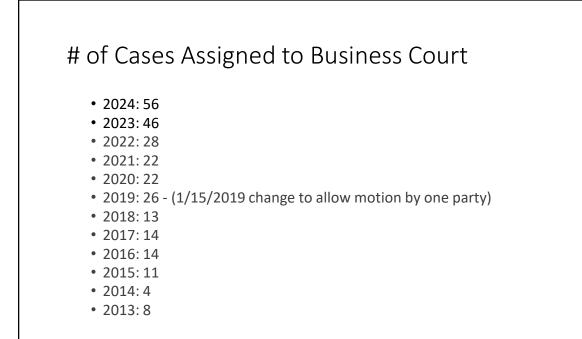
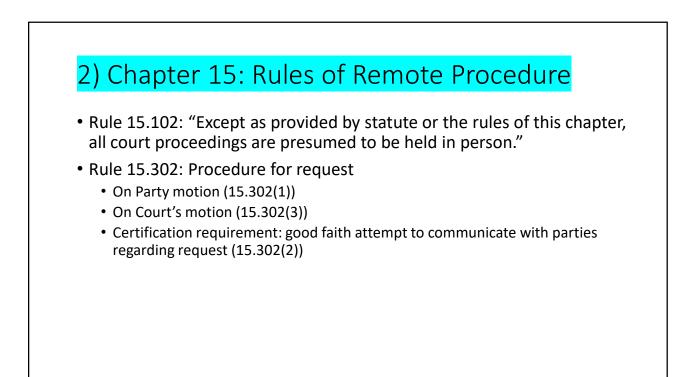
CIVIL PRACTICE AND PROCEDURE UPDATE

12/13/2024 Sarah Crane Polk County District Court

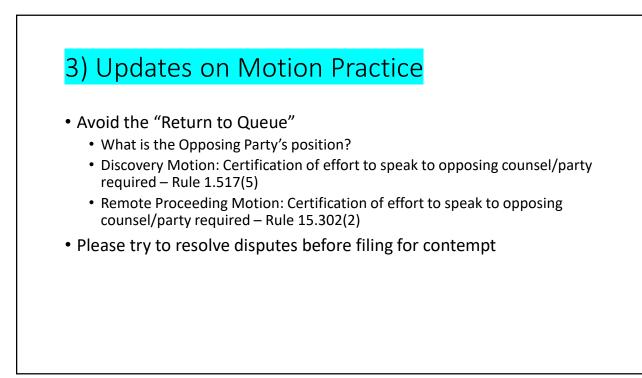
1) Business Court Update Nine judges appointed: Judge Rustin T. Davenport, Mason City, D2 Judge David P. Odekirk, Waterloo, D1 Judge Michael J. Schilling, Burlington, D8 Judge Jeffrey D. Bert, Bettendorf, D7 Judge Sarah E. Crane, Des Moines, D5C Judge Lawrence P. McLellan, Des Moines, D5C Judge David W. Nelmark, Des Moines, D5C Judge John D. Telleen, LeClaire, D7 Judge Sean McPartland, Cedar Rapids, D6





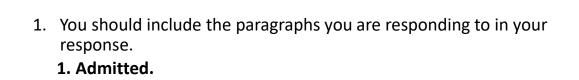
Chapter 15: Rules of Remote Procedure

- Rule 15.302(4): Factors to consider on case-by-case basis
 - Logistics: schedule, number and location of parties, length of proceeding
 - Participants: agreement or objection, prior abuse of method, interpreters
 - Nature: complexity, type of proceeding, public access
- Criminal: Rule 15.404 Specific proceedings <u>presumed</u> in person and others <u>presumed</u> remote
- Juvenile: Rule 15.503 Specific juvenile proceedings <u>favored</u> in person and others <u>favored</u> remote
- Family Law: Rule 15.602 In-person <u>favored</u> for contested or evidentiary family law proceedings



Motions to Seal Should be a motion to raise the security level and identify which level Level 0: Public Access Level 1: Case Parties Level 2: Self-Represented Parties, Attorneys, Government Agencies Level 3: Case Attorneys Level 4: County Attorneys Level 5: Authorized Court Personnel Level 8: Judges/Magistrates/Designated Personnel (expunged) Level 9: Judges/IT Support/Clerk of Court – (complete seal)

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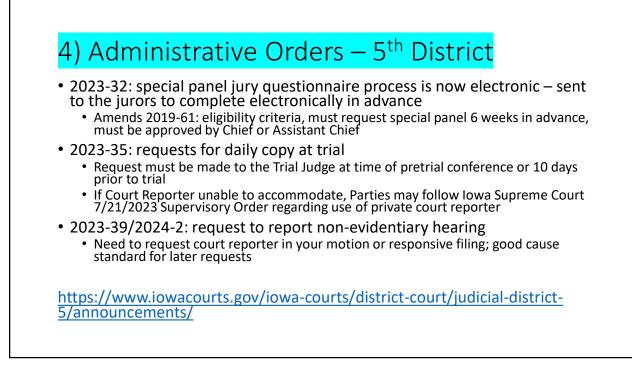


 This format is required for Interrogatory Responses pursuant to Rule 1.509(1)(d).

