



# THE ADVOCATE

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

## PCBA Sponsors Creative Law Day Competitions

Adopting the 2002 ABA theme “Celebrate Your Freedom – Assuring Equal Justice for All,” the PCBA Law Day Committee is sponsoring visual arts and poetry competitions for 8th – 12th grade students. For several years, the PCBA has sponsored an essay contest for 8th and 11th grade students in the Polk County area. This year, a new type of competition was selected in order to spark participation from a broader range of Des Moines area students. Committee members are excited about providing students with different ways to express their ideas about law and its impact on their lives.

Recognized artists and published poets will help judge the competitions. Entries will be displayed in public buildings and student poets will be invited to read their poems at the Des Moines Poetry Festival in May 2002. Consistent with the PCBA Law Day tradition, winning students and their teachers will be honored guests at the annual meeting. In addition, monetary prizes will be awarded.

Informational packets were sent to area art and language arts teachers in January. For copies of competition materials or more information, please contact committee co-chairs Emily Chafa at 283-4530 or Kristin Collinson at 223-5038 (ext. 214). **The competition deadline is March 29, 2002.** ■

## Polk County Women Attorneys Announce 2002 Board

The Polk County Women Attorneys (PCWA) have selected the Board of Directors for 2002. Officers include: President, Rebecca Howe; President Elect, Mary Chavez-Muramatsu; Past President, Nancy Johnson; Secretary, LeAnne Krell; and Treasurer, Alison Werner Smith. Committee Chairs for 2002 include: CLE / Programs Co-Chairs, Earl Parsons and Beth Townsend; Membership Co-Chairs, Amy Peters and Heather Palmer; Newsletter Chair, Elizabeth Baldwin; Professional Action Co-Chairs, Judge Karen Romano and Krista Tanner; Publicity Chair, Christine Cownie; Social Co-Chairs, Ann Holden Kendell, and Tiffany Koenig; and Liaison Chair, Barb Heady. PCWA looks forward to an exciting and productive year. ■

## PCBA Nominating Committee Appointed for 2002-2003 Election

Nominating Committee has been appointed consisting of the following immediate past presidents of the Polk County Bar Association: Brian Wirt, Chair, David Craig, Nan Horvat, Tim Pearson and LuAnn White. The Committee will provide nominations for the officers of the Association (president-elect, vice president, secretary and treasurer), the Board of Directors, representatives to the Board of Governors of the Iowa State Bar Association, members of the Ethics Committee, and library trustees. The Committee may also determine recipients of the Polk County Bar Association Award of Merit for any members who have made outstanding contributions to the Polk County Bar Association.

Any member may submit suggestions for the Committee’s consideration. Suggestions should be made to Brian Wirt, Davis, Brown, Koehn, Shors & Roberts, 666 Walnut, Suite 2500, Des Moines, IA 50309 (Telephone 288-2500). Please make suggestions to the Committee by March 31, 2002. The election will be held at the Annual Meeting of members on May 14, 2002, at the Hotel Savery. ■



### *What’s Inside...*

- Romano Sworn In**
- Volunteer Lawyers Needed for Speaker’s Bureau
- Courthouse Security Updates**
- Judge Jordan Retires
- New 5C Judicial Nominating Commissioners**

## Polk County Courthouse Security Update

**M**uch discussion has been engendered by the recent closing of the north door of the Polk County Courthouse to the public. Sheriff Dennis Anderson was approached by the Polk County Bar Association to determine the reasons for the decision. At the December Board meeting, Susan Low reported on her findings with the Sheriff. The Polk County Courthouse is owned and maintained by Polk County. The Board of Supervisors recently determined that over \$14,500 in taxpayer funds would be saved by the Sheriff's Office providing security at the courthouse over the private security firm, Huntley Security. On July 1, 2001, the change over in security at the courthouse from Huntley to the Sheriff's Office took place. Due to limits on personnel, and the need to maintain the west entrance for prisoner access from the jails, it was determined that only one of the entrances (north or south) could be maintained as the public entrance to the courthouse.

The Courthouse Security Task Force comprised of representatives of the judges, Board of Supervisors, Polk County General Services, the Polk County Sheriff's Office, Court Administration and the Clerk of Court's Office debated the merits of closing one of the entrances. The Sheriff's Office made the final determination to close the north door. This decision was made based upon evidence that the majority of the public used the south door to enter the courthouse by a 2:1 ratio. The limited amount of parking around the courthouse, the results of a security questionnaire, and the proposed location of the future courthouse annex also weighed heavily into the decision to keep the south door open as the main public entrance.

According to the Sheriff's Office estimates, approximately 1,500 to 1,800 people enter the Polk County Courthouse each day through the south door. This volume causes congestion and sometimes long waiting lines. A second walk-through metal detector is on order for the south entrance. The new metal detector will help alleviate the heavy traffic entering the courthouse, especially on cold winter, rain, and/or jury reporting days.

