

POLK COUNTY BAR ASSOCIATION

CLE

WHAT HAPPENED AT THE CAPITOL
IN 2021

May 20, 2021

James Carney, Legislative Counsel

Iowa State Bar Association

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Iowa State Bar Association

ISBA LEGISLATIVE AND ADMINISTRATIVE REVIEW PROCESS FOR NON-ISBA PROPOSALS

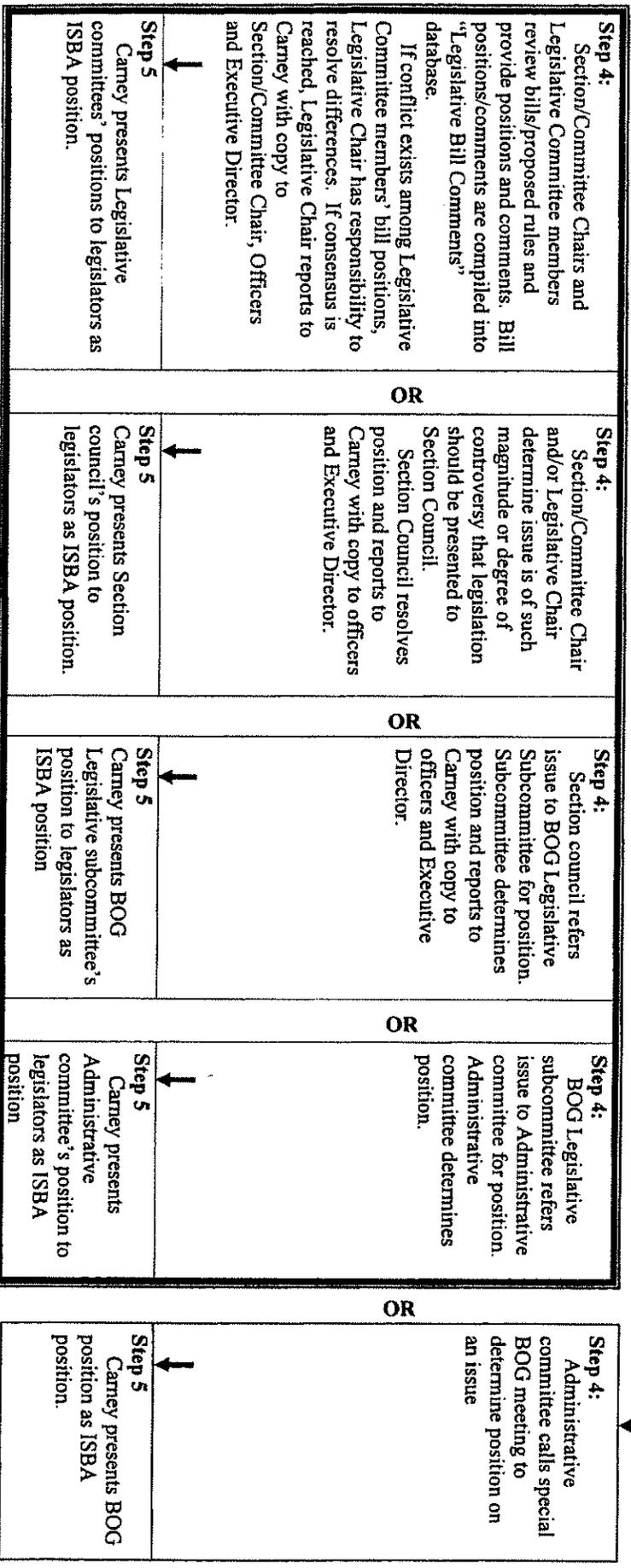
Step 1: ISBA Section Chair and/or Committee Chair designate Legislative Chairperson and/or Legislative Committee of no more than 3 persons.

Step 2: Legislative contact directory prepared by Carney after appointments by Section and Committee Chairs.

- Step 3:
- A) Bills reviewed daily by Carney and sorted by Section/Committee.
 - B) Notice of bills to be reviewed by each Legislative Committee sent electronically to Section/Committee Legislative chairs and Legislative Committees.
 - C) Proposed administrative rules reviewed upon receipt of Administrative Bulletin by Carney and referred to Section/Committee Legislative Chairs and Legislative Committees.

