



THE ADVOCATE

THE NEWSLETTER OF THE POLK COUNTY BAR ASSOCIATION. • MAY 2002

Polk County Bar Association Law Day Committee Hosts Visual Arts and Poetry Contest 2002

**“Celebrate Your Freedom –
Assuring Equal Justice for All”**

This year’s theme focuses on America’s efforts to make equal justice a reality for all American citizens. Students were asked to explore ways to make American justice equal regardless of race, national origin, ancestry, color, creed, religion, age, gender, disability or economic status.

Participating students were from Harding Middle School, Hoover High School, Urbandale Middle and High Schools, and Dowling High School. Local poets, artists and attorneys evaluated the poetry and visual arts entries. Six poetry winners were chosen from 8th, 9th, 10th and 11th grade entries. In the visual arts portion of the competition, three visual arts entries were selected as winners and five students were given honorable mention. No further distinctions between the winners were made. Students and their teachers were honored at the PCBA Annual Meeting held on May 14. The winning poems will periodically appear in the PCBA newsletter.

The Airport

Head down, paces quick
The crowd divides as he walks through.
Cold gazes follow him.
He clutches his suitcase harder.

In line now, he is pulled aside.
He feels like an animal on display.
People stare with silent satisfaction
As he is degraded and humiliated.

After he is back in line,
Five words enter his mind
“America, Land of the Free.”
What a joke!

All he wants to do is fly home,
Just like any other guy.
But because he has a beard and a turban,
Freedom is hard to come by.

Abby Wagner
10th Grade – Dowling High School

Establish Justice

We the People

Made the Right:
to hear the case
and judge the fight.

We the People

Made the Law:
let the witness
tell what they saw.

We the People

Made the Case:
now it’s equal
for every race.

We the People

Lost a lot.
A group attacked,
but were not caught.

We the People
Found our way.
Because we don’t
Make guiltless pay.

Libby Driscoll
10th Grade
Dowling High School



What’s Inside...

Iowa State Bar Association
Annual Meeting
**Jim Gritzner Sworn In As U.S. District
Court Judge**
Iowa Organization of Women Attorneys’
Annual Meeting
Martha Mertz Appointed 5th District Judge
Juvenile Court Administrative Order
**Odell McGhee Appointed Associate District
Court Judge in District 5C**

Clerk's Corner

Good day to everyone:

The Judicial Branch budget is still a looming question and my office is making adjustments as needed. Some changes that have occurred or will occur are:

- No more free certified copies, unless the Code specifies.
- Money received on small claims judgments is being made payable and mailed to the plaintiff.
- We have set up pick up boxes for attorneys to cut down on postage costs and time spent stuffing envelopes. This is strictly voluntary and is intended for frequent court users. If you would like to participate, please see the department supervisor.
- We are no longer mailing copies of small claims orders to plaintiffs/defendants if represented by counsel.
- Payment will be expected at the time of filing the annual report/order in guardianships, conservatorships, and trusts. (We are currently working on a project to collect costs in cases filed prior to 2002.)
- Payment is expected at the time of filing dissolution decrees.
- Civil filing fees will probably increase July 1st. Please see SF2320.
- We would appreciate your cooperation in not filing large batches of small claims cases at one time. It would be most helpful if it could be spread out during the week.
- One more thing: please include in all Foreclosure in Rem decrees the book and page of the mortgage that was filed with the Recorder.

Have a safe and happy summer,

Lois Leary

Clerk of Court

NEWSLETTER CONTRIBUTORS

Contributors for this newsletter include Co-Chairs Bob Hanson and LuAnn White, and committee members Beth Baldwin, District Court Administrator, and Simon Noel. Other contributors are Lois Leary, Clerk of Court for Polk County, Carol Burdette, Polk County Bar Association Executive Director, Susan Low, President-Elect, Emily and Kristin Collinson, Co-Chairs of the Law Day Committee and the Iowa Organization of Women Attorneys'.

Gritzner Sworn In As Newest Federal Judge

James E. Gritzner, a Des Moines attorney, was sworn in as a United States District Court Judge for the Southern District of Iowa at the Federal Courthouse in Des Moines, Iowa on March 26, 2002. Amongst those in attendance were Senator Charles Grassley and representatives of the office of Senator Tom Harkin and the American Bar Association in addition to numerous members of Judge Gritzner's family, friends, associates and several members of the local federal judiciary. He replaces the Hon. Charles R. Wolle who took senior status on October 16, 2001.

Judge Gritzner obtained his bachelor's degree from Dakota Wesleyan University (1969) and a master's degree from the University of Northern Iowa (1974). Upon his graduation from Drake University Law School in 1979, he clerked for U.S. District Judge Ronald E. Longstaff and subsequently practiced law in Waterloo and Des Moines. Most recently, he had practiced with the Des Moines law firm of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, P.C. While in private practice, Judge Gritzner served as a member of the Iowa Board of Parole from 1980 – 1982. He also served as Counsel to the Iowa State Bar Association's Committee on Professional Ethics and Conduct and as Counsel to the Iowa Supreme Court's Client Security and Attorney Disciplinary Commission from 1985 – 1990.

The Polk County Bar Association extends its congratulations to Judge Gritzner on his appointment to the federal bench. ■



NOTICE:

Physician Available
For Independent Medical Exams

Robert C. Jones, M.D.

