

# Appellate Caselaw Update

**Stephanie A. Koltookian**

[Koltookian.Stephanie@bradshawlaw.com](mailto:Koltookian.Stephanie@bradshawlaw.com)

**Robert J. Thole**

[Thole.Robert@bradshawlaw.com](mailto:Thole.Robert@bradshawlaw.com)

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# Supreme Court Summary

- From September 2, 2016, to April 21, 2017, the Iowa Supreme Court published 73 opinions.
  - 44 cases remain pending
- The average time from submission to opinion was 65.6 days (as of 4/14/2017)

# CASE SUMMARY BY MONTH

	<u>Summer</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>December</u>	<u>January</u>	<u>February</u>	<u>March</u>	<u>Apr.</u>	<u>TOTAL</u>
<b>Argued</b>	9	24	19	12	14	10	14	10	5	117
<b>Cady</b>	1	1	2	2			1			7
<b>Wiggins</b>	1	1	1	1	2		2	1		9
<b>Hecht</b>	2	3		1	1	1	1			9
<b>Appel</b>	1	2	2	1	1	2				9
<b>Waterman</b>	1	2	2			1	1	1		8
<b>Mansfield</b>	1	2	3	1	1	1		1		10
<b>Zager</b>	1	3		3	1	1		1		10
<b>Per Curiam</b>	1	4	3		2		1			11
<b>Remain</b>	0	6	6	3	6	4	8	6	5	44

# Updated Appellate Case List

## Supreme Court December 2016

- December 2, 2016
- Upon the Petition of KENT D. LANGHOLZ
- December 9, 2016
- RESIDENTIAL AND AGRICULTURAL ADVISORY COMMITTEE, LLC, an Iowa Limited Liability Company; MATT MESCHER; ALLAN R. DEMMER; CAHTERINE DEMMER; WAYNE AMESKAMP; SHARON AMESKAMP; VERNON BOGE; DONALD BOGE; MARY ANN RUBLY; JOHN R. RUBLY; DOLORES THEIR; LARRY THEIR; GARY BURKLE; CINDY BURKLE; WAYNE VORWALD; LINDA VORWALD; JEFF PAGE; GERALD WOLF; and JOANN WOLF vs. DYERSVIL
- STATE OF IOWA vs. ROBERT LIONEL DUBOIS
- December 16, 2016
- IN THE INTEREST OF C.F.-H., Minor Child, C.H., Father
- IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD
- December 23, 2016
- RUSSELL L. NEWHALL vs. MARCIA ELAINE NEWHALL ROLL
- STATE OF IOWA vs. TROY RICHARD BROOKS
- DINSDALE CONSTRUCTION, LLC vs. LUMBER SPECIALTIES, LTD
- STATE OF IOWA, Plaintiff, vs. IOWA DISTRICT COURT FOR JONES COUNTY
- MARCIA E. ROLL vs. RUSSELL L. NEWHALL
- December 30, 2016
- STATE OF IOWA vs. PATRICK JOHN LETSCHER
- JBS SWIFT & COMPANY and AMERICAN ZURICH INSURANCE COMPANY vs. ROSALVA OCHOAs. RUSSELL L. NEWHALL

# Updated Appellate Case List

## Supreme Court January 2017

- January 13, 2017
- PAULA SEGURA and RICARDO SEGURA vs. STATE OF IOWA
- January 20, 2017
- STATE OF IOWA, Plaintiff, vs. IOWA DISTRICT COURT FOR SCOTT COUNTY
- STATE OF IOWA, Plaintiff, vs. IOWA DISTRICT COURT FOR SCOTT COUNTY
- STATE OF IOWA, Plaintiff, vs. IOWA DISTRICT COURT FOR SCOTT COUNTY
- January 27, 2017
- BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA vs SAC COUNTY BOARD OF SUPERVISORS, AS TRUSTEE OF DRAINAGE DISTRICTS 32, 42, 65, 79, 81, 83, 86, and CALHOUN COUNTY BOARD OF SUPERVISORS and SAC COUNTY BOARD OF SUPERVISORS AS JOINT TRUSTEES OF DRAINAGE DISTRICTS 2 AND 51 and BUENA VISTA COUNTY BOARD OF SUPERVISORS and SAC COUNTY BOARD OF SUPERVISORS AS JOINT TRUSTEES OF DRAINAGE DISTRICTS 19
- IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD
- IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD

# Updated Appellate Case List

## Supreme Court February 2017

- February 3, 2017
- DUTRAC COMMUNITY CREDIT UNION vs. DOUGLAS P. HEFEL and SHEILA K. HEFEL
- February 10, 2017
- STATE OF IOWA vs. JAYEL ANTRONE COLEMAN
- STATE OF IOWA vs. CHRISTOPHER D. BROWN
- IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD
- February 17, 2017
- STATE OF IOWA vs. DAIMONAY DARICE RICHARDSON
- STATE OF IOWA vs. SHANNON ELIZABETH LEE BREEDEN
- WELLMARK, INC. d/b/a WELLMARK BLUE CROSS AND BLUE SHIELD OF IOWA, an Iowa Corporation, and WELLMARK HEALTH PLAN OF IOWA, INC., an Iowa Corporation, Plaintiffs, vs. IOWA DISTRICT COURT FOR POLK COUNTY
- IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD
- February 24, 2017
- Upon the Petition of JUDITH ANN CHAPMAN
- STATE OF IOWA vs. JAMES NORMAN HARRIS
- GARY PETTIT vs. IOWA DEPARTMENT OF CORRECTIONS

# Updated Appellate Case List

## Supreme Court March 2017

- March 3, 2017
- CENTRAL BANK and REAL ESTATE OWNED, L.L.C., an Iowa Limited Liability Company vs. TIMOTHY C. HOGAN, as Trustee of the Liberty Bank Liquidating Trust; LIBERTY BANK, F.S.B.; IOWA STATE BANK; FIRST STATE BANK; FARMERS SAAVINGS BANK; FARMERS TRUST & SAVINGS BANK; and FIRST COMMUNITY BANK
- DUTRAC COMMUNITY CREDIT UNION and KWIK TRIP, INC. vs. RADIOLOGY GROUP REAL ESTATE, L.C.; SHAMROCK PROPERTIES, L.C.; DUFFY FAMILY LIMITED PARTNERSHIP; BIGGER BETTER BETTY BUILDING, L.L.C.; and QUAD CITY OMS, L.C.
- JOHNSON PROPANE, HEATING & COOLING, INC. vs. THE IOWA DEPARTMENT OF TRANSPORTATION
- March 10, 2017
- JEREMY D. YOCUM vs. STATE OF IOWA
- GARY N. PORTER and LORI PORTER vs. RICHARD L. HARDEN and JANICE HARDEN
- TUNIS E. DEN HARTOG, SHIRLEY ANN SCHWEERTMAN, LEONARD G. LYPPERT, MARY ELLEN MOLINARO, WILLIAM JAMES ROBERT and MARK D. FISHER vs. CITY OF WATERLOO, IOWA
- EUGENE J. KOPECKY vs. IOWA RACKING AND GAMING COMMISSION
- PATRICK ALAN NEY vs. JOHN GLENN NEY
- IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD
- March 24, 2017
- MYRIA HOLDINGS INC. & SUBS vs. IOWA DEPARTMENT OF REVENUE
- March 31, 2017
- BRENDA PAPIILLON vs. BRYON JONES

# Updated Appellate Case List

## Supreme Court April 2017

- April 7, 2017
- STATE OF IOWA vs. ANDRE LETROY ANTWAN HARRINGTON
- IOWA SUPREME COURT COMMISSION ON THE UNAUTHORIZED PRACTICE OF LAW
- ESTATE OF MICHAEL G. COX II by Executors, JOLEEN COX and MICHAEL G. COX SR., and JOLEEN COX, Individually and MICHAEL G. COX SR., Individually, Appellants, vs. DUNAKEY & KLATT, P.C. n/k/a KLATT, ODEKIRK, AUGUSTINE, SAYER, TREINEN & RASTEDE, P.C.
- DENNIS WILLARD vs. STATE OF IOWA
- April 14, 2017
- STATE OF IOWA vs. JAMES ALON SHORTER
- STATE OF IOWA vs. YARVON NATHANIEL RUSSELL
- ESTATE OF MERCEDES GOTTSCHALK by Coexecutors RICHARD GOTTSCHALK and REBECCA RASSLER vs. POMEROY DEVELOPMENT, INC. d/b/a POMEROY CARE CENTER vs. STATE OF IOWA, Third-Party Defendant-Appellee. On review from the Iowa Court of Appeal
- STATE OF IOWA vs. JAMES ROBERT DOWNEY



# ***State v. Brown*, 890 N.W.2d 315 (Iowa 2017)**

- **Issue:** Should the evidence obtained in two searches of a defendant's car have been suppressed where the person conducting the search was the defendant's stepfather, a police officer who was off duty at the time?
- **Holding:** No. Not every off-duty police officer acts as a government agent in every situation. The Court adopted a two-part test to determine if a police officer was acting in an official capacity: (1) the capacity in which the off-duty police officer was functioning when initially confronted with the situation, and (2) the manner in which he or she conducting himself or herself from that point forward. Here, the defendant's stepfather was acting as a concerned parent the whole time and ceased his involvement after calling the police.

