



THE IOWA LAWYER

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Preparing Creators For A Bigger Stage

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- Brandon W. Clark, Chair of the Copyright, Entertainment, and Media Law Practice Group

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

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THE IOWA LAWYER

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By Melissa Higgins



Giving for good: Practical application of Iowa Court Rule 39.18

Along with tidings of comfort and joy, Christmas Day will bring a gift unique to Iowa lawyers. Dec. 25 marks the final day by which all active Iowa lawyers in private practice must engage in business succession planning in compliance with new Court Rule 39.18.

By Gordon Fischer and Mackenzie Graham



Survey illustrates realities of attracting young, energetic attorneys to state's small towns

The swell of baby boomer lawyers retiring from active practice in the next few years could have a major impact on access to justice for Iowa citizens, particularly those in rural areas.

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ABOUT THE COVER



Brandon Clark is pictured in the auditorium at Hoyt Sherman Place in Des Moines, one of the preeminent concert and event venues in Central Iowa. Clark represents a variety of musicians as the chair of the Copyright, Entertainment and Media Law Practice Group at McKee, Voorhees & Sease (MVS). You can learn more about his unique background that led him to this career on page 6.

2018 Iowa Court Rules

(Softbound Edition) available in January

The Legislative Services Agency (LSA) is publishing the new annual Iowa Court Rules as a one-volume book updated through December of this year for the reduced price of \$40, a bargain when compared to the Thomson Reuters publication.

Practitioners may order the Iowa Court Rules by credit card, Automated Clearing House (ACH) funds transfer, or by returning a printed form (found on page 30) with payment by mail. Other publications available for purchase include the archived version of the 2017 Iowa Code, the new 2017 Iowa Acts, the new 2017-2018 Iowa Official Register or "Redbook," and the 2018 Iowa Law Infobase as a download from the Internet.

To order a printed legal publication or the Iowa Law InfoBase, visit the LSA website. Practitioners can obtain updates to the Iowa Court Rules, free of charge, either by accessing www.legis.iowa.gov/ subscribe/subscriptions on a subscription basis, or by accessing www.legis.iowa.gov/law/courtRules/courtRulesListings anytime.

Kudos

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

Becki Brommel, an attorney at BrownWinick in Des Moines, for receiving Honorable Mention for the Nonprofit Board Leadership Award along with her fellow board member, Darcy Johnson, at the October 2017 Iowa Nonprofit Summit. The purpose of the Iowa Nonprofit Awards is to recognize the exceptional practices, achievements and impact of nonprofit organizations and professionals, philanthropic organizations, national service and volunteer programs, and local collaborations for their efforts to address community challenges. Becki has served on the Komen Greater Iowa Board of Directors since April 2012.

Ivan Webber, an attorney with Ahlers & Cooney in Des Moines, for being selected by the International Municipal Lawyers Association for the 2017 Marvin J. Glink Private Practice Local Government Attorney Award. Nominated by Alan Kemp, executive director of the Iowa League of Cities; Barry Lindahl, senior counsel for the City of Dubuque; and Eric Goers, assistant city attorney for Iowa City and IMLA's Iowa state chair, Ivan was one of three attorneys to receive this award in 2017. As Lindahl explained in his nomination letter, "Ivan is regarded by city attorneys in Iowa as the dean of Iowa city attorneys."

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A holiday gift list

I am not Santa Claus, though I have pretended a time or two. But it's fun to imagine what I would do if I had his powers. So here are some Christmas gifts I would like to give to many of you.

To Phil Garland and our rural lawyers who stand firm in the face of growing competition from internet legal service providers, increasing pressure to specialize, declining population and clients who struggle to pay: May you always feel the pride and satisfaction that comes from knowing your presence is nothing less than essential to the clients and communities you serve.

To every Iowa lawyer who has found time to perform pro bono legal services for those in need: May your heart be warmed by expressions of profound gratitude from those you have helped.

To Tom Hillers and his leadership team at the Young Lawyers Division, who have demonstrated passion and energy the rest of us should strive to emulate: May your student loans be reduced and none of you be injured during next summer's Keg Throw.

To John Wheeler, Christina Thompson, Van Everett, and all the coaches and volunteers who make participation in mock trial a life-altering experience for thousands of young Iowans: May you witness in future years the good that will come from having improved their ability to think critically, synthesize information, develop arguments, use logic, defend a position, work as a team, and advocate, write, and speak well.

To the Iowa State Bar Foundation and those whose efforts and donations make possible its mission of supporting worthwhile law-related projects that enhance our profession and educate the public about the legal system: May the Foundation soon reach its Capital Campaign goal of \$1,000,000.

To the hundreds of solo and small firm practitioners who



defend indigent Iowans facing criminal charges: May the coming legislative session produce your first hourly rate increase in 11 years, a rate that going forward will be indexed to inflation.

To new State Court Administrator Todd Nuccio, our judges and all those who work for Iowa's courts: May the legislature and governor treat the judicial system with the respect it deserves as a co-equal branch of government and fund it accordingly.

To the fantastic lawyers, judges and other advocates for children of divorce who deserve credit for, and carry on the work of, the Kids First Law Centers: May your remarkable success first in Linn County and now in Polk County continue and be replicated throughout Iowa.

To our friends in the legislature, from both parties, who listen to the concerns of Iowa lawyers and work with us when they can: May our members, their families, employees and clients express their thanks in the voting booth.

To Jim Carney and Doug Struyk, the ISBA's peerless lobbying duo, who work long hours monitoring legislation, making sure the ISBA is well-informed and advocating for our interests: May this and future legislative sessions always end early, or at least on time.

To Hugh Grady and the Iowa Lawyers Assistance Program, which quietly provides free, confidential support for Iowa lawyers, judges, and law students battling myriad personal demons: May the ILAP find the people and resources needed to carry out its mission for a second quarter century.

To Dennis Groenenboom, the outgoing executive director of Legal Aid of Iowa: May your retirement be as successful and fulfilling as your many years of service to low-income Iowans.

To Dean Jerry Anderson, Dean Gail Agrawal and the law schools at Drake and University of Iowa: May your institutions experience steadily increasing student applications and rising bar exam passage rates.

To the ISBA Board of Governors and our many members who carry out the good work of our sections and committees: May you continue to march forward with what you see as right for the organization, and find the continued time to commit your talents, without sacrificing too much time away from your practice or family.

To Dwight, Harry, and the ISBA staff for all they have done for our members, including this one: May you continue to find fulfillment in knowing that your efforts to make us all look good are appreciated beyond any words we can use to express our gratitude.

On a personal note, to Bruce Walker, Skip Kenyon, Tom Levis, Bill Boyd, Cindy Moser, Molly Kottmeyer, Eric Turner, Guy Cook and David Brown (there are more, but this is a start): That I

someday find a way to repay the support and assistance you have given me.

Finally, to ISBA members wherever you may be: Have a safe, healthy and happy holiday season.



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



Clark, at his office in
801 Grand in Des Moines.

The most interesting attorney in Iowa?

Copyright lawyer's unique background helps him carve out music industry niche

By Melissa Higgins, Communications Director

There are likely not any other Iowa attorneys who get to go to the Grammys as part of their work, or who get invitations to attend Paul McCartney's private soundcheck. There probably isn't another attorney in this state who can lay claim to playing as the opening act for Weezer, having their photo appear in Billboard Magazine, burning down a house for a music video or signing autographs for fans while aboard a first-class international flight.

Brandon Clark is the chair of the Copyright, Entertainment and Media Law Practice Group at McKee, Voorhees & Sease (MVS), and comes at the practice of law from a very unique background: former touring musician and music industry insider. It's how he has been able to land clients with top-notch talent from all over the U.S.

"My background is definitely an asset, and I think it would be extremely difficult to take the path that I've taken without having that background," he explained. "I grew up talking about the music industry and copyright law. That exposure was very important."

Clark's father is an executive for a music publishing company, Barnhouse, based in Oskaloosa. That's where Clark grew up, while also spending significant time in the entertainment hotbeds on the east and west coasts, making industry connections right alongside his dad.

He decided first he wanted to be a musician, receiving a music scholarship to attend the University of Northern Iowa. That is where he started his first band that saw some real success. The Blue Island Tribe developed a significant following and completed several tours together, including multiple tours overseas.

"I gained an understanding for the industry by being in it and running into the issues that my clients are now running into. While it was frustrating at the time, I think it has made me a much better attorney," he said.



Clark on stage with Blue
Island Tribe in Japan.

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I spend a lot of time on the phone and I travel regularly, but honestly, I view being based in Des Moines, as an advantage. Obviously, there are some disadvantages, but comparatively, we can offer more competitive rates and pricing than firms on the coasts, the quality of life in Des Moines is much better, people are much more accessible, there's a lot of exciting things going on here right now, and if I need to be somewhere, I can get there. I think this is also true for clients, it's much easier for clients to get attention, opportunities and build their resumes in Des Moines than it is in New York or Los Angeles."

After Blue Island Tribe disbanded, Clark considered his options. He ended up graduating from UNI with a business degree in 2006, and even though he "wasn't a great student," he had a professor who encouraged him to consider law school. He ended up at Drake University Law School, where his career coincided with the beginning of the Intellectual Property Law Center. This experience, and a few key professors, helped develop his interest in that area.

