



Dedicated to improving our civil justice system



IOWA DEFENSE COUNSEL ASSOCIATION

DEFENSE UPDATE

SUMMER 2021 VOL. XXIII, No. 3

Find us on Facebook, Twitter & LinkedIn

Join Frank Ramos at the IDCA Meeting on September 16 for his session, *The Future of the Practice: How to Lead, Train and Mentor Post-COVID*. As the legal community continues to return to the office and courtroom, Mr. Ramos will identify ways to adjust to the new landscape and continue to lead your law firm, or stand out from the others:

50 Post-COVID Business Development Tips to Remain Engaged in Your Law Practice:



Frank Ramos

1. Purchase personal stationary and write two handwritten letters to prospective referral sources or clients each week.
2. Schedule at least one coffee meeting before office hours once a week.
3. Update your firm and social media photo and your website and LinkedIn profiles.
4. Decide upon one to three topics you want to post about on social media, and try to post on one of those topics daily.
5. Repurpose content from articles and PowerPoints you've done and break them down to bite sized portions for social media. One slide deck may have enough content for a month's worth of daily LinkedIn posts.

Continued on page 3

EDITORS

Susan M. Hess, Hammer Law Firm, P.L.C., Dubuque, IA;
 Joshua Strief, Elverson Vasey & Abbott, LLP, Des Moines, IA
 William H. Larson, The Klass Law Firm, LLP, Sioux City, IA;
 Benjamin J. Patterson, Lane & Waterman LLP, Davenport, IA;
 Thomas B. Read, Elderkin & Pirnie PLC, Cedar Rapids, IA;
 Kevin M. Reynolds, Whitfield & Eddy, P.L.C., Des Moines, IA;
 Brent Ruther, Aspelmeier, Fisch, Power, Engberg & Helling, P.L.C.
 David Charles Waterman, Lane & Waterman LLP, Davenport, IA

WHAT'S INSIDE

50 Post-COVID business development tips to remain engaged in your law practice:..... 1

IDCA President's Letter 2

Your License and Registration Please: Multi-Jurisdictional Law Practice and Questioning Your Right to Cross State Lines..... 4

Case Law Update..... 7

New Lawyer Profile..... 9

IDCA President's Letter



Steve Doohen
IDCA President

Hello IDCA Members:

Thank you all for the privilege of allowing me to serve as your organization's President this past year. While it is hard for me to believe, this will be my last President's letter for the ***Defense Update***. What a pleasure it has been to play a small role in leading the IDCA, especially during such challenging times. Candidly, the job of President was made easy, given the hard work and dedication of our Board and all of our members. Never did any call for volunteers, or some help with a project or committee, go unanswered.

I take both comfort and pride in knowing that our organization is in the hands of great leadership. Heather Tamminga and her team at Amplify Association Management keep us on task and running smoothly. Susan Hess has been hard at work planning for her Presidency and will kick off her leadership role with a top-notch program for our Annual Meeting. The Executive Committee and full Board of Directors meet with regularity to discuss a wide range of issues that are in the best interest of the organization. I know from having been a part of these discussions that our long-term health and vitality as an organization is always of paramount concern.

The Annual Meeting is once again a live event. I hope to see you all at the Embassy Suites in downtown Des Moines on September 16–17, 2021. If you want to rub elbows with the members of our bench, you should definitely plan on attending because the program will feature a great number of Iowa judges as speakers and panelists. The other speakers will be timely and informative as well. Please plan on attending.

In closing, I would encourage everyone to stay engaged and active with their membership. This can mean several things.

Attend the annual meeting and make it a point to say hello and introduce yourself to a new member.

Participate in the panel discussions so the discussions are topical and lively.

Make it a point to personally thank our Annual Meeting sponsors, without whom the Annual Meeting would not be possible.

Mentor the young attorneys in your office or community by telling them about the IDCA and encouraging their membership.

Join a committee to help steer the organization into a bright future.

Participate in our Community Forum and contribute to the Verdict and Settlement Databases. What a great resource this has already become. If you are not familiar, log on to the website and take it for a test drive. You will be glad you did.

I hope that you remain well, both personally and professionally. Please keep in touch.