# ***State v. Coleman*, 890 N.W.2d 284 (Iowa 2017) (4-3)**

- **Issues:** (1) Was a state constitutional argument preserved when the defendant failed to identify any constitutional provision in the trial court? (2) Was there a constitutional violation when the police officer requested a defendant's identification, registration, and insurance information when the initial reason for the traffic stop has been resolved?
- **Holdings:** (1) Yes. Not identifying any constitutional provision preserves error when an unidentified constitutional argument has been raised in trial court below; (2) Yes. Police officers must allow the driver to go on his or her way after the resolution of the reason for the stop. Overruling *State v. Jackson*, 315 N.W.2d 766, 767 (Iowa 1982)
- **Dissent (J. Waterman)**

***Bd. of Water Works Trustees of City of Des Moines v. SAC Cty. Bd. of Supervisors, 890 N.W.2d 50 (Iowa 2017)***

- **Background:** City board of water works trustees brought several claims in federal court against drainage districts, alleging that districts had allowed excessive levels of nitrates in river. The United States District Court for the Northern District of Iowa, Mark W. Bennett and Leonard T. Strand, JJ., certified questions.
- **Holdings:** The Supreme Court, Waterman, J., held that:
  - 1 there exists no remedy against drainage districts other than mandamus;
  - 2 the broad immunity in favor of drainage districts does not violate equal protection;
  - 3 districts did not unconstitutionally take board's property; and
  - 4 board could not assert claims against districts under inalienable rights clause.
- Certified questions answered.

# ***Residential & Agric. Advisory Comm., LLC v. Dyersville City Council, 888 N.W.2d 24 (Iowa 2016)***

- **Background:** Community members filed petition for writ of certiorari challenging city council's decision that rezoned agricultural land to commercial land in order to facilitate the development of baseball and softball complex. The District Court, Dubuque County, Thomas A. Bitter, J., denied the petition and denied members' motion to modify the order. Members appealed, which was transferred. The Court of Appeals, Vogel, P.J., 2013 WL 5951191, reversed and remanded. Members filed second writ of certiorari in response to city council's vote approving ordinance correcting description of rezoned land. Members' motion to consolidate the two writs was granted. Following trial, the District Court, Bitter, J., annulled the writs. Members filed appeal, which was retained.
- **Holdings:** The Supreme Court, Zager, J., held that:
  - 1 city council's rezoning decision was not arbitrary, capricious, or unreasonable;
  - 2 city council's rezoning decision was made in accordance with city's comprehensive plan;
  - 3 city council's rezoning decision did not constitute illegal spot zoning;
  - 4 city council proceedings concerning ordinance, which sought to correct legal description contained in rezoning ordinance, substantially complied with statutory zoning requirements, and thus, ordinance was valid;
  - 5 city council's rezoning decision met rational basis test, and thus did not violate equal protection; and
  - 6 community members were afforded procedural due process.
- Affirmed.

# ***State v. Shorter*, \_\_ N.W.2d \_\_\_, 2017 WL 1367014 (Iowa April 14, 2017)**

- Same crimes considered in *State v. Tyler*, 873 N.W.2d 741 (Iowa 2016)
- **Issues:** (1) Was there sufficient evidence to support Defendant's conviction as a principal, an aider and abettor, or under a joint criminal conduct theory; (2) Whether a witness's testimony was objectionable as not within the minutes of testimony; (3) Whether the defendant needed to be present during discussion of a jury question; and (4) Whether it was ineffective assistance of counsel for failing to request a stock instruction on eyewitness identification
- **Holdings:** (1) Yes, the evidence here was stronger than *Tyler* and the joint criminal conduct theory would necessarily implicate liability on a principal or aiding and abetting theory; (2) No because the defense was on fair notice and wasn't subject to unfair surprise; and (3) No because he did not show how his participation would have effected the resolution; and (4) No because there was no prejudice