NORMAL FLOW

EMERGENT RESPONSE NEEDED



2019-20 ISBA Section Matrix

Section	Number of Members	2019-20 Chair	2019-20 Vice-Chair	Live Seminars (hours)	Webinars
Administrative Law	117	TBD			0
Agricultural Law	265	Bridget Bailey			0
Alternative Dispute Resolution	112	Joe Happe			0
Business Law	508	Laura Schmitt			1
Commercial and Bankruptcy	294	Robert Gainer			2
Construction Law	125	Brian Rickert	Jodie McDougal	6.75 annual	0
Corporate Counsel	319	Eric Nemmers		9 annual	2
Criminal Law	394	John Sandy, Jr.		5.5 annual	1
eCommerce	61	Amy Adkins		6 annual	0
Elder Law	225	Scott Lyon			0
Environmental & Natural Resources	94	James Pray		6 annual	0
Family and Juvenile Law	632	Laura Parrish	Elien Ramsey-Kacena	20.75 annual	7
Government Practice	235	Margaret Johnson		5.75 annual	2
Health Law	172	George Eichhorn			1
Intellectual Property	136	Jonathan Kennedy		6 annual	1
International Law	45	Dr. Brian Farrell			0
Labor and Employment Law	382	Ray Rinkol		6.5 annual	1
Litigation	699	William (Bill) Miller			1
Probate, Trust, and Estate Planning	1116	Christine Halbrook			2
Real Estate and Title Law	935	David Erickson			0
Solo Small Firm	268	Jeremy Danilson			0
Taxation	376	Jenna Lain		21.25 annual	6
Trade Regulation	42	Hon. Edward Mansfield		6.5 annual	0
Workers' Compensation	330	Aaron Oliver			0

2019-20 ISBA Section Matrix

Section	Practice Manual	Legislative Committee Appointed	Listserv Status	Regular Council Meetings	Newsletters	Quarterly BOG Reporting
Administrative Law			inactive			
Agricultural Law			inactive			
Alternative Dispute Resolution			inactive			
Business Law	2018		inactive			
Commercial and Bankruptcy			inactive			
Construction Law			inactive			
Corporate Counsel			inactive			
Criminal Law			active			
eCommerce			inactive			
Elder Law			inactive			
Environmental & Natural Resources			inactive			
Family and Juvenile Law	2018		inactive			
Government Practice			active			
Health Law			inactive			
Intellectual Property			inactive			
International Law			inactive			
Labor and Employment Law			inactive			
Litigation			inactive			
Probate, Trust, and Estate Planning	2018		active			
Real Estate and Title Law	2019		active			
Solo Small Firm			inactive			
Taxation	2018		inactive			
Trade Regulation			inactive			
Workers' Compensation	2000		inactive			

IOWA STATE BAR ASSOCIATION
2021 Affirmative Legislative Program

Updated 5/19/2021

Bill No.	Subject	Bill Description	Bill Status
HF 711	Probate & Trust Law Calculation of Probate Court Costs	Iowa Code §633.31 is currently being applied inconsistently throughout the state. There are now several district court cases declaring the clerks in at least six counties to be calculating court fees inappropriately. The bill addresses how the clerks of probate court determines and collects charges in connection with services provided in probate matters. Excludes from the determination of court fees property over which the court lacks probate jurisdiction and for which the clerk renders no services.	Sent to Governor
HF 836	Probate & Trust Law Guardianship & Conservatorship Update	Proposed changes to HF 610 to “fix” technical errors and substantive issues with the legislation that passed during the 2019 Legislative Session. This bill only addresses requested changes in Iowa Code 633.	House: On House Debate Calendar Senate: Funneled
HF 834	Probate & Trust Law Family Law Guardianship & Conservatorship Update	Proposed changes to HF 591 to “fix” technical errors and substantive issues with the legislation that passed during the 2019 Legislative Session. This bill only relates to amendments to Iowa Code 232D, or the Iowa Minor Guardianship Act. Specially, this bill makes clarifications to the role of “court visitor”, background checks, court confidentiality, and when and how the Court should be notified with regard to minor conservatorships.	House: Funneled Senate: Funneled
SF 173	Probate & Trust Law Certification of Trusts	Amends Iowa Code section 633A.4604 (Certification of Trusts) to require these certifications to include names of all currently acting trustees, state how many trustees must agree if there is more than one trustee, and allow signers to certify these documents (no longer will signature notarization be required). Amends Iowa Code section 633A.4703 (General order of abatement) to make trust code provisions for abating shares of surviving spouses who don’t take elective shares of the trust be the same as the probate code provisions for abating shares of surviving spouses who don’t take elective shares under the decedent’s Will.	Signed by the Governor on 3/8/21.