All my best,
Steve Doohen
2021 IDCA Pres

Continued from Page 1

6. Don't do everything. Choose one social media platform. Choose one or two organizations. Less is more.
7. Have an accountability partner to keep you on task.
8. Keep a journal to track your daily marketing activities.
9. Set goals for yourself and pursue them. A goal may be meeting a new person each week for coffee.
10. Pursue low-cost marketing efforts. Hand-written notes. Social media posts. Coffee at the local coffee house.
11. Your contacts are critical. Grow and deepen your business relationships.
12. When joining an organization, volunteer. Do the tasks no else wants.
13. Marketing is a daily activity. Do something every day that is marketing related.
14. Calendar all your marketing activities. If it's not on your calendar, you likely won't do it.
15. Develop a plan to stay top of mind of your contacts - newsletters, social media, press releases, etc.
16. When you meet someone, actively listen.
17. When networking, it's 80% listening, 20% talking.
18. Your best referral sources are satisfied clients. Their recommendations go a long way to secure new clients.
19. Have regular firm meetings to discuss individual marketing efforts.
20. Create and stick to a marketing budget.
21. Business development is based on relationships, not selling.
22. Customer service is key. Promptly return calls, texts, DMs and e-mails.
23. Connect your connections.
24. Before a conference, schedule coffees, lunches and dinners with attendees. Always secure the attendee list to do this.
25. Always ask yourself - what I'm about to do - is it something that would turn me off if it was being done to me? If so, don't do it.
26. Take rainmakers out for coffee and pick their brains.
27. Read books on business development.
28. Call colleagues and just check in on them.
29. Send thoughtful gifts - a favorite book, a favorite bag of coffee or box of tea bags, etc.
30. Remember others' names and their hobbies.
31. Keep up with the news.
32. Let others direct conversations. Make it about them.
33. Practice networking. I used to be a wallflower. Not anymore.
34. Join Toastmasters or take an improv class to develop your public speaking skills.
35. Beta test. Try different things to see what works for you.
36. Make your office a destination. I turned my office into a rum bar. Maybe get a fancy coffee machine. Or a pinball machine. Anything that will want others to come visit you in your space.
37. Make your business card stand out and have a virtual business card.
38. Be willing to do others favors and mentor others. Always be paying it forward.
39. Watch YouTube videos and CLE on marketing.
40. Take your time. Business development is a marathon, not a sprint.
41. Get published.
42. Self-publish an e-book.
43. Find where your prospective clients are and join organizations they belong to.
44. Be passionate. Don't do something you don't enjoy.
45. Recalibrate as necessary.
46. Be willing to reach into your pocket to market.
47. Always move forward.
48. The more you put into it, the more you will get out of it.
49. We all have a brand. Everything we do builds it or undermines it.
50. Don't do things you don't enjoy. I've never played golf to get work and I never will.

Join Todd Scott at the IDCA Annual Meeting on September 16 for his session, **Multi-Jurisdictional Practice and the Unauthorized Practice of Law**. Find out about the basics – and complexities – of ABA Model Rule 5.5 Unauthorized Practice of Law; Multi-jurisdictional Practice of Law. This program is for any lawyer who has ever handled client matters across state lines, or any firm that hires attorneys to work on behalf of their clients from other jurisdictions. The rules that regulate multi-jurisdictional practice and UPL are changing so catch up on what's new and steer clear of a multi-jurisdictional headache.

Your License and Registration Please: Multi-Jurisdictional Law Practice and Questioning Your Right to Cross State Lines

By Todd C. Scott



Todd C. Scott

All states generally have an assortment of professional rules and governmental statutes that establish the territorial boundaries around the unauthorized practice of law (UPL). Rules regulating attorney jurisdictional restrictions are complicated and they seem to change just a bit from state-to-state. But be assured, state UPL rules are always about who can practice law, where, when, and how.

The purpose of the prohibition against the unauthorized practice of law is to protect the general public from individuals and businesses whose qualifications have not met minimum standards to be considered competent and capable to render legal advice or services in a particular jurisdiction.

For individuals who have no legal training, a violation of the rules prohibiting the unauthorized practice of law is rare. Occasionally, there are notorious exceptions. Frank Abagnale, Jr. the imposter whose life story was the subject of the biography and movie titled, *Catch Me If You Can* starring Leonardo di Caprio, asserted that it was much easier to fake being an attorney than faking being a doctor or pilot, since most attorneys, "Act like fakers because they have to pretend that they know what they are doing in front of clients, even when they do not."

However, UPL rules are more typically about restricting the activities of persons already possessing a law license from another jurisdiction. Enforcing the rules that prohibit the unauthorized practice of law becomes much more complicated when the person who is potentially in violation is a trained attorney who has been licensed to practice law in another jurisdiction.

Attorneys have lots of reasons for practicing law in a state where they are not licensed. If a Minnesota attorney follows their spouse to a state where he or she is not licensed, but they are only serving clients exclusively from their home jurisdiction, that is not so bad, right? No harm, no foul?

How jurisdictions treat these matters varies widely. Some state jurisdictions take a very strict view on whether an attorney licensed in another state can handle any private client matters in their jurisdiction, while others are more accommodating. Adding to the confusion is that many states are reconsidering their rules prohibiting the unauthorized practice of law and whether additional exceptions to UPL prohibitions would better reflect a modern, mobile legal economy.

UNDERSTANDING THE BASICS OF THE RULES PROHIBITING THE UNAUTHORIZED PRACTICE OF LAW

To understand how states can vary in their interpretation of lawyers engaged in UPL, it is important to get a basic understanding of **ABA Model Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law**.

First, you should notice that the general rule addresses two basic concerns: lawyers practicing law in foreign jurisdictions, and lawyers from foreign jurisdictions practicing law in the local state. Using the ABA Model Rule 5.5 as an example, parts (a) and (b) identify these distinctions:

ABA MODEL RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:



- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

In the rule above, part (a) simply addresses the conduct of a local lawyer when he or she is in a foreign jurisdiction. It is basically saying that if the local lawyer violates the professional rules as an attorney in practice in another state, that attorney is also in violation of the rules in his or her local, licensed jurisdiction. Part (a) is necessary because licensing jurisdictions rely on other states to enforce the conduct of lawyers, even when they violate the rules in the foreign jurisdiction that has no authority over the attorney in question.

Think of Part (b) as the protectionist clause in the rule. It is designed to regulate the conduct of lawyers entering the local jurisdiction. It is Part (b) of the ABA Model Rule that can change significantly from jurisdiction to jurisdiction, as some states are more protective than others when allowing lawyers licensed in other jurisdictions to engage in the practice of law. For that reason, part (b) is broken down further into parts (b)(1) and (b)(2).