Sheriff Anderson recently approved a new attorney ID card system to allow attorneys access to the courthouse through the west entrance as a convenience to attorneys, and to ease the congestion at the main public entrance on the south side of the courthouse. The attorney ID cards will not entitle attorneys to bring other persons, such as clients, witnesses or other staff, with them through the west entrance. ID cards can be obtained by calling Tami Morton of the Polk County Sheriff's Office at 286-3814 to make an appointment Wednesday, February 20, 2002, between the hours of 1 to 3 p.m. ID cards will then be issued by appointment at the Polk County Sheriff's Administration Office, Midland Building, 206 6th Avenue, Suite #112. Attorneys should bring a photo ID (e.g., driver's license) with them for identification, and expect approximately 10 minutes for completion of the process. If you are unable to fit the 20th into your schedule, you may contact Tami to arrange another appointment time. ■

## Judge Jordan Retires

**T**he Honorable Jerrold W. Jordan, District Judge for Iowa District 5A, retired as of December 31, 2001. Judge Jordan spent fifteen years on the district bench following twenty-six years in private practice in Knoxville, Iowa. Judge Jordan was born in Carroll, Iowa, in 1934, and attended undergraduate school at Iowa State College and Drake University, receiving his bachelor's degree from Drake in 1958. He also served in the United States Army from 1955 to 1957. Judge Jordan graduated from Drake Law School in 1961, and practiced law with the Johnson, Jordan and Lane Law Firm in Knoxville until his appointment to the district bench in 1987.

Judge Jordan and his wife, Marolyn, who reside in Knoxville, have three children and seven grandchildren. He looks forward to continuing his service to the district as a senior district judge. Senior district judges work a minimum of thirteen weeks per year and are "on call" for assignments. Indeed, Judge Jordan may already have his work cut out for him – he anticipates spending one day a week on the domestic bench for District 5C this coming spring and summer.

Judge Jordan wants the bar to know he has thoroughly enjoyed the opportunity to serve the district as a district judge and looks forward to several more years as a senior district judge. The Polk County Bar Association thanks Judge Jordan for his service on the bench and wishes him the best as he assumes senior status. ■

## Nominees Selected for District 5A Vacancy

**O**n January 23, 2002, the Judicial Nominating Commission for Iowa Judicial District 5A met and nominated two people to fill the vacancy created by the recent retirement of District Judge Jerrold W. Jordan. The commission, chaired by District Judge Darrell Goodhue, nominated Knoxville attorney Martha Mertz and District Associate Judge Richard B. Clogg of Indianola.

Mertz is a 1974 graduate of Northeast Missouri State University and a 1982 graduate of Drake Law School. In addition to practicing law with the Knoxville firm of Mick & Mertz, Mertz was Assistant County Attorney for Marion County from 1982 – 1985 and Marion County Attorney from 1986 – 1989. Mertz also chaired the Family Law Section of the Iowa State Bar Association from 1996 – 1997.

Judge Clogg is a 1971 graduate of Simpson College and a 1974 graduate of Drake Law School. Judge Clogg practiced law with the Indianola firm of Elgin, Clogg & Patin for 25 years before being appointed to the district associate bench in 2000.

Governor Vilsack has 30 days from the date he is notified of the nominations to appoint the new district judge. Look for an announcement of his appointment by the later part of February. ■

# Attorneys Still Needed to Speak on Certain Areas of Law for Speakers Bureau

The PCBA Public Relations Committee still needs attorneys willing to speak to the public in the areas of domestic law, particularly divorce and child custody, criminal law, immigration law, and elder law. Persons interested in speaking on other areas of the law can also still sign up to participate.

The Public Relations Committee is presently putting a list together of potential organizations to contact about areas of the law for which speakers are available. The committee has also been creating a list of attorneys willing to speak on various legal topics and areas. The Bar Association's Public Relations Committee has started the Speakers Bureau in an effort to help improve community relations with the legal profession by providing opportunities for contact and education.

Anyone interested in volunteering to participate in the Speakers Bureau should contact, or return the application below to, Carol Burdette, Executive Director, Polk County Bar Association, 521 East Locust St., Suite 302, Des Moines, Iowa 50309, 243-3904, or should contact Steve Serck, committee chair, at 243-7611. ■

## Reserve the Date

**Doctor - Lawyer Dinner, April 24, 2002**

The Polk County Bar Association/Polk County Medical Society are sponsoring a dinner on April 24, 2002. The Speaker will be Michael Gartner. There will be a social hour at 6:00 p.m. and dinner at 7:00 p.m. at the Marriott West located on 74th Street in West Des Moines. Approximate cost for the dinner will be \$30. Watch for a registration form in the upcoming PCBA Luncheon Announcement postcard. You may also call or e-mail your registration to the PCBA office, 243-3904 or cburdette@dwx.com.

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## Upcoming PCBA Luncheons

**03-12-02 Speaker:** Justice Louis Lavorato - Chief Justice, Iowa Supreme Court

**04-09-02 Speakers:** Hon. Arthur Gamble and Dr. Larry Baker

**05-14-02 ANNUAL MEETING**

**06-11-02 ANNUAL LAW CLERK LUNCHEON**  
**Speaker:** Hon. Ross Walters

The luncheons will be held at the Savery Hotel at noon. Cost is \$13, pre-registered, or \$15 at the door. Call 243-3904.

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## Speaker's Bureau Sign-Up

NAME \_\_\_\_\_

FIRM \_\_\_\_\_

ADDRESS \_\_\_\_\_

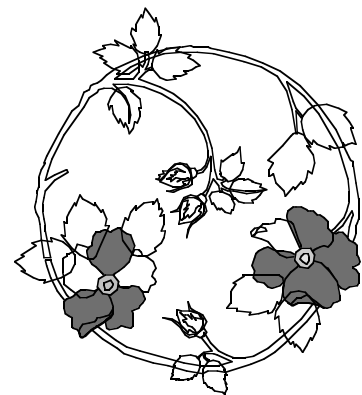
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

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  
or facsimile: 244-8845



# Board of Governors Consider Court Redistricting, Supreme Court Legislative Proposals, Real Estate Document Filing, Legislative Issues

**O**n January 22, 2002, the Iowa State Bar Association's Board of Governors held a special meeting at the Sheraton Four Points Hotel in Des Moines, Iowa. The following matters were considered.