# ***State v. Richardson*, 890 N.W.2d 609**

## **(Iowa 2017) (4-3)**

- **Issues:** (1) Did the district court err in not modifying the \$150,000 restitution award set by Iowa Code section 910.3B(1)? (2) Was the mandatory minimum \$150,000 restitution in homicide cases unconstitutionally disproportionate when it is imposed on a juvenile defendant?
- **Holdings:** (1) No. Restitution is not part of a defendant's sentence. Iowa Code section 901.5(14) does not authorize the district court to modify a restitution award required by section 901.3B.1; (2) The restitution was not cruel and unusual punishment or an excessive fine.
- **Issues Not Presented or Decided:** Whether the defendant's specific payment plan was unconstitutional as applied; whether a restitution payment plan can so deprive him/her of the opportunity for rehabilitation as to undermine the guarantees of *Miller*, *Lyle*, *Ragland*, *Pearson*, and *Null*.
- **Dissent (J. Appel)**

# Other Criminal Tidbits

- *Pettit v. Iowa Dep't of Corrections*, 891 N.W.2d 189 (Iowa 2017)—The proper vehicle to challenge sex offender treatment program classifications is a PCR, NOT a judicial review petition.
- *State v. Dubois*, 888 N.W.2d 52 (Iowa 2016) —A victim can seek full restitution for pecuniary damages not paid by his or her insurer.
- *Breeden v. Iowa Dep't of Corrections*, 887 N.W.2d 602 (Iowa 2016) —Juvenile offenders resentenced under *Lyle* are entitled to accrue earned time at the accelerated rate established by Iowa Code section 903A.2(a).

# Other Criminal Tidbits

- *State v. Letscher*, 888 N.W.2d 880 (Iowa 2016) — Trial courts do not have authority to order forfeiture of a pretrial appearance bond as part of a defendant's sentence.
- *State v. Downey*, \_\_\_ N.W.2d \_\_\_, 2017 WL 1367022 (Iowa Apr. 14, 2017) — A person cannot be criminally liable for lying in response to an unauthorized question in a weapon permit application.



## ***Estate of Cox v. Dunakey & Klatt, P.C., No. 16-0649,*** **2017 WL 1291796 (Iowa Apr. 7, 2017)**

- **Background:** Law firm moved to enforce and to seal documents related to purported settlement agreement in malpractice action brought by parents of deceased client arising from law firm's drafting of a prenuptial agreement with a provision that did not effectively waive client's spouse's right to client's retirement account. Parents of deceased client moved for an appointment of an out-of-district judge to preside over the remainder of the case. The District Court, Black Hawk County, Kellyann M. Lekar, C.J., denied the motion for an out-of-district judge, and Richard D. Stochl, J., 2016 WL 1613124, entered judgment that the parties had reached a binding settlement that included a confidentiality clause. Parents of deceased client appealed.
- **Holdings:** The Supreme Court, Mansfield, J., held that:
  - 1 no settlement agreement existed;
  - 2 trial court could order the sealing of the documents related to the mediation between law firm and parents of deceased client that purportedly resulted in a settlement agreement; and
  - 3 trial judge's recusal was not required.
- Affirmed in part, reversed in part, and remanded.

# ***Dinsdale Constr., LLC v. Lumber Specialties, Ltd.,*** **888 N.W.2d 644 (Iowa 2016)**

- **Background:** Following building collapse, builder filed action against lumber company for negligent misrepresentation. The District Court, Grundy County, Kellyann Lekar, J., entered judgment on jury verdict against company. Company appealed. The Court of Appeals, Mullins, J., 2015 WL 7075830, affirmed. Company appealed.
- **Holding:** The Supreme Court, Cady, C.J., held that lumber company, which sold building materials and engineering services, and its employee did not have pecuniary interest in supplying information to builder about structural integrity of building under construction, and thus, employee did not have duty to use reasonable care in supplying the information.
- Court of Appeals decision vacated; District Court judgment reversed; case remanded.

***Estate of Mercedes Gottschalk v. Polmeroy  
Development, Inc. and State of Iowa, No. 14-1326  
(April 14, 2017)***

- The Iowa Supreme Court held the state had no legal responsibility to safeguard a 95-year-old woman who was raped by a violent sex offender placed in her nursing home after being released from state custody.
- The Decision upheld the lower court's decision to dismiss the state from a lawsuit filed by the women's children.
- The state received court approval in 2010 to release William Cabbage from a state-run sex offender program and place him in the Pomeroy Care Center, a northwest Iowa nursing home. Cabbage was 82 and had dementia.
- But within months, he sexually assaulted the woman and was sent to prison.
- The Supreme Court said that because a court approved Cabbage's release, the state had no further responsibility to monitor him.

**QUESTIONS/COMMENTS?**