YOUR “SYSTEMATIC AND CONTINUING PRESENCE” IN A FOREIGN JURISDICTION MAY BE YOUR PROBLEM

ABA Model Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice Of Law part (b)(1) specifically refers to lawyers who are not admitted to practice in the jurisdiction yet they have, “establish[ed] an office or other systematic and continuous presence in this jurisdiction for the practice of law.”

Notice that Part (b)(1) is silent about what type of advice the lawyer is giving in the jurisdiction where the attorney is not licensed to practice. There are no distinctions regarding who the lawyer is representing when practicing law in the visiting jurisdiction. It simply refers to the practice of law, regardless of whether the clients reside in the lawyer’s home jurisdiction, or the jurisdiction in which they are temporarily visiting. A lawyer who is not licensed to practice in the jurisdiction, yet has a local office providing legal services is in violation of the rule – even if they are only giving legal advice over the phone to clients in the state where the attorney does hold an active license.

Like nearly all ethics rules, there are exceptions in ABA Model Rule 5.5 Unauthorized Practice of Law identified in parts (c) and (d) that are not shown above. The exceptions generally involve situations where the visiting lawyer’s services are reasonably

E·3M • Focused on Function •
MILLENNIUM

WORK THERAPY SERVICES

XRTS FCE

Functional Capacity Exams Backed by Science.

E3’s XRTS FCE utilizes statistical analysis of the variation within and between repeated measures and applies it to the physical performance data collected during testing. XRTS FCEs produce evidence-based data that can be used to make appropriate and defensible therapeutic, medical and legal decisions. The XRTS model has no reliance on opinion or subjective measures, moving cases forward to case closure.

Schedule FCE services across the state of Iowa:

515-254-1726

or

e3clinic@millenniumtherapy.com



FCE SERVICES AVAILABLE ALMOST ANYWHERE IN IOWA!

related to the lawyer's practice in their licensed jurisdiction and are not services for which the forum requires pro hac vice admission. For example, a visiting lawyer who is involved in a mediation or arbitration, or other type of alternative law situation, may lawfully practice law in the visiting jurisdiction if the matter is reasonably related to their practice in their home jurisdiction. In-house lawyers and lawyers in government practice may also enjoy similar exceptions.

The basics of Rule 5.5, it can be summarized as follows:

- A lawyer licensed to practice law in Jurisdiction A will likely be in violation of Jurisdiction A's ethics rules if they violate the rules in Jurisdiction B. [Rule 5.5(a)]
- If a lawyer from Jurisdiction A establishes an office to engage in the practice of law in Jurisdiction B, they will be in violating the rule on the unauthorized practice of law in Jurisdiction B. And, since they violated the rules in Jurisdiction B, they will be in violation of the rules in their home jurisdiction, Jurisdiction A (see the above.) [Rule 5.5(b)]
- If a lawyer from Jurisdiction A engages in a "systematic and continuing practice" of law in Jurisdiction B, they will be in violating the rule on the unauthorized practice of law in Jurisdiction B. And, since they violated the rules in Jurisdiction B, they will be in violation of the rules in their home jurisdiction, Jurisdiction A (see the above.) [Rule 5.5(b)]
- There are exceptions to these rules that involve specialized practice areas (federal matters), specialized proceedings (mediation, arbitration) and in-house counsel. Yet, there still needs to be a relationship between the work the lawyer is doing in the visiting jurisdiction and the work they generally do in their home jurisdiction.

THE TREND TO BROADEN 5.5 EXCEPTIONS AND HOW TO IDENTIFY CHANGES IN THE RULE

As lawyers are looking for ways to provide legal services to clients in multiple jurisdictions, and states are starting to recognize that clients may be better served if their options for legal services are broadened, many jurisdictions are examining their Rule 5.5 to decide whether the rule should have further exceptions. If change were to occur, out-of-state lawyers may begin to see more opportunities for practicing in a foreign jurisdiction so long as their practice is focused exclusively on the laws of the jurisdiction in which they are authorized to practice law.

A good example of the trend in action is the recent publication of ABA Formal Opinion 495 on Lawyers Working Remotely released by the ABA Standing Committee on Ethics and Professional Responsibility on December 16, 2020. Formal

Opinion 495 indicates that a lawyer does not have a "systematic" presence in a jurisdiction merely by their physical presence in that state. "The lawyer's physical presence in the local jurisdiction is incidental; it is not for the practice of law," the opinion reads.

Case Law Update

Austin McMahon



Austin McMahon

Morris v. Legends Fieldhouse Bar and Grill, LLC, 958 N.W.2d 817 (Iowa 2021)

WHY IT MATTERS: In determining whether a business owed a duty to an ejected intoxicated patron who refused a security guard's offer of a cab ride, chose to walk away, and was struck and killed by a drunk driver 30 minutes later, the Iowa Supreme Court declined to apply

the general duty found in Restatement (Third) of Torts § 7, and instead applied Restatement (Third) of Torts § 40 and held that the business owed no continuing duty to the ejected intoxicated patron once the patron left the premises.

SUMMARY: On August 22, 2015, Daulton Holly and Jordan Wills had been drinking since 5:00 PM. Holly lived in Tennessee and was in the Des Moines area for work and staying at a hotel. Around 11:00 PM, Holly and Wills took a cab to Beach Girls, a strip club approximately twelve minutes away from the hotel by car. Beach Girls is located in a remote, rural area of West Des Moines. Beach Girls does not serve alcohol, but allows patrons to bring their own beer to drink inside, and Holly and Wills purchased beer at a convenience store en route.

