

defense UPDATE

The Iowa Defense Counsel Association Newsletter

Vol. 1 No. 2

ANNUAL MEETING

THE 1988 ANNUAL MEETING IS SCHEDULED FOR OCTOBER 27, 28 AND 29.

Ed Seitzinger and Pat Roby, chairpersons for the 1988 Annual Meeting, have put together what promises to be a superb event.

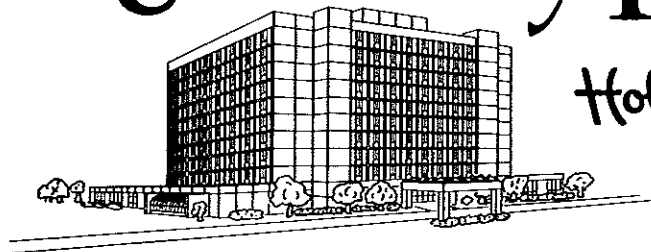
Seitzinger, in charge of general arrangements, has promised an extravaganza never before staged by the Iowa Defense Counsel. This year's meeting will be held at University Park Holiday Inn. This facility is located at 1800 50th Street in West Des Moines. Seitzinger has announced that the Thursday night theatre trip is going to be replaced by a special event that should be enjoyed by all.

Pat Roby, who this year is serving as Program Chairman, has just about completed recruitment of the speakers for an outstanding educational program. It is expected that the program will qualify for 15 hours of C.L.E. credit, including the 6-hour federal requirement. Featured on the program on Thursday will be the annual workers' compensation update, a Supreme Court update by Justice David Harris and a special one hour and 45-minute program on evaluating and defending closed head injury cases.

On Friday, October 28, a special trial demonstration will be featured, with special emphasis on selecting a jury including a presentation by Dr. Thomas Sannito on defense techniques and jury selection. In the afternoon is planned a panel on defense of civil litigation from the national prospective, including panelists from

NEW LOCATION FOR ANNUAL MEETING

University Park

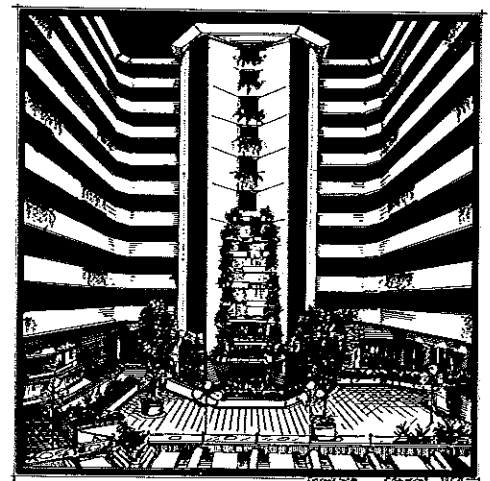


Holiday Inn®

ATRIUM • CONVENTION CENTER

Kansas City, Nashville, Tennessee, Richmond, Virginia, and Jacksonville, Florida. Also featured on Friday will be a special presentation on defending sports injury cases.

On Saturday morning, Roby has planned for the traditional annual Appellate Court review, a legislative update from Kevin Kelly, the Defense Counsel's lobbyist, and a special presentation on Appellate practice and procedure. All in all it should be both an entertaining and educational program. Again, the meeting will be held on Thursday, October 27, Friday, October 28, and Saturday, October 29 at University Park Holiday Inn in West Des Moines.



All meetings and programs will be held at University Park. Pictured above is the Atrium where Thursday night's events will be held.

MESSAGE FROM THE ASSOCIATION PRESIDENT

Dear Members of the Iowa Defense Counsel Association:

As the end of summer approaches and thoughts turn to your busy fall trial schedules, it is important to keep a few dates clear of conflicts. One of the most important dates for reserving is the annual meeting and seminar sponsored by the Iowa Defense Counsel Association. This year that event will occur on October 27-29. As you will be able to tell from the materials accompanying this letter, President-Elect Roby has put together an interesting and informative program continuing the Association's history of sponsoring very high quality continuing legal education events. Also you will note that this year the location of the annual meeting has been changed. Hopefully, the Holiday Inn in West Des Moines will provide us with better accommodations and service, thereby increasing the participation of our membership.

In regard to the activities of your Board of Directors, at its last meeting new and restated by laws were adopted which will streamline and ratify the manner in which the Board has operated. Under the guidance of Legislative Committee Chairman Herb Selby, the Association has continued its active pursuit of tort reform in the General Assembly this last year. Amongst the Association's activities were drafting legislation concerning pre judgment interest, punitive damages, collateral source payments, and abolition of joint and several liability. Because of the serious economic problems facing the State, the Iowa Legislature did not place a high priority on the continuing reform of the tort system. Hopefully, the next general assembly will be more inclined to take up these issues.

In the meantime in its continuing efforts to serve its members, the Association is looking into new areas of activity such as the formation of a library of depositions of commonly used plaintiff's experts in Iowa for the use of our membership. But more about this later.

See you all at the annual meeting!

Very truly yours,
THOMAS D. HANSON

Kevin Kelly, the Iowa Defense Counsel lobbyist, has submitted the following report on the status of his lobbying efforts in the Iowa Legislature during this past session:

The Legislature in 1988 did, in essence, nothing. They passed a whole lot of unimportant bills containing little substance or of little importance to the general public, to lawyers in particular, but especially, to the interests of the Defense Bar. In fact, not one piece of legislation relating or even affiliated with the tort system was passed, or for that matter even debated, in the 1988 session. This is the result in part of the 1987 agreement between the Plaintiffs' Bar and the insurance companies wherein part of the agreement was that if they would pass that package in 1987, nothing concerning tort reform or modifications of the tort law would be considered in the 1988 session. Therefore, the agreement of 1987 effectively precluded any opportunity for changes this year. The closest opportunity we had to pass a piece of legislation was the proposal dealing with the extension of a Statute of Limitations.