But music was still calling, so Clark spent his law school summers and breaks touring with bands and working on his music. He never clerked, so when it came time to find his first job after graduation, he knew he didn't have a leg up on the competition. So, Clark decided to open his own firm, leasing space in the East Village of Des Moines. One of his first clients was RAYGUN, the popular T-shirt shop known for its humorous slogans, handling their copyright legal issues. He spent five years building up his client base through connections and referrals, and also traveled a lot during this time working for record labels helping sign new bands, before eventually ending up moving his practice to MVS in 2015.

"MVS has given me the freedom to build and grow the practice group while also

exposing me to a much more diverse range of clients and issues," he said. "Even though copyright, trademark, and patent laws/rights can be very different, at their core, the clients are all creators.

Clark, in his office, thumbs through a book his dad gave him in high school about the business of the music industry.



Clark on stage with his band MINT at Woolly's in Des Moines.



Clark on stage with MINT at the NewBo Music Festival in Cedar Rapids.



The "Industry Supporter of the Year" award hangs on the wall in Clark's office.



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Clark accepting the Des Moines Music Coalition's "Industry Supporter of the Year" award in 2017.





Brandon Clark and his guest, Alisha Sanchez, at the 2017 Grammy Awards in L.A.

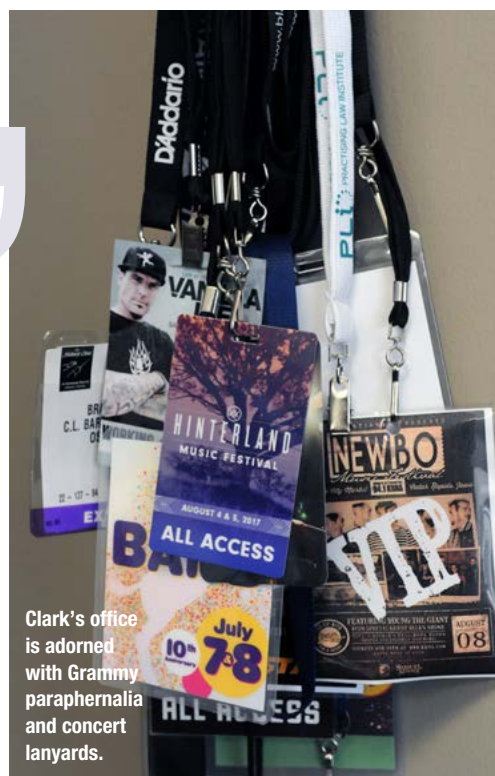
“You really have to learn it by going through that experience and doing it. You can read books and soak up as much information as possible, but I definitely believe that in order to really get it, and understand it on that deeper level, you have to actually do it.”

I really enjoy working with creative people and helping them understand, protect and enforce their rights.”

Clark says he spends a lot of his time “putting out fires”: for example, trying to stop new music leaks before an album is released. He compares those incidents to a game of whack-a-mole; as soon as he knocks down one problem, another one pops up. On top of the unpredictable nature of the copyright law industry, a diverse mix of unique clients also keeps him busy.

“I’m fortunate to get to work with very creative, talented and fun clients. It definitely keeps things interesting and there are very few days that end up feeling routine. They constantly keep me learning and exploring new issues and questions. Whether it is negotiating an agreement for a developing artist like Max Jury, vetting RAYGUN’s new ideas for potential copyright and trademark concerns, or working with a client like Casey’s (General Stores) to address social media and advertising issues, the clients definitely keep my job exciting and entertaining,” he said.

Ever-changing technology also keeps him on his toes. “Technology disrupted the music industry and the industry hasn’t done a very good job of adapting,” he said. “From a legal standpoint, the laws have been very slow to respond to technology, and the copyright or intellectual property issues that it creates. There are still a lot of



Clark’s office is adorned with Grammy paraphernalia and concert lanyards.



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unanswered legal questions, but because of that it's an evolving and growing area of law."

Also evolving and growing: the Des Moines music and creative scene. One of Clark's passions is helping expand opportunities for musicians and other creative artists in the Des Moines area. So, he dedicates his free time to various related causes: as a member of the Board of Directors for the Des Moines Social Club; co-founder and current board member of Station 1, a non-profit record label; and board member for the Iowa Volunteer Lawyer for the Arts program. He also teaches Copyright Law at Drake Law, as well as a music industry class for Drake undergrads. All of this caught the attention of the Des Moines Music Coalition, which gave Clark their "Industry Supporter of the Year" award for 2017.

That plaque is just one of the unique items on display at his office in 801 Grand, alongside dozens of VIP concert lanyards and Grammy memorabilia. Clark is a member of The Recording Academy, and as such gets to vote for Grammy Award winners. He has attended the star-studded ceremony multiple times.

"Watching the Grammy Awards in person from a suite at the Staples Center was a pretty amazing experience. Walking around with people you 'know' from their music or from seeing them on television, but they have no idea who you are, is pretty surreal," he said.

But it is not that experience that left Clark the most star-struck. That came while he was driving with one of his clients, musician Max Jury, to a meeting the morning after he had played a sold-out Lollapalooza show. Clark got a text message from Tom Windish, one of the most successful booking agents in the industry.

"He's definitely someone that people refer to as a 'super-agent,' and I remember thinking to myself that that was a really big deal. Just the fact that he had my cell phone number, let alone was using it, was pretty crazy to me. It probably doesn't sound very significant, but it was definitely one of those moments that I remember when and where it happened."

But he doesn't let these brushes with fame go to his head: "Occasionally, I'll look back on things and think, 'Wow, that was really cool,' but this industry is too competitive and difficult to take anything for granted or get complacent. There is always something more to do, someone to call back or a new problem that pops up. That's one of the things I really enjoy about working with developing artists: I get to go on that ride with them, I get to experience those highs and lows right along with them."

Thanks to speakers – November 2017

Opioid Problems in Iowa (Live Webinar)

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Iowa Department of Public Safety
Dale Woolery, Associate Director, Iowa
Office of Drug Control Policy

Representing Victims of Elder Abuse in Iowa (Live Webinar)

November 8, 2017

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Elder Law Section
J. Andrew Cederdahl, Equal Justice Works,
AmeriCorps Elder Justice Legal Fellow

Risk Management for Lawyer Proceedings (Live Webinar)

November 9, 2017

Co-sponsored by The Iowa State Bar Association and Lockton Affinity and CNA.
Theresa Garthwaite, Risk Control Specialist,
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Corporate Counsel Institute (In-person or Live Webinar)

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Human Trafficking in Iowa (Live Webinar)

November 13, 2017

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Section 101 Update: What Can We Learn from the Recent Patent Eligibility Cases and Guidelines (Live Webinar)

November 14, 2017

Sponsored by The Iowa State Bar Association
Intellectual Property Law Section
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ISBA to seek periodic cost-of-living adjustments for indigent defense compensation

By James Carney and Doug Struyk, ISBA Legislative Counsel



Despite the very difficult state budget situation with virtually all agencies and departments being cut, the ISBA is dedicated to pursuing an increase in compensation for court-appointed attorneys and a periodic cost-of-living adjustment.

The State Public Defender's office makes a budget request each year. The last several years approximately \$30 million has been appropriated to the state public defender to operate its offices, and another \$30 million to fund court-appointed counsel. During the 2017 legislative session, an additional \$3 million of supplemental appropriations was made, to bring the total appropriation to \$33 million for indigent defense counsel payments.

to meet the requirement of the Iowa and United States Constitutions to provide legal representation at state expense to low-income persons accused of a crime that may result in incarceration. The state public defender either handles the matter or compensates attorneys who are on the court appointment list for handling the case. After cases are concluded, orders are entered requiring the indigent defendant to repay expenses to the state (recoupment) to the extent the defendant is reasonably able to do so. In recent years, the demands placed upon the state public defender's budget for indigent defense have continued to increase; however, for the past several years the state public defender's budget has been maintained at status quo levels.

States Constitution guarantees to all persons accused of a crime the right to counsel in their defense. The U.S. Supreme Court has interpreted the Sixth and 14th Amendments to the U.S. Constitution as requiring states to provide counsel to all indigents who are accused of crimes in their jurisdictions. In addition, the Iowa Constitution guarantees that in all criminal prosecutions, the accused shall have a right to the assistance of counsel. The Iowa Supreme Court has interpreted this constitutional provision as meaning the right to effective assistance of counsel.

Each state addresses the constitutional requirement to provide indigent defense in different ways. There is hardly any state that does it the same as another state. A large number of states still fund indigent defense on a city or county level with no state funding. Other states have state funding, but their public defender programs are very different. For example, Florida has state funding, but the public defenders must actually run for general election and have five years of experience in handling criminal cases. Iowa has a very balanced approach to providing indigent defense counsel by utilizing public defender offices and court-appointed counsel.

Under Iowa's current system there are three ways of providing legal representation to indigents. Legal representation is provided by public defenders, who are lawyers employed by the State Public Defenders Office; contract attorneys who are private attorneys who contract with the public defender to provide legal representation to indigents; or court-

Issue

Indigent defense is a program designed

ISBA position

The Iowa State Bar Association supports adequate compensation of court-appointed counsel in order to ensure that the state meets its constitutional obligation to provide competent assistance of counsel to indigent persons accused of crimes. The ISBA further supports amending Iowa law to mandate periodic cost-of-living adjustments in the hourly rate for such compensation. Additionally, the ISBA supports the appointment of a blue ribbon task force to recommend improvements to the indigent defense program, to include adequate compensation.

