shcharansky v. Shapiro, 905 N.W.2d 579 (Iowa 2017)
First group of co-guarantors on loan debt sued a second group of co-guarantors for contribution for amounts first group paid in satisfaction of debt. Relying on the Restatement (Third) of Suretyship and Guaranty, the Court holds that the source of the funds used to satisfy the debt is not important. So long as a co-guarantor satisfied an obligation for which the other co-guarantors were equally liable, a cause of action for contribution exists. Therefore, the fact that the money that the first group used to pay the debt came from the first group's parents did not affect the first group's entitlement to contribution, regardless of whether the money received from the parents was a gift, a loan, or something else.

Intervention in Auxiliary Attachment Proceeding

Finken v. West, 910 N.W.2d 629 (Iowa App. 2018)
Former co-owner of corporation sued the estate of the other former co-owner seeking to collect amounts claimed to be owed. Claimant also filed an auxiliary proceeding for attachment pursuant to Iowa Code Chapter 639. Law firm that had represented the deceased owner sought to intervene in the attachment proceeding to protect the firm's claimed attorney lien. Denial of law firm's intervention request was reversed. First, the fact that law firm had ability to pursue other litigation to protect its statutory right to satisfy its lien from the attached property did not eliminate the firm's right to intervene. Second, Iowa Rule of Civil Procedure 1.407 (which was relied upon by the trial court) did not apply because the request to intervene was not made in the main action (to which Rule 1.407 would apply), but in the auxiliary attachment action, which was governed by Iowa Code Sections 639.60 and 639.61. Third, the fact that the law firm had other available remedies was immaterial to its right to intervene. Finally, even if the underlying suit were to settle, it would not make the law firm's request to

intervene moot because settlement of the main suit has no bearing on the disposition of the funds being held by the court as part of the attachment action, the dispute over which still needed to be decided.

DIVORCE / FAMILY LAW

Details of QDRO After Stipulation

In re Marriage of Tinker, 902 N.W.2d 819 (Iowa App. 2017)
Stipulation of the parties included division of husband's IPERS account via QDRO using the Benson formula. After decree was entered approving the stipulation, the parties were unable to agree as to the terms of the QDRO with regard to preretirement death benefit, the benefit option, and survivorship rights. Trial court ruling resolving the dispute in wife's favor was reversed. The preretirement death benefit, the benefit option to be selected, and the survivorship rights as a contingent annuitant are significant property rights that must be bargained for or otherwise explicitly resolved at trial. Here, the only issue addressed in the decree was the percentage of the husband's IPERS benefit. The actual benefit package the husband would receive was left unaddressed and thus left to the husband's election.

Shared Physical Care in Spite of Communication Difficulties

Hensch v. Mysak, 902 N.W.2d 822 (Iowa App. 2017)
In custody dispute between unwed parents, the child was doing well, but there were communication difficulties between the parents, caused largely by excessive texting. Both the trial court and appellate court criticized the father's "exaggerated journal writing" that attempted to paint an unflattering picture of the mother and an overly flattering picture of himself. Both parties were criticized for the nature and extent of text messages. Affirming the award of joint physical care, the Court noted that although cooperation and communication are essential in a shared-care arrangement, tension between the parents is not alone sufficient to demonstrate a shared-care arrangement will not work. The communication difficulties and tension must rise above the "not atypical acrimony that accompanies litigation in family-law matters." Since the communication difficulties did not rise to that level in this case and the parents were otherwise good parents with a child that was doing well in the agreed-upon shared care arrangement that the parties had been following up to trial, shared care was affirmed.

Assessing Credibility Based on Actions During Break

Ruden v. Peach, 904 N.W.2d 410 (Iowa App. 2017)
Appellate court is not bound by trial court credibility findings, especially when those findings are based, in part, on conduct by a party during a break. As factfinder, the

trial court may take into account the conduct and appearance of the witnesses on the witness stand. However, the trial court was not permitted to consider information supplied by an unidentified person that claimed to have seen the mother in this custody battle expose her breasts to others in the courtroom during a break. By relying on conduct outside the record in making its credibility determination, the trial court became a witness not subject to oath or cross-examination or competing evidence. This is especially problematic when the trial court relied on an event that the trial court did not witness, but which was reported to the trial court. Reversing the trial court, physical care was awarded to the mother based on her long-term relationship with a husband who stayed home to watch the child, her history as the primary caretaker, and close bond with the child.

Enforceability of Surrogacy Contracts

P.M. v. T.B., 907 N.W.2d 522 (Iowa 2018)
As a matter of first impression, gestational surrogacy contracts are enforceable in favor of the intended, biological father against a surrogate mother and her husband. The intended parents would not have entrusted their embryos to the surrogate mother, and the child would not have been born, without their reliance on the surrogate's contractual commitment. A holding invalidating surrogacy contracts would deprive infertile couples of the opportunity to raise their own biological children and would limit the personal autonomy of women willing to serve as surrogates to carry and deliver a baby to be raised by other loving parents. The trial court properly established paternity in the biological father based on undisputed DNA evidence and properly terminated the presumptive parental rights of the surrogate mother and her husband. Permanent custody of the child was properly awarded to the biological, intended father.

Expenses Considered in Setting Spousal Support

In re Marriage of Stenzel, 908 N.W.2d 524 (Iowa App. 2018)
Types of spousal support are not mutually exclusive and the label placed on the type is a "red herring." Court can consider current and future earnings in calculating ongoing spousal support. As a matter of first impression, charitable donations and retirement savings are properly considered as part of spousal support recipient's needs when the couple has a history of prioritizing such expenditures.

Postsecondary Education Subsidy Calculation

In re Marriage of Larsen, 912 N.W.2d 444 (Iowa 2018)
Calculating a postsecondary education subsidy is a three-step process: (1) determine the cost; (2) calculate the child's contribution; and (3) allocate the remaining amount between the parents, with neither parent obligated for more than one-third of the total cost. Regarding the first step, the cost of attendance published by the state

university is presumed to be the cost (if attending a college other than an in-state public institution, the average of the three state schools is to be used). Sorority dues do not warrant deviating from the published cost. Regarding the second step, scholarships received by the student are included as the child's contribution. Available loans may be considered as the child's contribution, but not here due to the parents' incomes and the amount saved in the child's Section 529 account. In calculating the amount the student could contribute from employment, reasonable expectation of employment, as opposed to proof of the existence of a specific job, can be used. Child support paid by the father to the mother over the summer before the student started college is not part of the "child's contribution." Regarding the third step, since each parent had control over half of the Section 529 account and both had significant incomes, the amount left after subtracting the child's contribution from the total published cost was equally divided between the parents, as the amount for each parent did not exceed one-third of the total.