Throughout the night, Kraemer, a security guard working at Beach Girls, observed Holly repeatedly drop his wallet, knock drinks off tables, and even attempt to enter the female dancer's dressing room. Kraemer concluded Holly was intoxicated and escorted him outside. Wills joined them outside. Kraemer told Holly, "Sorry, bud. You've had too much to drink. I can't let you go back inside the club. You can't be drunk in the club. You're just having issues right now. I can't let you go back in." Kraemer then told Wills, "Here's the deal. He's intoxicated"-- "he's had a little too much. He just needs to go. You need to get him a cab. I don't know what you want to do, but he can't go back inside. You guys need to figure something out here."

Regarding his own obligations as a security guard, Kraemer testified that customers "consume alcohol, so it's actually my responsibility to make sure people get home safe, if possible.

But also, I can't detain people for no good reason, so if they want to leave, they can leave." While Kraemer said they always offer a cab, it is not his job to call a cab for a customer. Regardless, Kraemer offered a cab to Holly a couple times, which Holly refused. The Iowa Supreme Court also emphasized several times that neither Kraemer nor any other employee ordered Holly to leave the parking lot.

Wills didn't want to leave and argued with Holly. Holly started walking away, and Kraemer told Wills: "You need to try to get him a cab. It's not safe for him to be walking out around here with dark clothes on." Holly flipped off Wills as he walked away; Wills returned inside saying, "Well, he'll regret it tomorrow." Surveillance video shows Holly walking away from Beach Girls at 1:29 a.m.

At 2:11 a.m., a 911 caller reported a body lying face down on the pavement at the 6400 block of Raccoon River Drive, approximately half a mile from Beach Girls. Police identified the body as Holly. An autopsy showed that at the time of his death, Holly had marijuana metabolites in his blood stream and a blood alcohol concentration of 0.261. The vehicle that struck Holly had no front-end damage and the DNA and trace evidence were found only on the underside. Based on the physical evidence, Amanda Kilgore, a criminalist at the Iowa Division of Criminal Investigation, concluded that Holly was lying in the road when he was run over.

Jennifer Morris, Daulton Holly's mother, filed a petition alleging "[t]he negligent acts of the Beach Girls ... employees, staff, agents, and/or officers in ejecting Daulton Holly from its premises when he was clearly too intoxicated to drive or otherwise safely make it back to his hotel without assistance was a direct and proximate cause of the damages sustained by the decedent, Daulton Holly."

The Iowa Supreme Court framed the issue it confronted in this case by stating: "We must decide whether Beach Girls was entitled to summary judgment on grounds that its duty to Holly ended when he walked away from the premises after he was ejected from inside for intoxication and refused its offer of a cab ride. The parties agree that the business owed its patrons a duty of reasonable care for their safety while on its property. Did that duty of care end at its property line? What duty is owed after a business ejects a patron for intoxication? Is the business liable for an accident occurring over thirty minutes later nearly half a mile away?"

The Iowa Supreme Court began its analysis by articulating the oft-repeated rule of law that “[d]uty is a question of law for the court to decide.” The court declined to apply the general duty found in § 7, stating that:

The general duty of care in section 7 does not apply because Holly was killed by a third party off site; he wasn’t physically harmed by a Beach Girls employee. The relevant physical harm was inflicted by the drunk driver at another location. Rather, the applicable provision regarding a duty to protect against third-party harm is found in section 40, which provides that a business owes a duty of reasonable care to “those who are lawfully on the premises.” We applied section 40 in Hoyt, where the fight (third-party harm) occurred in the defendant’s own parking lot. “The duty imposed in [section 40] applies to dangers that arise within the confines of the relationship and does not extend to other risks.” The duty under section 40 is limited by place and time. The duty ends when the patron leaves the business.

In short, the court held that “[t]he Restatement (Third) does not support extending the business owner’s duty to protect patrons from third-party harm after they leave the property.” The court also noted that the principle(s) contained within § 40 is consistent with Iowa’s longstanding principle that “[l]iability generally follows control,” and here, “Beach Girls had no control over Holly after he left, and it had no control over [the drunk driver]. . .”

The court rejected the argument that “Beach Girls should have called the police to “arrest him ... or otherwise arrange a safe ride for him back to his hotel.” The court noted that “[c]ourts have long recognized that businesses have a right to eject intoxicated patrons,” and noted that “[o]ther courts have held that businesses owe no duty to call the police to protect a patron after he leaves the premises.”

Additionally, the court articulated public policy concerns with imposing liability on Beach Girls, stating “[a] contrary holding would impose potentially limitless liability on Iowa businesses, putting them in the untenable position to choose whether to forcibly detain intoxicated patrons and risk liability for false arrest or allowing intoxicated patrons to remain on site and risk liability for their on-site harm to themselves or others.”

On the other hand, the dissenting Justice Appel opined that Beach Girls owed a duty under § 7 “when it decided to remove him from the premises” as it was undisputed that “employees of the strip club engaged in affirmative conduct in ejecting [Holly] from the bar. And, as admitted by the employee, the action created a risk of physical harm to [Holly].” Consequently, Justice Appel concluded that there was no “need to resort to the second

step of the duty analysis and determine whether there is liability of omissions arising out of a special relationship under section 40. Here, the duty is based on section 7(a) type conduct.”