When the 1984 comparative fault legislation was passed, part of it extended the Statute of Limitations and we had, as one of our priority items, an effort to trim that back to a more realistic limitation. During the course of the debate on the malpractice bill, there was still a substantial concern about whether or not caps would be established on malpractice judgments. It has been the position of the

Iowa Defense Counsel Association to oppose caps.

Having established the lack of any action by the Legislature in any area of interest to the Defense Bar, I would point out that there were a few very minor pieces of legislation which would even mildly interest you as a lawyer, all of which illustrate how little the Legislature did this year. One of the bills, for instance, Senate File 2063, just added to the jurisdiction of the Magistrates by including the authority to cover county and municipal infractions--a real biggy. Other than that, a matter of enforcement of protective orders relating to homestead in dissolution cases, making some changes in the probate law relating to inheritance, and the surviving spouse's election to take against the Will, and finally, a big bill relating to the notice to be given to a judgment debtor when the debtor's property is to be levied on. I suspect that these bills best illustrate the accomplishments of the 72nd Iowa General Assembly's second session.

Last year's agenda items were the punitive damages, the collateral source, rule modification, pre-judgment interest, the Work Comp interface, the final abolition of joint and several liability, and the modifications of the Statute of Limitations bill.

In an examination of those items scheduled for debate or discussion in interim study committee, there are no study committees that have any interest to the Defense Bar and, in fact, probably little interest to the General Bar of the State of Iowa.

EDITOR'S NOTE: Your editor intended to publish Vol. 1 No. 2 long ago, but due to numerous difficulties, the edition is just now being published. In preparation for Vol. 1 No. 2, your editor asked last year's President to submit an article suitable for publication as a message from the President. The article submitted by Mr. Phipps was on the aspect of winning.

WINNING

"Say, I hear you lost another big one!" That statement has to be one of the defense lawyer's most dreaded greetings. The speaker may be attempting professional courtesy or even personal comfort. Experienced lawyers are supposed to be able to joke about their losses, right?

The interesting thing about those types of discussions, however, is that the "loss" under consideration may well represent some of your finest work as a defense lawyer. You may be justifiably proud of the way in which the case was tried, and of your own performance. Still, by popular definition, any case that ends in a Plaintiff's verdict is considered a "loss" for the defense attorney.

It may be unrealistic to expect that the public in general will ever understand that sometimes a reasonable verdict for the Plaintiff is actually evidence of very fine work on behalf of the defense counsel. Somehow, the phrase "We only have to pay \$500,000.", does not inspire universal enthusiasm or excitement. Still such a statement may be a legitimate declaration of victory.

These observations point out simply that the profession in which we are engaged is a very complex pursuit. Probably no one other than the persons actually involved in a lawsuit could even come close to evaluating a lawyer's performance -- so, as a practical matter, no one other than the lawyer would really know whether they had "won" or "lost" in an objective sense.

Notwithstanding the elusive nature of the task, it seems that it would be helpful, at least within the profession, to recognize the legitimate accomplishments of other counsel--even in the face of verdicts for opposing parties. To that end, I would like to suggest a new and more realistic professional definition of "winning" in the litigation context. To me, the lawyer "wins" when the client is given enough accurate information and sound evaluation to make an informed decision regarding the handling

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REPORT OF BOARD MEETING

WINNING *cont.;*

and/or resolution of the case. A lawyer "wins" when the jurors were able to actually understand the facts of the occurrence. The lawyer "wins" when a shy or reticent witness is helped to be able to "tell their story" in a confident, convincing way. The lawyer "wins" when the people involved are helped to overcome their fear of the legal system enough to be able to invoke its powers to their own protection. The lawyer "wins" when all the relevant and reliable facts concerning an event have been discovered, tested, and presented in an effective way. The lawyer "wins" when the "story" of the case takes on life and becomes more than a collection of facts or assertions. The lawyer "wins" when he or she practices his or her profession as a craft in an art form. In short, the lawyer "wins" when justice is accomplished.

My sincere congratulations to all our "winners" this year!

The summer Board Meeting of the Iowa Defense Counsel was held in Des Moines on Saturday, July 30, with President Hanson presiding. Reports were received from the Legislative Committee, the Membership Committee and new By-Laws were extensively discussed and adopted by the Board. New members approved at the July 30 Board of Directors Meeting included the following:

Eleanor M. Dilkes
Simmons, Perrine, Albright &
Ellwood
1200 MNB Building
Cedar Rapids, IA 52401

Larry G. Gutz
Moyer & Bergman
2720 First Avenue NE
Cedar Rapids, IA 5240

Steven M. Augspurger
Bradshaw, Fowler, Proctor &
Fairgrave
1100 Des Moines Building
Des Moines, IA 50309-2464

Eric M. Michaels
Grinnell Mutual Reinsurance Co.
I-80 and Highway 146
Grinnell, IA 50112

Jeffrey A. Sar
Baron, Sar, Wenell, Lohr & Jarman
750 Pierce Street
Sioux City, IA 51102

Gerald J. Newbrough
Nymaster, Goode, McLaughlin,
Emery & O'Brien, P.C.
1900 Hub Tower
Des Moines, IA 50309

NOTE FROM THE EDITOR:

We were originally planning to issue the DEFENSE UPDATE on a quarterly basis. It has been over a year since our first edition. We now have the process computerized which will make future editions easier. The plan is to have a DEFENSE UPDATE following the regular Board Meetings of Iowa Defense Counsel so as to keep all of you fully informed as to our activities. Your patience is appreciated.

JOHN B. GRIER