Death of Party Appealing Trial Court Ruling

In re Marriage of Wilson-White and White, 912 N.W.2d 494 (Iowa App. 2018)
After filing notice of appeal challenging trial court divorce ruling, husband died. The general rule is that an appeal from a dissolution proceeding is not moot or abatable where the appeal involves property rights, as the deceased party is substituted by a legal representative who can prosecute the decedent's interests. Here, since no one sought substitution of parties and, in fact, the husband's attorney sought to withdraw because no one intended to open an estate, there was no one to pursue the husband's disagreements. Therefore, there was no remaining controversy and the appeal was dismissed as moot.

Premarital Agreements – Attempt to Deny Attorney Fees

In re Marriage of Erpelding, 917 N.W.2d 235 (Iowa 2018)
A premarital agreement provision waiving an award of attorney fees related to issues of child or spousal support is categorically prohibited by Iowa Code Section 595.5(2). Given the need to take into account the best interests of the children, public policy prohibits premarital agreements from limiting child custody rights. Accordingly, provisions in premarital agreements that seek to waive or shift attorney fees as to child custody issues violate public policy and are barred by Iowa Code Section 595.5(1)(g).

EMPLOYMENT

Claims Based on Violation of Iowa Constitution

Godfrey v. State, 898 N.W.2d 844 (Iowa 2017)
Suit involved claims for damages for violation of the Equal Protection and Due Process clauses of the Iowa Constitution in the context of an employment dispute between an Iowa Workers' Compensation Commissioner and various state officials. In a 4-3 decision, claims based on Equal Protection and Due Process violations are found to be self-executing and support a tort claim as a private cause of action. However, also in a 4-3 decision, claims for constitutional violations for discrimination based on sexual orientation do not support a private cause of action because the Iowa Civil Rights Act provides adequate remedies.

Shortening Employment After Voluntary Resignation

Bradshaw v. Cedar Rapids Airport Commission, 903 N.W.2d 355 (Iowa App. 2017)
Employment agreement had a clause entitling the employee to one year of severance pay if terminated except for specified reasons. Employee submitted a resignation with an effective date two months in the future. Employer accepted the resignation, but with an effective date 30 days later. Employee sued, seeking severance pay. In a case of first impression, applying contract principles, the Court held that the acceleration of the separation date did not turn a voluntary termination into an involuntary termination within the meaning of the contract. The fact that the parties disagreed as to when the last day of employment would be was immaterial to the question of who took action to sever the relationship. In a 2-1 portion of the opinion, employee was also not entitled to compensation for the period of time between when the employer claimed separation (30 days after resignation) and when the employee wanted separation (2 months after resignation), as no statutes provide for it and nothing in the contract provided for it. To rule otherwise would allow an employee to change the employee's status from employed-at-will to employed-for-a-definite-term by simply including an effective date in a notice of resignation.

Calculating Attorney Fees & Expenses on Partially Successful Claims

Lee v. State, 906 N.W.2d 186 (Iowa 2018)
The plaintiff (a former employee pursuing FMLA claim) can recover the cost of computer-assisted legal research by making the following showings: (1) the computer-assisted legal research reasonably relates to the issues at hand; and (2) charges for computer-assisted legal research are the type of costs normally billed to a paying client in the relevant market. Since plaintiff failed to make either showing, the claim for these expenses was denied. Trial court did not abuse its discretion in using current hourly rates in setting fee award, even for work done years in the past, as use of the current hourly rates properly took into account the delay in payment.

Trial court did not abuse its discretion in using the percentage method to reduce plaintiff's claim for fees due to lack of success on some claims. However, the trial court abused its discretion by using a mathematical formula and reducing the claim by 40% based on failure on two of the five claims. Due to the length of this litigation (over a decade with this being the fourth appeal), the Supreme Court exercised its discretion to set the award rather than remanding. The Court took into account how the plaintiff's efforts in pursuing this FMLA claim advanced the public interest and the fact that the plaintiff was the prevailing party, but also considered the fact that the plaintiff was only partially successful and did not achieve a significant portion of the remedies sought. Therefore, the fee award was reduced by 35%.

Attorney Client & Work Product Privilege – Farragher-Ellerth Defense

Fenceroy v. Gelita USA, Inc., 908 N.W.2d 235 (Iowa 2018)
In a 4-3 decision in this race discrimination suit, trial court did not abuse its discretion in denying employer's request for a protective order to prevent employee from deposing employer's counsel and obtaining investigation notes. When an employer raises a Farragher-Ellerth affirmative defense and relies upon an internal investigation to support the defense, the employer waives attorney-client privilege and nonopinion work-product protection over testimony and documents relating to the investigation.

Corporation Has No "Family Members"

Cote v. Derby Insurance Agency, Inc., 908 N.W.2d 861 (Iowa 2018)
A corporation does not have "family members" and therefore cannot qualify for the family-member exception to the employee-numerosity requirement of the Iowa Civil Rights Act.

No Extraterritorial Application of Iowa Civil Rights Act

Jahnke v. Deere & Co., 912 N.W.2d 136 (Iowa 2018)
The Iowa Civil Rights Act ("the ICRA") does not apply extraterritorially because it contains no clear and affirmative expression or indication of an extraterritorial reach. Likewise, the ICRA does not apply to this discrimination case brought by an employee who worked in the employer's subsidiary in China. Employee failed to show either that the employee or the employer was located within Iowa for purposes of the alleged discriminatory acts. Mere Iowa residency and the presence of some ties to Iowa is insufficient to establish that the employment relationship was located in Iowa.

Exhaustion and Exclusivity of Remedies – Whistleblower

Walsh v. Wahlert, 913 N.W.2d 517 (Iowa 2018)
Former chief administrative law judge is permitted to bring a direct claim under Iowa Code Section 70A.28 (a "whistleblower" claim) without exhausting administrative

remedies under Iowa code Chapter 8A. However, common law claim for wrongful termination in violation of public policy was properly dismissed because such a common law claim cannot be brought when a civil service statute protects the employee from wrongful conduct, as was the case here. In those cases, a civil service statute that provides a comprehensive framework for the resolution of such claims provides the exclusive remedy.

