Section R

Case Law Update

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IOWA CASE LAW UPDATE

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ADMINISTRATIVE LAW

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.

Entitlement to Hearing After Denial of Claims

Colwell v. Iowa Dept. of Human Services, 923 N.W.2d 225 (Iowa 2019)
A managed care organization (MCO) denied reimbursement claims submitted by a dentist who contracted with the MCO as a provider. Iowa Code Section 249A.4 does not grant the DHS authority to interpret its own rules and regulations. Therefore, there is not deference to the DHS's interpretations and the interpretations are reviewed for errors of law. The Court declined to decide whether to defer to the DHS's interpretations of Iowa Code Section 249A.4(11) because, even under a *de novo* standard, the Court agreed with the DHS's interpretation. Finding the definition of "individual" in Section 249A.4(11) ambiguous, the Court concludes "individual" refers to Medicaid recipients and not providers. Therefore, the dentist was not entitled to a review process or hearing under Section 249A.4(11). However, the administrative rules in place at the time and the contract between the dentist and the MCO entitled the dentist to a state fair hearing process after the denial of the dentist's claims. When the dentist renders services that are not recoverable under Medicaid, with the proper pretreatment disclosures, the dentist may recover from the patient for these uncovered services. However, when Medicaid does not reimburse the dentist for services routinely covered by Medicaid, the dentist cannot recover from the patient. Since the DHS's role in the case was "primarily adjudicative," the dentist was not entitled to recover attorney fees from the DHS pursuant to Iowa Code Section 625.29(2) even though the dentist was the prevailing party. The dentist was also precluded from recovering attorney fees under a second exception, namely the exception under Section 625.29(1)(d) for actions where the role of the DHS was to determine eligibility or entitlement to a monetary benefit.

Emailing Notice of Judicial Review

Ortiz v. Loyd Roling Construction, 928 N.W.2d 651 (Iowa 2019)
Iowa Code Section 17A.19(2) imposes a jurisdictional requirement for initiating an action for judicial review of agency action that the petitioner "mail" a copy of the

petition to the attorneys for all parties. Such requirement is satisfied when the petition is sent to the attorneys in a timely manner by email.

APPELLATE PROCEDURE

Delay Between Service and Filing of Notice of Appeal

Evenson v. Winnebago Industries, Inc., 922 N.W.2d 335 (Iowa 2019)
Iowa Rule of Appellate Procedure 6.101(1)(b) requires notice of appeal to be filed within 30 days after the filing of the final order or judgment being appealed. Rule 6.101(4) states: "The time for filing a notice of appeal is tolled when the notice is served, provided the notice is filed with the district court clerk within a reasonable time." A 144-day delay between service of the notice of appeal on opposing counsel and filing of the notice of appeal with the Clerk of Court was not "within a reasonable time," so the appeal was dismissed. The fact that the Supreme Court Clerk issued a notice of briefing deadlines did not vest the Supreme Court with jurisdiction to hear the untimely appeal.

Filing Notice of Appeal Waives Post-Trial Motions

Freer v. DAC, Inc., 929 N.W.2d 685 (Iowa 2019)
While the jury was deliberating in this case, the parties entered into a high-low settlement agreement. The jury returned a defense verdict and the trial court entered judgment accordingly. Plaintiff filed a timely posttrial motion for new trial and change of venue. Defendant resisted and filed a motion to enforce the high-low settlement agreement and to strike Plaintiff's post-trial motions. At a hearing on the motions, the trial court verbally stated that it granted Defendant's motion to enforcement the settlement agreement and deemed Plaintiff's posttrial motions moot. Before the verbal ruling was reduced to writing, Plaintiff filed notice of appeal. In a 4-3 ruling, the Court found that Plaintiff abandoned its posttrial motions and divested the trial court of jurisdiction by filing notice of appeal. Therefore, the judgment entry for a defense verdict was affirmed, leaving Plaintiff with nothing rather than the low number from the high-low agreement. Dissenters would have enforced the high-low settlement agreement.

ATTORNEY DISCIPLINE

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.

Sexual Relations With a Client

Supreme Ct. Atty. Disciplinary Bd. v. Jacobsma, 920 N.W.2d 813 (Iowa 2018)
Thirty-day suspension for having a sexual relationship with a client. Distinguishing cases imposing longer suspensions, the Court noted that this case did not involve preying on the client's vulnerable personal, mental, or financial state, did not involve "sex-for-fees," and did not involve uninvited, unwanted, or harassing conduct. Aggravating factors included years of experience and the potential for harm to the client based on the types of cases for which the attorney represented the client. Mitigating factors included lack of prior discipline, isolated misconduct, remorse, cooperation with the Board, self-reporting of the misconduct, independent decision to participate in counseling and mental health treatment, being a respected member of the bar, lack of actual harm, amount of pro bono and reduced fee work, community service and volunteer work, and military service. Two dissenters (Wiggins and Christensen) noted the trend of these types of violations and argued for a longer suspension in an effort to promote "real deterrence."

Sexual Relations With a Client – II

Supreme Ct. Atty. Disciplinary Bd. v. Nine, 920 N.W.2d 825 (Iowa 2018)
Thirty-day suspension for having a sexual relationship with a divorce client. Mitigating factors included the fact that the misconduct was isolated, the client suffered no harm of any type, and the attorney has a significant history of involvement in the community and the profession. Aggravating factors included the fact that the representation involved a family law matter and the attorney's initial evasiveness. The Court also noted it was imposing sanctions based on the fact that the attorney's misconduct occurred in 2011. The Court suggests that harsher sanctions may be imposed in future such cases because of the recurring nature of these types of violations. One concurring justice (Wiggins) went along with the 30-day suspension only because the misconduct occurred in 2011, before several cases came out urging for longer suspensions.

Stealing Colleague's Undergarments and Related Conduct

Supreme Ct. Atty. Disciplinary Bd. v. Stansberry, 922 N.W.2d 591 (Iowa 2019)
One-year suspension for assistant county attorney stealing a female colleague's underpants from her home and rifling through female colleagues' gym bags at the office to photograph their undergarments for his personal sexual gratification. Being convicted of trespass and theft under these circumstances reflected adversely on attorney's fitness to practice law. Giving false statements to law enforcement investigating the case was a violation of rules prohibiting engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Attorney's conduct also violated the rule prohibiting sexual harassment. Aggravating factors included the fact that the attorney was a prosecutor, the victims were women the attorney oversaw at work, misrepresentations were made to law enforcement, the attorney failed to appreciate the wrongfulness of his actions, and the victims were traumatized. The Court found no mitigating factors.

Neglect, Lack of Communication, & Related Violations

Supreme Ct. Atty. Disciplinary Bd. v. Humphrey, 922 N.W.2d 601 (Iowa 2019)
One-year suspension for failing to prosecute an appeal for one client, never communicating with a second client in a criminal matter, failing to address the attorney's loss of a third client's abstract of title, ignoring inquiries from the board, and misrepresenting to the board what the attorney had done. Aggravating factors included prior disciplinary record of three prior suspensions, one of which included a three-month suspension for related but less serious misconduct. The Court discussed overcharging by the board and reiterated a reminder that a violation of Rule 32:8.4(a) (stating it is professional misconduct for a lawyer to violate the Iowa Rules of Professional Conduct) does not create a separate ethical infraction and "does not need to be automatically tacked onto every count of an attorney disciplinary complaint."

False Billing for Court-Appointed Work

Supreme Ct. Atty. Disciplinary Bd. v. Noel, 923 N.W.2d 575 (Iowa 2019)
One-year suspension for billing the State Public Defender for services not performed (i.e., billing for family team meetings the attorney did not attend) and submitting excessive mileage claims (i.e., billing mileage for a full trip for each client rather than pro rata). Offensive issue preclusion was properly applied to use the attorney's theft convictions for the same conduct to establish ethical violations. Minutes of testimony from the criminal case were properly admitted at the hearing, as the statements were non-hearsay as an admission by a party opponent by adoption due to the fact that the attorney had stated that the minutes were accurate in the criminal plea proceedings. Aggravating factors included lack of appreciation of the wrongful conduct by making excuses for much of the misconduct, the misconduct occurring repeatedly over a period of years, the failure to contact the State Public Defender to remedy the problem after discovering the inappropriate practice with regard to mileage, and the attorney's position as a magistrate. Mitigating factors included the attorney reimbursing the State Public Defender for the improper mileage and billing, the respect the attorney has gained in the legal community (as demonstrated by character reference letters from judges), implementation of better recordkeeping and billing practices, and no history of prior disciplinary actions.