Facts regarding indigent defense

The Sixth Amendment to the United

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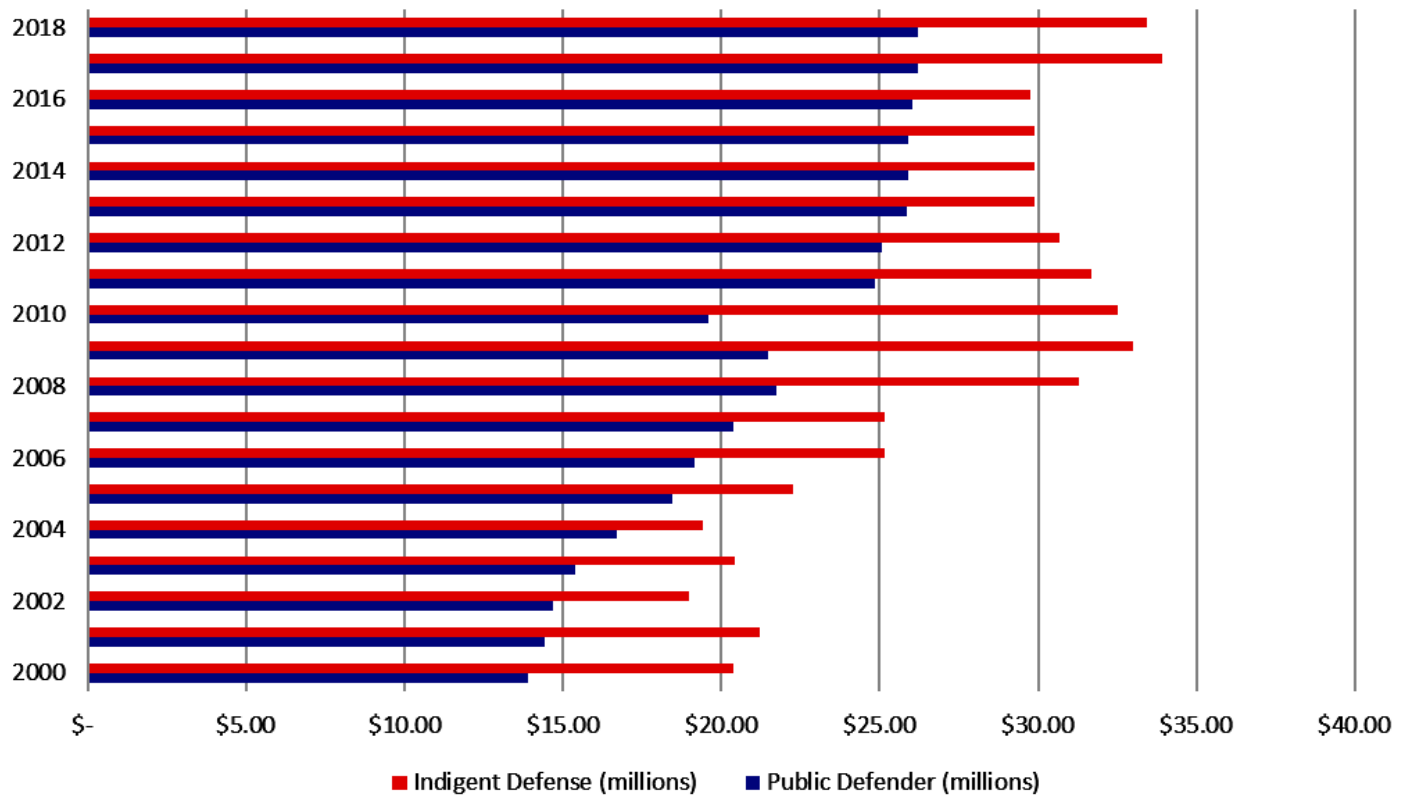
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INDIGENT DEFENSE BY THE NUMBERS

- Approximately 832 Iowa lawyers handle indigent cases. This is down from approximately 1,100 in 2013.
- Approximately 183 lawyers handle indigent defense appeals.
- Approximately \$33 million per year is appropriated to pay 75,992 claims for attorney fees. This is an increase from 62,000 claims in 2013.
- The average claim by an Iowa attorney is just over \$468.
- The State Public Defender's Office reviews all claims and approves approximately \$135,000 per day in claims, or approximately 300 claims per day.
- Approximately \$30 million is appropriated per year to staff 19 public defender offices in 14 Iowa cities. (The SPD has recently closed its Fort Dodge office).
- Approximately 41 percent of all claims paid relate to juvenile court proceedings.

Indigent Defense and Public Defender Appropriations FY 2000-2018



appointed attorneys in private practice who are not employed by or under contract with the public defender, but are appointed to represent an indigent person on a case-by-case basis.

A recent ISBA survey of Iowa lawyers who provide criminal defense services found that on average, criminal law practitioners providing these services have practiced law for 13.4 years. Seventy-five percent of Iowa lawyers who do criminal defense work practice on their own as solo practitioners, or in an office with only one other lawyer. Ninety-seven percent of Iowa lawyers doing criminal defense work practice in a firm with five or fewer lawyers. On the average, 29 percent of their total law practices involves criminal work. According to the most current ISBA economic survey in 2015, the average overhead costs of operating a law office in Iowa is over \$75 per hour.

The state's cost of providing indigent defense is increasing because the number of criminal cases is increasing. In the past decade, the total number of indictable criminal filings has more than doubled. In addition, a large percentage of criminal cases involve indigent criminal defendants. Estimates indicate that approximately 70 to 80 percent of all criminal cases involved indigent defendants. Whenever

the number of indictable criminal filings increases, the number of indigent criminal defendant appointments will correspondingly increase.

Historically, in an effort to reduce the state's budget, the rates were reduced for indigent defense cases in 1996 by \$5 per hour. Legislation adopted in 1999 restored the 1996 cut by increasing pay rates by \$5 per hour. In the 2006 legislative session the ISBA requested a \$10-per-hour increase. The fees were increased by \$5 per hour in 2006 and another \$5 per hour in 2007.

Today, attorneys handling Class A felony cases may now be paid \$70 per hour; attorneys handling Class B felony cases may be paid \$65 per hour; and attorneys in all other cases will be paid \$60 per hour. Over three decades ago, in 1986, the Iowa Supreme Court adopted guidelines for costs of court-appointed counsel, which authorized payment of \$40 to \$60 per hour. Many attorneys who began practice in the 1970's remember being paid between \$50 and \$60 per hour to handle indigent defense cases. As a comparison, the current federal indigent defense program currently pays \$132 per hour for non-capital cases and \$185 per hour for capital cases. Over the past 30 years, there has been approximately a 10 percent increase in indigent defense fees, and yet

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law office overhead has increased by almost 200 percent.

Iowa attorneys are proud of their continuing tradition of providing low-cost or pro-bono services to those who cannot otherwise afford legal representation. However, all attorneys are entitled to fair compensation for services provided. A system that pays those who represent the poor less than one third the usual and customary rate charged those who are not indigent, runs the risk of providing a lower quality of justice for the poor.

Cost savings and efficiencies

There are cost savings that can be explored and implemented in order to more efficiently utilize state resources.

The ISBA has worked with the Public Defender's Office to implement cost-savings measures. The public defender is increasing the use of special contacts that provide for payment of attorney services based on a fixed fee for representation in a specified number of cases, or some other basis for attorney compensation rather than an hourly basis. Additionally, we believe retaining experienced and efficient lawyers in the program by increasing the hourly rate will result in significant cost savings.

The State Public Defender's Office has recently upgraded its claims review software to enable attorneys to electronically submit their claims. The average number of days for claims

processing has been reduced from approximately 50 days to 18 days. This is a significant improvement in the claims payment process. This also allows that office, for the first time, to track in real time the hours and expenses that an attorney is billing on particular days. It gives the office a valuable tool to detect and prevent the inappropriate billing practices identified in a recent state audit. The Iowa State Bar Association supports honest billing and supports the indigent defense program being as efficient as possible.

Do you want increased compensation?

We know that the answer to that question is yes, of course. If you do, we need your help! In a down budget year with all state agencies and departments having their budgets reduced, increasing indigent defense compensation is a "heavy lift."

Iowa lawyers need to act back home to make this happen!!! The only way this can be accomplished is if all 150 legislators hear from their constituents back home that an increase in the hourly rate is badly needed and justified. Call or write your local legislators today. Meet with them back home and explain the cost of operating a law office and the expense involved in the practice of law. It requires more compensation than \$60, \$65 or \$70 per hour.

Provide legislators with a copy of the ISBA position paper on indigent defense and encourage them to talk with ISBA lobbyists. The ISBA position paper is available on the association's website. From the home page, click on the "Legislative" tab, then on "Affirmative Legislative Program" and finally on "Indigent Defense." Politely ask legislators for their commitment to increase the hourly rate of compensation and thank them for their service.

If all 832 lawyers who accept indigent defense cases were to contact their legislators, that would be fantastic. If another 832 bar members who care about their profession would contact their legislators, that would be even better. "All Politics Is Local" – and you are the local in politics. If you write or email your legislators, please copy legislative counsel at carney@carneyappleby.com and/or struyk@carneyappleby.com. Please help us help you by contacting your legislators now!