Notably, Justice Appel also remarked “Transparency is important. If the majority wishes to rule, as a matter of law, that strip clubs offering an alcohol-fueled sexualized venue provides such a socially important activity that it is entitled to an exemption from ordinary duty analysis, the majority should just come out and say it. Or, perhaps the majority thinks the sale of alcohol is akin to the sale of cutting edge pharmaceuticals that should be encouraged because of the social good that results from the activity. But if the public interest in cases involving the serving of alcohol to the point of intoxication is so pressing, the majority should so state and state why.”

Kindig v. Newman, No. 20-0028, 2021 WL 1904685 (Iowa Ct. App. 2021)

WHY IT MATTERS: In this case, the Iowa Court of Appeals noted that under Iowa Rule of Evidence 5.404(a)(2)(b)(i), a litigant asserting self-defense or justification may not prove the victim’s aggressive or violent character by specific conduct of the victim **unless** the conduct was previously known to the defendant.

SUMMARY: “A bachelor party devolved into discord and violence.”

In 2017, Colby Newman planned a bachelor party for his brother, Spencer Newman. Colby secured a party bus for the bachelor party for the bachelor group to travel on. Jacob Schroeder served as the group’s designated bus driver. The “partygoers” drank alcohol as they travelled from location to location to eat and drink, and all the partygoers, excluding Jacob, became intoxicated.

Later in the evening, the group disagreed where they should go next. Most agreed they should head home. Dustin Kindig wanted to go to a strip club. But Spencer, the bachelor, went to the front of the bus and told Dustin and Jacob that he just wanted to head home. From this point, the men’s retelling of the evening differs. Spencer and other partygoers recall Dustin pushing him and then hitting him on the eyebrow with a glass bottle. The two men then fought on the floor of the bus. Jacob then pulled the bus over. Dustin got off the bus. Another partygoer, Joshua (Josh) Burns, also got off the bus. Josh claims he went to ask why Dustin hit Spencer and then they “locked up” but “[n]othing ever happened.” The two “wrestl[ed] around standing up” until Colby separated them. Josh looked away, and then Dustin attacked him. Colby followed Dustin and tried to persuade him to get back on the bus. Those on the bus drove around looking for Dustin and Colby before eventually giving up and returning home.

Dustin recalls matters differently. Dustin recalls Spencer shoving him first and then hitting him in the face with a bottle. Then, after Dustin exited the bus and was bent over, Josh punched him in the face several times. And then, Dustin claims, Jacob drove away—abandoning Dustin—when Jacob heard police sirens.

Dustin initiated these proceedings. He alleged battery by Spencer; battery by Josh; battery and aiding and abetting battery by Colby; negligence by Jacob; and common carrier liability, negligence per se, negligence, and premises liability by Press Box. The district court granted summary judgment to Jacob and Press Box. Dustin moved to voluntarily dismiss his claims against Colby, which the court granted. The remaining claims of battery by Spencer and Josh were tried before a jury, with Spencer and Josh both asserting theories of self-defense. The jury returned a defense verdict.

On appeal, Dustin argued that the district court abused its discretion in admitting evidence of his prior bad acts, pointing to the testimony from Jacob, Spencer, Josh, and Colby discussing specific instances of violence involving Dustin, as well as their general knowledge of Dustin's history of violence.

The district court relied on Iowa Rules of Evidence 5.404 and 5.405 to admit evidence of Dustin's violence. Rule 5.404(a)(2)(b)(i) provides that in civil cases, "Evidence of an alleged victim's character for violence may be offered on the issue of self-defense by a party accused of assaultive conduct against the victim." The court noted that in order of Spencer and Josh to be able to introduce specific instances of violence to establish Dustin's character for violence, rule 5.405(b) required the character trait be an essential element of their self-defense claim. The court stated that the supreme court recently clarified the application of rule 5.405 by holding that a defendant asserting self-defense or justification may not prove the victim's aggressive or violent character by specific conduct of the victim unless the conduct was previously known to the defendant.

The court then looked to testimony identified by Dustin to determine if it contained evidence of specific conduct or acts that **were not known** to Spencer and Josh. The court ultimately rejected Dustin's argument that the district court erred in allowing the testimony relating to bad acts, including Spencer and Josh's testimony as to specific instances of prior bad acts consisting of violence.

For two of the witnesses, Jacob and Colby, the court upheld admissions of their **reputational** testimony. For Josh and Spencer, the court upheld admission of their specific instances testimony, stating that both Josh and Spencer testified to violent incidents (fights) that they both individually and personally observed.

New Lawyer Profile



Jennifer B. Chavez-Rivera

In every issue of Defense Update, we will highlight a new lawyer. This issue, we get to know Jennifer B. Chavez-Rivera, an Associate Attorney at Whitfield & Eddy P.L.C., in Des Moines, Iowa.

A first generation American, Jennifer was born in Kodiak, Alaska, and grew up in Des Moines, Iowa; however, her family's roots extend all the way to Cabañas, El Salvador. She graduated

from East High School in 2013, and received bachelor's degrees in both Political Science and Ethics and Public Policy from University of Iowa in 2017, before earning her law degree from Drake University Law School in May of 2020. Jennifer's practice consists of a mix of civil litigation, family law, and transactional law, including probate, tax, and real estate matters. Fluent in both English and Spanish, Jennifer provides bilingual legal services within the firm and to her clients. She is a member of Whitfield & Eddy's Diversity, Equity and Inclusion Committee and the Whitfield Women group. Jennifer also is a member of the Iowa State Bar Association, the Polk County Bar Association, the Iowa Defense Counsel Association, and the Blackstone Inn of Court.