Misappropriation of Client Funds

Supreme Ct. Atty. Disciplinary Bd. v. Parrish, 925 N.W.2d 163 (Iowa 2019)
While the Board has the burden of showing that a misappropriation of funds occurred, the attorney has the burden of providing evidence of a colorable future claim to the funds. When an attorney receives funds for a specific purpose, that purpose supersedes any claim or attorney lien the attorney may have in the funds and the "future claim of right" defense is not applicable. Attorney converted client funds by taking client's check earmarked for a trial transcript on appeal and cashing the check without paying the court reporter or placing the funds in the trust account. However, at the time the check was cashed, the attorney had a future colorable claim of right that exceeded the amount of the check. As a result, the transgressions were viewed as violations of trust account regulations regarding safekeeping of client funds. However, the Court warned that, in future cases concerning specific purpose funds, a future colorable claim of right will not be a defense to a charge of theft or misappropriation. Two-year suspension imposed for trust account violations, making "brazenly false" statements to the Supreme Court reporting that the client had not raised funds for the transcript, and causing delays and ultimately dismissal of court proceedings for failing to pay transcript fees. Aggravating factors included the attorney's history of prior admonitions, public reprimands, and a prior license suspension; the fact that prior misconduct involved improper handling of fees and

trust account violations; the attorney's seventeen-year history of practicing law; the fact that there were multiple rule violations; the fact that the violations were done knowingly; the attorney's course of conduct during the disciplinary proceedings that made the Commission's work more difficult; the attorney's attempt to concoct a fee agreement to avoid trust regulations; the fact that the misconduct harmed the client; and the attorney's failure to take responsibility for his actions. One dissenter called for revocation.

Embezzling Employer's Funds While License Suspended

Supreme Ct. Atty. Disciplinary Bd. v. Johnson, 926 N.W.2d 553 (Iowa 2019)
Lawyer's license was suspended and he began working as an accountant at a car dealership. Lawyer embezzled funds belonging to his employer, resulting in a criminal conviction for Fraudulent Practices in the First Degree. Such misconduct constituted a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer and conduct involving dishonesty, fraud, deceit, or misrepresentation, resulting in revocation of the lawyer's already suspended license.

Revocation for Drug Dealing

Supreme Ct. Atty. Disciplinary Bd. v. Bauermeister, 927 N.W.2d 170 (Iowa 2019)
In a 5-1 decision, revocation imposed after the attorney was convicted of felony federal charge of conspiring to possess and distribute a controlled substance involving a scheme whereby the attorney conspired with others to buy marijuana in Oregon to sell in Omaha. The majority distinguished a case in which an attorney that was a drug user and alcoholic received a license suspension, noting that the current case involved an attorney that was a drug dealer motivated by greed. Aggravating factors included the fact that the attorney was the orchestrator of the drug dealing, the attorney paid a coconspirator to assume the risk of transporting marijuana across state lines, the attorney participated in at least two earlier drug deals over several months before his mule was caught, the attorney engaged in for-profit drug dealing while serving as an assistant city attorney, and the attorney committed a felony for financial gain. Mitigating factors included the fact that the attorney had no disciplinary history, the attorney was actively involved in his children's activities, the attorney cooperated with law enforcement and the disciplinary process, and the attorney self-reported, albeit after he was served with a search warrant by federal agents. The dissenter argued for a three-year suspension.

Repeated Probate Delinquencies

Supreme Ct. Atty. Disciplinary Bd. v. Capotosto, 927 N.W.2d 585 (Iowa 2019)
Sixty-day suspension for allowing 12 probate estates to become delinquent and incurring 38 delinquencies in 6 estates. Such misconduct violated rules requiring reasonable diligence, requiring communication with clients, and prohibiting conduct

prejudicial to the administration of justice (e.g., causing needless expenditure of judicial resources). Aggravating factors included the number of delinquencies, two prior reprimands (one of which involved the same type of misconduct involving delinquent probate matters, including one of the estates in this case being the same estate as in the prior disciplinary proceeding years earlier), and failure to comply with an agreement reached to avoid discipline to clean up the estates and to refrain from opening new estates. Mitigating factors included reference letters from others, willingness to take court-appointed cases, and the fact that the attorney completed substantial work on most of the cases.

Frivolous Claims & Misrepresentations to Court – Pro Hac Vice

Supreme Ct. Atty. Disciplinary Bd. v. Caghan, 927 N.W.2d 591 (Iowa 2019)
Out-of-state attorney admitted *pro hac vice* enjoined from the practice of law in Iowa for at least six months after misconduct that included violations of rules prohibiting bringing a frivolous proceeding, prohibiting knowingly making or failing to correct false statements of material fact or law to a tribunal, and prohibiting conduct prejudicial to the administration of justice. Aggravating factors included the attorney's experience, previous violations related to frivolous proceedings, and lack of remorse. Three dissenters argued for a one-year injunction.

CIVIL PROCEDURE

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.

Attorney Fees Under City Civil Rights Ordinance

Seeberger v. Davenport Civil Rights Commission, 923 N.W.2d 564 (Iowa 2019)
Davenport's civil rights ordinance is organized into three divisions. Division II lists discriminatory practices including employment, accommodation, retaliation, and education. Division III addresses fair housing. Division II expressly allows attorney fee awards while the corresponding remedy section in Division III does not. A tenant successfully established a violation under Division III. In a 5-2 decision, the Court declined "to transport the remedy provisions from Division II to Division III" and denied the claim for attorney fees. The Court also rejected the argument that fees could be recovered under the Fair Housing Act. The same reasoning used in cases that hold that a local civil rights commission cannot award punitive damages under a federal statute applies to prohibit a local civil rights commission from awarding attorney fees under a federal statute.

Failure to Respond to Jurors' Questions Regarding Instructions

Mumm v. Jennie Edmundson Memorial Hospital, 924 N.W.2d 512 (Iowa 2019)
Iowa Code Section 668.3(5) directs the court to give instructions and permit evidence and argument on the effects of the jury's answers to comparative fault interrogatories. Here, the trial court's instructions did not explain how the math worked on allocation of fault between the defendant doctor and a released party. Consequently, when the jury asked a question about how allocation of fault worked, the trial court should have given an explanatory instruction rather than referring the jury to the original instructions. However, there was no prejudice to the plaintiff since the jury returned a verdict finding no fault by the defendant doctor. The Court pointed out that it was hampered in its efforts to review the record for prejudice since the plaintiff/appellant did not order a transcript, so the Court had no way of knowing how strong the evidence was or whether misleading arguments were made to the jury in the absence of an instruction on how comparative fault worked.

Discovery & Protective Order Regarding Police Reports – Open Records Law

Mitchell v. City of Cedar Rapids, 926 N.W.2d 222 (Iowa 2019)
Motorist shot by police officer during a traffic stop sued the officer and the city. Confidential record provisions of Section 22.7 do not trump discovery rules to block discovery of the records, but confidentiality of records exchanged in discovery may be safeguarded by a protective order under Rule of Civil Procedure 1.504. Police investigative reports do not lose their confidential status under Section 22.7(5) when the investigation closes. Three-part balancing test under Hawk Eye remains the controlling precedent for disputes over confidentiality of police investigative reports. Trial court properly applied that test and properly refused to grant a protective order prohibiting public disclosure of "investigative reports or electronic communications generated or filed within 96 hours of the incident." Trial court properly addressed the defendants' arguments that disclosure would have a chilling effect on the candor expected for internal investigations by excluding from the order compelling production those "reports or memorandum generated solely for purposes of a police internal review of the incident." Since the police investigative reports were not exempt from public disclosure under the Hawk Eye balancing test, a protective order limiting disclosure to third parties would be pointless since any member of the public could obtain the same reports through a Chapter 22 open records request.

Error Preservation Limitation – Rule 1.904(2)

Winger Contracting Co. v. Cargill, Inc., 926 N.W.2d 526 (Iowa 2019)
Amendment to Rule 1.904(2) was designed to eliminate the difficult choice faced by lawyers in determining whether a 1.904(2) motion was a valid request to consider an issue overlooked by the trial court or whether it was a mere rehash and therefore did not operate to stay the time for filing an appeal. It was not designed to overhaul

error preservation doctrines. Therefore, a party cannot raise an issue for the first time in a 1.904(2) motion and doing so does not preserve error on that issue.

Modifying Jury Verdict to Conform to Jury's Intention

Anderson v. Anderson Tooling, Inc., 928 N.W.2d 821 (Iowa 2019)
This case involves a complex business suit alleging civil conspiracy against two defendants related to claims against the other defendant for the underlying torts of conversion, intentional interference with prospective business advantage, breach of fiduciary duty, and misappropriation of trade secrets. The trial court may only make nonsubstantive changes to a jury verdict. Here, the main tortfeasor was found liable with substantial damages awarded. The jury also found that the other two defendants had engaged in a civil conspiracy, but stated the damage amount as "$0 – duplication." As noted in the "Torts" section of this outline, civil conspiracy is not an independent action. Instead, damages are assessed based on the harm caused by the underlying tortious conduct. Determining that the failure to award damages against the two conspiracy defendants was the result of faulty structure of the verdict form, the trial court properly amended the verdict to extend liability to the conspirators. The Court pointed out that many of the issues in this case could have been avoided had the parties not agreed to a sealed verdict.