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Giving for good:

Practical application of Iowa Court Rule 39.18

By Gordon Fischer and Mackensie Graham

Along with tidings of comfort and joy, Christmas Day will bring a gift unique to Iowa lawyers. Dec. 25 marks the final day by which all active Iowa lawyers in private practice must engage in business succession planning in compliance with new Court Rule 39.18.

How is this a gift? Iowa Court Rule 39.18 may well significantly increase charitable giving by attorneys in our state through both business succession planning and personal estate planning. Iowa Court Rule 39.18 presents the opportunity for Iowa lawyers to make a continued and lasting charitable impact on our communities, state, even the world through the donation of assets such as office space, equipment and furniture, in addition to – or in lieu of – money. Such an opportunity to affect major change is indeed a gift. Allow me to unwrap these thoughts further.

Case for charitable giving

There will be disagreement over the numbers, but we can all agree there are Iowans who are hungry, homeless, subject to emotional and physical abuse, and struggling with addiction. Certainly, reasonable Iowans could engage in robust debate about the causes of, and the solutions to, these problems. But, no one doubts these problems exist.

We also all know of nonprofit organizations in our communities that are successfully combatting these issues. Is there an organization, whether church, school, charity or government agency, that is doing impactful work in your area? Consider supporting them through your personal estate plan and/or business succession plan.

Outside Iowa, we learn nearly every day of catastrophes affecting one part of the globe or another. It almost seems as if each disaster is more tragic than the last. Again, we all know about nonprofit organizations helping those around the world in desperate need. These groups, too, are worthy of assistance.

Could Iowa Court Rule 39.18 unleash a torrent of philanthropy from Iowa lawyers? Indeed, it could. To understand how and why this is so, let's start by briefly summarizing Rule 39.18.

Mandatory requirements of Rule 39.18 in plain language

Iowa Court Rule 39.18 has two tiers. The first tier is mandatory, while the second tier is optional. Iowa Court Rule 39.18 requires Iowa lawyers to engage in business succession

planning. Under the rule, Iowa lawyers must take steps to prepare for their own disability or death.

Under the first, mandatory tier, if you are an active Iowa lawyer in private practice, you must take several actions. You must identify and authorize a “designated representative”—a lawyer that will help continue and/or conclude affairs of your firm in case of your disability or death. The representative must be either an Iowa lawyer, or Iowa law firm, or a “qualified attorney-servicing association.” So, if you are a member of a law firm, you may identify and authorize the law firm itself as your designated representative.

A qualified attorney-servicing association is explicitly defined as “a bar association, all or part of whose members are admitted to practice law in the state of Iowa; a company authorized to sell attorneys professional liability insurance in Iowa; or an Iowa bank with trust powers issued by the Iowa Division of Banking.” Iowa Court Rule 39.18(7)(a).

You also need to select a “custodian.” The custodian must know and be kept informed of the location of the client list, electronic paper records and files, and passwords and other security protocols to access electronic files and records.

The custodian can be a different person or entity than the designated representative(s). While the representative must be either an Iowa lawyer(s) in good standing, a law firm, or a qualified organization, the custodian need not be any of these.

Again, these requirements must be met by Dec. 25. These actions must be certified via the Annual Client Security Questionnaire by the Iowa Client Security Commission, due in March 2018. I cover the details of this first tier in previous articles in this series of four pieces on the subject. Check out the September and October 2017 issues of The Iowa Lawyer (available online under The Iowa Lawyer archives) to read more.

Rule 39.18's practical effect: Personal estate planning

The practical effect of Iowa Rule 39.18 is to require a degree of personal estate planning. It's difficult to imagine a lawyer complying with Rule 39.18 without at least two basic estate planning documents: a will (or trust) and a durable power of attorney. After all, Rule 39.18 requires lawyers to plan for death or disability. To adequately prepare for the former, Iowa lawyers need a will or trust. To



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sufficiently prepare for the latter, Iowa lawyers need a durable power of attorney. For top-notch effectiveness, both the will/trust and the durable power of attorney need to contain specific and special language to address unique aspects of each lawyer's practice.

Where there's a will...

As all lawyers know, a will is the legal instrument that permits a person, the testator, to make decisions on how his or her estate will be managed after death. Depending on the size and number of assets (both personal and corporate) owned by the attorney, a trust, such as a revocable living trust, may be a better option. In any case, a lawyer's will or trust must provide direction as to what should be done with the lawyer's practice, assuming the lawyer owns part or all of a firm.

A will or trust has a host of benefits. Among these is the ability to give to charitable causes after your death and leave a lasting legacy. More lawyers engaging in estate planning should translate into more philanthropy.

Rule 39.18's supplemental plan

Again, Iowa Court Rule 39.18 contains

two tiers. While the rule's first tier is mandatory, the second tier is optional. The concept of a "supplemental plan" is discussed in just a single paragraph:

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

Thus, tier two encourages lawyers to craft a supplemental plan. Most likely this plan would take form as a set of documents providing for the duties and operations specific to a lawyer's practice. While not required, you want and need a supplemental plan. A supplemental plan has at least three



incredibly significant benefits: defining key terms (such as "disability"); avoiding client confusion (or worse); and agreeing on the exact roles and responsibilities of, and the relationship between, the designated attorney and practicing attorney.

Benefits abound

Just like your personal estate plan, your business succession plan can allow for firm assets to be donated to charities of your choice. Whether the law practice continues, is sold, or is shut down in an orderly process, Iowa attorneys should consider charitable giving as part of the future of their practices. Imagine the impact on our respective communities and the state if Iowa attorneys crafted business succession plans to include Iowa nonprofits as beneficiaries.



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Keep calm and live on

With a written and well-designed succession plan and a knowledgeable, trustworthy designated representative and/or successor, many more law firms will “live on.” The firm could continue to donate charitably, sponsor, and give back to organizations and causes in the communities which sustain them.

Closing time

If a succession plan instead calls for the firm to end operations, the plan can detail such so clients and ongoing cases will be handled with utmost professionalism. Rule 39.18 allows for closure in an organized fashion, not the chaos that might well ensue without a business succession plan. In such cases, the practice can help nonprofit organizations as one of its last acts of operation.

You might be thinking, “Sure, I would love to help my favorite charities if this were to happen, but what parts of my practice are useful...beyond just money?”

An example of an incredibly useful asset to a nonprofit group is office space. If you own office space, consider giving it to charity through the business succession plan. Imagine what a difference it would make for a small, growing nonprofit organization if it were able to upgrade to an office, substituting cubicles for doors!

Another great example of welcome donations is technology such as computers, tablets, projectors and televisions. (Of course, prior to donating you’ll want to direct your designated representative to wipe clean all data concerning clients and personal identifying information.) Think of the positive increase in productivity resulting from a charitable gift such as laptop computers.

Plus, don’t forget about assets inside your office, such as furniture, desks and filing cabinets. We may well take them for granted, but a cash-strapped nonprofit

organization would greatly appreciate the extra functionality these items provide.

Donors often don’t want their cash gifts to be used on items like office space, furniture or even upgraded technology. Donors typically restrict cash gifts to directly assist the needy. This means your unrestricted charitable donations of items like technology and office equipment mean even more than you might know.

Sold!

Succession plans could allow, or even direct, the designated representative to sell the law firm. In case of a sale, the succession plan could require that a certain portion of sale proceeds be donated to charity. This could be done on either a percentage basis or straight-up cash amount. If significant, the proceeds could even be used to fund a charitable tool, such as a charitable gift annuity, charitable remainder trust or donor-advised fund at the local community foundation.

I was born in a small town

Iowa faces population loss and what some have termed a “rural brain drain.” In response, Iowa governmental bodies, like city and county administrations as well as local economic development agencies, have partnered with industry to create more and better economic, cultural, housing and educational opportunities in small towns. Note that government agencies are eligible

for charitable gifts. A gift to a local government entity is tax deductible if it is solely for “public purposes,” i.e., the contribution must not be intended to benefit any particular individual.

Lawyers could lead a renaissance for rural Iowa, and indeed our entire state. Business succession planning and personal estate planning can immensely help that effort.

More resources

This is the fourth and final article in my series covering Iowa Court Rule 39.18. If you need more information as you work to meet the Dec. 25 deadline, I advise you to click to The Iowa Lawyer archives online to read my other three articles in the September, October and November issues.

Additionally, there are plenty of resources available including a succession planning handbook produced by the Iowa Client Security Commission, located at iowacourts.gov, under Professional Regulation and then Client Security. There is also a two-hour CLE course (\$50) available on The Iowa State Bar Association website at iowabar.org, featuring a discussion on the history leading up to Rule 39.18 and an excellent explanation of Iowa lawyers’ responsibilities under the new rule. Both the succession planning handbook and the CLE video are enormously helpful.



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

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

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Survey illustrates realities of attracting young, energetic attorneys to state's small towns

Most retirement-age rural practitioners interested in finding replacements for themselves to avoid letting clients down; how to do that still a bit unclear

By Steve Boeckman, Communications Director Emeritus

The swell of baby boomer lawyers retiring from active practice in the next few years could have a major impact on access to justice for Iowa citizens, particularly those in rural areas. An analysis of membership data last summer shows that approximately 1,400 Iowa attorneys are 65 years or older and could retire at any time.

In order to get a picture of how these retirements might impact rural Iowans, the ISBA's Rural Practice Committee conducted a survey of rural practitioners in late October/early November.