Ph. (515) 255-8001

Neurosurgery, generally
spine
shoulder
hip
extremities
carpal tunnel
hernias

Iowa Organization of Women Attorneys to Hold Annual Meeting in Conjunction with ISBA Annual Meeting on June 20, 2002

All attorneys are invited and welcome to attend the I.O.W.A. (Iowa Organization of Women Attorneys) Annual Meeting and Banquet to be held on Thursday, June 20th, beginning at 7:00 p.m., at the Marriott Hotel in downtown Des Moines. This event includes many firsts, including the presentation of the First Annual Arabella Mansfield Award, to be given to a woman attorney in Iowa, in honor of the first woman to be admitted to practice law in the United States (right here in Iowa), and the first time that the I.O.W.A. Annual Meeting will be held in conjunction with the ISBA Annual Meeting.

The banquet will also feature Willie Stevenson Glanton as keynote speaker. Cost of the banquet is \$25.00. A reservation form can be downloaded and printed via the I.O.W.A. website at <http://iowawomenattorneys.org>. I.O.W.A. also has planned an afternoon CLE track on June 20th as part of the Iowa State Bar Association's Annual Meeting. The schedule for this program is available on the I.O.W.A. website. The schedule for the entire ISBA Annual Meeting is available at <http://www.iowabar.org>. ■

Critelli to Become Iowa State Bar Association Vice President

Nick Critelli, II has been nominated to become Vice President of the Iowa State Bar Association. Critelli was nominated by the ISBA Board of Governors, and is expected to be elected by the membership to become Vice President at the Annual Meeting of the ISBA on June 19, 2002. ■

NEWS FOR NEWSLETTER WANTED

Anyone wanting to submit news items for the PCBA Newsletter, or wanting to serve on the Newsletter Committee, should contact Newsletter Committee Co-Chairs Bob Hanson and Lu Ann White at Hanson, Bjork & Russell, L.L.P., 405 6th Ave., Suite 1300, Des Moines, Iowa 50309 (telephone: 244-0177) (fax: 244-8258), or contact Carol Burdette at 243-3904.

Iowa State Bar Annual Meeting to be June 19-21, 2002

The Iowa State Bar Association's Annual Meeting and CLE will be held at the downtown Marriott Hotel June 19-21, 2002. The CLE seminar covers an array of topics, and features trial technique expert Fred Lane. Also, as an added attraction, the Iowa Organization of Women Attorneys is sponsoring a special issues track on Thursday afternoon.

Social activities include the General Assembly and Awards of Merit Luncheon on Wednesday at 11:30 a.m., the President's Luncheon Honoring the Supreme Court on Thursday at noon, the 50-Year Members Award Luncheon at noon on Friday, and the Past Presidents' Reception, hosted by past ISBA presidents for all seminar attendees, on Thursday afternoon after the CLE. The special Wednesday evening event is the President's Dinner, with a reception at 6:30 p.m. and the dinner and entertainment at 7:00 p.m., hosting the special entertainment attraction, the Bar and Grill Singers. Attorneys are invited to attend the social events even if they are not attending the CLE sessions.

The Annual Meeting schedule can be found, and registrations made, by logging on to the ISBA website at <http://www.iowabar.org>. Or, for information, call the ISBA office at 515 243-3179. ■

2002 Doctor-Lawyer Dinner A Success

Once a tradition of the professional community, the "Doctor-Lawyer" social evening was revived this year. On April 24, 2002, approximately 160 attended a joint meeting of the Polk County Bar Association and the Polk County Medical Society at the West Des Moines Marriott. The evening included a social reception and dinner, with Michael Gartner, the featured after-dinner speaker.

Mr. Gartner's insights and experiences gained from his long career in the news business were punctuated with his descriptions of the people and encounters that brought images of those personalities into the room. Mr. Gartner contrasted his background as newspaper reporter with television new reporting. He illustrated the difference by noting that while covering earlier wars for newspapers was dangerous, cameramen and reporters now cover wars on a real time basis in which they are in immediate peril and must make decisions without any luxury for reflection. That same instantaneous decision making window carries over to the television editors and has changed dramatically the dynamics of the news process.

Plan to attend the next joint meeting with the doctors next Spring. ■

The Colors of America

By Lisa Crnic



The shining red,
The glowing blue,
The twinkling white,
The colors of our American flag.

Red and white stripes dominate side by side,
running in their parallel lines equally.
They are given the freedom to stand elevated in the air and
speak what they believe in.
Red and white shines for our male and female genders that
ring with freedom.

The backdrop of blue supports our stars.
It holds all the equal justice together in one secure territory.
It creates the equal laws that please each individual.
It emphasizes that red and white were both created equal.
Blue glows for our assuring government that rings with
freedom.

The fifty white stars shine with life.
Each and every one is an individual.
The stars dream no more as they live and walk together as
brothers and sisters.
They stand up as a team regardless of the unique way each
lies in the backdrop of blue.
They recognize that everyday, is a free day.
White stars twinkle for our races and religions that ring with
freedom.

The equal genders,
The assuring government,
The free races and religions,
The colors of America.

Mertz Sworn In As District Judge For Fifth Judicial District

Martha L. Mertz, a Knoxville attorney, was sworn in as a district judge for the Fifth Judicial District at the Marion County Courthouse in Knoxville on April 5, 2002. She replaces the Hon. Jerrold W. Jordan who took senior status as of December 31, 2001. Judge Mertz received her undergraduate degree in 1974 from Northeast Missouri State University and graduated with honors from Drake University Law School in 1982. Since that time, she has been in private practice in Knoxville with the law firm of Mick & Mertz. In addition, Judge Mertz served as Assistant Marion County Attorney from 1982-1985 and as Marion County Attorney from 1986-1989.