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

Elements of Promissory Estoppel

Kunde v. Estate of Bowman, 920 N.W.2d 803 (Iowa 2018)
Farmer sued neighbor's heirs for unjust enrichment, quantum meruit, and promissory estoppel, claiming farmer had an option to buy neighbor's land and farmer had made substantial improvements in reliance on the promised option. The Court noted that express contracts and implied contracts cannot coexist with respect to the same subject matter. Since the farmer and the neighbor had a farm lease that addressed improvements and allocated the costs of those improvements to the farmer, farmer's claims based on unjust enrichment and quantum meruit failed. However, the promissory estoppel theory was not addressed by the farm lease, as the promissory estoppel claim was based on the farmer's claim that the farmer only incurred the cost of the improvements after relying on the neighbor's promise of an option to buy the land. Clarifying conflicting prior cases that created confusion as to whether promissory estoppel required proof of a "clear and definite agreement" or a "clear and definite promise," the Court holds that a "clear and definite promise" is sufficient if the other elements of promissory estoppel are met.

Door-to-Door Sales – Definition of Consumer Goods or Services

Morris v. Steffes Group, Inc., 924 N.W.2d 491 (Iowa 2019)
The Iowa Door-to-Door Sales Act ("DDSA")(Iowa Code Chapter 555A) only applies to the sales of "consumer goods or services." Whether goods or services are "consumer" goods or services depends on the primary purpose of the goods or services sold. Such determination is made from the perspective of the buyer, not the seller. Here, the seller sought summary judgment on the buyer's claims that the seller violated the DDSA by arguing that the sale of the services was not a "consumer" service because the seller was in the business of selling agricultural auction services, not consumer goods or services. However, viewed from the perspective of the buyer, since the seller presented no evidence that the services it sold were not primarily for personal, family, or household purposes, the seller was not entitled to summary judgment.

CORPORATIONS

(No Cases)

CRIMINAL LAW

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.

Lesser Included Offenses & Merger

State v. West, 924 N.W.2d 502 (Iowa 2019)
In a thorough review of the doctrine of merger and the method for determining lesser included offenses, the crimes of Delivery of a Controlled Substance and Involuntary Manslaughter by a Public Offense Other Than a Forcible Felony or Escape do not merge even though the two crimes meet the Blockberger "elements test." The Court declines to abandon the two-step approach set forth in Gallup and Halliburton. That approach involves using legislative intent to determine whether an offense is necessarily included in a greater offense. The legal elements test is useful, but not determinative. Where, as here, the greater offense has a penalty that is not in excess of the lesser included offense, a legislative intent to permit multiple punishments is demonstrated.

Kidnapping – Confinement & Torture Elements

State v. Albright, 925 N.W.2d 144 (Iowa 2019)
Defendant was found guilty of Kidnapping in the First Degree. The "incidental rule" states that confinement or removal in the kidnapping statute requires more than confinement or removal that is an inherent incident of the commission of another crime. The Court held that the incidental rule still applies when the kidnapping charge involves torture. Here, the confinement element was met by evidence that the defendant confined the victim for 13 hours, with periods of assault occurring throughout that period, and the defendant prevented the victim from leaving the house where she was confined. The torture element was met by evidence that the defendant beat the victim intermittently for 13 hours, punched and hit the victim in the face with his hands, hit her in the pelvis with a cordless drill, cut behind her ear with a knife, burnt her wrists with a Taser, broke her dentures, allowed his dog to bite her, and threatened to bury her in a cornfield up to her head and let a combine cut her head off while repeatedly calling her a whore and other derogatory names. Since the defendant was found guilty of Kidnapping in the First Degree, the Court did not need to address the question whether it was error to submit an instruction on a lesser included offense of Kidnapping in the Second Degree. When a jury convicts a defendant of a greater offense, no prejudice results from the jury considering guilt of a lesser offense.

Sex Offender Registration – Internet Identifiers

State v. Aschbrenner, 926 N.W.2d 240 (Iowa 2019)
Amendment to sex offender registration statute that added requirements for offenders to divulge "internet identifiers" as part of the sex offender registration process does not violate *ex post facto* constitutional provisions or violate free speech guarantees of the Iowa or federal constitutions.

Kidnapping – Nature of Confinement to Support Charge

Sauser v. State, 928 N.W.2d 816 (Iowa 2019)
Pointing a gun at the victim and making him stay in a chair for a period of time before shooting and killing the victim did not meet the "confinement" element of kidnapping. The confinement cannot be predicated on merely seizing another person. The confinement must be beyond that which would ordinarily be associated with the underlying offense and it must make the underlying crime more heinous. Here, the purported confinement was simply the unique facts associated with this particular shooting and did not make the shooting substantially more heinous. As a result, trial counsel was ineffective for permitting the shooter to plead guilty to kidnapping.

CRIMINAL PROCEDURE

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.

Restitution Standards

State v. Roache, 920 N.W.2d 93 (Iowa 2018)
Defendant stole a backpack that included a student's study guide. The organization that issued the study guide contractually "fined" the student $1900 for the loss of the guide. In a 6-1 decision, since Iowa Code Chapter 910 expressly relies on civil liability principles to determine restitution, the Restatement (Third) of Torts' risk standard for scope of liability applies. In assessing whether the $1900 could be assessed as restitution, the avoidable consequences doctrine did not apply because it is a comparative fault principle that does not apply to intentional acts. The State failed to prove that the student would be compelled to pay the fine and failed to rebut Defendant's argument that the fine was an unenforceable penalty. An unpaid fine is akin to an unpaid billing invoice and is insufficient, without more, to support a restitution award. Although the study guide may have had value as intellectual property, no lay or expert testimony was presented to prove such value. Since the organization that issued the study guide could not compel the student to pay the fine in a civil action, the fine amount could not be assessed as restitution. The fine was also punitive, and punitive damages are not recoverable as restitution.

Ineffective Assistance of PCR Counsel

Goode v. State, 920 N.W.2d 520 (Iowa 2018)
Postconviction relief ("PCR") applicant claimed PCR counsel was ineffective by failing to present evidence of ineffective assistance of trial counsel. Since the question of whether this was a constitutional or statutory claim was not the issue in the case, Court of Appeals erred by rejecting applicant's claim because it was framed as a constitutional issue. On the merits, trial court properly denied PCR application. Applicant was not entitled to remand to address claim that PCR counsel was ineffective not because of any statute of limitation issue, but because such claims must be raised in a separate application for PCR.

Restitution for Damage to Pursuing Law Enforcement Vehicles

State v. Shears, 920 N.W.2d 527 (Iowa 2018)
Defendant pled guilty to Criminal Mischief and Eluding. Defendant challenged restitution order requiring Defendant to pay for damage to police cruisers damaged in the chase. In this circumstance, a government entity is a "victim" under the restitution statute. In determining causation under the statute, tort principles are applied rather than some more restrictive standard. The Court declines to decide whether causation must be analyzed under tort principles in effect when the restitution statute was enacted in 1982 or under current tort principles applying the "scope of liability" standard because the result would be the same either way in this case. Damage to police vehicles as a result of a high-speed chase would be within the scope of liability in a negligence action, and thus such damage is recoverable as restitution. Even if the pursuit intervention technique ("PIT") maneuver used to stop Defendant was an independent act that was also a factual cause of damage to the police vehicles, under either the tort principles in effect in 1982 or the current tort principles, Defendant is still liable for the damages. Also, the "firefighter's rule," which generally limits the ability of firemen or police officers to recover for injuries incurred in performing their duties, does not apply to avoid Defendant's liability in these circumstances. Provision in Iowa Code Section 321J.2(13)(b) allowing recovery of up to $500.00 for emergency response costs in OWI cases did not limit recovery in this case.

Risk Assessments in PSI & Considering Unproven Offenses at Sentencing

State v. Gordon, 921 N.W.2d 19 (Iowa 2018)
Claim that use of risk assessment tools in presentence investigation report (PSI) violated Defendant's due process rights is a claim of error in the proceedings prior to imposition of sentence. Consequently, normal rules of error preservation apply. Since Defendant failed to object to the inclusion of the risk assessment tools in the PSI, error was not preserved. Ineffective assistance claim could not be resolved on direct appeal and was preserved for postconviction proceedings. Trial court did not err by considering: (1) criminal charges that were filed between plea and sentencing; and (2) details about the nature of the crimes (i.e., that Defendant was with a juvenile runaway). Since Defendant admitted to committing the new crime to the presentence investigator, admitted to the sentencing judge that Defendant was with the juvenile when arrested, and failed to object to any information contained within the PSI regarding the arrest, the trial court did not abuse its discretion in relying on the unprosecuted charge or surrounding circumstances.