A legislative report was received from Jim Carney. He emphasized that the budget crisis would drive all legislation this session. The legislature is committed to spend the first part of the session on substantive issues, while the second half will be spent on budget issues. The affirmative legislation approved by the Board of Governors at its last meeting was being drafted and ready to be introduced.

Bill Scherle reported on behalf of the Strategic Planning Committee of the Bar Association. The Committee's purpose is to map out the future of the Bar Association. He indicated that the Bar should allocate in its budget approximately \$10,000.00 for his Committee's work.

The issue of centralized filing real estate documents also was revisited by the Board of Governors in the context of reorganizing the Real Estate Modernization Committee, which is responsible for this legislation. The Board of Governors agreed to allow the President to appoint six members to the Committee. Those members should include members of the association who are against the bill requiring centralized filing of real estate documents. The motion to appoint the committee was passed.

The Board of Governors adopted a position paper on the funding of the Iowa court system. The position paper supports full and adequate funding for the court.

Iowa legislators Senator Kramer, Representative Rants, and Representative Siegreest spoke at the luncheon. The legislators made it clear that due to the budget problems, there would probably be some changes in judicial districts and the operation of the clerk's office. They indicated that although the Supreme Court wanted the legislature to delegate the redistricting to the Court, the legislature would probably keep legislative oversight over any redistricting.

After lunch a presentation was made to the Board of Governors by Dr. Mark A. Edelman who was retained by the Bar Association to prepare a report on the costs savings or lack thereof of the Supreme Court proposal for redistricting which has been withdrawn by the Supreme Court. The report concluded that the cost of the Supreme Court's plan for redistricting and consolidation of the clerk's office would cost more than it would save. During a discussion by board members, the validity of the report was questioned. A copy of the report can be found on the Bar Association's webpage.

The last matter to be addressed was the Supreme Court's affirmative legislative proposal. The Board of Governors

looked at the following proposals advanced by the Supreme Court:

As to the Supreme Court's proposal to release funds previously earmarked for alternative dispute resolution, the Board of Governors voted not to take a position on this proposal.

On the Supreme Court's proposal to allow the Court to redistrict without legislative oversight, the Board of Governors voted to oppose any redistricting that was not legislated by the legislature.

Regarding consolidation of the Clerk of Court offices, the Board of Governors voted to support the Supreme Court's proposal that there does not have to be a Clerk of Court in each county. The Board of Governors took the position, contrary to the Supreme Court's proposal, that there needs to be a person in the clerk's office in each county full-time and that person needs to be a resident of that county.

The Supreme Court proposed that the Court Administrator should appoint the clerk of courts and chief juvenile officers rather than the district court judges. The Board of Governors voted to oppose that position.

The Supreme Court's proposal included a provision that they should be able to delay the appointment of Judges when vacancies occur for budgetary reasons. The Board of Governors voted to oppose this position.

It should be noted that except for the proposal in paragraph 7(e), the Polk County Board Members voted to support the Supreme Court's positions. There appears to be a strong feeling from the rural areas against change. This was reflected in the votes at the Board of Governor's meeting. The Polk County lawyers were joined in their votes by a few other members of the Board from urban areas.

The last matter considered was the Governor's request to raise filing fees. The Board of Governors agreed to support this proposal only if the court's budget is not reduced.

## **Diekema and Stefani Elected to Nominating Commission for 5C**

New attorney members of the Judicial Nominating Commission for District 5C are Connie Diekema and Randy Stefani. They were elected by attorneys in the district in January. They are replacing Elizabeth Kennedy and Jeff Goodman.

# November 8th Circuit Court Updates

## **BANKRUPTCY**

SCHWARTZ v. KUJAWA, No 01-1246 (8th Cir. November 02, 2001) Sanctioned party in involuntary bankruptcy proceeding need not pay attorney's fees for time opposing counsel billed client for speaking to the media.

HAMILTON v. LAKE ELMO BANK, No 00-4078 (8th Cir. November 02, 2001) Rule 8002(a) of the Bankruptcy Rules, which limits the time for filing a notice of appeal to 10 days, does not violate the Due Process clause of the 14th Amendment.

FORD v. STUDENT LOAN GUARANTEE FOUND. OF ARKANSAS, No 01-6062 (8th Cir. November 21, 2001) Under 11 USC 523(a)(8), evidence that debtor is 62-years old, has serious disability and holds her current job only through her friendship with the owner is sufficient to show undue hardship to discharge student loan debt.

IN RE: CANAL STREET LTD. P'SHIP, No 01-6019 (8th Cir. November 08, 2001) Under Fed. R. Bankr. P. 9014, a creditor is not entitled to a hearing for an application to reopen a closed post-confirmation Chapter 11 case.

## **CIVIL PROCEDURE**

HENNESSY v. DANIELS LAW OFFICE, No 00-2048 (8th Cir. November 02, 2001) Under 15 USC 1692k(a) of the Fair Debt Collection Practices Act, an offer to settle a "judgment" alone does not include an offer to settle a claim for attorney's fees under the act.

NICK v. MORGAN'S FOODS, INC., No 00-2776 (8th Cir. November 05, 2001) District court may impose sanctions under Fed. R. Civ. P. 16(f) for failure to comply with referral orders to mediation.

## **CIVIL RIGHTS**

WOOTEN v. PLEASANT HOPE R-VI SCH. DIST., No 01-1181 (8th Cir. November 01, 2001) A post-deprivation hearing provides sufficient due process for expulsion from extra-curricular activities.