Tolling Filing of Civil Rights Complaint

Mormann v. Iowa Workforce Development, 913 N.W.2d 554 (Iowa 2018)
The equitable tolling doctrines of the discovery rule and equitable estoppel are available with respect to the 300-day filing limitation in the Iowa Civil Rights Act. Discovery rule did not excuse the late filing in this case because Plaintiff had knowledge of facts sufficient to support a prima facie case of age discrimination immediately after being informed of the decision not to hire him. The fact that he later discovered evidence that made his case stronger did not entitle Plaintiff to avail himself of the discovery rule to save the case from dismissal. Likewise, equitable estoppel did not apply based on the claim that the prospective employer omitted the real (i.e., allegedly discriminatory) reason for not hiring Plaintiff in the rejection letter sent to Plaintiff. To invoke equitable estoppel in this context, Plaintiff must show some affirmative misrepresentation by the employer that the employer knew or should have known would cause delay in the filing of a claim.

Wrongful Discharge Claims by Contract Employees

Ackerman v. State, 913 N.W.2d 610 (Iowa 2018)
In a case of first impression, in a 5-2 decision, wrongful discharge in violation of public policy claims are not categorically reserved for at-will employees. Therefore, an administrative law judge covered by a collective bargaining agreement can still bring a claim based on wrongful termination in violation of public policy. The issue of whether Iowa Code Section 70A.28 provides the exclusive remedy for wrongful discharge claims brought by contract state employees was not properly raised and litigated, so it was not decided.

Pre-Employment Physical – Disability Discrimination

Deeds v. City of Marion, 914 N.W.2d 330 (Iowa 2018)
City declined to hire a prospective firefighter after the physician performing the city's pre-employment physical examination reported that the applicant was not medically qualified for the position. The physician made the determination based on national firefighter guidelines that disqualify persons with MS with active symptoms within three years. Applicant sued the city for violating the disability discrimination provisions of the Iowa Civil Rights Act and sued the physician for aiding and abetting the discrimination. In a 4-2 decision, summary judgment in favor of the city and the

physician was affirmed. The physician did not inform the city that MS was the reason the applicant was found unfit and the city did not inquire further. The applicant also did not inform the city that the applicant had MS. Summary judgment was granted because the applicant could not prove the city discriminated against the applicant because of the applicant's MS when the city was unaware that the applicant had MS. The physician was not liable for providing an independent medical opinion or for aiding and abetting without proof the city intentionally discriminated against the applicant.

EVIDENCE

Hearsay to Explain Officer Conduct & Cautionary Instruction Versus Mistrial

State v. Plain, 898 N.W.2d 801 (Iowa 2017)
Officer's testimony that, based on statements from the complaining witness, the officer concluded that marks on the wall were caused by Defendant throwing bolt cutters at the complaining witness was hearsay. The evidence was not designed to explain the officer's subsequent conduct and investigation. Rather, it was merely an attempt to put before the fact finder inadmissible evidence. However, due to the strong evidence that Defendant threw the bolt cutters (e.g., testimony of two eyewitnesses, photographs of the damage to the wall, and evidence the bolt cutters were damaged and had paint markings consistent with the color of the house), the evidence was cumulative. Due to the cumulative nature of the hearsay and the trial court's cautionary instruction, there was no prejudice. Also, portion of 9-1-1 call that referenced the defendant's criminal history was inadmissible character evidence. However, since the reference was brief, inadvertent, and did not play a major part in the State's case, trial court's cautionary instruction telling the jury to disregard the references was sufficient to cure any prejudice and a mistrial was not necessary.

Statements That Explain Conduct Are Not Hearsay – Standards

State v. Banes, 910 N.W.2d 634 (Iowa App. 2018)
For a statement to be admissible as showing responsive conduct, and thus not hearsay, it must not only tend to explain the responsive conduct but the conduct itself must be relevant to some aspect of the State's case. Here, statements by burglary victims that they had heard Defendant may be involved in the burglary was not hearsay because the statements explained why the burglary victims, upon seeing Defendant in the community, began to follow Defendant and even participated in a high speed chase with Defendant, which resulted in Defendant abandoning Defendant's vehicle which was later linked to the burglary and was found to contain items stolen in the burglary.

OSHA Violations & Evidence of Otherwise Excluded Topics

Kinseth v. Weil-McLain, 913 N.W.2d 55 (Iowa 2018)
In asbestos litigation, evidence of manufacturer's OSHA violations for failing to include warning labels after manufacturer knew of the risks of asbestos was relevant on punitive damage claim, so trial court did not abuse its discretion in admitting it. By summary judgment, the trial court had dismissed all claims based on exposure to asbestos in the removal of various asbestos-containing products based on the statute of repose. However, evidence of exposure to asbestos on removal of such products was still admissible on the issue of causation (i.e., Plaintiff was still exposed to the asbestos in removing products, which may have contributed to Plaintiff contracting mesothelioma even though Plaintiff could not receive compensation for such exposure), provided a proper limiting instruction was given.

INSURANCE

Appraisal Clauses – Causation of Loss

Walnut Creek Townhome Assoc. v. Depositors Ins., 913 N.W.2d 80 (Iowa 2018)
In a case of first impression, appraisers chosen under an appraisal clause of a policy are authorized to decide the factual cause of damage to insured property to determine the amount of the loss. The court decides coverage questions, but the appraisers' determination of the factual cause and monetary amount of the insured loss is binding on the parties absent fraud or other grounds to overcome a presumption of validity. While coverage determinations are for the court, the court is not free to disregard the appraisal award as to factual disputes that may be dispositive of coverage questions.

JUVENILE

No Compensation for Collateral Work

Greenwood v. State Public Defender, 901 N.W.2d 529 (Iowa App. 2017)
Overruling the trial court, attorney appointed as guardian ad litem in a CINA proceeding is not entitled to be compensated for work done in setting up a guardianship that benefited the children and resulted in the closing of the CINA case, even when the attorney was ordered to prepare the guardianship paperwork. Iowa Code Section 815.11 prohibits payment from the indigent defense fund for work performed under Chapter 633.