Risk Assessments in PSI – II

State v. Guise, 921 N.W.2d 26 (Iowa 2018)
Since the issue was not raised in Defendant's brief, the Court declines to address the issue of whether there is legislative authority supporting the use of a risk assessment at sentencing. As in Gordon, due process challenges were not preserved for appeal and the record was insufficient to address ineffective assistance claims. Concurring opinion argues, not for categorical rejection of risk assessment tools, but for a fully-developed record to make sure the assessment tools are statistically valid. Mistaken reference to a surcharge for an underlying crime that was not charged, which the sentencing judge immediately corrected, did not demonstrate improper consideration of an unproven or unprosecuted offense.

Preclusive Effect of Determination of Length of Sex Offender Registration

Barker v. Iowa Dept. of Public Safety, 922 N.W.2d 581 (Iowa 2019)
On the unique facts of this case, even though the crime for which sex offender was convicted required a lifetime registration requirement, due to a prior (although erroneous) determination by the Court of Appeals that sex offender was only required to register as a sex offender for ten years, the ruling had preclusive effect that prohibited the DPS from requiring sex offender to register for life.

Stipulation to Habitual Offender Priors – Procedure & Error Preservation

State v. Smith, 924 N.W.2d 846 (Iowa 2019)
Defendant stated a desire to stipulate to prior offenses that would trigger habitual offender enhancement. Trial court's statement that Defendant had a right to file a motion in arrest of judgment was insufficient to comply with its duty under Harrington because the statement did not tie that right to the method of challenging the stipulation proceedings and did not ensure that Defendant understood that the failure to file such a motion would preclude Defendant from challenging the proceedings on appeal. Therefore, Defendant was not precluded from challenging the prior offense stipulation on appeal. Trial court failed to engage in the Harrington colloquy to inform Defendant of the nature of the habitual offender enhancement, obtain a factual basis, inform Defendant of the minimum and maximum punishment of habitual offender enhancement, inform Defendant of trial rights, and inform Defendant that challenges to admissions based on defects in the habitual offender proceedings must be raised in a motion in arrest of judgment and failure to do so would preclude the right to assert them on appeal.

Restitution – Ability to Pay

State v. Albright, 925 N.W.2d 144 (Iowa 2019)
In a review of the statutory scheme for imposing financial obligations, the Court holds that the sentencing judge must impose the applicable financial obligations for restitution to a victim, fines, penalties, and surcharges regardless of the offender's reasonable ability to pay. The sentencing judge can only assess all other financial obligations (e.g., court costs, attorney fees, jail fees, crime victim assistance) in an amount commensurate with the offender's reasonable ability to pay. It is error to order an offender to pay all of the second category restitution items in full without having the amount of each such item available to the sentencing judge at the time the order is issued.

Probation Revocation Standards and Restitution

State v. Covel, 925 N.W.2d 183 (Iowa 2019)
A court may revoke probation if the probationer violates the terms of probation. The judge must base a revocation decision on more than a simple reevaluation of the information known by the trial judge at the time of sentencing. If a probation violation is established, the trial court must then determine whether the person should be committed to prison or whether the court should take other steps to protect society and improve chances of rehabilitation. Here, the trial court put a great deal of time and thought into the decision to revoke probation by getting an updated PSI and holding two probation revocation hearings, so no error occurred in revoking the youthful offender's deferred judgment and imposing a prison sentence. However, the restitution portion of the sentencing order was vacated because the trial court ordered the defendant to pay the total amount of restitution without having the total restitution figures available, in violation of the Albright procedure.

Scope of Motion in Arrest, Attorney-Client Breakdown, & Ex Post Facto Surcharges

State v. Petty, 925 N.W.2d 190 (Iowa 2019)
Defendant did not preserve error by filing a motion in arrest of judgment that raised different issues than those raised on appeal. The issue not properly preserved for appeal was preserved for postconviction relief. Record was insufficient to determine whether there was a breakdown of the attorney-client relationship, so that issue was preserved for postconviction relief. Since the defendant's criminal conduct occurred one month before the effective date of the sexual abuse surcharge imposed by Iowa Code Section 911.2B, imposition of the surcharge violated *ex post facto* principles and that portion of the sentence was vacated. Trial court's imposition of court costs and attorney fees without determining Defendant's reasonable ability to pay violated the procedures detailed in Albright.

Apportionment of Court Costs on Dismissed Counts

State v. Ruth, 925 N.W.2d 589 (Iowa 2019)
In a multi-count case in which the offender is convicted on one or more counts and one or more counts are dismissed, sentencing courts can no longer routinely order the offender to pay all court costs unless there is an agreement between the parties or the record shows no court costs are attributed to the dismissed counts. Without an agreement, sentencing courts must either apply the apportionment rule or include a provision that directs the offender to pay the court costs identified in the docket report other than those attributed to a dismissed count. An appeal is not the only remedy for the failure to apportion costs at sentencing. The State, the defendant, or the clerk of court can request a supplemental order to apportion court costs.

Apportionment of Court Costs on Dismissed Counts – New Rule

State v. McMurry, 925 N.W.2d 592 (Iowa 2019)
Modifying the rule set forth in Petrie, in a multi-count case that results in both a conviction with regard to one or more counts and a dismissal of one or more counts, court costs that would have been the same without the dismissed counts (e.g., filing fee, court reporter fees for plea and sentencing, service fees) should not be apportioned proportionately and all such fees should be assessed against the defendant. Equitable apportionment of court costs is still required, but apportionment should only occur with regard to fees and costs clearly attributable to any single count. It is error to find the defendant has the ability to pay court-appointed attorney fees in full before the total amount of fees has been determined.

Claim of Illegal Sentence – Appointment of Counsel

Jefferson v. Iowa Dist. Ct. for Scott County, 926 N.W.2d 519 (Iowa 2019)
A motion to correct an illegal sentence is a stage of the original criminal case, even when filed years after the sentence was imposed. Therefore, Iowa Rule of Criminal Procedure 2.28(1) requires the court to appoint counsel when an indigent defendant files a motion to correct an illegal sentence under Iowa Rule of Criminal Procedure 2.24(1).

Risk Assessments in PSI – III

State v. Headley, 926 N.W.2d 545 (Iowa 2019)
Sentencing judge does not abuse its discretion in considering risk assessment tools on their face as contained in the PSI, as these tools contain pertinent sentencing information. The argument that the sentencing judge did not know of the cautions and limitations associated with the tools was without merit because it is essentially a due process argument that was not preserved because the defendant did not object to the tools on this basis. Ineffective assistance claims could not be raised on direct

appeal, but were preserved for postconviction relief. Sentencing court did not consider an improper sentencing factor by consider the PSI writer's recommendation because the recommendation is pertinent sentencing information. Requiring the defendant to pay the court costs associated with dismissed charges did not constitute an illegal sentence as long as the costs would have been incurred in prosecuting the charges that were not dismissed, which was the case here. Ordering the defendant to pay restitution in the form of court costs and correctional fees without first determining the defendant's ability to pay those items was error, as noted in Albright.

Expungement Conditioned on Payment of Court Debt

State v. Doe, 927 N.W.2d 656 (Iowa 2019)
After charges against a criminal defendant were dismissed, the defendant sought expungement of the record pursuant to Iowa Code Chapter 901C. The request was denied because the defendant still owed court-appointed attorney fees. The defendant challenged the condition on Equal Protection grounds under both constitutions, arguing that criminal defendants who owed fees to privately-retained attorneys were allowed expungement. In a 4-3 decision, the Court found no Equal Protection violation. Since there is no constitutional right to expungement, the Equal Protection claim did not involve a fundamental right. Applying rational basis analysis, the Court found that the legislature could reasonably condition expungement on payment of costs in order to provide an incentive for defendants to pay court debt.

Individualized Voir Dire on Race Issues & Implicit Bias Instruction

State v. Williams, 929 N.W.2d 621 (Iowa 2019)
In a 4-3 portion of the opinion, Defendant convicted of Murder in the Second Degree was entitled to remand to more fully develop Defendant's 6th Amendment "fair-cross-section" claim regarding the racial make-up of the jury. Defendants trying to show that a policy or practice relating to excusing jurors might amount to systematic exclusion of racial minorities are not to be foreclosed from doing so by a rigid rule that calculates the pool based on who was summoned rather than who actually appeared. In another 4-3 portion of the ruling, trial court did not abuse its discretion in refusing to require individualized voir dire regarding race issues. Defendant and the decedent were of the same race and there was no suggestion that race played a role in the alleged crime or its investigation. Also, the trial court properly balanced the request against concerns that, if jury selection was not finished that day, a larger number of jurors would be exposed to potential improper influence (i.e., all jurors going home as opposed to the 14 selected, with a more meaningful admonition). In another 4-3 portion of the ruling, trial court did not abuse its discretion in refusing to give a requested implicit bias instruction, as Defendant and the victim were of the same race and the trial court used an updated Instruction 100.8 that addressed generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases.