WALKER v. MASCHNER, No 00-3204 (8th Cir. November 02, 2001) Under 42 USC 1997e(a) of the Prison Litigation Reform Act, a prisoner must exhaust his administrative remedies even if he seeks some relief which he cannot remedy through the administrative process.

GREY v. WILBURN, No 00-1313 (8th Cir. November 06, 2001) Claim against state agency for public accommodation in licensing scheme under the Americans with Disabilities Act may be construed as seeking prospective injunctive relief from the agency officers.

LYON v. VANDE KROL, No 00-3283 (8th Cir. November 02, 2001) Under 42 USC 1997e(a) of the Prison Litigation Reform Act, a statement from a prison official that participation in religious events were determined by outside religious leaders may excuse prisoner from exhausting administrative remedies.

ADAMS v. BOY SCOUTS OF AM., No 00-1424 (8th Cir. November 21, 2001) Private actor does not become a state actor by summoning law enforcement officials to remove plaintiff from its premises.

## **CONSTITUTIONAL LAW**

MISSOURI REPUBLICAN PARTY v. LAMB, No 00-1773 (8th Cir. November 02, 2001) Missouri Rev. Stat. 130.032.4 and 130.032.7, which limit political party contributions to candidates, does not violate the 1st Amendment.

## **CRIMINAL LAW & PROCEDURE**

US v. BORDERS, No 00-3907 (8th Cir. November 01, 2001) In a drug dealing case, general questions and instructions to an all-white jury about prejudice and bias are sufficient even if the defendant is not white because a racial difference itself does not support a presumption of bias.

US v. ORTEGA, No 01-1168; 01-1170; 01-2106 (8th Cir. November 01, 2001) Defendant's failure to pass a polygraph test is insufficient to support a sentence enhancement for obstruction of justice on theory that she lied to obtain a lighter sentence.

US v. JIMENEZ-VILLASENOR, No 01-1021 (8th Cir. November 02, 2001) Evidence of drug paraphernalia, guns, and notes to drug dealers is sufficient to support a conviction finding defendant participated in drug conspiracy even if intercepted phone calls never explicitly mentioned drugs.

US v. RAMIREZ-RIOS, No 01-1153 (8th Cir. November 05, 2001) USSG 2K2.1(b)(2) sentencing reduction for felon in possession of firearm for "sporting purposes", does not apply to prisoner who had handgun for self-defense.

US v. MCCABE, No 01-1445 (8th Cir. November 05, 2001) Defendant must request a statement from sentencing court under 18 USC 3553(c) in order to appeal a sentence for judge's failure to state reasons for imposing a sentence at a particular point in the guidelines if the sentence exceeded 24 months.

US v. KRIENS, No 01-1239 (8th Cir. November 05, 2001) Where dual jurisdiction exists, federal prosecution of defendant proper even if referral from state prosecutor questionable.

# Romano Sworn In

**O**n January 25, 2002, Judge Karen A. Romano was sworn in by Governor Tom Vilsack as Iowa Judicial District 5C's newest district court judge. Judge Romano was appointed to the district bench in December and actually assumed her new duties on January 4, 2002. Judge Romano had previously served as a district associate judge in Polk County since 1996. Prior to that she had been an Assistant Polk County Attorney for nine years.

Iowa Court of Appeals Judge Larry J. Eisenhauer, whose position on the District 5C bench was filled by Judge Romano, spoke at the investiture ceremony and excerpts from his remarks appear below.

*"May it please the court, Judges, Governor Vilsack, distinguished guests, family and friends of Judge Romano. It is my honor to speak at the swearing in of Karen Romano as a District Court Judge. I had the pleasure of administering the oath of office to her in 1996 when she became an Associate District judge. She earned her promotion and I'm sure her family is very proud of her.*

*Karen is a graduate of Dowling High School, Creighton University and has her law degree from the University of Iowa. Her career includes practicing law with Robert Pratt, nine years in the Polk County Attorney's office and service on the associate court since 1996. She joins a distinguished group of Polk County district court judges who started their judicial service as associate district court judges. They include, Judges Artis Reis, Scott Rosenberg, Douglas Staskal and D.J. Stovall. As a prosecutor she ably handled a wide array of cases including juvenile and criminal. I'm sure she remembers the first case she had. As she walked into the courthouse a couple was fighting with each other down in the coffee room. A real knock down dragout. It turned out they were the parents of the child in her first juvenile case that morning.*

*Her reputation as a judge is for being firm but fair and for taking the time to carefully explain her rulings to litigants. I can speak from experience that her notes in small claims cases are legible and concise.*

*She has been very active in the legal community participating in the "Trial by Jury" program at the State Fair, the People's Law School here at the courthouse and judging mock trial competitions. She has served as a trainer of lawyers, judges and court appointed special advocates. She is the chair of the Polk County Courthouse Security Committee.*

*She is also active in her church and has ridden RAGBRAI on two occasions.*

*You have a distinguished group of judges who have served the residents of Polk County. The first sitting of the Polk County court was on April 6, 1846 and the presiding judge was Joseph Williams. The court sat for three days and adjourned until September. Obviously much has changed in one hundred and fifty six years.*

*At Karen's swearing-in in 1996 I stated I thought the District Judges had found in Karen Romano a lawyer who*

*would become a judge: "...learned in the law. Not merely in books but, something far more difficult to acquire, the law as applied in action in the courtroom; a judge deeply versed in mysteries of human nature and adept in the discovery of the truth in the discordant and often contentious testimony of fallible human beings; a judge beholden to no one, independent and honest and-equally important- believed by all people to be independent and honest; a judge, above all, with a zeal to mete out justice according to law to every man, woman and child that may come before her and to preserve individual freedom against any aggression of government; a judge with humility born of wisdom, patient and untiring in the search for truth, and keenly conscious of evils arising in a workaday world from any unnecessary delay. Karen has proven to be that kind of Judge. I'm sure she will continue to demonstrate those qualities. Congratulations on your appointment and best wishes for a long and distinguished career."*

The Polk County Bar Association extends its welcome to the newest member of the District 5C judiciary. ■

## Clerk's Corner

Greetings to Bar members from the Clerk's Office! Hope everyone's new year is off to a great start.