Judge Mertz is a member of the American and Iowa State Bar Associations as well as the Iowa Trial Lawyers Association. She chaired the Family Law Section of the Iowa State Bar Association from 1996-1997. She has also garnered her share of honors for professional and academic achievements. She is a past recipient of the ICADV Gold Seal Award (1994) (recognition by the Iowa Coalition Against Domestic Violence for extraordinary efforts on behalf of battered women) and the Athena Award (1989) (recognition by the National Athena Foundation for efforts promoting the advancement of women in business). While in law school, she earned the Rodney L. Hudson Appellate Advocacy Award (1982) (best oral argument before the Iowa Supreme Court) and has been a member of the Order of Barristers (recognizing exceptional academic performance) since 1981.

The Polk County Bar Association extends its congratulations to Judge Mertz on her appointment as the newest member of the district bench for the Fifth Judicial of Iowa. ■

Judge Richard Morr Awarded the Supreme Court 2001 Court Innovation Award

On Friday, May 5th, Justice Michael Streit of the Iowa Supreme Court awarded District Court Judge Richard Morr the Supreme Court's 2001 Court Innovation Award. The ceremony took place in Knoxville, Marion County, during the Fifth Judicial District's Judges' Meeting. The Court Innovation Award was established to recognize court personnel who have played a part in developing and implementing an innovative program or process that has improved the delivery of court services, public access to the courts, or the administration of justice. Chief Judge Arthur Gamble nominated Judge Morr for the honor, citing Judge Morr's efforts in improving the administration of justice through instituting innovative case management practices in the Fifth Judicial District, recognizing the need for assuring courthouse security, and supporting many projects, including the CJIN computer program during Judge Morr's tenure as chief judge of the Fifth Judicial District (1986-1995). Judge Morr accepted the honor in his usual style, noting all the other persons who had played a large part in each of the noted areas. Judge Morr, of Chariton, Lucas County, served in the United States Air Force from 1949 to 1950, earned his bachelor's degree from the University of Iowa in 1954, where he then earned his law degree in 1957. Judge Morr practiced law for 22 years, serving as the Lucas County Attorney for nine years, before being appointed to the District Court Bench in 1980. Judge Morr continues to travel the highways and county roads of the Fifth Judicial District in his 22nd year as a District Court Judge serving the people of Iowa. ■

Odell McGhee, II Appointed as Associate District Court Judge in District 5C

Odell McGhee, II was appointed as an Associate District Court Judge for District 5C in February 2002. His public investiture ceremony was March 12, 2002.

Judge McGhee was born in Liberty, Mississippi. At thirteen, his family moved to Chicago, where he finished high school. He attended the University of Illinois and then transferred to Cornell College in Mt. Vernon, Iowa, where he graduated with a B.A. in 1974. He graduated from Drake University Law School in 1977. Judge McGhee began his career as a program planner for the Iowa Commission of the Aging. He then became an administrative hearing officer with the Iowa Department of Environmental Quality. He also heard cases as a hearing officer for the Iowa Civil Rights Commission, the Department of Agriculture, and Job Service of Iowa. He prosecuted cases for the Compliance Division of the Iowa Department of Environmental Quality. Since 1982, he was employed by the Polk County Attorney's Office, where he served as a prosecutor in several criminal departments and also had worked in the civil division. Most recently he was lead special prosecutor working with white-collar and vehicular homicide cases.

Known for his interest in and active involvement in community activities, Judge McGhee recently has served as chair of the Des Moines Waterworks Commission, as a director on the Anawim Housing Commission, and as a member of the executive committee of the National Poetry Society. He was appointed to a special task force by Governor Vilsack to develop strategies to combat the proliferation of absent fathers as a member of the Fatherhood Commission. In the past he has served as chair of the Corinthian Baptist Church, chair of the Morris Scholarship Fund, and as a

special appointee to the Governor's Commission on Youth. He has served as vice president of the Executive Board of the Des Moines Tutoring Center, a commissioner on the Des Moines Public Housing Authority, a member of the Hillside Development Commission, a member of the Des Moines Playhouse, a chair and trustee of the Corinthian Gardens Senior Citizen and Handicapped Apartment Complex, chair of the Corinthian Baptist Church Board of Trustees, and a member of the Salvation Army Advisory Council and chair of its basketball program. He has volunteered with several community groups, including the United Way's Public Policy Committee, the Langston Hughes Company of Players, the N.A.A.C.P., the Council on International Living, and the Morris Scholarship Fund.

Judge McGhee has been involved in legal associations as well. He is a member of the Iowa State Bar Association, the Polk County Bar Association, where he has served on the Ethics Committee and on the Board of Directors, the National Bar Association, where he has served as president, the National Association of District Attorneys, and the National Association of Prosecutors. He is a member of the Iowa Supreme Court's Continuing Legal Education Commission and an officer of the National Association of Prosecutors. He has served on various Iowa State Bar Association committees.

The Polk County Bar Association extends its congratulations to Judge McGhee on his appointment as the newest member of the associate district court bench for the Fifth Judicial District of Iowa. ■

Legal Writing Position

Washington College of Law, American University, Washington, DC for the academic year 2002-2003. Core responsibilities include teaching legal research and writing in the two-credit, two-semester first-year legal writing program to approximately 45 students per semester.

All inquiries should be by mail. For more details, contact the Office of the Dean, Suite 366, Washington College of Law, American University, 4801 Massachusetts Avenue, NW, Washington, DC 20016.