However, the Court also noted that its ruling did not mean that it would have been an abuse of discretion to give the requested instruction. In a 7-0 part of the ruling, the "stand your ground" law took effect July 1, 2017, so it did not apply to this crime that happened late in the day on June 30, 2017.

Curing Prosecutor Misconduct & Improper Jury Influence

State v. Christensen, 929 N.W.2d 646 (Iowa 2019)
Prosecutor eliciting testimony from DCI agent that physical evidence was available for testing by others was improper, as it suggested the defendant had the burden of proof. However, mistrial was not required, as the prosecutorial misconduct was isolated and the trial court quickly struck the improper testimony and gave a curative instruction. Also, the stricken testimony was not startling or flamboyant. Testimony from another State witness was shown to be misleading, if not false, but a mistrial was not required because there was no showing that the prosecutor was aware of a plan to present false testimony and the problem was cured by the trial court directing the witness back to the stand to clarify the prior misleading testimony. A new trial was not required based on claims that jurors became aware of threatened riots if a guilty verdict was not returned. The Court declined to set the standard of review because the Court agreed with the trial court's findings. Without foreclosing an irrebuttable presumption standard in an appropriate circumstance, the Court declined to impose such a presumption on these facts and also declined to impose a rebuttable presumption. Instead, the Court applied a reasonable-probability of prejudice test. Applying that test, objective facts only are allowed – who said what to whom and when and what specifically was injected into the jury discussion – but juror assessments about the impact of the improper extraneous influence are off limits. Here, Defendant failed to show a reasonable probability that the verdict of the jury would have been different if the extraneous influence (characterized as a vague speculative hearsay report on Facebook about a possible riot that was only briefly discussed by the jury) did not reach the jury. Likewise, the threat of a riot did not support a finding of implied jury bias, as the ostensible threat to the jury attested by one juror was hearsay upon hearsay.

PCR – Expert on Battered Women's Syndrome

Linn v. State, 929 N.W.2d 717 (Iowa 2019)
On postconviction relief following conviction for First Degree Murder, trial court abused its discretion in not appointing an expert on battered women's syndrome ("BWS"). After a lengthy discussion of BWS, the Court finds that Section 822.5 authorizes appointment of an expert at state expense in PCR proceedings. Based on the evidence of verbal, psychological, and physical abuse by the decedent, the applicant demonstrated a reasonable need for an expert in order to evaluate trial counsel's claimed ineffectiveness and understand BWS's relevancy to the applicant's

justification defense. The length of the relationship cannot be used as a yardstick to measure the need for a BWS expert. The factual matters in the record and the applicant's asserted need reasonably demonstrated that a BWS expert was necessary to guide the applicant, the applicant's PCR counsel, and the courts in evaluating the applicant's claim.

DEBTOR / CREDITOR

Enforcing Judgment Against Ownership Interest in LLC

Wells Fargo Equipment Finance v. Retterath, 928 N.W.2d 1 (Iowa 2019)
Minnesota creditor had a Florida judgment against a Florida resident, who owned membership shares of an LLC formed in Iowa. The judgment was then filed in Iowa. Pursuant to the Revised Uniform Limited Liability Company Act (codified as Iowa Code Section 489.101), the creditor obtained a charging order to execute on the debtor's membership interest in the Iowa LLC. As a matter of first impression, the Court holds that, for the purposes of determining the enforceability of a charging order under the RULLCA, a member's membership interest is located where the LLC was formed. In this case, the LLC was formed in Iowa, so Iowa law applied to the dispute. Iowa law does not recognize ownership of property by a married couple as "tenants in the entireties," so the petition filed by the judgment debtor and his wife seeking to vacate the charging order on that basis was properly dismissed. With regard to challenges based on improper registration of the Florida judgment in Iowa, the fact that the Clerk of Court did not note the mailing of the filing of the foreign judgment as required by the statute was not fatal. There was substantial evidence supporting the trial court's finding that the judgment debtor received notice such that the clerical error was not fatal to the registration of the judgment and issuance of the charging order. Notice requirements that permit mailing of registration of a foreign judgment pursuant to Iowa's Uniform Enforcement of Foreign Judgments Act (Iowa Code Chapter 626A) do not violate due process protections. Basic due process requirements were already met by the Florida court when judgment was entered. Registering a foreign judgment is merely the method of enforcing the properly-obtained judgment. Therefore, due process is satisfied under both constitutions by the procedures of the UEFJA.

DIVORCE / FAMILY LAW

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

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.

Prohibition on Payroll Deductions for Union Dues for Public Employees

Iowa State Education Association v. State, 928 N.W.2d 11 (Iowa 2019)
Applying rational basis analysis, amendments to the Public Employment Relations Act that prohibit payroll deductions for union dues do not violate the Equal Protection clause. Public employees do not have a constitutional right to payroll deductions for union dues. There is no Equal Protection violation merely because voluntary automatic payroll deductions are permitted for charities or dues to other organizations that do not impact the public treasury.

Different Bargaining Rights – Public Safety Employees

AFSCME Iowa Council 61 v. State, 928 N.W.2d 21 (Iowa 2019)
The 2017 amendments to the Public Employment Relations Act ("PERA") limited the issues over which collective bargaining was required and significantly reduced such

issues for bargaining units comprised of less than thirty percent "public safety employees." In a 4-3 decision, applying rational basis analysis, the amendments did not violate Iowa's Equal Protection clause by giving greater bargaining rights to bargaining units comprised of 30% or more of public safety employees. The legislature could reasonably conclude that the goal of keeping labor peace with unions comprised of at least 30% public safety employees, and the greater risks faced by emergency first responders, justified the classification. Also applying rational basis analysis, the amendments did not violate the Freedom of Association clause, as the amendments do not prohibit or restrict unions from soliciting members, disseminating materials, engaging in political activities, or expressing their views. "There is a fundamental distinction between the right to associate and whether someone must listen when you do."

Acceptance of Employer Contract Offer

UE Local 893/IUP v. State, 928 N.W.2d 51 (Iowa 2019)
Public employee union claimed it accepted the State's offered collective bargaining agreement. The State, in resisting the union's motion for summary judgment, failed to argue that Iowa Administrative Code Rule 621 – 6.5(3) required the State to vote to ratify after the union vote and that without the State's vote, no contract was formed. Therefore, the State was found not to have preserved error on that issue. Without that issue, the State lost, as the State had not withdrawn its offer before the union's acceptance and ratification, resulting in an enforceable collective bargaining agreement. The Court also rejected the State's arguments that the union failed to exhaust administrative remedies and that the courts should defer to the Public Employment Relations Board ("PERB") under the doctrine of primary jurisdiction. Due to PERB's regulations not equipping the agency to adjudicate contract-formation and contract-enforcement issues coupled with the courts having specific legislative authority to do so, the primary jurisdiction doctrine did not apply. Since PERB could not order the relief the union sought in the lawsuit, the union was not required to exhaust administrative remedies with PERB.

Public Employer Required to Get Approval Before Ratifying CBA

Service Employees Int'l Union v. Board of Regents, 928 N.W.2d 69 (Iowa 2019)
Public Employment Relations Board ("PERB") had statutory authority to promulgate Iowa Administrative Code Rule 621 – 6.5(3), which implements a public-voting requirement before a public employer can accept a collective bargaining agreement. Since the Board of Regents never approved the CBA proposal that was accepted by the union, the CBA did not become an enforceable contract.

Interpretation of 2017 Amendments to PERA

United Electrical, Radio, & Machine Workers v. PERB, 928 N.W.2d 101 (Iowa 2019)
The 2017 amendments to the Public Employment Relations Act ("PERA") limited bargaining to "base wages and other matters mutually agreed upon" for bargaining units that do not have at least 30% public safety employees. The amendments also prohibited an arbitrator resolving any disputes between the public employer and such bargaining units from considering "past collective bargaining agreements." Interpreting those amendments, in a 5-2 decision, the Court determined that the terms "base wages" and "past collective bargaining agreements" are ambiguous, but the context of those terms allowed their meaning to be determined. "Base wages" means the floor level of pay for each job before upward adjustments such as for job shift or longevity. "Past collective bargaining agreements" means the CBAs that came before the existing CBA.

Adoption of the "Same-Decision" Affirmative Defense

Hawkins v. Grinnell Regional Medical Center, 929 N.W.2d 261 (Iowa 2019)
Due to the fact that Iowa has adopted the "motivating-factor" standard for causation rather than the "determining-factor" standard under the Iowa Civil Rights Act, an employer is entitled to the "same-decision" affirmative defense that goes with the "motivating-factor" standard. The same-decision affirmative defense is an affirmative defense, so it must be pled and proved. Iowa courts should no longer use the McDonnell Douglas burden-shifting analysis and determining-factor standard when instructing the jury.

EVIDENCE

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.

