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IOWA DEFENSE COUNSEL ASSOCIATION

# DEFENSE UPDATE

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## When the Unrepresented Party Has a Robot Lawyer: AI, Pro Se Litigants, and the Perils for Iowa Attorneys A Practice Alert for Iowa Defense Counsel

By Brent Ruther, Aspelmeier, Fisch, Power, Engberg & Helling, P.L.C.



Brent Ruther

*DISCLAIMER: This article is being submitted, partially as a thought exercise. Why? It has been partially drafted using an AI program—see the irony? The product produced by AI at this point will only get better and highlights the necessity for counsel to be aware of its benefits and pitfalls not just with opposing counsel but now with pro se litigants. Citations, additional content, suggestions gained from my own experience with pro se litigants and their robot lawyers and source material was added by the “author”.*

The courtroom dynamic has always been awkward when one side has a lawyer and the other doesn't. Now add artificial intelligence to the mix, and the awkwardness has deepened considerably—along with the professional risk. Iowa attorneys defending cases against pro se litigants increasingly find themselves navigating a dual minefield: the opponent may be filing AI-generated briefs riddled with fabricated citations, and the defending lawyer, tempted to lean on the

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## IDCA President's Letter



Sean M. O'Brien  
IDCA President

Before I begin the President's Letter for this quarter, I had an exciting development to report. I got a couple of letters to the editor about my last column. Folks wanted to know more about the world's largest Cheeto. There is bad news and good news. Sadly, Sister Sarah's, the home of the Cheeto, closed. The restaurant fortunately reopened as Emerald's, and it is owned by a college friend of my law partner, Jason Madden. It still has the Cheeto.

This brings me to the topic of this month's letter: mentorship. I've been blessed with several mentors at various stages of my legal career. Today I write about one of them, Bill Fanter. Bill had an eloquent way of communicating. The associates at the old Bradshaw law firm referred to his words of wisdom as "Fanterisms". They often had hunting or outdoor themes, and I thought I would share a few with you.

**Never change horses midstream.** I don't know if you've ever ridden a horse. I have, and I find it to be an accomplishment to successfully mount and dismount. I cannot imagine how difficult it would be to change horses, let alone in the middle of a river. This proverb advises us against switching leaders, strategies, or plans in the middle of a crisis or challenging matter. Stay calm and carry on.

**It kicks harder than it shoots.** When one discharges a firearm, it creates a rearward force known as recoil. The recoil can create a sharp, painful sensation in the shoulder or hand. A gun that kicks harder than it shoots inflicts more punishment on the person shooting it than received by the target. As lawyers, we are trained to be zealous advocates for our clients. Issue spotting can get you high grades in law school, but it does not always make for effective advocacy in a court of law. We sometimes need to pare down our arguments to only those that can win the day. If your argument kicks harder than it shoots, you need to drop it.

**You can lead a horse to water, but you can't make it drink.** Witness preparation is an important but underrated task of

the defense lawyer. Some might even view it as a form of art, particularly for corporate representatives. Our clients often lead busy lives with many responsibilities at work and home. Getting someone's undivided attention to prepare for a deposition on a matter that happened years ago can be a challenge. Witness preparation must be tailored to individual needs. Some witnesses need hand holding, others need mock questioning, while sometimes all that is needed is a manager to run interference and allow the witness sufficient time to review the file or subject matter without worrying about other responsibilities. Whatever the technique, you want that horse thirsty for the assistance you can provide. Otherwise, they are not likely to take it.

**That dog will hunt.** A good bird dog will do three things: it will locate the bird, it will flush the bird, and it will retrieve the bird. Likewise, a good expert witness has three qualities. Your expert should have technical expertise in the subject of interest through education, experience, or preferably both. Your expert should also be able to communicate that education and expertise to laypeople in an understandable way. The best experts, however, seem to have a general knowledge of the legal system and the ability to assist you in shaping the strategy for your defense. If your expert can do those three things, then that dog will hunt.