Assistant Director of Law Clinic/Staff Attorney, The Ohio Northern University College of Law, Lima Legal Clinic,

Summer 2002. Candidates must hold at least the JD, be experienced in related areas, and be licensed to practice in Ohio or eligible to seek admission by motion. A detailed job description will be provided upon request. Candidates should submit an introductory letter, resume, transcripts, and names of three references with addresses and telephone numbers to: Professor Sherry Young, Chair, Personnel Committee, Ohio Northern University College of Law, 525 S. Main Street, Ada, OH 45810.

Applications should be submitted no later than June 1, 2002 to receive full consideration. ■

Suggestions for Attorneys to Assist the Court in these Times of Budget Cuts and Staffing Shortages

Due to a shortfall of state revenues, all state branches and departments are facing budget cuts, staffing layoffs and furloughs. The judicial branch is no exception. It is operating with fewer staff and resources. To continue to supply the high quality and quantity of service will require everyone's participation, including the attorneys who work in and utilize the courts. Many of these suggestions are common sense and many attorneys already do what is suggested.

1. Before preparing and filing a motion (particularly motions for extensions of time or deadlines, continuances, or to amend pleadings), contact all opposing counsel to determine if an opponent resists the motion. Include in the body of the motion that opposing counsel has/have been contacted and whether there is any resistance to the motion.
2. Prior to filing a motion to continue a trial or hearing, the movant should contact all other counsel and the case coordinator (trial) or court attendant (motion) to obtain a new date when the court and all counsel are available and include that in the motion or proposed order granting the motion.
3. After filing the hard copy with the clerk, attorneys should deliver a copy of any motion or resistance to the assigned judge when it is filed. If an attorney is going to resist the motion, he or she should file the resistance as soon as possible. If there is no resistance to a motion and that is not indicated in the motion, notify the judge as soon as possible.
4. Once a motion is filed, attorneys may e-mail the motion to the assigned judge along with e-mailing a copy to all opposing counsel. Also, attorneys may e-mail a proposed order granting the motion if in the motion it is represented that all attorneys have been contacted and there is no resistance to the motion. On any proposed order, include the service list of each attorney, address and party represented. This will assist in preparing envelopes and the mailing of the order. Remember – any communication with the court must all be conveyed to all other counsel in the case.
5. If an attorney e-mails a copy of the motion or order to the judge, then do not hand deliver a hard copy. If an attorney e-mails a matter to the court, the attorney should use the Delivery Options and request a notice when the e-mail has been received and opened, or ask in the e-mail for a response from the judge to confirm the motion or order was received, or call the judge/court attendant to confirm. Be aware of judges' schedules (vacation or leave), availability, or change in assignment which may make e-

mail unfeasible. Attorneys should also verify in the e-mail or cover letter to the court that all opposing counsel have been forwarded a copy via e-mail or regular mail (if opposing counsel does not have e-mail).

6. Utilize this list of judges' e-mail addresses.

Richard.Blane@jb.state.ia.us
George.Bergeson@jb.state.ia.us
Robert.Blink@jb.state.ia.us
Arthur.E.Gamble@jb.state.ia.us
Michael.Huppert@jb.state.ia.us
Robert.A.Hutchison@jb.state.ia.us
Joel.D.Novak@jb.state.ia.us
Eliza.Ovrom@jb.state.ia.us
Donna.Paulsen@jb.state.ia.us
Glenn.E.Pille@jb.state.ia.us
Linda.Reade@jb.state.ia.us
Artis.Reis@jb.state.ia.us
Karen.Romano@jb.state.ia.us
Scott.Rosenberg@jb.state.ia.us
Douglas.Staskal@jb.state.ia.us
Robert.Wilson@jb.state.ia.us
James.D.Birkenholz@jb.state.ia.us
Gregory.Brandt@jb.state.ia.us
Carol.Coppola@jb.state.ia.us
Carol.Egly@jb.state.ia.us
Louise.Jacobs@jb.state.ia.us
Odell.McGhee@jb.state.ia.us
Cynthia.Moisan@jb.state.ia.us
William.Price@jb.state.ia.us
Joe.Smith@jb.state.ia.us
Connie.Cohen@jb.state.ia.us
Karla.Fultz@jb.state.ia.us
Ruth.Klotz@jb.state.ia.us

7. Along with prepared orders, attorneys can prepare and deliver to the court addressed envelopes or pre-printed labels for all attorneys on the service list for use by the court attendant in mailing out copies.
8. When completing a Uniform [Trial] Scheduling Order, particularly for a non-jury case, please make as accurate a prediction as possible on the expected length of the trial and specify the precise number of days. This will help scheduling. In non-jury cases, the parties may be limited to the number of days specified/requested and all remaining evidence may be required to be submitted by deposition. See Iowa Code § 624.3.
9. When a Uniform Scheduling Order is brought to the judge for signature, the attorneys should also give the court attendant copies (canary color) for each attorney of record and court administration. This will save copying.

Suggestions for Attorneys...(cont.)