Detention of Runaway Under Interstate Compact for Juveniles

In the Interest of D.H., 902 N.W.2d 584 (Iowa App. 2017)
The Iowa Administrative Code prohibits the detention of nondelinquent runaways. However, Iowa Code Section 232.173, which adopts the Interstate Compact for Juveniles ("ICJ"), contains conflicting provisions that preempt the Iowa Administrative Code. The relevant ICJ section on placement of nondelinquent runaways requires detention for juveniles who are a danger to themselves or others but allows the juvenile court to exercise its discretion in all other circumstances. If a finding is made that the runaway is a danger to herself or others, detention is required. If no such finding is made, the trial court has discretion to place the juvenile at any place deemed appropriate, which includes detention.

Definition of "Imminently Likely" – Abuse of Siblings

In the Interest of L.H., 904 N.W.2d 145 (Iowa 2017)
Three children in the home. Each child has a different father. The father of the youngest lived with the mother and the children. The father of the youngest physically abused the oldest child and the mother and was shown to have anger issues. Even though there was no indication that the father had physically abused the youngest child (the father's child, L.H.), a unanimous court upheld trial court findings and CINA adjudication under Sections 232.2(6)(b) and 232.2(6)(c)(2), finding that L.H. was "imminently likely" to be physical abused (232.2(6)(b)) and "imminently likely" to suffer harmful effects from a failure of a parent to properly supervise (232.2(6)(c)(2)). The findings were supported by the fact that the mother refused to end the relationship with the father, continued to expose all three children to the father on a regular basis, and failed to cooperate with services. "Imminently likely" is to be liberally construed in favor of safeguarding children and does not require a showing that the child is on the verge of being physically abused.

Incarcerated Parent – Reasonable Efforts Prior to TPR

In the Interest of L.M., 904 N.W.2d 835 (Iowa 2017)
Child tested positive for drugs at birth and was removed. Shortly thereafter, the mother was jailed and later sent to prison for drug-related offenses. Mother's parental rights were terminated. Court of Appeals reversed, finding lack of reasonable efforts since the mother was not given visitation while incarcerated. In a 5-2 decision, the Court vacated the Court of Appeals decision and upheld termination. The mother's claim of lack of reasonable efforts based on lack of visitation while imprisoned was untimely, as the mother did not object to the lack of visitation or request it at several review and permanency hearings. The Court noted that it was not holding that reasonable efforts could not include visitation for incarcerated parents, and the Court also noted that the issue of whether visitation to incarcerated parents should be

ordered as a reasonable effort toward reunification when timely raised by a parent will depend on the circumstances of each case.

Shifting Burden in TPR & Guardianship Versus Termination

In the Interest of A.S., 906 N.W.2d 467 (Iowa 2018)
Answering a previously unanswered question, the Court held that once the State has proven a ground for termination, the parent resisting termination bears the burden to establish an exception to termination under Iowa Code Section 232.116(3). Mother failed to meet her burden to establish that the grandparents' temporary custody of the two-year-old child should preclude termination of the mother's parental rights. Reversing the Court of Appeals decision to order guardianship with the grandparents, the Court reiterates that a guardianship is not a legally preferable alternative to termination.

Incarcerated Parent – Distinguishing Factors

In the Interest of J.E., 907 N.W.2d 544 (Iowa App. 2017)
Distinguishing In re C.F.-H., termination of incarcerated father's parental rights was upheld. In C.F.-H., the child remained in the custody of the mother, whereas here, a removal order was issued removing custody of the child and placing the child in foster care due to mother's meth use. Efforts to allow visitation in prison were thwarted by the father's misconduct record. Even though the father may discharge from prison within a couple of years, there was no guarantee of that and even at the earliest possible discharge date, it was still too late to avoid termination.

Best Interests in Private Termination

In the Interest of Q.C., 911 N.W.2d 761 (Iowa 2018)
In a unanimous decision, even though statutory grounds for private termination under Chapter 600A were met, it was not in the best interest of the children to terminate father's parental rights. This was in spite of the fact that the father had a history of depression and suicidal ideation as a youth, had two OWI convictions, had developed an addiction to meth over a three-year period during which he was incapable of parenting the children to the point that they were placed in daycare so the stay-at-home father could use meth, had possessed illegal fully automatic rifles, had been working on assembling unlawful silencers for his weapons, had pled guilty to four state criminal charges (including two counts of domestic assault involving strangulation of the children's mother, one count of child endangerment, and one count of possession of meth), had pled guilty to federal weapons charges, failed to take responsibility for his actions by blaming the mother for his actions in assaulting her and blaming her for his incarceration, had expressed anger and thoughts of revenge against the mother, had no meaningful bond with the children, and had little to no contact with the children due to his incarceration. Additionally, the children had

a stepfather that was an appropriate parent, was well bonded to the children, and planned to adopt them. These negatives were found to be outweighed by the fact the father had a good prison record, had participated in treatment programs in prison, was scheduled to be released from prison within a few years, had extended family willing to provide support for his parenting activities, had plans to live with his parents upon release, and had a job lined up. Additionally, the parties had signed a divorce stipulation shortly before the termination hearing in which they agreed that the district court could consider modifying visitation once the father was released from prison.

Constitutionality of Mandatory Sex Offender Registration

In Interest of T.H., 913 N.W.2d 578 (Iowa 2018)
Substantial evidence supported juvenile court finding that child committed sex abuse by force against the victim. Since the child was 14 years old and the delinquent act was done by force, Iowa Code Section 692A.103(4) requires the child to register as a sex offender and, pursuant to Section 692A.103(5)(e), the juvenile court is not permitted to modify or suspend the registration requirement during the period the dispositional order is in effect. However, the child can be relieved of registration requirements by the juvenile court when rehabilitation under a dispositional order is achieved prior to expiration of the dispositional order (Iowa Code Section 232.54(1)(i)). In a 6-1 portion of the opinion, mandatory sex offender registration constitutes punishment. In a 4-3 portion of the opinion, although punishment, mandatory sex offender registration is not cruel and unusual punishment in violation of the federal or state constitution.