**That train has left the station.** There are critical moments during the lifetime of a lawsuit where a judge's ruling on a motion or trial objection significantly impacts the evidentiary landscape. This can be quite frustrating if you believe the ruling to be erroneous. The best one can do in those situations is make your record and move forward. Don't waste your time fretting, because that train has left the station.

Let me end my letter with where I started: Jason Madden. When Jason and I started at the firm, it kept office hours on Saturday mornings. We even had a receptionist on duty to answer the phones. Most of the associates in those days, including Jason and I, lived in the Beaverville area of Des Moines. We took a liking to Cooney's Tavern, an Irish pub. After a late Friday night solving the world's problems at Cooney's, Jason and I were late for work on Saturday morning. On his way out for the day, Bill Fanter stopped by my office to inquire about the reason for our delinquency. I told him, in true Fanter fashion, that if you are out hooting with the owls, it is hard to get up and crow with the roosters. I then added, in our defense, that he probably didn't know the name of the nighttime janitor. Bill replied "touché" and left. And as he turned to leave, I am pretty sure he had a smile on his face.

I hope you experienced the good fortune of having a mentor guide you during your legal career. I also hope you've had the joy of watching a mentee grow and have success. I'd love to hear your stories sometime.

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same tools, risks discipline for doing so carelessly. Understanding both hazards is no longer optional.

## THE PRO SE AI PROBLEM IS REAL AND GROWING

Self-represented litigants have always posed unique challenges. Courts extend them some procedural latitude, opposing counsel must navigate their filings charitably, and judges sometimes nudge them toward arguments they didn't quite make. Now those litigants have access to ChatGPT, Google Gemini, and a growing roster of tools specifically marketed to them—including platforms that explicitly help pro se filers draft motions and organize their cases.

The results have been, to put it mildly, mixed. A legal analyst tracking AI hallucinations in court filings worldwide found:

294 instances of AI-generated hallucinations by pro se litigants in U.S. cases in 2025 alone. AI use by pro se litigants presents challenges for courts, *Maura Johnson, The Indiana Lawyer*, February 27, 2026.

In an Indiana case decided in early 2026, pro se appellants cited 14 fabricated cases, mischaracterized real ones, and submitted out-of-state authority as controlling law—a pattern the court said was consistent with unverified AI use.

The Indiana court dismissed the appeal, holding the errors “went far beyond minor infractions” and that the litigants had built their primary arguments on “nonexistent authorities.”

*The court's warning was blunt and worth noting by Iowa practitioners: “Pro se litigants are held to the same standards as licensed attorneys, and courts do not accommodate litigants—whether represented or not—who support their arguments with fabricated cases.” Wilcox v. Gingrinch, 274 N.E.3d 1269, 1277 (Ind. Ct. App. 2026).*

Iowa practitioners should not assume this is a coastal or federal-court phenomenon. The same free and widely available AI tools that empowered the Wilcox appellants are in the hands of every self-represented litigant in Iowa district court right now. What makes the problem insidious is that the output looks authoritative. A hallucinated citation arrives in perfect Bluebook format, complete with a plausible reporter, a realistic page number, and a holding that almost fits the facts. Courts pressed for time may not catch it. Opposing counsel moving quickly may not catch it. That is exactly why the burden falls on you.

## WHAT THIS MEANS FOR IOWA DEFENSE COUNSEL

When your opponent in an Iowa district court or before the Eighth Circuit files a brief peppered with citations you can't find anywhere, your instinct may be to simply ignore the phantom cases and move on. Resist that instinct—but also know your obligations.

### VERIFY EVERY CITATION YOUR OPPONENT SUBMITS

A California appellate court in *Noland v. Land of the Free, L.P.*, 114 Cal. App 5<sup>th</sup> 426, 2025 Cal.App. LEXIS 584 imposed a \$10,000 sanction on an attorney who filed AI-fabricated citations—but pointedly declined to award attorney's fees to opposing counsel, who had failed to detect or report the fake cases to the court. The opinion suggests that spotting and flagging AI hallucinations is becoming part of expected professional competence. That is a new burden, but it is one Iowa practitioners should take seriously now, before Iowa courts formalize the expectation.