Hearsay – Cards and Notes of Support

Hawkins v. Grinnell Regional Medical Center, 929 N.W.2d 261 (Iowa 2019)
In this employment discrimination suit where the reason for termination of employment was the key issue, cards and notes of support from friends and former co-workers to the fired employee constituted hearsay and admission of that hearsay necessitated a new trial. The hearsay was prejudicial because the evidence of the reason for termination of employment was not overwhelming, the hearsay was not cumulative, and the hearsay went to the primary issue of the case.

Self-Defense – Character of the Alleged Victim

State v. Williams, 929 N.W.2d 621 (Iowa 2019)
Defendant accused of murder who claimed self-defense sought to introduce evidence of the victim's criminal history or proof of specific prior acts of violence not known to Defendant. Clarifying some past inconsistent rulings, in a unanimous part of the ruling, the Court declared that the plain text of Rule 5.405 should be followed. The rule allows specific-acts evidence to be used to prove character only when character is an "essential element" of a charge, claim, or defense (Rule 5.405(b)). Character is not an essential element of justification. Therefore, a defendant asserting self-defense or justification may not prove the victim's aggressive or violent character by specific conduct of the victim unless the conduct was previously known to the defendant.

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.

Exclusions & Efficient Proximate Cause

City of West Liberty v. Employers Mut. Cas. Co., 922 N.W.2d 876 (Iowa 2019)
A squirrel climbed onto an outdoor electrical transformer at the city's power plant, resulting in arcing that caused significant damage to the transformer and other electrical equipment. Insurer denied coverage based on an exclusion for loss caused

by arcing. City relied on the efficient proximate cause doctrine, asserting that the squirrel was the efficient proximate cause of the loss. The Court found that the doctrine only applies when two or more causes, at least one of which is covered and at least one of which is excluded, contribute to a loss. Here, there were not two independent causes as the squirrel did not independently contribute to the loss other than through the arcing. Electrical arcing is always going to have some cause, so, if the squirrel causing the arcing was a basis for avoiding the exclusion, the exclusion could be avoided every time by simply pointing out that the arcing had a cause.

CGL Obligation to Indemnify Homeowners' Carrier for Settlement

Metropolitan Property & Cas. v. Auto-Owners Mut., 924 N.W.2d 833 (Iowa 2019)
Homeowners' insurance carrier filed subrogation claim against comprehensive general liability (CGL) carrier for amounts paid to settle a claim for an accidental shooting death. Substantial evidence supported trial court findings that: (1) son of owner of insured LLC was engaged in conduct for the business of the LLC at the time of the accidental shooting so as to make the son an insured under the CGL policy; (2) the insured LLC was potentially liable for the accidental death under a premises liability theory; and (3) a $900,000 settlement with disputed liability was a reasonable amount to pay to settle a claim for the accidental death of a healthy 17-year-old. Therefore, the CGL carrier was obligated to indemnify the homeowners' carrier for half of the settlement.

JUVENILE

Constitutionality of Mandatory Sex Offender Registration

In the 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.

Participation in TPR Hearing by Incarcerated Parent

In the Interest of M.D., 921 N.W.2d 229 (Iowa 2018)
State sought to terminate parental rights of a mother incarcerated in another state. Trial court properly denied mother's request for continuance. However, limiting mother's telephone participation to testifying only was improper. The Court expressly rejected a rule that limits telephone participation of an incarcerated parent in a termination of parental rights hearing to giving testimony. Instead, the Court adopts the standard that juvenile courts must give incarcerated parents the opportunity to participate from the prison facility in the entire termination hearing by telephone or other similar means of communication that enables the parent to hear the testimony and arguments at the hearing. In the event prison officials or other circumstances do not permit the standard to be met, the juvenile court must provide an alternative process that allows the parent to review a transcript of the evidence offered at the hearing. In those instances, the court must direct an expedited transcript of those portions of the hearing that were closed to the parent be prepared and given to the parent to review prior to testifying by telephone, along with all exhibits admitted into evidence. If the attorney representing the incarcerated parent is unable to obtain the cooperation of prison officials to make the parent available for the entire hearing, the juvenile court must communicate with the prison officials to explain the importance of participation by the parent and the benefits of avoiding the alternative procedure. If efforts by the juvenile court are unsuccessful, then the alternative procedure of providing transcripts and exhibits must be followed. Three justices concurring in part and dissenting in part agreed with remand in this case because incarcerated parents should be allowed to participate by telephone during the entire hearing as long as it is arranged by the parent's attorney and allowed by prison officials. However, they dissented with regard to the "onerous mandates for juvenile court judges and their effects on court reporters."

Delay in TPR Ruling – Reasonable Efforts in Interim

In the Interest of L.T., 924 N.W.2d 521 (Iowa 2019)
When the juvenile court fails to enter a ruling for 20 months following the close of the evidentiary hearing on a petition seeking to terminate parental rights, it is error to deny the mother's request to reopen the record to present evidence of the mother's current situation. This is especially the case when the juvenile court allowed the State to reopen the record 6 months after the close of the initial evidentiary hearing. Even though the juvenile court verbally expressed an intention to grant termination at the end of the hearing on the State's request to reopen, the State remained obligated to engage in reasonable efforts because that obligation runs until the juvenile court has entered a final written order of termination. An oral expression of an intended ruling is not the final action of the court. Although the reasonable efforts obligation

continued, the nature of that obligation depends on the best interest of the child and does not necessarily mean efforts at reunification.

MISCELLANEOUS

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.

Civil Rights – Medicaid Coverage for Gender-Affirming Surgery

Good v. Iowa Dept. of Human Services, 924 N.W.2d 853 (Iowa 2019)
Administrative rule that prohibits Medicaid coverage of surgical procedures related to gender identity disorders violates the Iowa Civil Rights Act's prohibition against gender-identity discrimination. The DHS is a "government unit" within the ICRA's definition of a "public accommodation" and is bound by the terms of the ICRA, which prohibits discrimination on the basis of sex or gender identity. Due to the finding that the rule violates the ICRA, based on the doctrine of constitutional avoidance, the Court declined to address the issue of whether the rule violates the equal protection clause of the Iowa Constitution and other constitutional issues.

Reasonable Accommodation of Mental Health Disability in Medical School

Slaughter v. Des Moines University, 925 N.W.2d 793 (Iowa 2019)
Medical student was expelled based on failing grades. In a case of first impression in a 4-3 ruling, knowledge of the university's psychotherapist of student's depression cannot be imputed to the university's academic decision-makers when student did not authorize disclosure. Disclosure restrictions in Iowa Code Chapter 228 and HIPAA fall within an exception to the general principle of agency law imputing an employee's knowledge to the employer. To avoid summary judgment, student had to make a facial showing that a reasonable accommodation existed that could have enabled the student to meet the medical school's academic requirements. The student made no such showing.

MOTOR VEHICLES / OWI

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.

Timing of Granting Request for Phone Calls

State v. Davis, 922 N.W.2d 326 (Iowa 2019)
Driver's rights to make phone calls pursuant to Iowa Code 804.20 were not violated when officer denied the driver's request to call the driver's wife until after field sobriety testing occurred at the sally port. Due to a snowstorm, the sally port was a location for field sobriety testing, not a "place of detention" within the meaning of Section 804.20.

Constitutionality of Speed Cameras

Behm v. City of Cedar Rapids, 922 N.W.2d 524 (Iowa 2019)
Challenges to ordinance permitting speed cameras based on claims that ordinance violated substantive due process, equal protection, and privileges and immunities clauses of the Iowa Constitution were reviewed under rational basis standard and not strict scrutiny. Applying rational basis standard, ordinance did not violate substantive due process, equal protection, or privileges and immunities clauses. Ordinance was not conflict preempted by statute governing proceedings on municipal infractions by virtue of the fact that the ordinance provided a voluntary administrative review process before municipal infraction proceedings are initiated. Ordinance's procedures also did not violate procedural due process. Involvement of third party contractor in the process of initiating infraction process was not an unlawful delegation of city authority.

Constitutionality of Speed Cameras – II

City of Cedar Rapids v. Leaf, 923 N.W.2d 184 (Iowa 2018)
Utilization of speed cameras in Cedar Rapids does not violate equal protection, privileges and immunities, or substantive due process clauses of state or federal constitutions. Motorist failed to preserve error on claim that the city's action is preempted by provisions of the Iowa Administrative Code, but, even if preserved, Iowa Department of Transportation did not have authority to promulgate automated traffic enforcement rules, as held in Behm. Since this case went to trial in small claims court, procedural due process requirements were met. Motorist failed to meet the motorist's burden to support motorist's claim of unlawful delegation of authority to a private company.