MISCELLANEOUS

Restoration of Gun Rights

In the Matter of A.M., 908 N.W.2d 280 (Iowa App. 2018)
Applicant previously committed for substance abuse and mental health issues did not present the quality of evidence necessary to establish that applicant would not be likely to act in a manner dangerous to the public safety. Fact that the County Attorney supported the application is not determinative. If the trial court rubber-stamped an agreement between the applicant and the State, it would run afoul of the statutory intent requiring the court to base its ruling on evidence rather than an agreement.

Sexually Violent Predator – "Presently Confined"

In re Detention of Wygle, 910 N.W.2d 599 (Iowa 2018)
In a 4-3 decision, a person convicted of a sexually violent offense who has discharged the sentence and is residing in a residential facility as part of the special sentence imposed by Chapter 903B is not "presently confined" under the Sexually Violent

Predator Act (Iowa Code Chapter 229A). Therefore, the State cannot commence a sexually violent predator commitment proceeding in the absence of a recent overt act, as required by Section 229A.4(2).

Forfeiture Proceedings – Suppression Issues

Matter of Herrera, 912 N.W.2d 454 (Iowa 2018)
In an *in rem* forfeiture proceeding brought pursuant to Iowa Code Chapter 809A in which the State seeks to forfeit a vehicle, cash, and other items found in the vehicle, the Fifth Amendment privilege against self-incrimination excuses a defendant's compliance with forfeiture threshold pleading requirements, such as identifying the source of the cash. Additionally, the trial court must first rule on motions seeking to suppress evidence that the State is using to support its forfeiture claim before adjudicating the forfeiture claim. Finally, vehicle owner who recovered the vehicle when the State withdrew its objection to return of the vehicle after months of contested litigation was entitled to an award of attorney fees as the prevailing party even though there was not an adjudication on the merits.

Sexually Violent Predator – "Presently Confined"

In re Detention of Tripp, 915 N.W.2d 867 (Iowa 2018)
In a unanimous portion of the ruling, a person is not "presently confined" under the provisions of Section 229A.4(1) when the person has been discharged from the sentence underlying the sexually violent offense that resulted in incarceration even though the person is confined for a violation of a Chapter 903B special sentence. In a 4-3 portion of the ruling, the person could not be committed as a sexually violent predator based on a "recent overt act" when the only evidence of such act was an exhibit that was admitted at trial that should not have been admitted because it was hearsay.

MOTOR VEHICLES / OWI

Zero Tolerance for Marijuana in Blood

State v. Childs, 898 N.W.2d 177 (Iowa 2017)
In a 5-2 decision, the Court reaffirms State v. Comried and, based on the plain meaning of the statute, holds that Section 321J.2 is violated when nonimpairing metabolites of marijuana are present in a driver's urine.

Boating While Intoxicated Issues

State v. Pettijohn, 899 N.W.2d 1 (2017)
Seizure of boat did not violate state or federal constitution because the officer who stopped the boat had a reasonable, articulable suspicion the boat driver was committing a crime. However, in a 4-3 decision, because the State failed to prove the boat driver voluntarily consented to the warrantless breath test and failed to prove the breath test was justified by an exception to the warrant requirement, the warrantless administration of the breath test violated Article I, Section 8 of the Iowa Constitution. The Court noted that the ruling did not apply to non-boat OWI cases, as the implied consent statute pertaining to boats includes a penalty clause (making it coercive such that it negates a finding of consent) while the implied consent statute regarding regular vehicles in the OWI context does not.

Evidence of PBT Result Not Obtained Through Implied Consent

State v. Ness, 907 N.W.2d 484 (Iowa 2018)
Defendant was given a preliminary breath test ("PBT") by Defendant's probation officer when Defendant arrived for a meeting appearing drunk and smelling of alcohol. Over Defendant's objection, the PBT results were admitted into evidence in Defendant's OWI trial. The Court declined to resolve the dispute whether the PBT results were inadmissible when they were administered pursuant to a request from a probation officer rather than pursuant to implied consent procedures because the State conceded error. The Court determined that the error was not harmless, even though there was evidence that Defendant smelled strongly of alcohol, had bloodshot and watery eyes, was unsteady on his feet, slurred his speech, admitted to drinking, and admitted to jail staff that Defendant was intoxicated. Although the evidence was strong without the test result evidence, it was not so strong as to overcome the presumption of prejudice.

Warrant for Blood Without Invoking Implied Consent

State v. Frescoln, 911 N.W.2d 450 (Iowa App. 2017)
The State's ability to obtain chemical testing of a suspected drunk driver is not limited to the provisions of Iowa Code Chapter 321J and implied consent. Because the officer obtained a valid search warrant to obtain a sample of Defendant's blood, the results of the blood test were not inadmissible just because the officer did not invoke implied consent. Search warrant was determined to allow chemical testing of the blood obtained via the warrant. Even though the warrant did not expressly authorize testing, the stated reason for drawing the blood was its relevance to an OWI investigation and a common sense reading of the warrant implied that the sample would be subjected to chemical testing.

No Habitual Offender Enhancement for OWI Third Offense

Noll v. Iowa Dist. Ct. for Muscatine County, 919 N.W.2d 232 (Iowa 2019)
Iowa Code Section 321J.2(5) prescribes the maximum and minimum sentence for Operating While Intoxicated ("OWI"), third and subsequent offenses. Thus, the habitual offender provisions in Section 902.8 and 902.9 do not apply to OWI, third and subsequent offenses.

DOT Officer Authority to Initiate Traffic Stop

State v. Werner, 919 N.W.2d 375 (Iowa 2018)
Under the state of the law in August 2016, Iowa Department of Transportation Motor Vehicle Enforcement Officer did not have the authority to stop a motorist for speeding and subsequently arrest the motorist for Driving While Revoked. Such officers do not have general traffic enforcement authority. Also, the officer's arrest was not a valid citizen's arrest because the officer made the stop as part of the officer's official duties, rather than as a private citizen, and there is no indication that the officer went with the motorist before a magistrate, as required by Section 804.24. Finally, the officer was not engaged in a community caretaking function.

DOT Officer Authority to Initiate Traffic Stop – II

Rilea v. Iowa Dept. of Transportation, 919 N.W.2d 380 (Iowa 2018)
Under the statute in effect at the time, DOT motor vehicle enforcement officers lacked authority to stop vehicles and issue speeding tickets or other traffic citations that did not relate to operating authority, registration, size, weight, and load. Such officers did not have such authority under citizen's arrest statute because they were not private persons and, even if they were, the citizen's arrest statute does not authorize citations in lieu of arrest.