### ALERT THE COURT PROMPTLY WHEN YOU FIND FABRICATED AUTHORITY

Iowa Rule of Professional Conduct 3.3 requires candor toward the tribunal, which includes a duty not to allow false statements of law to go uncorrected if you know of them. When a pro se opponent cites cases that simply do not exist—as happened in a federal District of Arizona case resulting in sanctions—you have an obligation to say so.

### DON'T EXPLOIT THE CONFUSION

There can be a temptation, when facing a poorly drafted pro se AI brief, to let the court's time be consumed untangling the opponent's errors rather than filing a clean, responsive brief of your own. That strategy is shortsighted. Iowa courts will remember who helped them and who didn't.

## YOUR OWN AI USE: THE RULES HAVEN'T CHANGED, BUT THE STAKES HAVE

The more dangerous pitfall for Iowa defense counsel may be their own AI use. The catalogue of national discipline cases is now long enough to constitute a genuine warning. Consider the following cases from across the country:

- ***People v. Crabill*, 2023 Colo. Discipl. LEXIS 64; 2023 WL 8111898:** A Denver attorney who denied using AI was found to have texted a paralegal admitting the AI had fabricated material—that, in his own words, “like an idiot,” he hadn't checked the work. He received a 90-day suspension.

- **Mata v. Avianca, 678 F.Supp. 3d 443 (S.D.N.Y., 2023):** The case that put the profession on notice. A federal judge fined counsel \$5,000 for submitting a ChatGPT-generated brief full of invented cases. The shortcomings of AI for legal research were, from that date forward, on every lawyer's radar.
- **Smith v. Farwell, No. 2282CV01197 (Norfolk, SS Mass. Superior Court, February 12, 2024):** A judge sanctioned an attorney whose "interns" had prepared AI-drafted filings containing fictitious citations he never reviewed. Delegation is not a defense.
- **Garner v. Kadince, Inc., 2025 UT App. 80:** Attorney ordered to pay opposing counsel's fees and refund his own client after submitting a brief containing a non-existent case generated by ChatGPT.
- **Johnson v. Dunn, 792 F.Supp. 3d 1241 (N.D. Ala., July 2025):** The court disqualified the offending attorneys from the case entirely and directed the clerk to notify bar regulators in every state where the lawyers were licensed—even though the firm had previously circulated warnings about AI misuse. A practice group leader had nonetheless submitted hallucinated authority.
- **Whiting v. City of Athens, 170 F.4th 439 (6th Cir. 2026):** In March 2026 the Sixth Circuit sanctioned two Tennessee attorneys \$15,000 each and ordered full reimbursement of the opposing party's fees after finding more than two dozen fake or misrepresented citations across three consolidated appeals. The panel was explicit that using fabricated citations goes "well beyond sloppiness in drafting" and constitutes "misconduct in arguing the appeal." The Sixth Circuit also held that court-ordered AI disclosures do not implicate attorney-client privilege or the work product doctrine—removing one argument lawyers had hoped to use to resist transparency requirements.
- **Couvrette v. Wisnovsky, No. 1:21-cv-00157-CL (D. Or. Dec. 12, 2025):** U.S. Magistrate Judge Mark D. Clarke imposed \$110,000 in fines and attorney's fees against two lawyers in a family winery dispute and dismissed the lawsuit with prejudice after finding 23 fabricated legal citations in the filings. That sanction is currently the largest AI hallucination penalty in U.S. legal history. The case is a reminder that AI hallucinations are not confined to unsophisticated sole practitioners—one of the sanctioned attorneys practiced at a large firm in San Diego.

**In 2026 it is estimated** that there have been 913 cases in which attorneys or pro se litigants have been "caught" or sanctioned for use of hallucinated cases. This statistic comes from

[damiencarlotin.com/hallucination](https://damiencarlotin.com/hallucination) which tracks such cases and provides identifying information for the cases included.