10. Attorneys should bring copies of all exhibits to trials should label all trial and hearing exhibits, and should provide two exhibit lists, one for the court reporter and one for the judge.
11. Attorneys should present two copies of proposed jury instructions, one for the judge and one for the judicial assistant or court reporter, as well as a computer disc (Microsoft Word program) so if the jury instructions need to be corrected the judicial assistant/court attendant can make the corrections.
12. When attorneys or their staff call judges, court attendants or court staff (case coordinators) or leave voice mail messages, please refer to the county, case number, parties' names, and telephone number where the attorney or person calling may be reached.
13. Attorneys should list in the signature block on each pleading or motion their current, full addresses, including zip codes, telephone numbers, fax number and e-mail addresses, and their attorney PIN number. It is difficult at times to find this information in the court file and takes unnecessary time to look up. (See I. R. Civ. P. 1.411).
14. Attorneys must promptly report the settlement of any case coming to trial. (See Iowa Rule of Civil Procedure 1.908(1)). Attorneys should call both the case coordinators and the assigned trial judge to report the settlement and cancellation of the trial. Remember- there is a non-waivable late settlement fee of \$500.00 in civil cases where settlement is not reported to the court by 4:30 p.m. on the Wednesday preceding the following Monday's trial date.
15. Attorneys should promptly call the judge/court attendant if any hearing on a pending motion may be canceled due to the issue being resolved. The judge can then fill that slot with another hearing and not lose that time.
16. Attorneys should be more "concise" in their briefs, particularly on motions for summary judgment. (I. R. Civ. P. 1.431(3)). Briefs are not to be filed with the clerk but delivered only to the judge who then makes the determination whether the brief should be included in the file.
17. Attorneys should be on time for hearings. If an attorney has a scheduling conflict, the attorney should advise the court ahead of time and determine the priority of attending the hearings. The attorney should keep the court informed of where he or she is and availability or expected time of arrival.
20. In family law cases, attorneys should advise the judge/judicial assistant assigned to hear that proceeding of the settlement or cancellation of hearing
19. In family law cases, attorneys need to call (286-2065 or 286-3856) by 2:30 p.m. the day before a "prove-up" (dissolution, modification, adoption or name change) in court, so the court file can be pulled and available to the judge. If an attorney does not attend the prove-up as scheduled, he or she should immediately call the court attendant and advise of a new date that the attorney will appear for the prove-up. Otherwise, the file is returned to the clerk's office and will need to be called in, pulled by the clerk and retrieved by the court attendant another time. If a "prove-up" is set by court order for a specific date, the attorney is required to appear that day if not disposed of earlier.
20. If an attorney submits a proposed Decree or Order which is dispositive of the case, that Decree or Order must provide who is responsible for payment of court costs. (Note: Iowa R. Civ. P. 1.960 provides that if payment of costs is not specified, the clerk shall enter judgment for costs against the plaintiff.)
21. In small claims cases it would be helpful for the attorneys to file their documentary proof of damages which supports the claim along with the Original Notice and Petition. Then, if the case is sent to the judge for entry of a default judgment, the court will have the necessary record in the court file and will not have to set a hearing or send out a notice requesting the proof.
22. In Probate Court, the attorney of record needs to notify the court attendant (286-3789) immediately when a 20-day service has not been made so that other probate matters may be scheduled in that time frame. By waiting until the last minute, valuable court time is lost to those needing appointment time.
23. In Probate Court, attorneys should not advise their clients or potential clients to file an adult guardianship pro se. Attorneys should not draw up documents for individuals and then send them to appear pro se so that when asked who their attorney is, they respond that they don't have one, when it is obvious that an attorney did the paperwork.
24. In Probate Court, an attorney who presents an order for continuance should also furnish signed consent to the continuance by other counsel involved in the case.
25. In Probate Court, if a settlement has been reached in a matter set for hearing scheduled for any time in excess of two hours, the attorneys should advise the court at least three working days before the date of hearing so that the court will have the opportunity to schedule other matters for the time released. ■

The Polk County Bar Association invites you to join its more than 1200 members in supporting activities to benefit the Bar and the community. The PCBA Board and its committees are working to improve the practice of law, serve the legal needs of the poor, and provide some fun for our members!

PCBA Committees include:

Admissions Committee – Interviews applicants of the Iowa Bar and reports to the Iowa Supreme Court on their qualifications.

Alternative Dispute Resolution Committee – Sponsors and supervises the Polk County District Court Mediation Program.

Bench and Bar Committee- Deals with issues of common interest to the Bar and Polk County District Court. Issues may include procedures or broader issues on the administration of justice.

CLE Committee – Plans CLE Seminars of the Bar.

Family Law Committee – Deals with issues relating to family law, including any needed revisions in the existing family law/juvenile justice system which can be addressed on a local level.

Fee Arbitration Committee – Hears disputes between attorneys and clients, primarily regarding fees.

Grievance Committee - Reviews complaints against attorneys to determine if the attorneys violated any ethical rules. Membership on this committee is by recommendation of the Nominating Committee (past presidents) and by election of the membership.

Law Day Committee – Plans activities for the observance of Law Day.

Membership Committee – Encourages and recruits attorneys for membership; develops ideas and events to promote membership.

Newsletter Committee – Publishes the PCBA newsletter “*The Advocate*”.

Pro Bono Committee – Organizes and coordinates pro bono work of the Bar.

Publicity/Public Relations – Publicizes the activities of the Association, educates the public as to what we do, and deals with public relations issues.

Social Committee – Plans social events of the Bar.

Special Projects Committee – Plans a special project to be sponsored by the Polk County Bar Association which will address a community need.

Title Standards Committee – Deals with a special range of issues involving real estate law and title standards.

United Way Committee – Assists the President-Elect in conducting the campaign.

Additionally, PCBA sponsors the PCBA Volunteer Lawyers Project and the District Court Mediation Program. Monthly lunch meetings provide members with valuable information on their practice, as well as networking opportunities. PCBA coordinates with other bar associations to work on joint projects and avoid duplication of services.

Membership in PCBA gives you a unique opportunity to participate in these efforts. Won't you join us?