While budget concerns and Supreme Court re-organization plans are top issues, I am happy to report some news on the bright side, namely Electronic Public Access (EPA). We have been testing the project for the last several weeks, and EPA should be rolled out to the general public in February.

Free online court information includes search capabilities by county or entire state, which will make available basic case information as well as docketed events, criminal charges, bond information, and financial summary, including child support payments.

Fee Based access, which should be of particular interest to all of you, will include additional information such as property, exhibits, service returns, judgment information and case scheduling.

We anticipate an initial bombardment of phone calls concerning this project, but in the long run we feel it will greatly reduce the number of phone calls and counter activity that we currently experience. More importantly, I am certain you will find this to be very user friendly, and will be a useful and efficient method in obtaining court information.

As always, if you have questions or concerns on any Clerk of Court issues, please feel free to contact me.

Lois Leary

# Judicial Branch and ISBA E-mail Notification Service of Iowa Appellate Opinions

Sign-up for the Iowa Judicial Branch E-mail notification service at <http://www.judicial.state.ia.us>. At the web site, click on "Sign up for Our New E-mail Notification" to receive automatic E-mail notices when court opinions and press releases are issued. You will be asked to provide your name, E-mail address and to check the types of notices you wish to receive: Supreme Court opinions; Court of Appeals opinions; Press Releases; and/or Supreme Court Orders. It is quick, easy and provides you with the information the same day opinions are issued. No more wondering or waiting required. Opinions can be obtained by e-mail by signing up for e-mail delivery through the Iowa State Bar Association's website [www.iowabar.org](http://www.iowabar.org). ■

## People's Law School

In the past, the People's Law School has been held at the end of February each year. This year the committee decided to move the People's Law School to the fall to avoid potential winter weather and encourage greater attendance. More information will follow as the dates are selected. ■

## Drake Continuing Legal Education

— REAL ESTATE —

*Sponsored by*

*Drake University Law School*

**Friday, March 1, 2002**

West Des Moines Marriott  
1250 74th Street  
West Des Moines, Iowa  
1-800-813-3669 (In Iowa)  
515-271-2824 (Outside Iowa)



## City of Des Moines, IA JOB ANNOUNCEMENT

Human Resources Department, City Hall-Room 103,  
400 East First Street, Des Moines, IA 50309  
Phone: (515)283-4213 Job Line: (515)283-4115  
WEB: [www.ci.des-moines.ia.us](http://www.ci.des-moines.ia.us)

### ASSISTANT CITY ATTORNEY I

*(Entrance – Non-Civil Service – Permanent Full-Time)*

THIS ANNOUNCEMENT IS OPEN TO THE GENERAL PUBLIC  
**Salary Range:** \$47,736 - \$68,060 annually, depending on education and experience.

#### **Requirements:**

Graduation from an accredited law school with a JD degree, admission or eligibility to be admitted to the Iowa Bar and sufficient experience in the practice of law. Possession of a valid Iowa driver's license or evidence of equivalent mobility.

**The City of Des Moines' Residency Requirement is in effect for this position. Applicant must be a resident of the City of Des Moines within seven (7) months of appointment date and maintain residency within the City of Des Moines while employed in this position. Duties:** Under direction, to do varied professional legal work. Provides legal advice, counsel and course of action recommendations to City Departments, Boards and Commissions; researches and prepares legal opinions and memoranda for the guidance of City Departments; researches, prepares and compiles proposed ordinances and resolutions and proposed amendments to existing ordinances; prepares and reviews contracts, leases and other real estate documents; represents the City before courts and other bodies. Performs related work as required. **Deadline Date:** Until such time that a sufficient number of qualified applications have been received. **Where to Apply:** Apply in Human Resources, Room 103, City Hall, 400 East First Street, Des Moines, IA 50309.

**Qualified disabled applicants who need a reasonable accommodation in order to interview must inform this office by the application deadline date.**

**Only U.S. citizens and legal aliens are eligible for hire. Passing a pre-employment physical and drug screen is required prior to employment. The City of Des Moines is an affirmative action/equal opportunity employer. Females, minorities and the disabled are encouraged to apply.** Posted 01/30/02

MARK YOUR  
CALENDARS

# GOLF!

Annual Polk County Bar Golf Outing

**MONDAY, JUNE 10, 2002**

Copper Creek Golf Course  
1 PM (SHOTGUN START)

# November 8th Circuit Court Updates

(Cont...)

US v. ARVIZU, No 00-3300 (8th Cir. November 06, 2001)  
Evidence that trial counsel offered to file notice of appeal and sentencing judge informed defendant that he had 10 days to file a notice is sufficient to defeat claim that counsel provided ineffective assistance for failing to file the notice of appeal.

US v. FRAZIER, No 98-3747 (8th Cir. November 06, 2001)  
Fed. R. Crim. P. 23(b) is not unconstitutional and under that rule a court may dismiss a juror from trial after nine days of testimony due to life-threatening illness of relative.