MUNICIPAL CORPORATIONS

Transfer of Ownership of Abandoned Buildings

City of Eagle Grove v. Cahalan Investments, LLC, 904 N.W.2d 552 (Iowa 2017)
City sought to obtain title to two properties pursuant to Iowa Code Section 657A.10A, claiming they had been abandoned and in an advanced state of disrepair. Because the City's claim fit within the public-nuisance exception recognized in the U.S. Supreme Court case of Lucas v. South Carolina Coastal Council, Iowa Code Section 657A.10A does not result in a taking requiring compensation to the landowner.

Immunity for Nuisance Claims

Kellogg v. City of Albia, 908 N.W.2d 822 (Iowa 2018)
Homeowner's claim against city for nuisance based on storm sewer discharge was barred by the state-of-the-art immunity defense of Iowa Code Section 670.4(1)(h). The definition of "tort" in the Iowa Municipal Tort Claims Act includes a nuisance action. The statute does not just immunize claims of negligent design, construction, or failure to upgrade. It also immunizes all claims based upon or arising out of claims for the failure to bring the facility up to today's standards. Although the homeowner was not required to prove the city was negligent to establish a claim for pure nuisance, the homeowner's nuisance claim was in fact based on the city's failure to upgrade the overburdened sewer pipe, so the immunity statute barred the claim.

Removal of County Attorney

State v. Watkins, 914 N.W.2d 827 (Iowa 2018)
In an action to remove an elected county attorney from office for willful misconduct or maladministration in office pursuant to Iowa Code Section 66.1A, the party seeking removal has the burden to show, by clear and convincing evidence, that the alleged wrongdoer's acts took place within the official's capacity as a public official and not when the official was acting as a private citizen. The party seeking removal also has the burden to prove by clear, convincing, and satisfactory evidence that the official committed the charged acts intentionally, deliberately, with a subjectively bad or evil purpose, contrary to known duty. In assessing whether the official should be removed from office for sexual harassment in the workplace, the applicable legal standards are those set forth in Chapter 66, not the standards found in the rules of professional conduct for attorneys or in civil employment law. In a 4-3 decision, although the official's actions were disgraceful, disrespectful, inappropriate, and could not be condoned, they were not proved to have been done with a bad or evil purpose contrary to a known duty or to have been committed within the scope of the official's responsibilities as the county attorney. The official was entitled to attorney fees on remand.

PROBATE / GUARDIANSHIP / CONSERVATORSHIP

(No Cases)

REAL PROPERTY

Taking of Abandoned Property

City of Monroe v. Nicol, 898 N.W.2d 899 (Iowa App. 2017)
Iowa Code Section 657A.10A(1)(a) allows title to abandoned property to be awarded to the city in which the property is located. Because Section 657A.10A(1)(a) was enacted to remedy the existence of unsafe abandoned buildings, the statute is a permissible exercise of police power rather than an unconstitutional taking without compensation.

Nonconforming Use – Intensification of Use

City of Des Moines v. Ogden, 909 N.W.2d 417 (Iowa 2018)
City attempting to enjoin property owner from continued use of property as a mobile home park failed to meet its burden of proving discontinuation of nonconforming use was necessary to avoid risk to safety of life or property. Vague testimony about the fire hazards of mobile home parks in general did not suffice to meet the burden. In a case of first impression, applying a burden-shifting framework, intensification of a mobile home park due to the addition of structures or the expansion of homes within the park did not amount to an illegal expansion of the authorized nonconforming use. Intensification of a nonconforming use is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used.

"Assigns" of Property Interests & Avoiding Zoning Changes

TSB Holdings v. Board of Adjustment, 913 N.W.2d 1 (Iowa 2018)
Following litigation in 1987, the Supreme Court issued an order providing for the rights of a real estate developer and its successors and assigns with respect to development of specified lots in Iowa City (which order was incorporated into a District Court order on remand). Subsequent owner sought to develop the land consistent with the terms of the remand order in spite of a new city zoning ordinance that would have otherwise prohibited the development. The subsequent owner was determined to be an "assign" of the owner at the time of the 1987 ruling, even though the subsequent owner did not take directly from the 1987 owner and did not receive all subject parcels at the same time. Therefore, the subsequent owner was afforded the rights under the remand order and the city was prohibited from enforcing its new zoning ordinances to stop development that was permitted by the remand order.

Nuisance Suits Against CAFOs

Honomichl v. Valley View Swine, LLC, 914 N.W.2d 223 (Iowa 2018)
Iowa Code Section 657.11(2) purports to give farmers immunity from nuisance claims when operating a confined animal feeding operation ("CAFO"). Neighbors filed

negligence and nuisance claims and obtained summary judgment striking the immunity defense as unconstitutional. A facial challenge is one in which no application of the statute could be constitutional under any set of facts. An as-applied challenge alleges the statute is unconstitutional as applied to a particular set of facts. In a 5-2 portion of the decision, the Court reaffirms the three-prong test of Gacke in addressing as-applied challenges. Whether Section 657.11(2) is unconstitutional as applied to the plaintiffs is inherently fact-specific. In this case, the trial court erred by granting the "as-applied" challenge without making specific findings of fact that the three-prong test was met. Therefore, summary judgment was inappropriate.

SEARCH AND SEIZURE

Search of Belongings of Others During Execution of Search Warrant

State v. Brown, 905 N.W.2d 846 (Iowa 2018)
In a 4-3 decision, under the Iowa Constitution, law enforcement officers executing a search warrant looking for drugs are not allowed to search a purse belonging to a visitor who is present at the premises to be searched when that person is not named in the warrant. Search of the possessions of a third party at a residence is unconstitutional when the warrant does not support probable cause to search that particular person.