SF 239	Probate & Trust Law Liability of Decedent's Estate	<p>Amends Iowa Code Section 611.22 to limit the parties who can represent a decedent's interest in litigation following a decedent's death to parties who can and must treat the results of litigation as any other asset or liability of the decedent's estate.</p> <p>Legislation would ensure that a decedent's liability pursuant to litigation isn't given a higher priority for payment than any other claim under §633.425 of the Probate Code, and that any additional assets to which a decedent becomes entitled after death as a result of litigation aren't exempt from taxes or other obligations to which estate assets are subject. As proposed, only a personal representative of a decedent's estate as defined in Section 633.3 or a "successor" as defined in Section 633.356 (the affidavit procedure for settling estates with probate assets worth \$50,000 or less) because only these parties are obligated to pay the decedent's financial obligations (taxes, debts, Medicaid claims etc.).</p>	<p>Signed by the Governor on 3/8/21.</p>
SF 240	Probate & Trust Law Uniform Custodial Trust Act	<p>Creates a new chapter in Iowa Code called "Uniform Custodial Trust Act." This legislation would provide a tool to facilitate small gifts to adults akin to the Uniform Transfers to Minors Act (Chapter 565B). Additionally, this act would be used for litigation proceeds, gifts or bequests to vulnerable adults who may not be qualified to manage the new assets, but where a conservatorship isn't a suitable vehicle. Finally, this proposal will facilitate the management of property for adults and will facilitate estate planning for testators and trust settlors.</p>	<p>Signed by the Governor on 3/8/21.</p>
SF 235	Probate & Trust Law Contested Claims in Probate	<p>This proposal amends and updates the Iowa Probate Code that governs contested claims in Probate Proceedings, Iowa Code § 633.68-633.449. More specifically, this legislative proposal updates the required procedures in these proceedings to coordinate with the EDMS electronic court-filing system. Increases the value of contested claims that can be litigated under these statutes from \$300 to the small claims statutory values passed by the legislature in 2019 (\$6,500). Finally, this legislative proposal streamlines the notice requirements in these proceedings by removing outdated provisions regarding the use of USPS.</p>	<p>Signed by the Governor on 3.22.21</p>

<p>HF 561</p>	<p>Construction Law Mechanic's Lien Proceedings</p>	<p>This proposal amends Iowa Code § 572.8 to allow a mechanic's lien involving real property covering multiple counties to be posted once on the centralized, digital MNLR system and indexed on all applicable counties.</p> <p>In addition, this legislative proposal amends Iowa Code § 572.32 to provide statutory certainty on the recovery of attorney fees by prevailing claimants in mechanic's lien actions where the lien is discharged by a bond.</p>	<p>Signed by the Governor on 4.30.2021</p>
<p>HF 844</p>	<p>Business Law Uniform Model Corporations Act</p>	<p>Along with thirty-three other States and the District of Columbia, Iowa has generally followed the Model Business Corporation Act in enacting the law governing business corporations. It is substantively sound and well drafted, and it offers benefits to Iowa courts, practitioners, and businesses on account of its widespread adoption, court interpretations (although non-binding), and useful Official Comments. In December 2016 the ABA Corporate Laws Committee published a 4th Edition of the MBCA. The 4th Edition amends the MBCA in various substantive ways. It also represents in part a restatement of the MBCA to include amendments approved since publication of the 3rd Edition; and in recognition of continuing developments in the law, the 4th Edition integrates the MBCA with the law governing unincorporated business associations such as LLCs. Finally, some changes were made simply to improve clarity.</p>	<p>Sent to Governor</p>

In addition to the above legislative proposals, the Iowa State Bar Association supports the following positions as a part of its 2021 Affirmative Legislative Program:

- **Full funding of indigent defense and adoption of legislation providing for \$5.00 per hour increase with an automatic cost of living increase in indigent defense fees.**
- **Full Funding of the Judicial Branch.**
- **Full funding for Legal Services.**
- **Full funding of the IA Secretary of State's Office as requested by IA Secretary of State Paul Pate.**
- **Full funding for the Office of Substitute Decision Maker through the Aging and Disability Resource Center to protect the interests of Iowans who have no one else to manage their financial and health care needs.**
- **Support child abuse prevention and treatment efforts and funding for child abuse prevention and treatment.**
- **Oppose the legalization of title insurance.**
- **Oppose absolute immunity legislation.**
- **Oppose arbitrary caps on the recovery of damages in medical malpractice cases.**

The

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REVISED CALCULATION OF COURT COSTS IN PROBATE

This bill is one of The Iowa State Bar Association Probate and Trust Law Section's affirmative legislative proposals. This proposal has been reviewed and approved by the ISBA's Board of Governors representing over 7000 attorneys in Iowa. This bill relates to how the clerk of the probate court determines and collects court costs in connection with services provided in probate matters. The ISBA has proposed similar legislation for several years.