Application for Committee Appointment

I request consideration for appointment to the following Committees: (see back for list of committees)

I can contribute to the following: _____

I am interested in serving on other Committees in the order listed:

1) _____ 2) _____ 3) _____

Name: _____

Firm/Agency/Employer: _____

Address: _____

City/State: _____ Zip: _____ Phone: _____

Bar Association Memberships and Board/Committee activity: _____

I am presently serving on these Polk County Bar Committees: _____

I have served on these Polk County Bar Committees in the past: _____

Primary areas of practice: _____

- | | | |
|----------------------|-----------------------------|------------------------|
| 1. Solo Practice | 2. 2-10 Lawyer Office | 3. 11-25 Lawyer Office |
| 4. 25+ Lawyer Office | 5. Gov't Attorney | 6. Corporate Counsel |
| 7. Judge | 8. Legal Aid/Legal Services | 9. Other |

Date: _____ Signature: _____

Return To:

Carol Burdette, Executive Director
Polk County Bar Association
521 E. Locust St., Suite 302
Des Moines, IA 50309

Polk County Ethics Complaints Hold Steady

The good news in this turbulent economic environment is that ethics complaints against Polk County lawyers have not increased. According to Steve Lytle, Chair of the Polk County Bar Association Ethics Committee, complaints against lawyers have shown no discernible trend in terms of substance, and have not deviated from the 60 - 70 complaints filed annually during the past three years. Of these, approximately five or six per year are fee disputes that are referred to the Polk County Bar Fee Arbitration Committee.

While the Ethics Committee itself has no power to administer discipline, it has authority to review complaints and make recommendations to the Board of Professional Ethics and Conduct. The procedure begins with a complaint that is filed with the Committee. The attorney who is the target of the complaint is then provided an opportunity to review the complaint and file a response. The Committee sends the attorney's response to the complainant, offering the complainant an opportunity to respond. One of the members of the Committee is selected to investigate the claimed ethics violation. The investigation can consist of interviews, and review of correspondence and other documents, including court documents. The record developed is then considered by the entire committee acting in the capacity of a 'peer review.'

The Ethics Committee can then recommend the following remedies:

1. Outright dismissal, which means that no ethical violation occurred;
2. Dismissal with caution, which means no ethical violation occurred, but the Committee offers suggestions to improve practice so that future complaints of the same nature can be avoided; or

3. Referral to the Iowa Supreme Court Board of Professional Ethics and Conduct, which has the power to impose disciplinary sanctions.

Approximately five to seven cases a year are referred to the Supreme Court Board of Professional Ethics and Conduct by the Polk County Bar Association's Ethics Committee, and usually result in disciplinary action. If an attorney does not respond to the complaint, or otherwise fails or refuses to cooperate with the Committee's investigation, the complaint is referred to the Supreme Court Board of Professional Ethics and Conduct.

While the protocol in Polk County is for ethics complaints to be filed with the Committee, there is "original jurisdiction" within the Supreme Court's Board to process ethics complaints on facts received from independent sources. Moreover, there is an interplay between the two entities. Claims against an attorney may already be pending with the Supreme Court's Board, when the Polk County Ethics Committee receives a subsequent claim. Under this scenario, the entire matter is referred to the Supreme Court's Board, so that this forum has the entire case perspective. Appropriate discipline, if warranted, can then be imposed by the Supreme Court. According to Steve Lytle, situations where multiple complaints have been made may be indicative of serious ethics violations.

Members of the Ethics Committee are elected by the Polk County Bar membership. Chairman Lytle, who is nearing completion of his three-year term, finds professional satisfaction in performing this socially responsible role.

2002-2003 OFFICERS:

President

Paul R. Tyler
699 Walnut St., Ste. 1600
Des Moines, IA 50309-3944
Phone 246-4513

President Elect

Susan A. Low
311 42nd St.
Des Moines, IA 50312
Phone 283-4072

Vice President

Connie L. Diekema
604 Locust St., Ste. 400
Des Moines, IA 50309
Phone 288-0145

Secretary

Joseph G. Van Winkle
418 6th Ave., Ste. 620
Des Moines, IA 50309
Phone 243-1000

Treasurer

Guy R. Cook
2222 Grand Ave.
P.O. Box 10434
Des Moines, IA 50306
Phone 245-4300

BOARD OF GOVERNORS:

Thomas M. Zurek
700 Walnut St., Ste. 1600
Des Moines, IA 50309
Phone 283-3100

Brian I. Wirt
666 Walnut St., Ste. 2500
Des Moines, IA 50309
Phone 288-2500

David C. Craig
604 Locust St., Ste. 400
Des Moines, IA 50309
Phone 288-0145

Miki McGovern
1000 E. Grand Ave.
Des Moines, IA 50319
Phone 281-6620

Nan M. Horvat
Polk County Attorney's Office
206 6th Ave., Fl. 2
Des Moines, IA 50309
Phone 286-3688

Anita L. Shodeen
321 E. Walnut St., Ste. 200
Des Moines, IA 50309
Phone 237-1186

Susan L. Ekstrom
100 Court Ave., Ste. 121
Des Moines, IA 50309
Phone 243-6395

Carol J. Moser
City Hall
400 E. 1st St.
Des Moines, IA 50309
Phone 237-1561

John K. Vernon
699 Walnut St., Ste. 1600
Des Moines, IA 50309
Phone 246-4511

David S. Wiggins
1200 Valley West Dr., Ste. 700
West Des Moines, IA 50266
Phone 225-4844

BOARD OF DIRECTORS:

Mark D. Hansing
801 Grand Ave., Ste. 3200
Des Moines, IA 50309
Phone 288-3667

Scott M. Brennan
666 Walnut St., Ste. 2500
Des Moines, IA 50309
Phone 246-7977

Michael A. Dee
3737 Woodland Ave., Ste. 437
West Des Moines, IA 50266
Phone 225-3737

Robert B. Hanson
405 6th Ave., Ste. 1300
Des Moines, IA 50309
Phone 244-0177

Jane Lorentzen
2700 Grand Ave., Ste. 111
Des Moines, IA 50312
Phone 244-0111

Eric F. Turner
1915 Grand Ave.
Des Moines, IA 50309
Phone 245-9509

Evidence (Not the Rules of Evidence) Rules in Commercial Torts—Interference with Prospective Business Relationships

by Simon Noel

In times of economic dislocation, commercial tort litigation is bound to be more prevalent. As the hunt for growth in earnings and profits as well as market share becomes more rigorous in comparison to the days of the “bull market,” lawyers must pay more attention to the various non-personal injury torts outlined in the Restatement and analyzed by Prosser in his hornbook.