US v. ALCANTAR, No 00-3418 (8th Cir. November 14, 2001)  
One-hour search of car after driver consented to search of car for drugs and weapons did not exceed scope of consent when driver did not protest the length of time.  
US v. CARRASCO, No 00-3176 (8th Cir. November 19, 2001)  
Downward departure for acceptance of responsibility not available to defendant who waited until second sentencing hearing before accepting responsibility for full amount of drugs.

US v. HUERTA-OROZCO, No 01-1673 (8th Cir. November 19, 2001)  
Defendant in drug trafficking trial entitled to new trial where there were no fingerprints on bag containing drugs and defendant denied ownership of bag.

CLARK v. CASPARI, No 00-1844 (8th Cir. November 28, 2001)  
Police "show up" presentation of suspects to robbery witnesses for identification 30 minutes after the crime occurred, while improper, may still be admissible if other circumstances showed that witnesses had reliable and non-suggestive reasons for identification.

## ERISA

MEAD v. INTERMEC TECHS. CORP., No 01-1066 (8th Cir. November 13, 2001)  
Under Iowa law, statute of limitations of Iowa Wage Payment Collection Act, Iowa Code 614.1(8), applies to ERISA claim for short-term disability payments after resignation.

## HEALTH LAW

IN HOME HEALTH, INC. v. SHALALA, No 00-1959 (8th Cir. November 19, 2001)  
Failure of health provider to exhaust administrative remedies under 42 CFR 413.106(g) not excused by claim that reimbursement guidelines were inadequate for all situations.

## INSURANCE LAW

GRE INS. GROUP/TOWER INS. CO., INC. v. COMPLETE MUSIC, INC., No 00-3982 (8th Cir. November 13, 2001)  
Under Nebraska law, there is insufficient causation in advertising injury clause in insurance policy to cover copyright infringement claim where insured used advertising to attract franchisees and franchisees committed infringement by using insured's products.

## LABOR & EMPLOYMENT LAW

WASHINGTON v. NORMANDY FIRE PROT. DIST., No 00-3828 (8th Cir. November 05, 2001)  
Public employer must show actual workplace disruption before disciplining an employee for exercising 1st Amendment rights and mere filing of grievance by coworker is insufficient.

ERICKSON v. FARMLAND INDUS., INC., No 00-2716 (8th Cir. November 14, 2001)  
Evidence that employer said employee had been at job "too long" is not by itself sufficient to show direct evidence of age discrimination.

MULTIMEDIA KSDK, INC. v. NAT'L LABOR RELATIONS BD., No 00-1684 (8th Cir. November 15, 2001)  
Under the LMRA, 29 USC 141-187, television news producers and assignment editors who could authorize overtime and assign stories but could not hire, fire or discipline other employees are not "supervisors."

KARTHEISER v. AM. NAT'L CAN CO., No 00-3924 (8th Cir. November 29, 2001)  
Under Iowa's Wage Payment and Collection Law, Iowa Code Ch. 91A applies, where employer allowed salaried supervisors to obtain overtime pay for supervising hourly employees working overtime, to supervisor who did not comply with record-keeping procedures when employer told him in advance it would not pay him overtime.

## MILITARY LAW

CHANDLER v. US AIR FORCE, No 00-3794 (8th Cir. November 08, 2001)  
Appellate court lacks jurisdiction to hear appeal over failure to grant military rank promotion or lost back pay that resulted from that failure.

## SECURITIES LAW

US SEC. & EXCH. COMM'N v. ZAHAREAS, No 00-3047 (8th Cir. November 29, 2001)  
Under 15 USC 78c(a)(18), an underwriter who can refuse to sell IPO shares to a broker does not place the broker under "total control" of the underwriter.

## SPORTS LAW

GRANDSON v. UNIV. OF MINNESOTA, No 99-1817 (8th Cir. November 20, 2001)  
Generalized complaints about the inequality of funding in men's and women's school athletic programs will not excuse an individual plaintiff from first complaining to the school before becoming eligible for monetary damages under Title IX.

## TAX LAW

MID AM. ENERGY CO. v. COMM'R OF INTERNAL REVENUE, No 00-3958 (8th Cir. November 15, 2001)  
Under 26 USC 451(f)(1), a utility bill that charges for use prior to the time the bill was sent must count as income for the time period of the actual use, even if the utility intended to account for some of the income in the month the bill was sent.

# December 8th Circuit Court Updates

## **ANTITRUST & TRADE REGULATION**

JONES v. VILSACK, No 01-2312 (8th Cir. December 05, 2001) Part of Iowa's Tobacco Use Prevention and Control Act, Iowa Code 142A.6(6), which prohibits retailers from selling cigarettes by using coupons and samples, is preempted by the Federal Cigarette Labeling and Advertising Act, 15 USC 1334(b).

## **BANKRUPTCY LAW**

SIEMER v. NANGLE, No 01-1227 (8th Cir. December 07, 2001) Under 11 USC 523(a)(6), a judgment under Illinois consumer fraud protection statute that imposed punitive damages after finding debtor was "wilful and wanton" is "wilful and malicious" under the statute and not dischargeable in bankruptcy

IN RE: PETERSON, No 01-6031 (8th Cir. December 21, 2001) A secured creditor's admission that he regularly made consumer loans does not remove debtor's duty to show that creditor met the numerical targets of Regulation Z of the Truth In Lending Act in order to be considered a "creditor" under the Act.