Current Code §633.31 provides that "for services performed" by the clerk in the settlement of the estate of any decedent, the court costs are based on the "value of the personal property and real estate of such a person." These words have no legal meaning and lack explanation when applied to certain types of assets and forms of ownership, many of which did not exist or were seldom used when the statute was passed. The lack of clarity has resulted in wide variations in the determination of court costs from county to county and even among deputy clerks within the same county.

The proposed legislation excludes from the determination of court costs, property over which the court lacks probate jurisdiction and for which the clerk renders no services. This includes property held in joint tenancy, transfers during the decedent's lifetime, and assets payable to beneficiaries. This legislation codifies what was the generally recognized, but inconsistently applied, practice of clerks of court statewide and reverses the Administrative Directive of the State Court Administrator 2014-1.

In 2014, in an effort to address variations in the determination of probate court costs, an Administrative Directive was issued by the office of the Iowa Supreme Court Administrator providing that joint tenancy property, transfers made during a person's lifetime (i.e., transfers to a revocable trust), and assets which by contract with the holder of the assets are payable to named beneficiaries are **not** excluded from the value of the personal property and real estate used to calculate the court costs payable to the clerk pursuant to Code Section 633.31(2)(k).

Prior to the Administrative Directive and today many jurisdictions do not collect probate costs on the above referenced assets pursuant to a 1973 Attorney General's opinion which provided, "[F]ees in § 633.31(2)(k) are only those for services rendered in the settlement of the estate of the decedent involving probate matters it necessarily follows that those fees should only be based on that part of the property of the decedent that is subject to the probate jurisdiction of the Iowa Courts." Iowa Attorney General, Opinion No. 73-1-8. We have attached a copy of a December 2018 Johnson County Order

Iowa State Bar Association

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providing that the calculation of probate court costs should not include nonprobate assets. The ISBA agrees with the Order, the probate court should not collect costs on assets that are not subject to the jurisdiction of the court.

The proposed legislation provides for the purpose of determining court costs, the following nonprobate assets are removed from the total gross asset calculation:

- Joint tenancy property,
- Transfers during the decedent's lifetime (i.e., transfers to a revocable trust),
- Non-probate assets such as life insurance, annuities, individual retirement accounts, retirement plans, transfer on death securities accounts, payable on death bank accounts, and similar assets payable to beneficiaries other than to the estate of the decedent.
- Real estate not located in the state of Iowa.
- Any other assets which pass by operation of law without court administration.
- Assets transferred to an estate from a conservatorship that has been administered in the state and for which an administrative fee has been charged and collected in the conservatorship.

We ask for your support of this legislation. Please feel free to contact us if you have any questions or require any additional information or explanation.

Thank you,

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IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

IN THE MATTER OF)	
)	
THE ESTATE OF)	PROBATE NO. ESPR031884
)	
RONALD R. REED)	ORDER
)	
DECEASED)	

On November 13, 2018, a hearing was held on the Executor’s request to set court costs. Counsel of record waived a formal record and the court heard the arguments of counsel. The Executor argued that the court costs should be calculated based on the total value of probate assets rather than the value of assets subject to Iowa inheritance tax, otherwise known as the gross assets of the estate. The Clerk of Court/State Court Administrator (“Clerk”) takes the position that costs should be calculated based on the gross assets of the estate. Having considered the arguments of counsel and the relevant law, the court agrees with the Executor.

The probate inventory in this case identifies assets of close to \$14,000,000, with court costs of approximately \$25,000 at issue. The Executor argues that all of the assets passed to beneficiaries outside of the administration of the estate and are therefore not probate assets for purposes of calculating court costs. These assets include life insurance payable to others, assets owned jointly with a spouse, transfers to an inter vivos trust, and annuities payable to named beneficiaries. In this case, Mr. Reed had deliberately planned to avoid probate. However, a personal injury law suit pending at his death (and still pending) required the opening of an estate

The State Court Administrator previously issued directive 2014-1, which directs clerks of court to calculate court costs based on the gross assets of an estate. The Clerk acknowledges that this excludes life insurance, unless paid to the estate, pursuant to Iowa Code section 633.5 (2017). The balance of the assets identified in the inventory are, according to the Clerk, appropriately included for purposes of calculating costs.