A total of 428 rural attorneys 65+ years of age were contacted via email and asked to answer 21 questions focused primarily on when they plan to retire, what they plan to do with their practices when they retire, how many attorneys in their areas are planning to retire and what the ISBA can do to help them transition out of the law practice. Additional questions asked the respondents how many attorneys are in their counties, how their county attorney offices are set up, what economic development organizations exist in their communities and whether those organizations would be willing to assist a young attorney who committed to practice in the community.

The survey also asked respondents whether they would be willing to mentor a young attorney as part of

an incubator program that numerous states have implemented, and how many hours of pro bono work they provided in the last year.

A total of 139 (32.4 percent) of attorneys contacted responded. Following is a summary of their responses on key questions.

Slightly more than a fourth of the respondents said they plan to retire within two years. An additional 32 percent said they plan to retire within five years. Almost 20 percent responded that they had "no definite time" to retire. Another nearly 18 percent said they plan to reduce their hours, but not fully retire.

What are their concerns about retiring?

"Won't know what I'll do to fill my time," at 26 percent was the most common answer given. Close behind it at 23 percent was "will let my clients down."

Other answers included: "Won't have anyone to keep the practice going" (15 percent), "don't have enough money put aside to live comfortably" (12 percent) and "will lose my stature in the community" (< 1 percent).

Thirty one (23 percent) of the respondents checked "Other" and included their comments. Among those comments were:

- "I hate to not use the knowledge and acumen I have accumulated over my career;"
- "Concern for clients, lack of a

successor, what I have built is worth something, but the nature of rural solo practice does not lend itself well to paying a new attorney what is needed to live plus pay on the education debt;"

- Passing on clients to attorneys who will ably represent them."

As for what they plan to do with their practices when they retire, the majority (38 percent) said they "aren't sure" at this point. The next largest percentage (26 percent) said they plan to sell the practice to an associate. Nearly 17 percent replied that they would close the practice. Another, almost 14 percent, said they would hire an associate and gradually transfer the practice to that associate. (See accompanying chart and breakout for details.)

In recent years, the Rural Practice Committee has learned of several instances where rural practitioners, especially solos, have sold their practices to larger firms in urban areas or to firms within the same town. Only three percent each of respondents said they would either sell the practice to another firm in town, or a firm from out of town.

When asked if they have seen instances of larger urban firms buying rural practices, nearly three fourths (70 percent) said no. The remaining respondents replied that

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they have seen such instances, with two being the most common response to the request for the number of transactions, and five being the highest number.

When asked how the acquiring firms staff these satellite offices, a slight majority (16.5 percent) said the office is staffed full-time with at least one attorney. The remaining responses varied from: "The same attorney comes from the home office to the satellite office several days a week" (12.4 percent), "different attorneys from the home office take turns staffing the satellite office several days a week" (9 percent) and "satellite office is staffed one day a week or less" (4.9 percent).

In a related question, the survey asked the respondents what impact the rapid growth in technology that allows attorneys to be more mobile has had on their practices. Slightly more than 50 percent (51.6 percent) said that technology has had an impact from an increase in cases going outside the area, a reduction in the need for a resident attorney and fewer attorneys needed since technology allows one attorney to handle more cases. A sizeable percentage (37 percent) said technology has had no discernible impact on the practice of law in their communities.

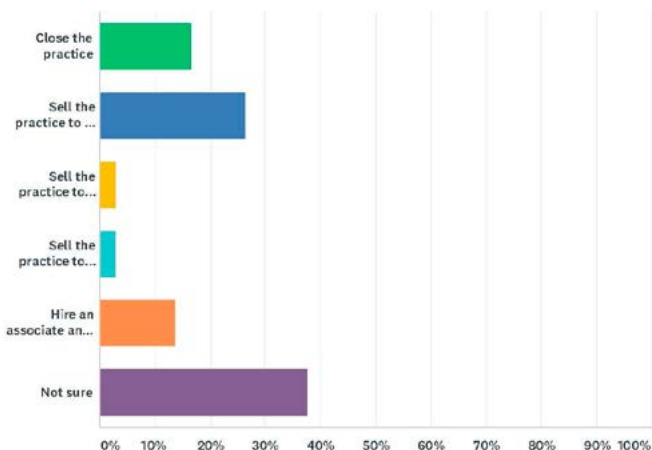
About 12 percent of the respondents selected "Other" and registered their comments. Among the comments were:

- "It allows new attorneys to practice without a secretary in a home office and no separate business office;"
- "It has reduced the size of physical premise needs – space for numerous book volumes not required. Clients still want attorney available personally as much as possible;"
- "It allows me more flexibility because I can work from anywhere;"
- "Attorneys fail to realize that people want their attorneys to be available and responsive. Merely having a telephone answering service does not meet the client's needs."

Respondents were asked what the ISBA can do to help them in their transition out of the practice. The question asked them to rate on a scale

Q6 What do you plan to do with your practice when you retire?

Answered: 133 Skipped: 6



of one to eight, with one being most helpful and eight least helpful, the various choices. The question also included an "Other" category for those who wanted to make suggestions not included in the offered choices.

Essentially tied at 3.13 and 3.15 for most helpful were: Serve as a recruitment center, or clearing house, to connect students and young graduates with rural attorneys looking to hire and publish articles and other materials on ways to retire from the law practice.

Close behind at 3.33 and 3.45 were: Organize and host opportunities for rural attorneys to meet with students who have expressed an interest in rural practice, and serve as a recruitment center, or clearing house, to connect rural attorneys interested in providing office space, mentorship and/or other resources to a new attorney participating in a solo/small firm training program and interested in practicing in the community.

Rated least popular at 3.98 and 4.20 were: Investigating opportunities

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ADDITIONAL FINDINGS FROM THE RURAL PRACTICE SURVEY ...

Attorneys responding to the rural practice survey in late October/early November were asked a number of questions related to the overall legal environment in their communities. Here are their answers:

Q: How is your county attorney's office structured?

- One full time county attorney 21.01%
- One full time and several part time county attorneys 30.43%
- Only part time county attorneys 19.57%
- Other 28.99%

Q: How many attorneys in your county attorney's office?

- 1 2 59.12%
- 3 4 27.01%
- Other 13.87%

Q: How many hours of pro bono or unbundled legal services did you provide in the past year?

- None 34.33%
- 1 3 hours 8.21%
- 4 6 hours 8.96%
- 7 10 hours 8.96%
- More than 10 hours 9.55%

Q: Do you provide alternatives to your standard hourly rate?

- Flat fee based on the case 44.35%
- Flat fee plus hourly rate for cases requiring additional work 29.03%
- Discounted hourly rate based on clients' ability to pay 55.65%
- Discounted hourly rate for good clients 17.74%
- Contingency fee 33.87%
- Other 16.13%

Q: How many law practices have hired associates in the past five years?

- 1 5 96.61%
- 6 10 2.54%
- 11 15 0%
- 16+ 0.85%

Q: Would an economic development organization in your community provide financial assistance to a young attorney who commits to practice in the community?

- Yes 16.50%
- No 83.50%

for partnerships with state, regional and local economic development groups to provide funding that assists young attorneys with the financial obligations that prevent them from working in a rural practice, and providing in-person or telephone seminars (or webinars) on tips for hiring summer clerks or full-time associates.

Respondents who checked the "Other" category and provided comments suggested that the ISBA should:

- Publish rural associate compensation plans and amounts;
- Develop a list of attorneys who are interested in relocating, or are graduating and have the money or financial backing to buy a law practice with or without ongoing mentoring;
- Partner with law schools to promote rural practice;
- Explore new methods of assisting with school loan reduction.

The survey offered respondents an opportunity to include any general comments they felt would be beneficial to the goal of replenishing rural areas with new, young, energetic attorneys as older attorneys retire. Twenty six (19 percent) took the time to offer an opinion.

One respondent wrote that, "giving students an opportunity to hear from rural practitioners might be helpful. I think they are generally happier than their urban counterparts. Also providing a forum for younger attorneys, who are unhappy with an urban practice selection, to connect with rural practitioners looking to add or affiliate with an attorney looking for a change could be helpful."

Another wrote that "smaller towns would rather have a local attorney than someone who comes to town periodically."

However, rural attorneys are fully aware of the realities of attracting new, young attorneys. As one respondent noted: "In recent hiring attempts, our office found that potential associates do not think smaller communities offer enough of one thing or another, such as shopping or entertainment. Unless such a person grew up in a smaller community, it is hard to get that person to seriously consider a county seat city of even 10,000. The issue I see now that we have two associates on board is the inability of smaller practices to pay the starting wage necessary for a new associate to pay back his/her school loans and have a decent standard of living."

While the survey results don't paint a particularly rosy picture of the efforts to fill rural practices with the next generation of attorneys, many respondents still see rural practice as a way of making a comfortable living while providing a quality of life not usually found in an urban setting. As one respondent commented about the ISBA's program to place young attorneys in small towns, "I appreciate your efforts to serve our rural attorneys and communities."



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Joseph F. Moser, Jeffrey R. Kappelman and Andrew M. Stanley have joined the Finley Law Firm in Des Moines.



Moser

Moser received his J.D. from the University of Iowa College of Law. He maintains a varied civil litigation practice, representing clients in Iowa's state and federal courts.



Kappelman

Kappelman received his J.D. from Drake University Law School in 2015. Following law school, he served as a judicial law clerk for one year in the Fifth Judicial District of Iowa and one year for Judge Gayle Nelson Vogel of the Iowa Court of Appeals.