## **CIVIL PROCEDURE**

LANCASTER v. AM. FOREIGN INS. CO., No 01-1926 (8th Cir. December 07, 2001) Under Mo. Rev. Stat. 379.200, an insurance company that prevails in a garnishment action against a judgment creditor of its insured is entitled to attorney's fees.

## **CONSTITUTIONAL LAW**

MINNESOTA SENIOR FED'N METRO. REGION v. US, No 00-3139 (8th Cir. December 13, 2001) Medicare+Choice reimbursement provisions to HMOs that encourage them to pass cost savings to beneficiaries do not violate the Equal Protection Clause or the Privileges and Immunities Clause even if the calculations result in geographic disparities.

WAYS v. CITY OF LINCOLN, No 01-1521 (8th Cir. December 14, 2001) Local ordinance that prohibited "intentional simulated sex acts" at all business establishments was facially overbroad where it did not exclude museums, non-adult theatres and ballet performances.

## **CRIMINAL LAW & PROCEDURE**

VEAL v. IOWA CORR. INST. FOR WOMEN, No 01-2067 (8th Cir. December 05, 2001) Evidence that judge met prosecutors at a bar after jury rendered a guilty verdict is not sufficient to show that a defendant had an unfair tribunal.

US v. ABOUD, No 01-1276 (8th Cir. December 07, 2001) Sentencing for substantive crime within statutory range of the crime will not preclude a second prosecution for related conspiracy claim for double jeopardy purposes.

US v. MARTIN, No 01-1102 (8th Cir. December 12, 2001) Under 21 USC 841, defendant's stipulation that he possessed a specific drug does not require jury instruction that he possessed that drug, in determining whether he had the requisite criminal intent.

US v. LEE, No 00-1975 (8th Cir. December 14, 2001) Individual defendants do not have standing to enforce the Department of Justice's death penalty protocols.

HUTTO v. WEBER, No 00-3529 (8th Cir. December 14, 2001) Prisoner sentenced to sixty year prison term for attempted escape under South Dakota's recidivist statute does not violate the proportionality rule of the 8th Amendment even if prisoner's prior crimes were non-violent and prisoner's role in escape was minor.

BOYD v. STATE OF MINNESOTA, No 01-1040 (8th Cir. December 17, 2001) Under Minnesota law, a jury instruction on "born alive" is not required for infanticide cases.

MOORE v. PURKETT, No 01-1712 (8th Cir. December 26, 2001) State trial court's ban on oral communication between Moore and his attorney during the trial proceedings violated Moore's Sixth Amendment right to the effective assistance of counsel.

US v. BILLADEAU, No 01-1061 (8th Cir. December 26, 2001) The crimes for which defendant was stopped, drunk driving and speeding, were assimilated crimes under the Assimilative Crimes Act. Therefore, tribal officer was engaged in performance of his official duties when he stopped defendant.

US v. HATCHER, No 01-2342 (8th Cir. December 26, 2001) A second pat-down search was illegal, and fruits of the search were properly suppressed.

US v. GREEN, No 00-3495, 00-3627 (8th Cir. December 27, 2001) A car passenger, detained in violation of his Fourth Amendment rights by police at a drug checkpoint, cannot assert that his Fourth Amendment rights were violated by the recovery of drugs if the driver consented to the search.

US v. WHEAT, No 00-3457 (8th Cir. December 28, 2001) An anonymous 911 call about the dangerous operation of a vehicle whose innocent details are accurately described may possess sufficient indicia of reliability to justify an investigatory stop by a law enforcement officer who does not personally observe any erratic driving.

# December 8th Circuit Court Updates (Cont...)

## CIVIL RIGHTS

HABIB v. NATIONSBANK, No 01-2056 (8th Cir. December 28, 2001) Failure to meet an employer's request to provide a doctor's note for a health-related departure from work, which results in an employee's discharge, is not sufficient to support a claim of unlawful termination based upon race, religion and/or national origin, under Title VII.

## DISPUTE RESOLUTION & ARBITRATION

DELTA MINE HOLDING CO. v. AFC COAL PROP., INC., No 00-3646 (8th Cir. December 28, 2001) A court will not overturn an arbitration award where one of the three arbitrators also served as an expert for one party, so long as the non-neutral arbitrator did not mislead the other arbitrators or prevent the other party from fairly presenting its case.

## ERISA

CREWS v. GEN. AM. LIFE INS. CO., No 00-3931/3963 (8th Cir. December 17, 2001) Promise of a "stay on" bonus in form of lump sum payment for benefits is not preempted by ERISA.

## GOVERNMENT BENEFITS

PEARSALL v. MASSANARI, No 01-1951 (8th Cir. December 20, 2001) In assessing conflicting medical opinions for a Social Security disability applicant, an administrative law judge may rely upon the medical opinion that is best corroborated by medical tests.

## INSURANCE LAW

CASTEEL v. CONT'L CAS. CO., No 01-1956 (8th Cir. December 10, 2001) Policy holder may cancel insurance policy provided through credit card issuer even if policy holder was no longer an authorized user of the card.

## INJURY AND TORT LAW

BROOKS v. HOWMEDICA, INC., No 00-1188 (8th Cir. December 11, 2001) Under 21 USC 361k of the Medical Device Amendments to the Food Drug and Cosmetic Act, the pre-market warning requirements for Class III medical devices preempt state law product liability claims for failure to warn.

## LABOR & EMPLOYMENT LAW

JACKSON v. ARKANSAS DEP'T OF EDUC., No 00-1789 (8th Cir. December 04, 2001) Employee did not suffer a constructive discharge due to supervisor's harassment when she left employment after the employer fired the supervisor and the employee did not complain about the harassment for nine months.