Closing Time of County Park

State v. Scheffert, 910 N.W.2d 577 (Iowa 2018)
Defendant challenged the stop of his vehicle for being in a county park after 10:30 p.m. because there were no signs posted as to the closing time. Iowa Code Section 461A.46 sets the closing time for state parks at 10:30 p.m. Iowa Code Section 350.10 states that the 10:30 p.m. closing time for state parks applies to county parks if the county conservation board has not modified or superseded the rule. Although the county conservation board attempted to supersede the closing time by rule (by also setting it at 10:30), the rule contained in its ordinance never took effect because the board failed to post it as required by Section 350.5. Thus, the closing time was governed by the default time of 10:30 p.m. set by Section 461A.46. Therefore, the officer had probable cause to stop the vehicle.

Community Caretaking Exception

State v. Coffman, 914 N.W.2d 240 (Iowa 2018)
In a 4-2 decision, an officer was justified in pulling behind a vehicle and activating emergency lights when the vehicle was stopped by the side of a highway at 1:00 a.m. with the brake lights engaged. The officer's actions were justified under the community caretaking exception to the warrant requirement under both constitutions.

However, under the Iowa Constitution, the State must prove *both* that the objective facts satisfy the standards for community caretaking *and* that the officer subjectively intended to engage in community caretaking. The burden was met in this case.

Inventory Searches – Limits Under Iowa Constitution

State v. Ingram, 914 N.W.2d 794 (Iowa 2018)
In a 4-3 decision, under the Iowa Constitution, new standards are set for inventory searches. First, vehicles cannot be impounded unless other options are not available. Second, if a vehicle is impounded, the driver should be asked whether the driver wants to retain any property in the vehicle and be given the opportunity to retrieve it. If the driver declines to retrieve any property, the driver may be asked whether there is anything of value in the vehicle and a record made of the response. Third, absent specific consent to search them, officers must inventory closed containers left behind as a unit, rather than opening the containers and taking an inventory of the contents.

Community Caretaking Exception – II

State v. Smith, 919 N.W.2d 1 (Iowa 2018)
For community caretaking exception to apply, the law enforcement conduct must be a bona fide community caretaker activity. This requires the State to prove both that the objective facts satisfy the standards for community caretaking and that the officer subjectively intended to engage in community caretaking. In this case, the officer stopped a vehicle that drove by the location where another vehicle had landed in a ditch with no occupants in it because the officer was looking for the driver of the vehicle in the ditch and the registered owner of the stopped vehicle had the same last name and address as the owner of the vehicle in the ditch. The Court found that this was not a bona fide community caretaker activity such as to be an exception to the warrant requirement under the Iowa Constitution because there was no indication that someone was injured or the occupants of the vehicle driving by wanted help.

TAXATION

Inheritance Tax – Former Stepchildren

Tyler v. Iowa Dept. of Revenue, 904 N.W.2d 162 (Iowa 2017)
A rational basis exists for the legislature to exclude stepchildren postdivorce from the inheritance tax exemption for surviving spouses, lineal descendants, lineal ascendants, and other stepchildren. Therefore, definition of "stepchild" in Section 450.1(1)(e) does not violate the Iowa Equal Protection Clause (Article I, Section 6).

Inheritance Tax – Family Settlement Agreement

Nance v. Iowa Dept. of Revenue, 908 N.W.2d 261 (Iowa 2018)
Decedent designated decedent's daughter-in-law as sole beneficiary on brokerage accounts. The Department determined the estate owed inheritance tax on the full account value. Decedent's grandchildren sued the beneficiary (daughter-in-law), claiming decedent lacked mental capacity to execute the beneficiary designation. The parties settled by having the beneficiary (daughter-in-law) give half of the account value to the grandchildren. Beneficiary then sought a refund of part of the inheritance tax already paid. In a 6-1 decision, the refund request was denied. Without an adjudication of incapacity, the beneficiary designation transferred the brokerage account to the daughter-in-law. The postmortem family settlement agreement was not binding on the Department and could not avoid the inheritance tax when the taxpayer failed to prove incapacity in the Department's contested case proceeding. The Department's refusal to give effect to the family settlement agreement was not irrational, illogical, or wholly unjustifiable.

TORTS

Malicious Prosecution – False Information

Linn v. Montgomery, 903 N.W.2d 337 (Iowa 2017)
One of the elements of a cause of action for Malicious Prosecution is "instigation" of the prosecution. The general rule is that mere furnishing of information to the authorities that results in the authorities bringing criminal charges does not meet the "instigation" element. There is an exception to the general rule when a person knowingly gives false information to authorities. Clarifying the standard, the unanimous court held that, for the exception to apply, the claimant must prove that false information was provided to the officials and must also prove that the officials would not have brought charges in the absence of the false information the defendants knowingly supplied. Since there was no evidence that false information was relied upon by the officials that brought charges or that the defendants did anything beyond merely supplying information to the officials, summary judgment was appropriate.

Unconstitutional Presumption of Liability

Westco Agronomy Company, LLC v. Wollesen, 909 N.W.2d 212 (Iowa 2018)
Provision of Iowa Code Section 706A.2(5), which deals with ongoing unlawful activity, that establishes a presumption of negligence that a defendant must rebut to avoid liability violates the Due Process Clause of the U.S. and Iowa Constitutions. However, since Iowa Code Section 706A.2(5)(b)(4) operates without the presumption and

requires proof of negligence, it remains enforceable by severing the unconstitutional provision.

Legal Malpractice – Relief From Sentencing

Kraklio v. Simmons, 909 N.W.2d 427 (Iowa 2018)
In a case of first impression, Restatement (Third) of the Law Governing Lawyers is applied to hold that a criminal defendant suing the defendant's lawyer over a sentencing error must obtain postjudgment relief on the sentencing issue, but need not prove relief from the underlying conviction. Since the criminal defendant obtained relief in the form of a court order holding that the defendant should have been discharged from probation earlier, the defendant had obtained postjudgment relief and was free to pursue the malpractice claim without that hurdle.

Dramshop – Signs of Intoxication After the Fact

Banwart v. 50th Street Sports, LLC, 910 N.W.2d 540 (Iowa 2018)
In a 4-3 decision overruling trial court grant of summary judgment to the bar in this dramshop action, plaintiff generated a genuine issue of material fact as to the bar's knowledge of the intoxicated condition of the bar patron. Bar patron rear-ended the plaintiff's vehicle within minutes of the patron leaving the bar. The officer that arrived at the scene observed patron to have bloodshot and watery eyes, to have slurred speech, to have admitted feeling "buzzed," to have difficulty following simple instructions, to have failed field sobriety tests, to have admitted not having had anything to drink since leaving the bar or for the last hour at the bar, and to have a blood alcohol level of .143. Majority found that a jury question was generated, as the jury was entitled to disbelieve patron's claims regarding her claimed quiet and tame demeanor and behavior at the bar and her claims of how many drinks she had in light of the signs of intoxication immediately noticed by the investigating officer. Dissenters claimed that the majority created an inference of negligence whenever a patron leaves a bar in an intoxicated condition, which inference is not permitted by statute or case law.