Stanley

Stanley received his J.D. from the University of Iowa College of Law in 2017. He was recognized by the law school faculty for his moot court work, receiving the ABA-Bloomberg BNA Award for Excellence in the Study of Intellectual Property Law.



Levis

Tucker F. Levis has joined Parker & McNeill, P.L.L.C. in West Des Moines as an associate. He received his J.D. from Drake University Law School in 2017. Levis' practice will focus on litigation.



Lambert

Mark Lambert has been appointed as Ames City Attorney. He previously had been serving as an interim since May. He replaces former City Attorney Judy Parks who retired earlier this year. Lambert received his J.D. from the University of Iowa College of Law and had worked as assistant city attorney since 2013.



Northup

Bill Northup joined Lincoln Savings Bank as the First Vice President & Trust Manager in 2017. He received his J.D. from the University of Iowa and is a

member of the Iowa Academy of Trust & Estate Council, a member of The Iowa State Bar Association (Probate & Trust Law Section), the Government Relations Chair of Mid-Iowa Planned Giving Council and has over 30 years of trust and estate planning experience.



Gunnerson

Gregory Lars Gunnerson has joined McKee, Voorhees & Sease PLC in Des Moines. He received his J.D. from the Mitchell Hamline School of Law. Prior to joining the firm, he prosecuted patent applications as a certified student attorney through Mitchell Hamline's Intellectual Property Law Clinic and has been registered to prosecute patent applications before the United States Patent and Trademark Office since July 2014. Much of his practice will focus on drafting and prosecuting patent applications in the firm's Mechanical and Electrical Practice Group.



Hillers

Thomas L. Hillers has joined Hupy and Abraham, S.C., P.C., in Des Moines. He received his J.D. from



Martino

Valparaiso University School of Law in 2007. He won The Iowa State Bar Association President's Award in 2016 and is currently the president of the Young Lawyers Division and a member of its Ethics Committee.

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

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

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The place where kids truly come first

Kids First Law Center expands with new Des Moines office

By Melissa Higgins, Communications Director



Attorney Molly McPartland and Office Manager Layne Huey pose at the Kids First Law Center office in Cedar Rapids, which is adorned with kid-friendly décor.

There is no question what the mission of the Kids First Law Center is; the name gives it away. It's a place where kids come first, always. So instead of stuffy leather chairs and polished shelves with legal books, Kids First greets its clients with toys, games, colorful artwork and a giant stuffed giraffe. It's a playful vibe that carries through the entire Cedar Rapids office, a bright and happy place where often dark and painful situations are playing out.

Kids First is a law firm that gives children a voice in divorce, custody and other conflicts by providing focused legal representation. In addition to child representation, the firm holds divorce workshops, offers a joint parenting mediation program, assists in neutral custody exchanges, and has recently launched a new restorative justice project which facilitates conflict resolution in the Cedar Rapids school district.

"The heart of what we do is conflict resolution," explained Jenny Schulz, who founded the firm in 2005.

Schulz had an early vision to create the first law firm in the country that focused exclusively on representing children in divorce. Since then, her Cedar Rapids office has grown to nine employees, all the while expanding

its program offerings based on needs in that community. Now, the need is taking them into Polk County with a brand-new office location in Des Moines. Two attorneys and an office manager will staff it, with the idea of offering a similar slate of community-centered programs in the heart of Central Iowa.

The overall goals for Kids First are to create stability for children of divorce, lessen the effect of family conflict on children, connect families to support systems and needed resources and make children's voices heard. It's a non-profit endeavor, funded primarily by individual donations and grants. Although Kids First attorneys are court-appointed, no state or federal funding is provided. Children receive free representation when their families meet income guidelines. For higher income families, Kids First provides services on a sliding fee scale.

"Divorce is something that impacts people across all backgrounds and income levels, so we're reaching kids across all types of families (with the sliding scale)," said Molly McPartland, one of the new attorneys hired to staff the Des Moines office. She completed three years of judicial clerking after law school and calls



The staff of the Cedar Rapids office gathers for a meeting. Executive Director Jenny Schulz is seated on the left.



Supporters of Kids First gather for a launch party to celebrate the new office in Des Moines. They are accepting donations and seeking volunteers in the Des Moines area. Left: Pictured at the welcome table of the launch party is two Kids First Cedar Rapids' attorneys: Ari Crum and Elizabeth Weyer, along with Judge Sean McPartland from the Sixth District

working for Kids First a “dream job.” McPartland is from Cedar Rapids and had met with Schulz before she went to law school to seek career advice.

“Then I remember I was in Des Moines for a year, clerking, and having lunch with somebody, and I said, ‘Wouldn’t it be so awesome if Kids First opened a Des Moines office?’ And it all came to fruition.”

She couldn’t be more pleased with the opportunity: “I’m excited to be part of this. It’s an exciting resource to bring to Des Moines.”

Another attorney, Cole Mayer, was hired even more recently to join McPartland in the Des Moines office. He comes from a private practice background. And rounding out the Des Moines staff is Layne Huey, who will serve as the office manager and workshop coordinator. Huey used to volunteer with Kids First when she lived in Cedar Rapids, and was thrilled to serve on the Visionary Committee which helped launch the Des Moines initiative. For Schulz, Huey was an obvious choice to bring on staff.

“Kids First is very mission-driven,” said Huey. “We find people who genuinely believe in the mission and go forth with sort of this selfless endeavor. We are still very unique in that we’re doing these things, completely focused on the kids.”

Their new office is in the Synergy Center, in the former AIB campus in Des Moines. A collection of non-profits are housed there with subsidized rent, a sort of “non-profit incubator” which is part of an initiative through the Telligen Community Initiative.

“The campus is designed to have a public health focus, where non-profits can have office space that isn’t cumbersome to their bottom line, and it is also a great place for networking and collaboration,” said Huey.

It was Polk County judges who got the ball rolling on this new Kids First location. They had heard what Schulz and her team were doing in Cedar Rapids and wanted to try to replicate it. The Visionary Committee was born, and began drumming up support and

fundraising cash.

The judges, who are the ones who appoint cases to Kids First attorneys, are on board for good reason, explained Schulz.

“It does relieve the burden and workload on the judiciary,” she said. “In Linn County, we have settled 84 percent of these high-conflict cases without having to go to trial. Without a child’s representative, only 15 percent of high-conflict cases settle.”

Each attorney on staff carries a caseload of about 40 to 50 children at a time. And while they work on the legal issues, they also help support the family in other ways. The entire staff is mission focused, with a belief that children are often underestimated.

“To be able to give them a voice is really powerful,” said Huey. “(Divorce) affects kids, and a lot of people don’t realize how much.”

Schulz says the success they have in working with these kids becomes quite evident, especially as they get older.

“I run into people now who say, ‘You may not remember me, but you really helped my family.’ That’s at the heart of why I started this,” said Schulz. “It’s never been about the numbers of how many kids we can help, because you’re not going to change a complicated family situation overnight. But with a lot of time and devotion to one family, you can help that child have a much different future and have his or her own successful relationships as an adult.”



Molly McPartland and Layne Huey sit in the client waiting room at the Kids First office in Cedar Rapids. This is also the room where neutral custody exchanges occur.



The artwork of some of the firm’s child clients hangs on the wall.

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Meet Larry Johnson, Iowa's new State Public Defender

EDITOR'S NOTE: Iowa Governor Kim Reynolds appointed Larry Johnson as the new State Public Defender several months ago to replace Adam Gregg, who Reynolds named as lieutenant governor after she became governor. In this Q&A interview, Johnson talks about his background, his goals for the state public defender's (SPD) office and his view on the private attorneys who contract with SPD to serve indigent Iowans.



Q *Talk about how your previous experience has prepared you for this new career opportunity, and what your duties are exactly as the State Public Defender?*

A: Governor Kim Reynolds appointed me as the Iowa State Public Defender on May 26. Prior to my appointment, I served as Legal Counsel to Governor Branstad and Lieutenant Governor Reynolds starting in August of 2015, and served as Deputy Legal Counsel starting in January 2011. As counsel, I dealt with a broad range of legal and policy issues.

I served as the governor's ex officio representative on the Iowa Legislature's Administrative Rules Review Committee, the governor's clemency attorney, and as policy liaison to the Office of the State Public Defender and Board of Parole. I reviewed all legislation prior to the governor's approval. One area I enjoyed the most was assisting the governor with the appointment of judges.

Prior to the governor's office, I practiced in Des Moines primarily in administrative law. While in law school, I interned at the Pottawattamie County Attorney's Office. I received my law degree from Creighton University School of Law and my Bachelor of Science in Management from Purdue University's Krannert School of Management.

Serving as the governor's counsel was the opportunity of a lifetime and I am incredibly grateful and excited to have the opportunity to serve as the State Public Defender. As the State Public Defender, I manage and oversee a \$60 million budget that encompasses 220 employees and 800 contract attorneys, with the focus on providing the constitutional right to counsel to Indigents Iowans.

Q *Now that you've had several months to settle in, what is your biggest goal as the new leader of the SPD?*

A: After six months on the job, I still am getting settled in. I appreciate the welcome I have received. We currently are heading in to the legislative session and we will be working with the executive and legislative branches on our budget and any policy initiatives.