Iowa Code Sec. 633.31 sets forth required court costs for probate matters and states that costs include "the value of the personal property and the real estate." Iowa Code Sec. 633.31(2)(k). An Iowa Attorney General opinion from 1973 addressed the issue of court costs in probate matters. Although Attorney General opinions are not binding on courts and do not relieve them of their duty to independently interpret statutes, such opinions are entitled to respectful judicial consideration. *Unification Church v. Clay Central School Dist.*, 253, N.W.2d 579, 581 (Iowa 1977). The 1973 opinion states "Since the fees in[sec.] 633.31(2)(k) are only for those services rendered in the settlement of the estate of the decedent involving probate matters it necessarily follows that those fees should only be based on that part of the property of the decedent that is subject to the probate jurisdiction of the Iowa Courts..." *Iowa Attorney General, Opinion No. 73-1-8*. The Attorney General opinion states that Sec. 633.31 and other

statutory court costs requirements "proceed on the theory that such payment is exacted for something actually done by the officer for the benefit of the litigant[.]" *Id*

The court is not aware of any other justification for statutory court cost requirements beyond that provided in the Attorney General opinion and therefore finds that assets which pass outside the administration of the estate cannot be the basis for any court costs incurred. It would be inconsistent with the purpose of the court cost requirement, then, to charge the estate here for work not actually performed or required. The only reason the assets were identified on the report and inventory is for Iowa inheritance tax purposes, which utilize the same schedules.

The court notes that last year there was a legislative attempt to address this issue. The proposed legislation did not pass. Hopefully, there will be a legislative fix soon. Until such time as either the legislature or the appellate courts resolve this issue, there will continue to be discrepancies in the calculation of court costs based upon both the savviness of the attorney for the estate and the decision of the judge.

For the above reasons, as well as those stated by the Executor in its Memorandum of Law and Brief filed November 8, 2018, IT IS THEREFORE ORDERED that the Executor's request for determination of court costs is GRANTED. Court costs in this matter shall be calculated based on the value of probate assets and not the gross assets of the estate. The Clerk of Court is directed to proceed with such calculation pursuant to the Application filed October 10, 2018 and to disregard Administrative Directive of the State Court Administrator 2014-1 as it would apply in this case.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
ESPR031884 ESTATE OF RONALD R REED

So Ordered

A handwritten signature in blue ink that reads 'Lars G. Anderson'. The signature is written in a cursive style and is positioned above a horizontal line.

Lars Anderson, District Court Judge,
Sixth Judicial District of Iowa

The

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CONTESTED CLAIMS IN PROBATE PROCEEDINGS

This bill is one of The Iowa State Bar Association Probate and Trust Law Section's affirmative legislative proposals. This proposal has been reviewed and approved by the ISBA's Board of Governors representing over 7000 attorneys in Iowa.

The legislation seeks to update and expand the procedure for filing and processing contested claims within Iowa probate proceedings by amending Iowa Code Sections 633.438 through 633.449 (Denial and Contest of Claims). Over the past decade the Judicial Branch has been working to develop a statewide electronic document filing system for all judicial filings. This system is referred to as the Electronic Document Management System or EDMS. Although the implementation of this system was completed over five years ago, there is still a need to update references in Iowa Code so that they mirror the EDMS requirements. This legislative proposal would update Iowa's statutes governing the current probate procedure for filing and processing contested claims to conform with the EDMS electronic court-filing system by eliminating the need for mailed notice through USPS, as service of notice is now handled electronically through EDMS.

In addition, processing contested claims in probate proceedings would be expanded under this proposal to increase the value of claims that can be litigated in probate proceedings from \$300 to the small claims statutory values, currently set at \$6,500. Increasing the value to match the current statutory value in Small Claims actions creates uniformity in the code, conserves judicial resources, and allows for a more expedient resolution to these claims, as a separate court filing and case will no longer be necessary to settle claims above \$300, but below \$6,500.

Thank you for your consideration of this bill. Please feel free to contact us if you have any questions about this bill.

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TRUST CODE CERTIFICATION

This bill is one of The Iowa State Bar Association Probate and Trust Law Section's affirmative legislative proposals. This proposal has been reviewed and approved by the ISBA's Board of Governors representing over 7000 attorneys in Iowa.