Constitutionality of Speed Cameras – III

Weizberg v. City of Des Moines, 923 N.W.2d 200 (Iowa 2018)
Utilization of speed cameras in Des Moines did not violate procedural due process under Iowa constitution based on claims that: (1) the city utilized additional procedures beyond those provided for in the ordinance; or (2) the third party vendor did not tell vehicle owners who called their hotline that the vehicle owners could avoid liability if there had been a sale, lease, or rental of the vehicle (a 6-0 part of the ruling). Irrebuttable presumption of vicarious liability of the vehicle owner did not violate substantive due process (a 6-0 part of the ruling). Substantive due process, equal protection, and privileges and immunities clause claims based on the exclusion of government-owned vehicles and semi-trucks from enforcement were not properly dismissed via motion to dismiss (as opposed to summary judgment in Behm)(a 4-2 part of the ruling). Motorists failed to preserve error on claims based on unlawful delegation to a private entity with respect to calibration of equipment (a 6-0 part of the ruling, with a special concurrence by two). If, on remand, motorists can sustain their claims based on violations of equal protection, procedural and substantive due process, and privileges and immunities clauses, the motorists have a viable claim for damages (a 4-2 part of the ruling). Since the ordinance does not provide for enforcement of a violation through any means other than a municipal infraction, the ordinance is not preempted by Iowa Code Sections 602.6102 and 364.22(4) and (6) (a 6-0 part of the ruling, with a special concurrence by two). Since the DOT lacked authority to promulgate rules regulating speed cameras, motorists' preemption arguments based on DOT actions were without merit (a 6-0 part of the ruling).

Proof of Detectable Amount of Controlled Substances

State v. Myers, 924 N.W.2d 823 (Iowa 2019)
Results of the initial testing of a urine specimen alone is insufficient to satisfy the burden of proof required to establish a violation of Iowa Code Section 321J.2(1)(c) (the presumptive "any amount of a controlled substance" violation). Without other evidence, an initial test that only identifies the "possible presence" of a controlled substance falls short of satisfying the beyond a reasonable doubt standard. Additionally, witness testimony of impairment does not serve to validate the presence of a controlled substance, at least not without expert testimony that could eliminate other causes for the conduct and demeanor. The case was remanded for dismissal, although three concurring justices would have allowed remand for a finding on the "under the influence" theory that was not addressed by the trial court.

Invoking Right to Independent Chemical Test

State v. Smith, 926 N.W.2d 760 (Iowa 2019)
Because the statute authorizing an independent chemical test only provides for the right to independent testing in addition to testing administered by the officer, only

statements made by a suspect regarding additional testing are sufficient to invoke the statutory right. Here, the defendant's statements related only to testing in lieu of the testing administered at the direction of the officer, so the statements were insufficient to invoke the right to independent testing under Section 321J.11.

Constitutionality of "Any Amount" of Controlled Substance

State v. Newton, 929 N.W.2d 250 (Iowa 2019)
In a case such as this, where the driver exhibited signs of impairment before invocation of implied consent procedures, the clause of the OWI statute that makes it unlawful for a person to operate a vehicle with "any amount of a controlled substance" in the driver's body does not violate the Due Process Clause of either constitution. The Court reserves for another day the issue of the constitutionality of the statute when the reasonable grounds to invoke implied consent do not involve contemporaneous objective signs of impairment.

No Suppression in DOT Proceeding With No Corresponding Criminal Case

Westra v. Iowa Dept. of Transportation, 929 N.W.2d 754 (Iowa 2019)
A DOT officer's stop of a vehicle was invalid due to lack of statutory authority to make the stop. However, driver could not challenge a subsequent OWI test refusal revocation. Iowa Code Section 321J.13(6) requires the DOT to honor suppression rulings made in a corresponding OWI criminal case, but, since there was no such criminal case for this driver, there was no suppression ruling that bound the DOT. By the terms of the statute, the driver could not raise a constitutional issue in the DOT proceeding. In a 4-2 decision, the Court held that allowing revocation does not violate Article I, Section 8 of the Iowa Constitution because the driver could not dispute that he violated the traffic laws. Even though the stop by the DOT officer exceeded the officer's statutory authority, it was still based upon reasonable suspicion and probable cause, so it did not amount to a constitutional violation. A constitutional violation does not occur every time a peace officer simply fails to adhere to a statute.

MUNICIPAL CORPORATIONS

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.

Change in Intensity of Nonconforming Use

Ames 2304 v. Ames, Zoning Bd. of Adjustment, 924 N.W.2d 863 (Iowa 2019)
Plaintiff owned a house converted to apartments that was grandfathered in as a legal nonconforming use. Owner's proposed interior remodeling that would increase the number of bedrooms but not the number of apartment dwelling units did not constitute a prohibited increase in the intensity of the nonconforming use.

Procedure for Sale of Abandoned Right-of-Way – Notice Requirements

Den Hartog v. City of Waterloo, 926 N.W.2d 764 (Iowa 2019)
City sought to transfer land from an unused right-of-way to a developer of a residential subdivision. Adjacent landowners objected, challenging the City's method of providing notice of the proposed sale. In this appeal, the third appeal in this dispute, the City was found to have complied with Iowa Code Section 306.23. Section 306.23 does not mandate a particular appraisal method; it only requires that the notice include the fair market value of the land based upon "an appraisal by an independent appraiser." Since the City hired an independent appraiser who arrived at the fair market value using appropriate standards, the City complied with Section 306.23. City's requirement that bidders deposit the full amount of the bid was not improper. The challenging landowners presented no evidence showing bids were deterred by the full deposit requirement and cited no authority prohibiting a full value bid deposit requirement. City's express reservation of a right to reject bids did not violate Section 306.23. The challenging landowners identified no bidders deterred by the City's asserted but unexercised right to reject bids and cited no authority precluding a right to reject bids.

Wind Energy Ordinance Challenges

Mathis v. Palo Alto County Bd. of Supervisors, 927 N.W.2d 191 (Iowa 2019)
In landowners' suit challenging a county wind energy ordinance and approval of a specific wind energy project, the fact that the wind energy company provided input into the ordinance drafting did not make the ordinance unlawful. The approval of the

specific project was not unlawful under the ordinance just because the planned eventual owner of the wind energy system did not submit the application. Since the owner at the time of the application submitted the application and disclosed the planned future transfer to MidAmerican, the application complied with the ordinance. Board did not act arbitrarily or capriciously in disregarding the recommendations of the DNR and the state archaeologist, as board members reviewed the recommendations and considered them, but chose not to follow them. Likewise, approving the project in spite of a report by an acoustical expert claiming the project would violate the ordinance's 50-decibel limit was not arbitrary and capricious. Finally, with regard to costs related to decommissioning and removing the wind turbines at the end of the useful life of the project, board's reliance on the only cost estimate that came from a licensed professional engineer, rather than a non-licensed individual that submitted a report in opposition to the project, was not arbitrary and capricious. Ultimately, the issues raised by the landowners were issues for the board, not the courts, to resolve.

Local Airport Commission Authority to Regulate Building Height

Carroll Airport Commission v. Danner, 927 N.W.2d 635 (Iowa 2019)
After FAA issued a no-hazard determination to farmers who constructed a grain leg near a local airport, the local airport commission sought an injunction to remove or lower the grain leg. In response to the farmers' preemption defense, the Court concluded that federal law and the FAA no-hazard determination allow for local regulation of tall structures in flight paths. The federal statute did not expressly preempt state statutes and local ordinances. Likewise, the federal statute did not impliedly preempt state statutes and local ordinances under either the conflict or field preemption subcategories of implied preemption. State and local regulators can impose stricter height restrictions on structures in flight paths notwithstanding an FAA no-hazard determination. This conclusion was supported by language in the no-hazard determination itself, which expressly warned the farmers that the farmers must still comply with state and local laws. The trial court was praised for being reasonable in giving the farmers a 9-month period within which to abate the nuisance.

PROBATE / GUARDIANSHIP / CONSERVATORSHIP

Transfer of Assets to Pooled Special Needs Trust

Cox v. Iowa Dept. of Human Services, 920 N.W.2d 545 (Iowa 2018)
Medicaid applicants sought judicial review of DHS decision requiring delay in eligibility for institutional long-term care benefits after applicants transferred assets to a pooled special needs trust. In a 6-1 decision interpreting the Medicaid statute, applicants may establish a pooled special needs trust, but there may be a delay in Medicaid long-

term care benefits if transfers to the trust after the individual reached the age of 65 were for less than fair market value. Here, the applicants were subject to a delay in eligibility because they were 65 when the transfers of funds to the trust occurred, the funding of the trust constituted a "transfer," and the transfer was for less than fair market value because even if the trustee was obligated to pay out trust funds over a period of time, the funds placed in the trust were still worth less than unrestricted cash.

Trusts – Statute of Limitations Following Trustee's Report to a Beneficiary

Konrardy v. Vincent Angerer Trust, 925 N.W.2d 620 (Iowa 2019)
Trust beneficiaries brought suit challenging the valuation date used by the trustee in valuing the beneficiaries' shares. A trustee has the duty to administer the trust in accordance with the terms of the trust. A violation of that duty is a breach of trust, so a claimed violation of that duty is governed by the one-year limitation period set forth in Iowa Code Section 633A.4504(1). A letter from the trustee responding to a letter of complaint from the beneficiaries' lawyer that included a schedule of assets, a statement that all assets were professionally valued, and a copy of the trust accounting for the years in question constituted a "report" under Section 633A.4504 and adequately disclosed the existence of a claim. Therefore, the receipt of that letter/report by the beneficiaries started the running of the one-year limitation period. Since the beneficiaries failed to file suit within one year of their receipt of that letter, their claims were time barred.