During law school, Jennifer was a student attorney for the General Civil Practice Legal Clinic, interned for Judge Anita Shodeen at the U.S. Bankruptcy Court, Southern District of Iowa, served as Vice President of the Student Bar Association, was an Articles Editor for the Drake Law Review Editorial Board, and was a member of the Hispanic & Latino Law Student Association. She was also a part of the inaugural class of what is now known as Drake Law School's Cady Law Opportunity Fellow Program.

Jennifer likes to spend her free time with her family and friends, traveling, enjoying good cuisine, and attending festivals and live music events. Jennifer also volunteers for DREAM Iowa, a non-profit organization whose mission is to empower Iowa immigrants with knowledge, skill development, and opportunities for civic engagement.

Connect with Jennifer on LinkedIn (<https://www.linkedin.com/in/jennifer-b-chavez-rivera/>) or view her attorney biography (<https://www.whitfieldlaw.com/attorneys-jennifer-b-chavez-rivera>).

EVENT WEBSITE

www.iowadefensecounsel.org/AnnualMeeting2021

Sponsored by Grinnell Mutual Reinsurance Company

IDCA has an event website allows you to register for the event and access to the agenda, session handouts, information about our sponsors, notification of any last-minute changes, and the ability to see who is registered (you must be logged into your IDCA account for the attendee list).

HOW TO REGISTER

REGISTRATION IS ONLINE ONLY: www.iowadefensecounsel.org/AnnualMeeting2021

Members must sign in to receive the IDCA member rate.

If you are not a member, you need to create an account before you can register. We invite you to take advantage of IDCA's first time member promotion. Join now and receive complimentary dues until December 2022 and the member rate to attend the IDCA Annual Meeting. **This offer is for first-time members only.**

REGISTRATION INCLUDES

Full Registration includes sessions, meals, breaks, and networking events listed for Thursday and Friday in the published Schedule of Events. Thursday Only and Friday Only Registration includes all published activities for those days only.

Materials are provided only on the event website. An email will be sent to all registered attendees once session handouts are available.

REGISTRATION QUESTIONS

When you register, you are required to indicate if you are attending the Thursday Networking Lunch and Thursday Evening Receptions. While included in the Full and Thursday Only registration options, verifying your attendance allows IDCA to better plan.

You are provided an opportunity to indicate dietary restrictions and special requests during the registration process.

Finally, you will choose your seating comfort level. Red indicates 6 ft. seating preferred. Yellow indicates 3 ft. seating preferred. Green indicates historical seating. Choosing your comfort level allows IDCA to better plan.

REGISTRATION ACKNOWLEDGEMENTS

All attendees are required to acknowledge an **IDCA Waiver and Release of Liability for Communicable Disease, IDCA Personal Accountability Statement**, and **IDCA Code of Conduct Policy Against Discrimination and Harassment for Members and Event Attendees**. The policies are available in full on the event registration page.

REGISTRATION FEES

	Full Registration		Thursday Only		Friday Only	
	On/Before Sept. 1	After Sept. 1	On/Before Sept. 1	After Sept. 1	On/Before Sept. 1	After Sept. 1
Member	\$275	\$325	\$185	\$235	\$120	\$170
In Practice 4 Years or Less—Member	\$175	\$225	\$100	\$150	\$75	\$125
Non-Member*	\$475	\$525	\$285	\$335	\$240	\$290
In Practice 4 Year or Less—Non-Member*	\$275	\$325	\$200	\$250	\$150	\$200
Claims Professional**	\$100	\$150	\$100	\$150	\$100	\$150

* Take advantage of IDCA's new member promotion. Join now and receive complimentary dues until December 2022 and the member rate to the IDCA Annual Meeting. First-time members only.

** Claims Professionals Rate: Not receiving CLE

CANCELLATION/REFUND POLICY

If written cancellation is received by September 3, 2021, a full refund less a \$50 processing fee will be issued. No refunds for cancellations after September 3, 2021; no refunds for no-shows.

CLE

Approved for 11.5 State CLE Hours (includes 1.0 Ethics Hours and 1.0 Wellness Hours). Activity Number 365699. CLE hours are posted to your IDCA account following the meeting and available at www.iowadefensecounsel.org when you log-in with your user credentials.

AT-A-GLACE AGENDA**THURSDAY, SEPTEMBER 16, 2021**

7:00 a.m.–5:00 p.m.	Registration and Exhibits Open
7:45–8:00 a.m.	Welcome & Opening Remarks
8:00–9:00 a.m.	Multi-Jurisdictional Practice and the Unauthorized Practice of Law (1.0 Ethics Hours)
9:00–10:15 a.m.	The Future of the Practice: How to Lead, Train and Mentor Post-COVID
10:15–10:30 a.m.	What's New with DRI
10:30–10:45 a.m.	Networking Break
10:45–11:45 a.m.	Iowa Business Specialty Court Update and Best Practices for Remote Proceedings
11:45 a.m.–12:00 p.m.	Annual Business Meeting & Installation of the Board of Directors
12:00–1:00 p.m.	Networking Lunch
1:00–1:45 p.m.	Iowa Court of Appeals: Civil Law Updates and Trends
1:45–2:30 p.m.	Case Law Updates
2:30–2:45 p.m.	Networking Break
2:45–3:30 p.m.	Litigation in the Time of COVID: Our Experiences
3:30–4:30 p.m.	Evaluating Hail and Wind Damage
4:30–4:45 a.m.	Recent Legislative Action Effects on Practice
6:00–8:00 p.m.	Awards & Networking Reception at Principal Park, <i>Sponsored by Minnesota Lawyers Mutual Insurance Company</i>