Iowa Code §633A.4604 provides the current requirements for certifying a trust in Iowa. The certification of a trust process was designed to protect the privacy of a trust instrument by discouraging requests from persons other than beneficiaries for complete copies of the instrument in order to verify a trustee's authority. An example of this type of request would be when a third party involved in business transactions with a trustee insists on receiving a copy of the complete trust instrument solely to verify a specific and narrow authority of the trustee to engage in a particular transaction, potentially compromising the security and privacy of the trust. Instead of providing a third party the entire trust instrument to examine, a certification of trust document only includes excerpts from the trust instrument necessary to facilitate the particular transaction, providing a third party with an assurance of authority without having to disclose the trust's dispositive provisions.

In 2019, Iowa Code section 633A.4604 was amended to allow for only one trustee or their agent needed to sign the certification document to authorize the certification of the trust. Since the law was enacted, Iowa Probate lawyers have identified a few pieces of the law that need to be tweaked to make the certification of trust process more efficient and to ensure that all trustees are protected when a trust is certified. Specifically, this legislative proposal requires these certifications to include names of all currently acting trustees, state how many trustees must agree if there is more than one trustee, and allow signers to certify these documents, eliminating the need for the use of notarization. This proposal will streamline legal processes, facilitate business transactions, and provide an extra layer of protection for the trustees, beneficiaries, and third-party business associates who partake in these transactions.

Finally, this bill also amends Iowa Code section 633A.4703 (General order of abatement) to make trust code provisions for abating shares of surviving spouses who don't take elective

Iowa State Bar Association

Page 2

shares of the trust be the same as the probate code provisions for abating shares of surviving spouses who don't take elective shares under the decedent's Will.

Thank you for your consideration of this bill. Please feel free to contact us if you have any questions about this bill.

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MECHANIC'S LIENS PROCEEDINGS

This bill is one of The Iowa State Bar Association Construction Law Section's affirmative legislative proposals. This proposal has been reviewed and approved by the ISBA's Board of Governors representing over 7000 attorneys in Iowa.

This proposal amends Iowa Code § 572.8 to allow a mechanic's lien involving real property covering multiple counties to be posted once on the centralized, digital MLNR system and indexed on all applicable counties. Currently, Iowa attorneys have issues with Mechanics' liens covering land in multiple counties, particularly when this type of lien has to be bonded off. As a result, attorneys are required to go through the filing process multiple times for the same lien. This amendment would resolve this issue by eliminating the unnecessary filing of duplicative liens, saving attorney's time and their client's money. It should also be noted that the current MNLR software already allows multiple counties to be indicated when a lien is filed, but the system only indexes the lien with the first county indicated. Therefore, we believe if this proposal is passed, the software infrastructure is already partially in place, and should cost the state very little.

In addition, this legislative proposal amends Iowa Code § 572.32 to provide statutory certainty on the recovery of attorney fees by prevailing claimants in mechanic's lien actions where the lien is discharged by a bond. Currently, Iowa's mechanic's lien law expressly allows a mechanic's lienholder to recover attorney's fees. However, Iowa Code does not expressly allow for the recovery of attorney's fees when these Mechanic's liens are discharged by a bond. Today, there is disagreement among district courts on how attorney's fees should be handled in these cases. This provides inconsistent and inequitable outcomes for prevailing Iowa claimants based solely on the geographic location of the proceedings. This proposed amendment would eliminate confusion, promote consistency within the Iowa Code, and ensures uniformity and fairness in Iowa's Courts.

Thank you for your consideration of this bill. Please feel free to contact us if you have any questions about this bill.

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INDIGENT DEFENSE

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ISSUE - Indigent Defense is a program designed to meet the requirement of the Iowa and United States Constitutions to provide legal representation at state expense to low income persons accused of a crime that may result in incarceration. The State Public Defender either handles the matter or compensates attorneys which are on the court appointment list for handling the case. After cases are concluded, orders are entered requiring the indigent defendant to repay expenses to the State (recoupment) to the extent the defendant is reasonably able to do so. In recent years, the demands placed upon the State Public Defender's budget for indigent defense have continued to increase.

The 2019 legislature passed, and the Governor signed, a \$3 per hour increase for appointments made after July 1, 2019. The ISBA appreciates this increase and hopes that the legislature can provide similar increases in the following sessions totaling a \$10 increase.