As I continue to assess our system, it is important to gain feedback from the local public defenders, contract attorneys, clients and judges. Currently, I am making my way around the state to visit all 18 field offices. I have enjoyed meeting our local public defenders, staff and judges. I continue to look forward to completing my tour of all of our field offices and meeting with our contract attorneys. I welcome your input.

I am impressed with many of the initiatives started by my predecessors. I

believe in customer service. Our office implemented rules to ensure attorneys handling indigent cases have the necessary qualifications to adequately represent their clients. Additionally, our office took steps to ensure our contract attorneys are paid in a prompt manner. I am continuing to keep customer service in mind by reviewing our website. Currently, it is difficult to navigate our website to find forms and information. We will be rolling out some changes on our website to make it more user-friendly in the upcoming weeks.

We will also be working to improve the data we collect as a public defender system. Our system is large and it is important to have useful information to make sure we are utilizing our resources as efficiently and effectively as possible.

Q *What is the most interesting or rewarding experience you have had so far?*

A: The SPD system consists of extremely bright, talented and passionate attorneys. Our office provides over 70 hours of free CLE each year. Attending the new attorney trainings and watching the dialogue between our experienced attorneys and new attorneys has been by far the most rewarding experience for me.

We receive positive feedback from our trainings. One comment we often receive is from our contract attorneys who request we provide in-person trainings in other areas of the state and not just Des Moines. Recently, we offered in-person training for Non-Citizen Representation regarding



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the Supreme Court's recent Morales Diaz decision in both Des Moines and Iowa City. We will continue to look for opportunities to offer training throughout the entire state as well.

Q *What do you see as the biggest areas for growth for the SPD?*

A: Technology. The SPD system went electronic for attorneys submitting their fee claims in January 2017. Our system will go electronic for fee claims for expert witnesses, interpreters and court reporters early in 2018. With the rollout of the judicial branch's EDMS, there is more room for growth in finding efficiencies with technology.

Q *The SPD recently made the decision to close down the Fort Dodge office as a cost-savings measure. What other moves do you anticipate will need to be made to stay within an ever-constrained state budget?*

A: The mission of our office is to provide high-quality, cost-efficient legal representation. In anticipation of a tight budget for Fiscal Years 2018 and 2019, I have proactively taken steps to promote savings and efficiencies. For example, in August, our office transferred all scheduling for the Deposition Unit in the Polk County Courthouse to our Des Moines Adult Public Defender's Office. Instead of maintaining a separate office at the courthouse to handle deposition scheduling, the staff at our Des Moines adult office is providing this service for court-appointed attorneys in Polk County. This was a seamless transition that continues to provide a valuable service with minimal-to-no disruption of services and results in savings for our office and taxpayers. I hope

the measures I have already taken will be sufficient to meet our budget for the upcoming year.

Q *There are nearly 900 private attorneys in Iowa who assist the SPD by providing court-appointed representation. Is there anything you want them to know about how you will lead this office during your tenure?*

A: Collaboration. In Iowa we have a hybrid-system comprised of local public defenders and private attorneys delivering legal services to indigent persons. Iowans are well-served by our hybrid-system. I welcome feedback from our contract attorneys and local public defenders. I want to hear what we are doing well and what we could improve. Whether it is an email, a phone call, or over a cup of coffee – I welcome your input and look forward to working with you.

Hugh Faulkner, 89, of Oskaloosa died Nov. 4.

Faulkner was born in 1928 in New Sharon. He served in the U.S. Army shortly after World War II and received his J.D. from the University of Iowa College of Law in 1957. He began his career working in various agencies and departments of the Iowa State House, then joined the Iowa Attorney General's office in the Department of Transportation. In 1961 Faulkner joined Bray & McCoy in Oskaloosa, where he became a partner the following year. He was also appointed as Mahaska County Attorney, serving there for several years.

Mark Nieters, 65, of Windsor Heights died Oct. 20.

Nieters grew up in Beaverdale. He received his J.D. from Drake University Law School in 1977. He was a partner at KPMG in the tax department before venturing out into private practice and joining Berger Law Firm.



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Learning from Other's Mistakes: Avoiding Ethical Issues in the Practice of Law (Live Webinar)

December 20
12 – 1 PM

Speaker: Rebecca Brommel, BrownWinick

This webinar will provide a review and analysis of recent ethics opinions and tips on avoiding becoming the subject of an ethics opinion.

CLE Credit: 1 state hour which includes 1 ethics hour

Ethical Issues for Tax Return Preparers (Live Webinar)

December 22
12 – 2 PM

This session examines current ethical issues facing tax return preparers, including attorneys. The session will focus on Circular 230 requirements, such as confidentiality and privilege. It will also address timely cybersecurity issues, including the requirement to protect data from unauthorized access or disclosure.

CLE Credit: 2 state hours which includes 2 ethics and 2 federal hours

Diversity and Inclusion: Every Lawyer's Professional Responsibility (In-person or Live Webinar)

December 27
1 – 4 PM

In-person attendance will take place at the ISBA Headquarters (625 E. Court Ave., Des Moines, IA 50309)

1 - 2 PM

You're a Lawyer, You Should Know Better: Anecdotal Tales of Workplace Inappropriateness

Speaker: Gina Messamer, Parrish Kruidenier

In "You're a Lawyer, You Should Know Better: Anecdotal Tales of Workplace Inappropriateness," Gina Messamer will discuss stories from Iowa lawyers that illustrate bias, prejudice, and/or harassment--from the obvious to the insidious. This program will give real-life examples to illustrate where the profession has room for improvement.

2 - 4 PM

Calling Out the Culture: Next Steps

Speaker: Hon. Annette Scieszinski, Senior Judge, Iowa District Court

In their professional calling, lawyers are required to avoid manifesting bias, prejudice, and harassment against other persons. In "Calling Out the Culture: Next Steps," Judge Scieszinski will alert participants to ways in which the legal profession falls victim to a culture that implicitly demonstrates bias, prejudice, and/or harassment--typically in ways not recognized by the professionals involved. This program will highlight strategies to reduce the exercise of subconscious influences in the practice of law, leading to a culture of diversity and inclusion.

CLE Credit: 3 state hours which includes 3 ethics hours

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Videos available include:

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- **Federal Case Law Update** - Speaker: Hon. Helen Adams, Chief United States Magistrate Judge, Southern District of Iowa
- **Joint Revocable Trusts** - Speaker: David Repp, Dickinson Mackaman Tyler & Hagen PC
- **Lawyer Death and Disability Planning** - Speakers: Tre Critelli, Director, Office of Professional Regulation; Paul Wieck, Fmr. Director, Office of Professional Regulation (ret.); Travis Cavanaugh, Simmons Perrine Moyer Bergman PLC; and Laura Jensen, Simmons Perrine Moyer Bergman PLC
- **Let's Make a Deal: Strategies for Negotiation with (or without) Mediation** - Speakers: Tim Semelroth, RSH Legal; David Baker, David L. Baker – Mediation Services; and Tom Hillers, Hupy and Abraham, S.C.
- **Medicaid Eligibility for Nursing Home and In-Home Services** - Speaker: Scott Hartsook, Iowa Legal Aid's Legal Hotline for Older Iowans
- **Nuts and Bolts of Iowa Residential Real Estate Transaction** - Speaker: Tim Gartin, Hastings Gartin & Boettger LLP
- **State Case Law Update** - Speaker: Hon. Paul Ahlers, District Court Judge, District 2B
- **Succession Planning/Classification Changes** - Speaker: Tre Critelli, Director, Office of Professional Regulation
- **Using Our New Digital Assets Act** - Speaker - Joshua Weidemann, O'Connor & Thomas, PC

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CORPORATE COUNSEL – DuPont Pioneer, Johnston – This position will be responsible for providing legal support to the Seeds Platform in North America, as well as providing legal support for the sourcing and real estate functions, amongst other responsibilities. The successful candidate should have strong experience and background in drafting and negotiating complex commercial agreements and transactions, be able to collaborate across legal and business teams to drive successful conclusions to business arrangements and be able to handle multiple and varied legal work on a timely and efficient basis. Background in secured transactions, bankruptcy, credit workouts, etc., a plus. This role is based in Johnston, and may require some travel. To apply visit

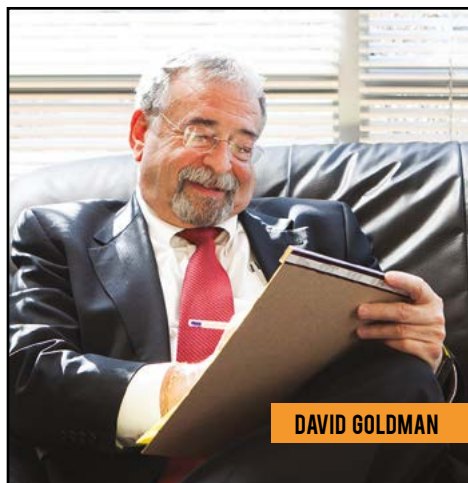
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DAVID GOLDMAN

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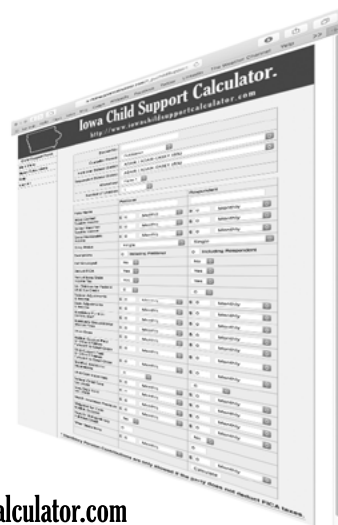
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Startups and the in-house counsel: Issue and roles

By Kate Lyon,
General Counsel for EcoTech, Inc.