FRIDAY, SEPTEMBER 17, 2021

6:00–6:45 a.m.	Fun Run and Walk
7:00 a.m.–1:15 p.m.	Registration and Exhibits Open
8:00–9:00 a.m.	Iowa Supreme Court: Civility in the Iowa Legal System (1.0 Ethics Hours)
9:00 - 10:30 a.m.	Stopping the Proliferation of Nuclear Verdicts
10:30–10:45 a.m.	Networking Break, <i>Sponsored by Skogen Engineering Group</i>
10:45–11:30 a.m.	Post House File 518: Recent Trends in Workers Compensation
11:30 a.m.–12:30 p.m.	Iowa State Bar Lawyers Assistance Program: Wellness (1.0 Wellness Hours)
12:30–1:15 p.m.	Moving Forward: Labor & Employment Trends and Predictions

THURSDAY, SEPTEMBER 16, 2021

8:00–9:00 a.m.

Multi-Jurisdictional Practice and the Unauthorized Practice of Law*Todd Scott, Minnesota Lawyers Mutual Insurance Company, Minneapolis, MN*

Do you spend a significant amount of time practicing law from a second home in another jurisdiction? Do you or any of your colleagues have clients in states where you are not licensed to practice law? Because of COVID-19 are you temporarily relocated to another jurisdiction while providing legal services for your clients in your home state?

Find out about the basics—and the complexities—of ABA Model Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law. This program is for any lawyer who has ever handled client matters across state lines, or any firm that hires attorneys to work on behalf of their clients from other jurisdictions. The rules that regulate multijurisdictional practice and UPL are changing so catch up on what's new and how to steer clear of a multijurisdictional headache.

9:00–10:15 a.m.

The Future of the Practice: How to Lead, Train and Mentor Post-COVID*Frank Ramos, Clarke Silvergate, Miami, FL*

As we move beyond the pandemic in our lives and law firms, a new paradigm has evolved on the future of communications, interactions and the practice. Frank Ramos will discuss how the practice has changed and how lawyers can equip themselves in this new landscape to lead their firms and practice groups, and how to train and mentor their teams to best handle this brave new work post-COVID.

10:15–10:30 a.m.

What's New with DRI*Rebecca Nickelson, Sinars, Slowikowski Tomaska, St. Louis, MO, DRI Mid-Region Representative**Kevin Reynolds, Whitfield & Eddy, PLC, Des Moines, IA, DRI State Representative*

Rebecca and Kevin will discuss and answer questions about what's new at DRI, the upcoming DRI annual meeting, review DRI member benefits, and share opportunities to serve on DRI substantive law committees.

10:45–11:45 a.m.

Iowa Business Specialty Court Update and Best Practices for Remote Proceedings*Judge Lawrence McLellan, District Court Judge, District 5C**Judge John Telleen, District Court Judge, District 7**Judge Sarah Crane, District Court Judge, District 5*

Have you considered utilizing the Iowa Business Court to litigate a business dispute? The panel of Business Court Judges will present an update on this Iowa Specialty Court, insight into the process, and best practices in cases before the Business Court.

1:00–1:45 p.m.

Iowa Court of Appeals: Civil Law Updates and Trends*Judge Sharon Greer, Iowa Court of Appeals**Judge David May, Iowa Court of Appeals**Judge Julie Schumacher, Iowa Court of Appeals*

A panel of Iowa Court of Appeals Judges will present a civil case law update along with a summary of their experiences during COVID and post-COVID. What practices that were adapted during COVID may be here to stay.



1:45–2:30 p.m.

Case Law Updates

Contract/Commercial Case Law

Austin McMahon, Swisher & Cohrt, P.L.C., Waterloo, IA

Employment and Civil Procedure

Crystal Pound, Simmons Perrine Moyer Bergman PLC, Cedar Rapids, IA

Tort Law and Negligence

Spencer Vasey, Elverson Vasey Law Firm, Des Moines, IA



An overview of recent Iowa appellate decisions addressing, impacting or affecting contract and commercial law, employment law and civil procedure, and tort law and negligence.

2:45–3:30 p.m.

Litigation in the Time of COVID: Our Experiences

Josh McIntyre, Lane & Waterman, LLP, Davenport, IA

Darin Harmon, Kintzinger Law Firm, Dubuque, IA



This presentation will present a range of perspectives on handling litigation matters during the pandemic to continue to progress cases through the court system. The panel will share experiences in litigating cases through jury trial, bench trial, arbitration and mediation. Through these experiences the panel will share ideas on how to continue to effectively administer justice in Iowa.

3:30–4:30 p.m.

Evaluating Hail and Wind Damage

Peter Vaccaro, Rimkus Consulting, Omaha, NE, and Des Moines, IA



This presentation participants with a working knowledge of the basic principles of wind and hail damage to residential and commercial roofing materials. Vaccaro will discuss site observation techniques and weather research to evaluate the presence and extent of wind and/or hail damage to a residential roof.

4:30–4:45 p.m.