Statute of Limitations – Probate Advice

Skadburg v. Gately, 911 N.W.2d 786 (Iowa 2018)
Attorney was sued for malpractice based on the claim that the attorney negligently advised client (the administrator of an estate) to pay the debts of the estate with life insurance proceeds and 401(k) funds obtained by the client as beneficiary of those plans, even though the funds were exempt from claims against the estate. Since the client failed to file suit for more than five years after the client became aware of a problem with the advice, the claim was barred by the statute of limitations. Exceptions to the statute of limitations based on the discovery rule, the continuous representation rule, or fraudulent concealment did not apply, as all of the exceptions

were negated by the fact that the client was aware of the problem with the advice more than five years before suit was filed.

Claims Related to Clergy Sexual Abuse

Bandstra v. Covenant Reformed Church, 913 N.W.2d 19 (Iowa 2018)
Parishioners sued elders and their church based on claims that the pastor of the church sexually exploiting them under the guise of counseling. Claims based on negligent response to the sexual abuse allegations were barred by the religious freedom clauses of both constitutions. Summary judgment in favor of the church on negligent investigation was proper since the church accepted the pastor's resignation within hours of the elders being informed of the pastor's conduct. Negligent supervision claims were not barred by the religion clauses, but were partially barred by the statute of limitations because, even giving the parishioners the benefit of the doubt about when they discovered their claims, the parishioners learned of the pastor's scheme more than two years before filing suit. One parishioner's claim was only partially time-barred and could proceed on claims for negligent supervision derived from exploitation that occurred within the two-year limitation period. Based on this ruling, the "continuing violations" doctrine did not apply, so the Court refused to resolve the question of whether the doctrine is recognized in Iowa. Alleged defamatory statements by church elders were either qualifiedly privileged or constitutionally-protected opinions. Parishioners could not use offensive issue preclusion based on pastor's conviction for Sexual Exploitation by a Counselor because the victim's lack of consent is not an element of the offense. Clergy privilege applied to church elders, even though they were not theologically-trained, with respect to otherwise qualifying communications. However, the elders' communications related to governance or administration were not spiritually-based and were, therefore, outside the scope of the privilege.

Public Duty Doctrine

Johnson v. Humboldt County, 913 N.W.2d 256 (Iowa 2018)
In a 4-3 decision reviewing summary judgment in favor of the county for claims made by a passenger of a vehicle who was injured when the driver fell asleep, went into the ditch, and struck a concrete embankment that had been constructed by the landowner, the Court holds that the public-duty doctrine survived Iowa' adoption of the Restatement (Third) of Torts. In simplified terms, that doctrine states that if a duty is owed to the public generally, there is no liability to an individual member of the public. That doctrine applies to claims brought under the Iowa Municipal Tort Claims Act (Iowa Code Chapter 670). There is no exception to the doctrine in cases of "grave danger." The doctrine is not limited to common law duty of reasonable care claims; it also applies to claims for negligence and premises liability.

Medical Malpractice – Disclosure of Experience & Related Issues

Andersen v. Khanna, 913 N.W.2d 526 (Iowa 2018)
In medical malpractice suit, in a 4-3 decision, a physician's experience or training with regard to the proposed treatment can be material to the decision whether to undergo proposed treatment such that failure to disclose the extent of experience or training may be evidence supporting a claim based on lack of informed consent. Trial judge misapplied the law of the case when the trial judge precluded introduction of evidence on an informed consent claim based on failure to warn of the risks of surgery due to the condition of the patient's heart based on an erroneous reading of a pretrial ruling on summary judgment by a different judge (which only dismissed informed consent claims based on lack of disclosure of experience). Jury verdict was reached without any instructions regarding informed consent. Therefore, jury verdict finding physician was not negligent did not preclude retrial on implied consent claims that should have been submitted to the jury.

Preemption of Claims Against Railroad

Griffioen v. Cedar Rapids & Iowa City Railway Co., 914 N.W.2d 273 (Iowa 2018)
Landowners in Cedar Rapids sued the railroad on state tort claim theories, alleging that the railroad's misguided efforts to protect the railroad's bridges over the Cedar River from washing out during flooding worsened the effects of the flooding for other landowners (i.e., the plaintiffs). In a 4-3 decision, the Federal Interstate Commerce Commission Termination Act ("ICCTA") was held to preempt the landowners' action. If a state-law tort claim requires second-guessing of a railroad's operation and management of its own rail lines as opposed to other activities, and the claim does not pertain to rail safety, it is preempted by the ICCTA. There is also no "one-time event" exception to preemption under the ICCTA. Finally, the savings clause in the Federal Railroad Safety Act did not prevent the landowners' claims from being preempted by the ICCTA.

Qualified Immunity for False Arrest

Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018)
Answering a certified question from the federal court, in a 5-2 decision, a defendant who pleads and proves as an affirmative defense that he or she exercised all due care to conform with the requirements of the law is entitled to qualified immunity on an individual's claims for damages for violation of Article I, Sections 1 and 8 of the Iowa Constitution.

WORKER'S COMPENSATION

Authorization Defense After Change in Position to Accept Liability

Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018)
In a case of first impression, an employer who initially denies liability for an employee's work-related injury can later amend its Answer to admit liability and regain control of the employee's medical care. Commissioner's order issued while employer was denying coverage stating employer could not use the authorization defense did not trigger the "law-of-the-case" doctrine, as employer's amended Answer admitting liability changed the facts such as to make the commissioner's order inapplicable. In a 6-1 portion of the ruling, the Court refused to change the Bell Bros. test. Thus, an employee seeking to recover for unauthorized medical treatment must still show that the unauthorized treatment was reasonable, beneficial, and resulted in a more favorable outcome than would have been accomplished with the employer's authorized care. That test also applies to recovering healing period benefits while recovering from the unauthorized care.