REAL PROPERTY

"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.

No Mechanic's Lien on Lessor's Interest for Work Done for Lessee

Winger Contracting Co. v. Cargill, Inc., 926 N.W.2d 526 (Iowa 2019)
Unpaid contractors that did work for lessee sought to enforce mechanic's liens against lessor and to have their mechanic's liens on the lessee's interest deemed to have priority over a construction mortgage ultimately held by the lessor. The Court held that the 2007 and 2012 amendments to the mechanic's liens statute narrowed the definition of "owner" and eliminated contracts with agents as a basis for a mechanic's lien against property of an owner. This interpretation of the amendments means that the Romp and Stroh cases are no longer good law. As a result of this interpretation, the contractors did not have mechanic's liens on the lessor's property. Contractors unquestionably had mechanic's liens on the lessee's property (i.e., the building and leasehold interest). These mechanic's liens were subordinate to a construction mortgage when the bank held the mortgage and that subordinate position did not change when the mortgage ended up being owned by the lessor after the lessor was forced to pay off the financing bank pursuant to contract after the project collapsed. In this situation, the lessor's ownership interest and its interest in the construction mortgage on the lessee's interest did not merge such as to lose the priority of the mortgage. There was no fraud or unjust enrichment by allowing the lessor to keep its priority, as the assignment of the mortgage to the lessor did not deprive the contractors of anything.

Eminent Domain for Oil Pipeline

Puntenney v. Iowa Utilities Board, 928 N.W.2d 829 (Iowa 2019)
Iowa Utilities Board's weighing of benefits and costs of Dakota Access pipeline supported the board's determination that the pipeline serves the public convenience and necessity. The pipeline company is both a company "under the jurisdiction" of the Iowa Utilities Board and a "common carrier," and therefore is not barred by Iowa

Code Sections 6A.21 and 6A.22 from exercising eminent domain powers. The use of eminent domain for a traditional public use such as an oil pipeline does not violate the Iowa or federal constitutions simply because the pipeline passes through the state without taking on or letting off oil. Substantial evidence supported the board's resolution of complaints by two individual landowners to the pipeline passing through their land.

SEARCH AND SEIZURE

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.

Stop of Vehicle & Subsequent Search Warrant for Residence

State v. Baker, 925 N.W.2d 602 (Iowa 2019)
In a good review of case law on investigatory stops, the Court reiterates that reasonable suspicion of a crime allows an officer to stop and briefly detain a person to conduct further investigation, while probable cause of a crime supports an arrest. Here, reasonable suspicion to conduct a traffic stop existed after the officer witnessed activity that appeared to be a hand-to-hand drug transaction out of a vehicle when officers also had knowledge of the following: (1) the defendant had engaged in suspicious behavior two weeks before the apparent drug transaction was witnessed; (2) an anonymous caller had reported that the defendant had just returned to town with a large shipment of marijuana and a large quantity of marijuana was at the defendant's residence; and (3) surveillance conducted after receiving the anonymous tip resulted in the observation of the suspected hand-to-hand drug transaction. With regard to a search warrant obtained for the defendant's residence after the traffic stop, the defendant had the burden of proving that officers made materially false statements in the affidavit either deliberately or with a reckless disregard for the truth. Failure to disclose information in a warrant application can constitute a misrepresentation if the failure to disclose results in a misconception or, in other words, if the omission produces the same practical effect as an affirmative statement. Here, the following omissions did not constitute misrepresentations: (1) reporting that the defendant had been arrested in the state of Nevada for traveling with a large quantity of marijuana in the vehicle without disclosing that the defendant had not been convicted; (2) reporting that the defendant acted suspiciously after observing an officer conducting surveillance on the defendant's house without disclosing that the officer was undercover in plain clothes in an unmarked car; and (3) failing to include information to demonstrate reliability of the anonymous informant, as the officers conducted independent investigation that corroborated details of the tip.

TAXATION

Sales Tax on Labor Installing Building Components

Lowe's Home Centers v. Iowa Dept. of Revenue, 921 N.W.2d 38 (Iowa 2018)
Department's application of law to fact is entitled to deference and should be upheld unless it is "irrational, illogical, or wholly unjustifiable." This dispute involves whether sales tax must be imposed on labor for installing building components sold by Lowe's

and performed by subcontractors. Installation services by electrical and plumbing subcontractors, which involved no structural changes to the home of customers, did not fall within the statutory exemption for "new construction, reconstruction, alteration, expansion, remodeling, or the services of a general building contractor," so tax was owed on those services. However, regulations limited the definition of "carpentry services" subject to sales tax to those performed for repairs. Since installation services did not constitute "repairs," sales tax was not owed for carpentry performed for installation.

TORTS

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.

Civil Conspiracy – Joint & Several Liability for Underlying Tort Only

Anderson v. Anderson Tooling, Inc., 928 N.W.2d 821 (Iowa 2019)
Civil conspiracy is not in itself actionable. Rather, it is the acts causing injury undertaken in furtherance of the conspiracy that give rise to the action. Because civil conspiracy cannot support an independent cause of action, it cannot have its own measure of damages. Instead, damages are assessed based on the harm caused by the underlying tortious activity. A person becomes jointly and severally liable for the harm caused by the other's tortious conduct when the person commits, encourages, or assists such conduct.

Constitutional Torts – Qualified Immunity, Punitives, & Attorney Fees

Baldwin v. City of Estherville, 929 N.W.2d 691 (Iowa 2019)
Citizen arrested for violating an ordinance that did not exist sued the city for actions of its police officers. In response to certified questions from federal court, the Court answers multiple questions. First, a Godfrey action such as this suit is the state counterpart to a Bivens action. The Federal Tort Claims Act ("FTCA") does not preempt a Bivens action even though the underlying facts of the Bivens action support a claim under the FTCA. The same is not true under the Iowa Municipal Tort Claims Act ("IMTCA"). Since the IMTCA expressly covers this type of suit, the IMTCA controls. Since the IMTCA controls and expressly dictates immunities for defendant municipalities, if the officers exercised due care such that the officers had qualified immunity under the IMTCA, the city would also have such immunity. Second, since the IMTCA expressly exempts municipalities from punitive damage liability, punitive damages are not available against the city that employed the alleged constitutional tortfeasors. Third, in a Godfrey claim, like in a Bivens claim, there is no express statutory authority for attorney fees. Therefore, the only way attorney fees could be recovered against the city would be if the plaintiff could establish the common law standard for award of attorney fees (i.e., the losing party acted in bad faith, vexatiously, wantonly, or for oppressive reasons). Finally, it is appropriate to retroactively apply the conclusion that the plaintiff can recover attorney fees in a Godfrey action if the plaintiff can establish the common law standard for attorney fees because Iowa has allowed common law attorney fees under this standard for over 100 years.

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.

Idiopathic Falls – Fact Question

Bluml v. Dee Jay's Inc., 920 N.W.2d 82 (Iowa 2018)
In a 5-1 decision, there is no blanket rule rendering certain categories of workplace idiopathic falls noncompensable, so long as the employee proves that a condition of the employee's employment increased the risk of injury. Whether the work conditions posed an increased risk of injury is a factual issue, not a legal issue.

No Liability of Insurance Inspector

Clark v. Ins. Co. of the State of Pennsylvania, 927 N.W.2d 180 (Iowa 2019)
Employees and former employees of manufacturing plant brought a common law tort claim against the employer's workers' compensation carrier alleging that the carrier failed to conduct or negligently conducted an insurance inspection at the manufacturing facility, which resulted in serious health problems for the plaintiffs. Summary judgment was granted to the carrier based on the conclusion that Iowa Code Section 517.5 provides immunity to the carrier related to inspections. Summary judgment was affirmed on appeal with a finding that Section 517.5 does not violate the equal protection, inalienable rights, or due process clauses of the Iowa Constitution. Immunity for inspections performed by workers compensation carriers is part of the "grand bargain" of the workers' compensation system, so the rational basis test was applied to the equal protection issue. Likewise, there is no inalienable rights clause violation because the "grand bargain" contemplates the close relationship between the carrier and the employer, and immunity for inspections is part of that grand bargain.

No Bad Faith Action Allowed Against Third-Party Claims Administrator

De Dios v. Indemnity Ins. Co. of North America, 927 N.W.2d 611 (Iowa 2019)
In a 5-2 decision, answering a certified question from federal court, the Court holds that, under Iowa law, a common law cause of action for bad-faith failure to pay workers' compensation benefits is not available against a third-party claims administrator of a workers' compensation insurance carrier.