## IOWA IS WATCHING

The Iowa bar is paying close attention. The *Iowa Lawyer* magazine's December 2025/January 2026 issue carried an article co-authored by Chief Judge C.J. Williams of the Northern District of Iowa—now serving on the National Judicial Conference's AI Task Force—explicitly warning Iowa practitioners to "check, double-check, and then triple-check AI-generated research and writing." The Iowa Judicial Branch has also convened an AI Working Group, signaling that formal guidance from Iowa courts is not far off. The ABA issued Formal Opinion 512 in July 2024, making clear that lawyers remain fully responsible for verifying AI-generated content under their existing competence and candor obligations.

The pace of national enforcement should give every Iowa practitioner pause. U.S. courts imposed over \$145,000 in AI hallucination sanctions in the first quarter of 2026 alone—and that figure captures only publicly reported cases. The pattern that emerges from the case law is consistent: the attorney whose name is on the filing is responsible for everything in it, regardless of whether an AI tool, an intern, or a paralegal produced the first draft. Iowa has not yet experienced a high-profile AI sanctions case of its own, but given the volume of cases nationally and the accessibility of the tools driving them, that window is closing. The Iowa practitioner who builds verification habits now will be far better positioned than the one who waits for a local cautionary tale.

## PRACTICAL RULES FOR IOWA LAWYERS

Given where things stand, Iowa defense counsel handling pro se AI cases should follow a firm set of principles:

- **Never submit any citation you have not personally verified** in Westlaw, Lexis, or an equivalent authoritative database. AI-assisted research platforms from established vendors have themselves produced hallucinations; your signature on the filing is your warranty that every case cited exists and says what you claim.
- **Document your verification process.** If you use AI for drafting or research, keep a record of what prompts you used and how you checked the output. In a discipline proceeding, "I verified everything" is far more persuasive with supporting documentation. You can easily do this through the use of storage features with each system—for instance Claude AI (the paid version) allows you to create "projects" where documents you want summarized etc.



can be uploaded and used for the future in that matter and all prompts used in that “projects” are saved.

- **Flag your opponent’s fabricated citations to the court in writing, promptly.** Not only is this the ethically correct move, it now appears to be the financially prudent one—given that courts have begun penalizing opposing counsel for failing to catch hallucinations.
- **Treat the pro se party’s AI filings as you would any other filing—no more, no less.** Iowa courts will extend reasonable procedural latitude to unrepresented parties, but they will not reward counsel who ignore or exploit those parties’ errors rather than engaging them candidly.
- **Implement a firm AI policy and train your staff.** As *Johnson v. Dunn* demonstrated, a written policy is not

enough if it isn’t followed. Discipline for AI misuse now flows upstream from associates and paralegals to the attorney whose

The rise of AI has not changed what it means to be a lawyer. The signature on the brief is still human, the obligation of competence is still yours, and the Iowa Supreme Court’s disciplinary machinery is still very much operational. The technology that promises to save you time can cost you your license if you forget those facts.



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## New Member Profile



**Mikaila Sward**

Mikaila Sward is an associate attorney at Elverson Vasey. Her practice includes insurance defense, business and corporate law, family law, and real estate.

Originally from Aiea, Hawaii, Mikaila graduated summa cum laude from the University of Colorado in 2020 and earned her J.D. from the University of Colorado Law School in 2025. She

relocated to Iowa after law school and was admitted to the Iowa Bar in 2025. She is a member of the Polk County Bar Association and the Iowa State Bar Association.

In her free time, Mikaila enjoys spending time with her husband and their golden retriever, cheering on Ferrari while watching Formula One, and getting lost in a good book. She looks forward to becoming more involved with the IDCA and connecting with fellow members.



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## Case Law Update

By Jaquilyn Waddell Boie



Jaquilyn Waddell Boie

Two recent Supreme Court decisions provide important reminders of the necessity to preserve error for appeal—albeit from very different stances. *McQuillen v. W. Side Transp., Inc.* provides a cautionary tale on the failure to preserve error.--- N.W.3d---, 2026 WL 911618 (Iowa 2026). In contrast, *Estate of Tornell v. Trinity Health Corp.* provides a nuanced analysis of whether error may be preserved

by implication and necessity where a petition is legally null. 31 N.W.3d 162 (Iowa 2026)

### *MCQUILLEN V. W. SIDE TRANSP., INC.*,--- N.W.3D---, 2026 WL 911618 (IOWA 2026)

On the afternoon of March 19, 2020, Margaret McQuillen was driving southbound through dense fog on Highway 151 near Anamosa. There is evidence that Margaret may not have had her headlights on, and that she may have been using her phone.