Recent Legislative Action Effects on Practice

Brad Epperly, Nyemaster Goode, P.C., Des Moines, IA, IDCA Lobbyist



This session will address actions from the 2021 legislative session and what issues may be ahead in 2022.

FRIDAY, SEPTEMBER 17, 2021

8:00–9:00 a.m.

Iowa Supreme Court: Civility in the Iowa Legal System

Chief Justice Christensen, Iowa Supreme Court, Des Moines, IA;
Justice McDermott, Iowa Supreme Court, Des Moines, IA



Now more than ever, Iowa attorneys should focus on components of civility and professionalism as part of their ethical obligations. This panel will discuss their *Rhinehart* decision from January, 2021 and the importance of civility in our Iowa justice system.

9:00–10:30 a.m.

Stopping the Proliferation of Nuclear Verdicts

Dr. William Kanasky, Courtroom Sciences, Chicago, IL



The nuclear verdict continues to be the hottest topic of discussion in civil litigation for both the plaintiff and defense bars. There are several factors to blame, including: 1) juror psychosocial factors, 2) growing litigation funding for plaintiff attorneys, 3) slow development of young defense attorneys, 4) political influences, 5) growth of Reptile tactics, 6) distrust of corporations, and 7) generational factors. This program will outline the influence of these factors on nuclear verdicts and provide practical solutions to avoid nuclear fallout for defendants.

10:45–11:30 a.m.

Post House File 518: Recent Trends in Workers Compensation

Jean Dickson, Betty Neuman & McMahon, PLC, Davenport, IA



In the summer of 2017, Gov. Branstad signed and approved House File 518 on March 30, 2017. The Amended Act took effect on July 1, 2017. The legislation was comprehensive and included many substantive changes to workers' compensation law. Substantive changes included but were not limited to shifting the burden of proof in intoxication cases, defining shoulder injuries as scheduled member claims, limiting body as a whole injuries to functional impairment in certain circumstances and eliminating commutations unless both parties consented. It has now been four years since the legislation passed. This presentation will discuss the trends and caselaw which has developed since that time.

11:30 a.m.–12:30 p.m.

Iowa State Bar Lawyers Assistance Program: Wellness

Hugh Grady, Iowa Lawyers Assistance Program, Des Moines, IA



This presentation will address lawyer wellness, why it matters, and highlight the Iowa Lawyer's Assistance Program.

12:30–1:00 p.m.

Moving Forward: Labor & Employment Trends and Predictions

Katie Graham, Nyemaster Goode P.C., Des Moines, IA



This presentation will cover current labor and employment issues, trends and verdicts as well as the most frequently asked employment questions in our post-pandemic world.

HOTEL INFORMATION

Embassy Suites by Hilton Des Moines Downtown

101 East Locust Street
Des Moines, IA 50309

Group Room Block Ends on September 1, 2021

RESERVE ONLINE: www.iowadefensecounsel.org/AnnualMeeting2021 Click on the **Hotel** tab for the online registration portal.

RESERVE BY PHONE: 1-800-EMBASSY and ask for the IDCA Annual Meeting room rate.

ROOM RATES

\$169/night plus tax. Rate includes a two-room suite and complimentary breakfast. Parking is additional. A city-owned parking lot is available across the street. Valet parking is \$25/day.

HEALTH PRECAUTIONS

As IDCA prepares to meet in person, the health of attendees is the top priority. You can expect that IDCA will follow the Center for Disease Control's (CDC) most updated health protocols and will adhere to current regulations set forth by the City of Des Moines and the Embassy Suites. In turn, IDCA asks each attendee take personal responsibility to minimize the potential spread of communicable diseases at the event. This includes staying home if you develop a fever or have had exposure to any contagious illness, abiding by current CDC guidelines while attending the event, and contacting IDCA staff if you become ill during or within 14 days following the IDCA Annual Meeting & Seminar.

Due to the changing nature of the CDC guidelines, specific event protocols will be communicated closer to the event.

NETWORKING EVENTS

AWARDS & NETWORKING RECEPTION AT PRINCIPAL PARK

Sponsored by Minnesota Lawyers Mutual Insurance Company

Thursday, September 16

6:00–8:00 p.m.

Included in Full and Thursday Only Registration options

Celebrate this year's award recipients in a casual environment. Put on your I-Cubs fan gear and join us for food, drinks, awards, and networking at Principal Park. Rumor has it that Cubby Bear is making an appearance!

Transportation is on your own. Principal Park is 0.8 miles from the hotel and is a quick 12-minute walk by paved trail.

FUN RUN AND WALK

Friday, September 17

6:00–6:45 a.m.

Meet in the hotel lobby and join colleagues for an early morning out along the Principal Riverwalk. Pick up the trail at the hotel and run or walk the 1.5-mile Riverwalk loop. This is a great way to connect and energize before the day ahead.



IOWA
DEFENSE
COUNSEL
ASSOCIATION

1255 SW Prairie Trail Parkway
Ankeny, IA 50023

IDCA Annual Meetings

September 16–17, 2021

57TH ANNUAL MEETING & SEMINAR

September 16–17, 2021

Embassy Suites by Hilton, Des Moines Downtown

Des Moines, Iowa

Register online: www.iowadefensecounsel.org/AnnualMeeting2021

September 15–16, 2022

58TH ANNUAL MEETING & SEMINAR

September 15–16, 2022

Embassy Suites by Hilton, Des Moines Downtown

Des Moines, Iowa