ISBA POSITION - The Iowa State Bar Association supports adequate compensation of court appointed counsel in order to ensure that the state meets its constitutional obligation to provide competent assistance of counsel to indigent persons accused of crimes. **The ISBA supports a \$5.00/hour increase in the contract rate and further supports periodic cost-of-living adjustments in the hourly rate for such compensation. The ISBA also supports the appointment of a "Blue Ribbon Task Force" to recommend appropriate improvements to the provision of indigent defense, to include compensation.**

BACKGROUND - The 6th Amendment to the United States Constitution guarantees to all persons accused of crime the right to counsel in their defense. The U.S. Supreme Court has interpreted the 6th and 14th Amendments to the U.S. Constitution as requiring States to provide counsel to all indigents who are accused of crime in their jurisdictions. In addition, the Iowa Constitution guarantees that in all criminal prosecutions, the accused shall have a right to the assistance of counsel. Both the United States and Iowa Supreme Courts have interpreted this Constitutional provision as meaning the right to effective assistance of counsel.

Under Iowa's current system there are three (3) ways of providing legal representation to indigents. Legal representation is provided by Public Defenders, lawyers who are state employees with the State Public Defenders Office; contract attorneys who are private attorneys who contract with the Public Defender to provide legal representation to indigents; or court appointed attorneys in private practice who are not employed by or under contract with the Public Defender but are appointed to represent an indigent person on a case-by-case basis.

A recent ISBA survey of Iowa lawyers who provide criminal defense services found that on average, criminal law practitioners providing these services have practiced law for 13.4 years. Seventy-five percent (75 percent) of Iowa lawyers who do criminal defense work practice on their own as solo practitioners or in an office with only one other lawyer. Ninety-seven percent (97 percent) of Iowa lawyers doing criminal defense work practice in a firm with five or fewer lawyers. On the average, 29 percent of their total law practice involves criminal work. According to the most current ISBA economic survey in 2015, the average overhead costs of operating a law office in Iowa is over \$75 per hour.

Many of the lawyers performing indigent defense are younger attorneys who are carrying significant student debt. In the early 80s, after the Public Defender system had become fully operational, college indebtedness of young practitioners was rarely over \$20,000. Today it is rarely under \$100,000. The ISBA estimates that 90 percent of the lawyers doing court appointed work with less than five years of experience carry at least six figures in college debt. Loan repayments are averaging between \$1200 and \$1400 per month.

Debt has had a terrifically negative impact on small town attorneys and is a main contributing factor to the decline of young lawyers locating in rural Iowa. It is extremely difficult to recruit young attorneys to a small town. In many parts of the state, judges are having difficulty finding lawyers willing to handle court appointments and juvenile work. It has been common for many who have started practices in smaller communities to leave their community simply because they cannot pay their student loans. A one or two-person firm with overhead of \$75 per hour can scarcely afford to bring on a new associate and have them do court appointed work when it does not cover the overhead to say anything of the wage of the associate.