At the same time, Clifford Takes, a semi driver for West Side Transport, Inc., was driving northbound on Highway 151. Takes made an unprotected left turn, crossing the southbound lane outside of traffic control devices. Margaret's car collided with the side of the semitrailer and slid underneath, sheering off the roof, pillars, windshield, and side windows of the car. Margaret suffered severe traumatic brain injuries and underwent lengthy brain injury rehabilitation.

In 2022, Margaret's parents brought suit against Takes and West Side Transport, Inc, alleging negligence and vicarious liability. Following seven days of evidence, the Court read the jury instructions and the parties made closing arguments.

The defendants alleged that the McQuillens made several improper arguments in closing remarks. First, the defendants claimed that the McQuillens wrongfully referred to "an undisclosed and unqualified lay rebuttal witness as an expert witness." The witness, Grace Lubben, was a childhood friend of Margaret's.

Lubben was called as a rebuttal witness to defendants' digital forensics expert, Joshua Lorencz.

Lorencz testified that Margaret had been using SnapChat in the moments leading up to the accident, though he conceded he had never used SnapChat. In response, Lubben testified that Margaret's Snap Map location following the accident, which showed Margaret at home, established that Margaret had not been using SnapChat while driving. In closing remarks, the McQuillens claimed that while Lorencz was a digital forensic expert, he was not a SnapChat expert and was not aware of what a Snap Map was. In contrast, the McQuillens referred to Lubben as a "SnapChat expert." Defendants moved for a mistrial, which the court denied. Defendants also moved for a new trial in post-trial motions.

Following the jury's verdict, the court entered judgment in the McQuillens' favor for \$26,129,236.80. On appeal, the Supreme Court found that Lubben's testimony included a technical analysis of how SnapChat works, and that defendants failed to object to her testimony. Like the district court, the Supreme Court found that the McQuillens' reference to Lubben as a "SnapChat expert" was fairly innocuous, particularly in light of the jury instructions regarding treating expert witnesses like all other witnesses.

Defendants also contended that the McQuillens' closing arguments went beyond the specifications contained in the jury instructions. The jury instructions allowed the jury to consider negligence on three grounds against the defendants: (1) failure to yield right-of-way, (2) failure to maintain a proper lookouts, and (3) failure to discontinue operation of a vehicle under hazardous conditions. However, during closing arguments, the McQuillens suggested the jury could also find negligence on the grounds of Takes (1) speeding earlier in the day, (2) failing to plan a route that would minimize unprotected left turns, and (3) violating a company policy as to where he could park.

Defendants again moved for mistrial. While the district court agreed arguing beyond the specifications of the jury instructions was improper, it denied the motion for mistrial and post-trial motion for a new trial. The court found that while the arguments were improper, the majority of the McQuillens' closing argument was appropriate, the defendants had an opportunity to clarify the proper specifications of negligence, the court admonished the jury that the closing arguments were neither evidence nor instruction of the law, and there was no evidence that the outcome of the trial would be different in the absence of the improper arguments.

The Supreme Court affirmed the district court on these grounds as well.

Finally, the defendants argued that the district court abused its discretion in preventing the defense from making arguments regarding the present value of future damages. However, the argument defendants were prohibited from making suggested—with an illustrative slide—that an individual could live off the interest that could be generated by investing a three million dollar award. Such an argument was expressly prohibited by the court's rulings on the McQuillens' motions in limine.

Following an unreported sidebar conference, defendants made no arguments about present value in general. Furthermore, the defendants failed to make a record of the issue prior to the submission of the case to the jury. Nor did the defendants raise the issue when the court made an additional record outside the presence of the jury after the case had been submitted. As such, the Supreme Court found that defendants failed to preserve the error for appeal. Even so, the Supreme Court noted that it did not consider the district court to have committed any error regarding defendants' present value arguments.