In a decision which offers guidance as to the legal definition as well as evidence necessary to sustain such claims, the Iowa Supreme Court, in *Compiano v. Hawkeye Bank and Trust*, 588 N.W.2d 462 (Iowa 1999), had the opportunity to again decide a case where the plaintiff’s causes of action were based, *inter alia*, on tortious interference with prospective business relationships.

Experienced litigators are expected to be proficient with the Rules of Evidence, but are more concerned with producing sufficient evidence necessary to successfully prove a claim at trial, as the aforementioned plaintiff learned following an unsuccessful appeal to the Iowa Supreme Court from an adverse lower court decision.

While the case was based upon multiple causes of action, the plaintiff articulated a cause of action for interference with prospective advantage. As previously specified by the Supreme Court in *Willey v. Riley*, 541 N.W.2d 521 (Iowa 1995), there are five elements that comprise this intentional tort:

1. A prospective contractual or business relationship;
2. The defendant knew of the prospective relationship;
3. The defendant intentionally and improperly interfered with the relationship;
4. The defendant’s interference caused the relationship to fail to materialize; and
5. Resulting damages.

Of these five elements, the Iowa Supreme Court noted that item 3 was most paramount as to liability, and specified there must be evidence of an actual intent to injure or financially destroy the plaintiff. Absent evidence of such predatory conduct, plaintiff’s claim will not prevail especially if a defendant can demonstrate some other legitimate intent for its actions.

In *Compiano*, the Court held that plaintiff’s proof did not reach this standard even though defendants decided to offer various products and services in-house, as opposed to allowing plaintiff, pursuant to his contract, to continue to do so independently. In the Court’s view, the plaintiff did not produce the “substantial evidence” necessary to create a fact question on the issue of motive.

Creative plaintiff lawyers are always seeking to expand the traditional parameters of tort litigation. In *Graves v. Iowa Lake Community College*, 639 N.W.2d 22 (Iowa 2002), we see a new application of this theory of liability to the employment law context. Although the plaintiff’s claim was dismissed on motion prior to trial because of an inability to prove point 3, the opinion is silent as to whether or not this cause of action is appropriate to employer/employee disputes. Presumably, if a plaintiff can prove all five elements of this tort, this cause of action could be applied in other than a strict commercial context.

Litigators, especially those who represent plaintiffs, need to be aware of these non-personal injury torts, and the high degree of evidence necessary to prevail. Those attorneys defending such claims must be equally vigilant of these requirements so that they may be armed to present dispositive motions at trial or before trial. In any event, attorneys need to pay more attention to the advance sheets for further guidance that will enable them to prepare for or defend against such claims.

More Attorneys Needed For Speakers’ Bureau Due to Community’s Overwhelming Interest

Community interest in the Polk County Bar Association’s Speakers’ Bureau has been overwhelming. Community groups have made numerous requests for attorney speakers, and the requests continue to come in to the office of Executive Director Carol Burdette. Approximately twelve requests for speakers were received in the first week, according to Carol Burdette, after mailings announcing the Speakers’ Bureau were sent. As a result of the overwhelming interest and success in having attorneys speak to community groups, additional speakers are needed.

Areas of interest to the community groups for which speakers are especially needed are the following: areas of landlord-tenant issues, and employment and human resources issues, such as legal concerns for the interviewer, including what can and cannot be asked in an interview. More attorneys are requested to volunteer to be speakers on these and other topics. Attorneys interested in speaking should contact Carol Burdette, Executive Director, at 243-3904, or send the form in this newsletter to Carol Burdette.

Polk County Juvenile Court Administrative Order 2002-07 Sets Out Juvenile Court Practice and Procedures

On March 27, 2002, Chief Judge Arthur E. Gamble entered Administrative Order 2002-07, entitled *In Re: The Administration of Polk County Juvenile Court and Fifth District Juvenile Judge Designation*.

Extensive work went into the development of this administrative order by the Chief Judge, as well as each of the Polk County judges now serving on the Juvenile Court Bench: District Court Judge Linda Reade, District Associate Court Judge Gregory Brandt, and Associate Juvenile Judges Karla Fultz and Constance Cohen; as well as Elizabeth Baldwin, Court Administrator, Lois Leary, Clerk of District Court, Bert Aunan, Jr., Chief Juvenile Court Officer, and each of their staff. Input and feedback was also solicited from other participants in the juvenile court system. Administrative Order 2002-17 sets out in one comprehensive document the practices of the Polk County Juvenile Court, and designates all judges of the Fifth Judicial District as juvenile judges for every county of the district.