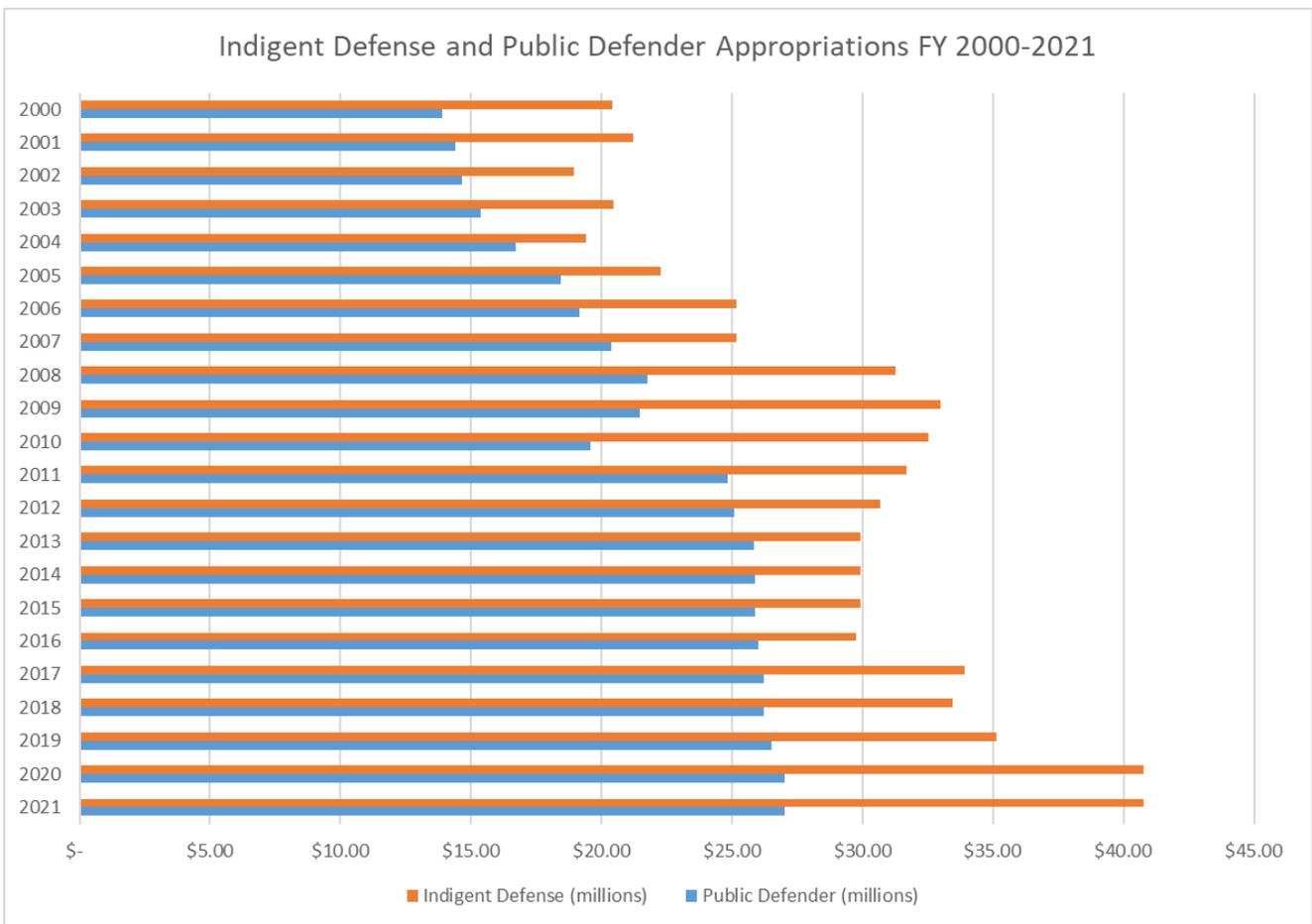
Historically, in an effort to reduce the state's budget, the rates were reduced for indigent defense cases in 1996 by \$5.00 per hour. Legislation adopted in 1999 restored the 1996 cut by increasing pay rates by \$5 per hour. In the 2006 legislative session the ISBA requested a \$10 per hour increase. The fees were increased by \$5.00 per hour in 2006 and another \$5.00 per hour in 2007.

Today, attorneys handling Class A felony cases may now be paid \$73 per hour; attorneys handling class B felony cases may be paid \$68 per hour, and attorneys in all other cases will be paid \$63 per hour. Over three decades ago, in 1986, the Iowa Supreme Court adopted guidelines for costs of court appointed counsel, which authorized payment of \$40.00 to \$60.00 per hour. Many attorneys who began practice in the 1970's remember being paid between \$50 and \$60 per hour to handle indigent defense cases in the 1970's. As a comparison, the current federal indigent defense program currently pays \$148 per hour for non-capital cases and in capital cases a maximum hourly rate of \$190.

Iowa attorneys are proud of their continuing tradition of providing low cost or pro bono services to those who cannot otherwise afford legal representation in civil cases. However, all attorneys are entitled to fair compensation for services provided. A system that pays those who represent the poor less than one third the usual and customary rate charged those who are not indigent runs the risk of providing a lower quality of justice for the poor. Estimates indicate that approximately 70 percent to 80 percent of all criminal cases involved indigent defendants.

INDIGENT DEFENSE BY THE NUMBERS:

- Approximately 689 Iowa lawyers handle indigent cases as contract attorneys.
- Approximately 136 Iowa lawyers handle indigent defense appeals as contract attorneys.
- In FY 2019, \$36,193 million was paid out from the Indigent Defense Fund (IDF) including \$32.697 million for 67,324 contract attorney fee claims and \$3.515 million for 8,966 miscellaneous claims for expert witnesses, translators, court reporters, and other approved items.
- The average claim by a contract attorney is just over \$486.00. (FY 2020).
- The FY 2021 appropriation for the IDF is \$40.760 million.
- The State Public Defender’s Office reviews all claims and approves approximately 305 claims per day averaging over \$144,772 per day in paid claims. (FY 2020)
- In FY 2021, the Legislature appropriated \$27,144 million to staff 18 Public Defender field offices, plus the administrative office, in 13 Iowa cities, serving all 99 Iowa counties.
- Approximately 39 percent of all claims paid relate to juvenile court proceedings. (FY 2020)



Updated: 11.23.2020
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