While the Supreme Court made clear that it would have affirmed the district court on all grounds, McQuillen is a reminder of the importance of preserving error for appeal.

### *ESTATE OF TORNELL V. TRINITY HEALTH CORP.*, 31 N.W.3D 162 (IOWA 2026)

In December 2021, Kara Tornell passed away from complications of COVID. She arrived to MercyOne in West Des Moines by ambulance. Her condition deteriorated rapidly, and after experiencing cardiac arrest, cardio-pulmonary resuscitation, and many medical procedures she was placed on life support. With an uncertain prognosis due to a prolonged lack of oxygen, Kara's husband, Preston, made the decision to remove Kara from life support.

Kara died intestate. Preston was appointed by the probate court as administrator of Kara's estate. Preston then filed a wrongful death action against the hospital, clinic, and physicians allegedly involved in Kara's care. The petition alleged loss of consortium, though it did not expressly include claims of loss of parental consortium. No attorney appeared on behalf of the estate.

The defendants answered, asserting various affirmative defenses, including failure to state a claim upon which relief may be granted and illegal practice of law. The defendants then moved to dismiss the petition, contending the pleading was a legal nullity because Preston, a nonlawyer, could not prosecute claims in district court on behalf of the estate.

Preston resisted the motions to dismiss, arguing that he was the sole beneficiary and administrator of the estate, and as such, could prosecute the wrongful death claims without an attorney. Preston also contended that he could bring claims for loss of consortium on behalf of his children as the administrator of the estate.

In the alternative, Preston cited to *Hawkeye Bank & Tr., Nat. Ass'n v. Baugh*, 463 N.W.2d 22, 26 (Iowa 1990), to contend that it would be an abuse of discretion for the court to dismiss a claim or void pleadings without allowing him the opportunity to cure the defect by finding counsel. Preston also filed a motion to amend the petition to allege that Kara died intestate and Preston was the sole beneficiary. Finally, Preston contended that the court could take notice of probate proceedings.

The defendants argued that because Preston's *pro se* petition was a legal nullity, he should not be granted leave to amend or time to secure representation. The district court granted defendants' motions to dismiss and denied Preston's motion to amend.

Represented by appellate counsel, Preston appealed. A divided five-judge panel of the Iowa Court of Appeals affirmed the district court. Two judges dissented. The Court affirmed that a lawyer was required to prosecute the wrongful death claims for Preston and the Estate. Additionally, the Court found that Preston failed to preserve error on his alternative claim for time to retain an attorney. Specifically, the Court's majority concluded that the district court did not rule on Preston's request for time to retain an attorney, necessitating a Rule 1.902(2) motion to preserve error.

The Supreme Court granted Preston's application for further review. The Supreme Court affirmed the Court of Appeals regarding the necessity of an attorney to prosecute the wrongful death claims for Preston and the Estate. However, the Supreme Court found that the district court and Court of Appeals erred in finding that Preston failed to preserve error on his alternative claim for time to retain an attorney.

The Supreme Court found that Preston first argued for the alternative relief in his prehearing resistance and surreply, and again in his oral argument at the hearing. With regard to the Rule 1.902(2) motion, the Supreme Court found that the district court implicitly and necessarily rejected Preston's request for alternative relief when it dismissed the lawsuit without granting Preston additional time to retain an attorney.

With a nod to the dissenting opinion of the Court of Appeals, the Supreme Court noted that courts in various other jurisdictions "have rejected the nullity approach in favor of approaches that generally give the improperly represented party a chance to hire a lawyer—sometimes with some discretion on the matter for the court." 31 N.W.3d at 170 (internal citations omitted).



## CONCLUSION

Error preservation is a critical component of appeal. Yet with the pace and complexity of trial, it remains an ever-present concern that requires careful attention to the record. Tornell presents a nuanced issue of error preservation—one that split the Court of Appeals and brought important clarification to Iowa law. Tornell establishes that under some circumstances, by implication and necessity, error may be preserved without a Rule 1.902(2) motion. Additionally, Tornell establishes that like other jurisdictions, Iowa law rejects the nullity approach in favor of allowing improperly represented parties time to retain counsel.

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