MATHIEU v. GOPHER NEWS CO., No 00-3990 (8th Cir. December 11, 2001) Under section 363.071(2) of the Minnesota Human Rights Act, the damage multiplier for prevailing employees may apply to emotional harm but not to front pay awards. ■

# Special Projects Committee Prepares Videos and Guides on Legal Topics for High School Students

The Special Projects Committee of the Polk County Bar Association has been planning and preparing a curriculum package on Law-related topics for distribution to high schools in the greater Des Moines area. Topics to be covered include school disciplinary procedures, free speech, discrimination, juvenile justice and alternative dispute resolution.

The curriculum packages will include a guide for teachers, goals, activities and a video. The videos will be produced with the assistance of Drake Television and Production. The videotapes will include a staged scenario followed by a brief discussion of the substantive law.

The Special Projects Committee has partnered with Drake University Law School and its Youth Law Project. Professor Andrea Charlow, Director of the Youth Law Project, has been instrumental in helping to develop the curriculum topics and serve as a liaison with other Drake University resources.

Additional committee members are needed. Anyone interested in joining the committee should contact Tom Walton, Chair, at the Nyemaster law firm at 283-3100, or Carol Burdette at 243-3904. ■

## Pay Des Moines Parking Tickets On-Line

Des Moines drivers can now pay their parking tickets on-line, rather than pay the postage and writing a check. The processing entity adds a fee of \$.50 for using the on-line payment system. The direct URL for entering the City's on-line parking ticket payment center: <http://www.ci.des-moines.ia.us/departments/CLK/parktic/index.htm>.

## 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.

# Polk County Bar Association and Volunteer Lawyers Project Seek Volunteers

Membership in the Polk County Bar Association offers the opportunity to join colleagues in projects that work for the good of the profession, address specific legal issues, plan social events, serve the legal needs of the poor, and become better acquainted with members of the legal community and judiciary.

The following committees/projects are seeking additional members:

1. The Special Projects Committee needs help with developing a law based curriculum project; Tom Walton is Committee Chair.
2. The Newsletter Committee is looking for "reporters"; LuAnn White and Bob Hanson are Committee Co-Chairs.
3. The Public Relations Committee needs assistance with launching the new PCBA Speakers Bureau, and needs additional speakers; Steve Serck is Committee Chair.
4. The PCBA Volunteer Lawyers Project is always in need of attorneys to represent indigent clients in civil legal matters. Please call Carol Burdette, Program Director, at 243-3904 for information about volunteer opportunities. Please join one of these committees today!

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Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

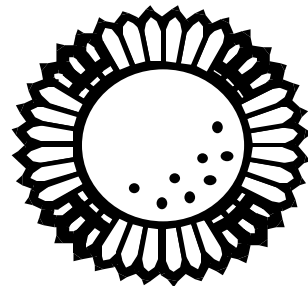
E-mail: \_\_\_\_\_

\_\_\_\_\_ I am interested in serving on the \_\_\_\_\_ Committee.

\_\_\_\_\_ I am interested in volunteering for the Volunteer Lawyers Project.

Send to Carol Burdette, Polk County Bar Association, 521 E. Locust, Suite 302, Des Moines, Iowa 50309, or fax to 244-8845.

*Thank*



*'Spring*

# President's Letter

**H**appy New Year to everyone! By now, some of us have already abandoned the resolutions we set for ourselves. A few of us have even forgotten what those resolutions were in the first place. There is one resolution I am asking everyone to make. The resolution is to mentor one law student or one newly admitted Iowa lawyer this year.

The mentoring you do does not have to be with a formalized program such as the Drake Law School Partnering Program, although I highly recommend the program. I have participated in it for a number of years. It is a wonderful opportunity to meet enthusiastic people and to keep up with what is happening at the law school. I like to think it helps me to be more open-minded. (Yes, I mean maintaining a youthful attitude.)

The mentoring program can also be informal. You can simply mentor someone in the very office where you work. Think back to those first few years of practice. I remember the woman attorney who showed me where to file papers at the Office of the Clerk of Court. She introduced me to all the assistant clerks. The introductions were invaluable. The next time I walked into the Clerk's Office, the employees all recognized me as a new admittee; they were more than willing to assist me whenever that lost look appeared on my face.

Try bringing a new associate to the monthly luncheons with you. Introduce the lawyer to other Polk County Bar Association members. It can be a frightful experience for a lawyer to walk

into a room filled with attorneys, not know anyone, and then try to find a place to sit when everyone else seems to know one another. Introduce the associate to the officers and members of the board. Make the associate feel welcome and a part of the association.

If you are on a committee for the PCBA, recommend that new associate to the committee chair or to the president. Try to involve the associate. New blood on a committee is always welcome. The associate can be tomorrow's board member if he or she is encouraged. The organization is always looking for new leadership.

Involve the new associate in the Volunteer Lawyers Program. Introduce the lawyer to the Executive Director, Carol Burdette. She is continually seeking eager volunteers. She will even provide no cost continuing legal education to the volunteer lawyers. (Lawyers are always looking for no cost seminars.)

Finally, just talk to the associate. Assure the person that the emotions he or she may be experiencing are not unique to that person. Share some of your own experiences during the first few years of practice. Give the associate the proverbial "pat on the back!"

With just a minimal amount of time and effort, you can make a difference in the life of a newly admitted attorney. ■

President Miki McGovern

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**Polk County Bar Association**  
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Des Moines, IA 50309-1939