Startups have a unique cultural feel, employees often move quickly (unimpeded by extensive organizational hierarchy), willingly explore out-of-the-box solutions, and do not think in terms of how things should be done, but what needs to be done to grow. This culture presents exciting challenges and opportunities for an attorney whose training lends itself to formal, rules-based thinking.

Within the startup community, arguments persist on how to define and categorize a startup. Some persons believe a three-year-old or younger company is a startup, while others think only companies built for explosive growth should be labeled a startup. For this article, I view a startup as a company struggling to get off the ground, striving to disrupt their marketplace or one poised for growth.

Just as the definition of startup varies, the role of in-house counsel within a particular startup takes a unique form. Depending on the size and growth cycle of the company, the attorney may be full-time, part-time or as-needed outside counsel. In all cases, I have found common issues exist for the attorney and one underlying area that impacts how an in-house job is performed: integrating business needs with legal solutions. This underlying area drives problems presented when working within a startup environment.

Issues I have experienced and heard repeatedly are: Recognizing problems with an inability to implement solutions, failing to spot problems and failing to understand one's intellectual property portfolio. To mitigate these, I believe success results from aligning your solutions with the business goals of the company.

To illustrate a few of these issues, take this hypothetical situation. Your sales representative receives a purchase order via email from your largest customer. The order is a new product, 200 widgets at 10 dollars a widget. The customer's purchase order contains three pages of terms and conditions, along with an email stating they have pulled the new widget logo off the company website and look forward to using this logo in their marketing material.

With a simple reply of thank you for your order, the employee enters the



purchase order into a system and allows reproduction of the widget logo. The employee is unaware he or she agreed to the customer's terms and conditions, there is no sales policy or system fully implemented, and branding guidelines set up by the marketing department are not followed. In one email transaction, multiple issues are not recognized by the employee.

As in-house counsel, you get to tackle this challenge at the beginning: Drafting terms and conditions ideal for your company, educating employees on the sales process, placing the company in a

favorable position. The situation presents a number of challenges. What if the company wants to accept the purchase order as is to close the sale, failing to see potential liabilities in the future? What if the company is taking higher risk than you would advise because it has confidence in its product or service?

All of these situations allow the lawyer to sell best practices, to maximize the company's bottom line and minimize future risk.

What about the underlying issue of intellectual property? This involves ensuring that the customer is following

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branding guidelines, and correctly citing trademarks and logo requirements. It's important to set up processes for the sales staff to utilize, removing failure points in the process.

It's also important to systemically recommend what and where to direct resources for offensive and defensive actions to build the company's portfolio, as well as educating the management team to understand upside, time and costs associated with different protections. Finding an outside firm to partner with is extremely important, I believe the most effective partners help shape and guide your company's entire portfolio, working within your budget and resource limitations.

Consistently creating a company environment where employees learn to spot issues and problem solve is one of the best ways an in-house attorney can be useful. Sit in on as many business, operations and marketing meetings as possible. Having an intimate knowledge of the business, its goals and processes drives more productive results. Successful counsel understands and embraces the environment. Counselors

present solutions efficiently implemented with a skeleton staff, are practical in their advice and understand the fluid nature of the business.

This article contains many assumptions and caveats. One large one is, as startups require business advice, in-house counsel must be diligent in understanding the role of attorney-client privilege in their day-to-day functions. Another is educating management on who is the client and what information is confidential and what is considered a business function, thus not protected. Carefully navigating the legal versus the business role of an attorney can be extremely tasking, but is of the utmost importance.

Whether you are in-house counsel or with an outside firm, working with a startup and providing solutions to clients that fit the company culture and goals is key to overcoming the inherent limitations of startups.

I love to debate the role of attorneys in the startup ecosystem. Helping small businesses launch and thrive is one of the best parts of my career. For further discussion, email me at klyon@c2development.com.

AUTHOR BIO:

Kate serves as General Counsel for EcoTech, Inc., an advanced manufacturing, and consumer electronics product company. She is an Iowa State alumna and 2010 graduate of Drake University Law School.



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



(Left) Some of the book club members pictured during a volunteer meeting in February of 2017. (Right) Some of the book club members are pictured with Judge Donna Paulsen, who was honored with the Willie Glanton Award in March 2017 during a PCWA meeting.

This month, the PR Committee recognizes the Iowa Correctional Institution for Women Book Club, which is run by Central Iowa female attorneys and judges.

In its two and a half years of existence, this book club has met with groups of women inmates at the prison in Mitchellville 60 times, on the second and fourth Tuesdays of each month. The group has supplied more than 900 books to ICIW to be read by book club members and then shared with other offenders to enjoy.

The group got its start after ICIW's then-warden Patti Wachtendorf approached some Polk County judges and asked if they would be willing to help create a book club for offenders who had been requesting a club for some time. After

recruiting and training volunteers and securing donations to purchase the books, the first book club meeting was held April 14, 2015.

"In many ways, it is like any other book club. You can forget where you are when the group is rating the book and sharing insights, personal reflections, what resonated (or not) in each read. However, I am always moved by how grateful many of the ICIW women are to have us there to share the book club with them," said Becky Reif, a book club volunteer and attorney at Ahlers & Cooney, P.C.

The official sponsors of the club are the National Association of Woman Judges, Iowa Organization of Women Attorneys and Polk County Women Attorneys.

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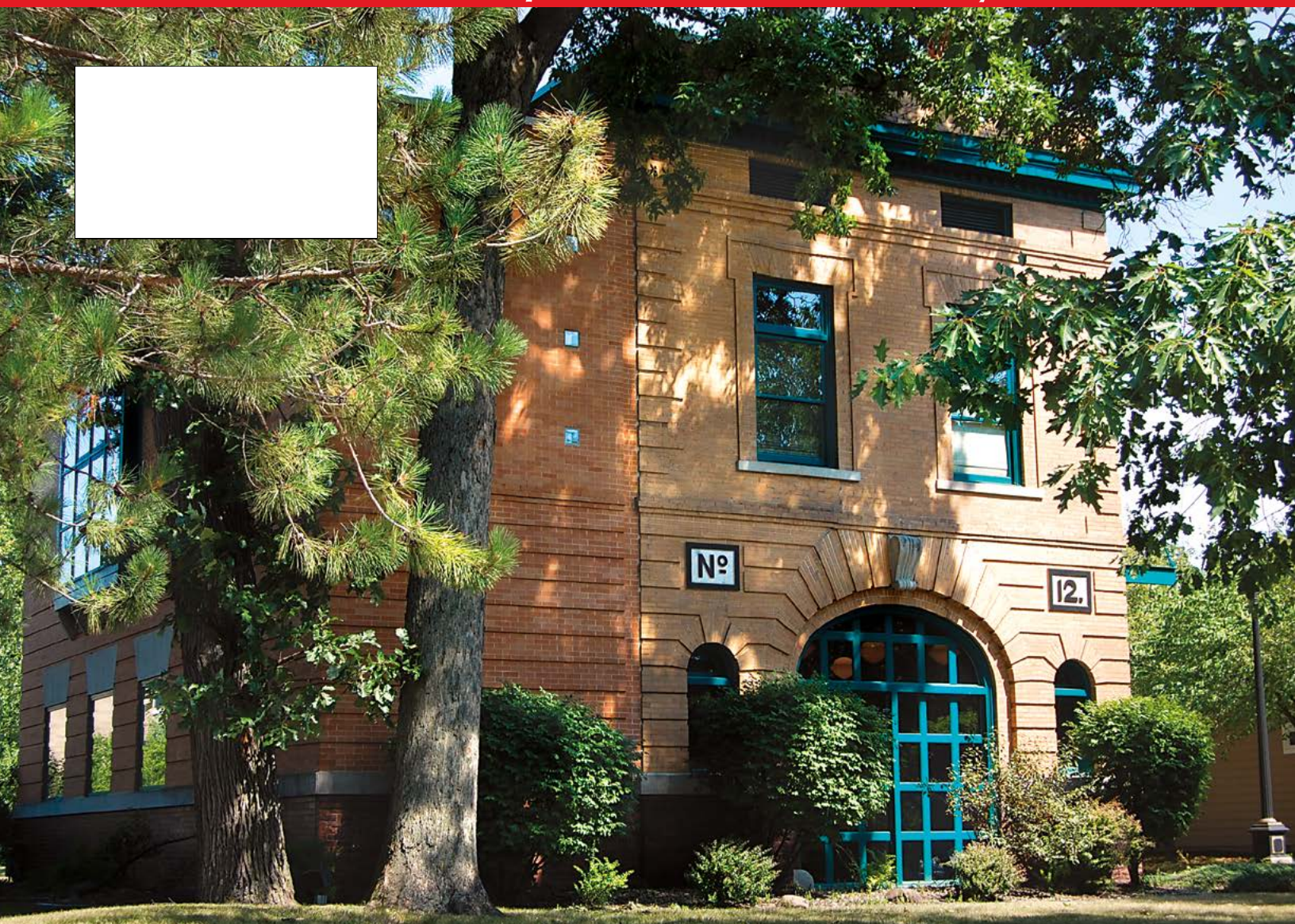
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