After an approximately nine month project of juvenile court file review and clean-up, the Polk County Clerk of District Court now has primary responsibility for all juvenile court files in Polk County. In the past these duties were shared with the Juvenile Court Services Office. The file review and clean up has allowed the Court to take a comprehensive look at the caseloads of each of the four juvenile courtrooms. Each docket is being structured so as to have an equal load of CINA, FINA, delinquency, commitments, and Chapter 236 Termination of Parental Rights cases. This equalization effort will allow these four courtrooms to better utilize docket time to keep the increasing flow of juvenile court cases moving in a timely fashion through the court system.

For private attorneys practicing in the juvenile court area, Administrative Order 2002-07 sets out expectations for practice that may have been informal understandings in the past.

Hearing dates are considered firm. Attorneys should plan that the hearing will be conducted so as to be concluded in one continuous session.

Attorneys should be prepared for meaningful pre-trial conferences, with appointed counsel and all parties appearing

personally for hearings. The youth shall be included in the delinquency hearing, and for CINA hearings only upon the request of the Guardian-ad-Litem. Judges will be accepting pleas and stipulations at the pre-trial hearings.

Appointment of counsel in juvenile court matters is considered a personal appointment, and requires that the appointed attorney be present at all hearings. The sometimes-used practice of asking another attorney to appear on behalf of the appointed attorney at a hearing is no longer accepted unless the appointed counsel has provided prior notice to the court, and the court has concurred with the substitution. Contract attorneys are appointed to juvenile cases on a rotational/equalization basis, considering the experience of the attorney and the difficulty of the case. The juvenile case coordinator is the official record keeper for the appointment process. Contract attorneys are expected to make themselves available for appointments to the case coordinator or authorize a representative in their office to accept appointments on behalf of the attorney.

If a contract attorney is unavailable to receive an appointment, has not authorized someone in their office to accept the appointment, or does not return the case coordinator's call within a reasonable time frame, the case coordinator shall note this information and move on to the next attorney on the list. If the contract attorney is unavailable for three calls in succession, the attorney shall be deleted from the court appointment list.

On old cases, re-opened cases, new sibling cases, or new charges against a child already in the juvenile court system, the previous (or current) attorney will be appointed to represent the child in the new matter, and this appointment will be considered in the overall attorney appointment equalization process.

For CINA cases, if an attorney (or other party) wishes to contest a proceeding, seven days notice is required to the court.

The full text of Administrative Order 2002-07 is available on-line. Please contact District Court Administrator Beth Baldwin at beth.baldwin@jb.state.ia.us for a copy.

President's Message

In this newsletter you will find an application for committee appointments and committee descriptions. I sincerely hope that each of you will take a few minutes to look over the Polk County Bar Association committee list and then complete an application form for one or more of these committees. Our Association truly needs broad-based participation to thrive and prosper. You should not feel restricted from making an application to serve on a committee because you have practiced only a short time or because you have practiced a very long time. Similarly, you should not hesitate to apply based on any concern that you have previously not been active in the Bar

Association or that you may lack the necessary background information. If any of you have ideas for Bar activities which do not appear to fit under any of the existing committees, I would very much appreciate your contacting either Carol Burdette or me to discuss your ideas. We are a relatively large professional organization and have the ability to affect positive changes in our community if we simply devote the time and effort. Your personal commitment to assist the Polk County Bar Association in its endeavors during the upcoming year could prove to be a great benefit to the Association and provide you with an enriching experience. Please let us hear from you.

Annual Bench & Bar Golf Outing

The Polk County Bar Association is sponsoring its annual Bench & Bar Golf Outing to benefit the Polk County Bar Association Volunteer Lawyers Project to be held Monday, June 10, 2002 at Copper Creek Golf Course, 1 mile East of the Iowa State Fairgrounds. Registration begins at 12:30 p.m. with a Shotgun Start at 1:00 p.m.

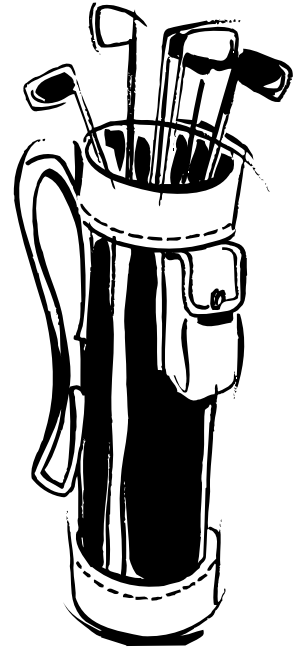
COST: \$80.00/person
Includes green fee, cart and dinner.
Box lunch (turkey sandwich, chips and brownie)
may be ordered for an additional \$7.00

If you are unable to play, please send a substitute. We cannot refund your fee.

PLEASE MAKE RESERVATIONS BY JUNE 3RD!

You may also call Carol to set up reservations at 243-3904

IN THE EVENT THAT THE OUTING IS CANCELLED DUE TO DANGEROUS WEATHER, AN 18 HOLE PASS WILL BE PROVIDED.



Golf Outing Sign-Up

NAME _____

FIRM _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Our Foursome on Monday, June 10, 2002 at 1:00 p.m. will be:

_____ Add me to a Group.

RETURN TO:

Carol Burdette
Polk County Bar Association
521 E. Locust, Suite 302
Des Moines, IA 50309-1939
or fax: 244-8845

ENCLOSED IS _____ for 80.00/person

Lunch _____ for 7.00/person

Total _____ enclosed

Please make check(s) payable to:
Polk County Bar Association

Speaker's Bureau Sign-Up

NAME _____

FIRM _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Area of law you would be interested in speaking on:

RETURN TO:

Carol Burdette
Polk County Bar Association
521 E. Locust, Suite 302
Des Moines, IA 50309-1939
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