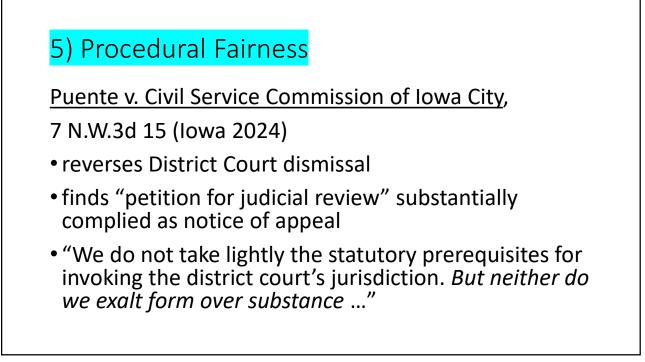
2. Admitted.

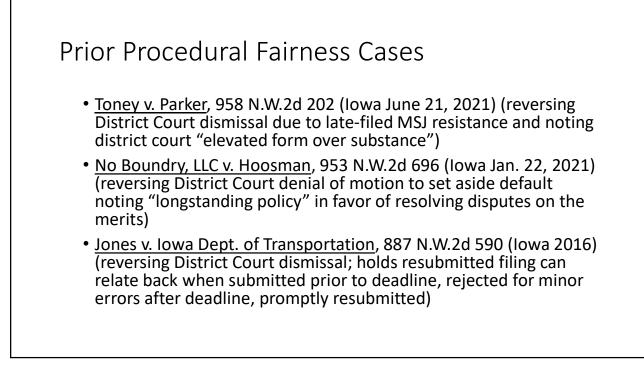
3. It is preferred that you follow this format for Answers and Responses to Summary Judgment Statements of Undisputed Fact.

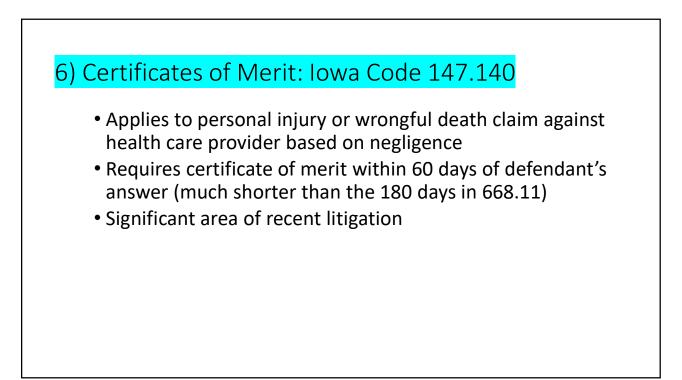
3. Admitted.

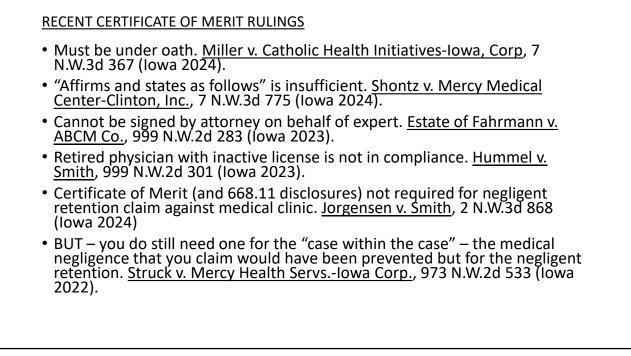






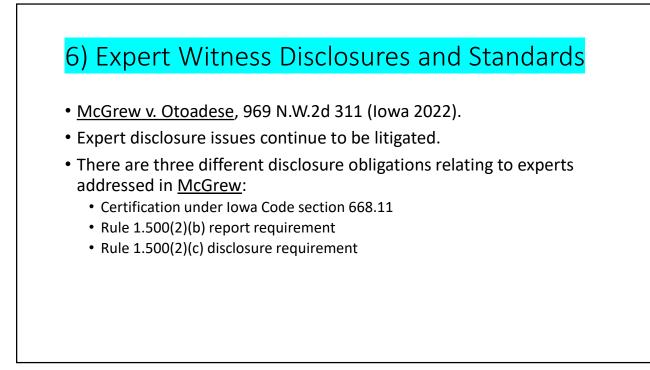






RECENT CERTIFICATE OF MERIT RULINGS

- Failure to comply cannot be cured. <u>Miller</u>, 7 N.W.3d at 377.
- Deadline can be extended for good cause or by agreed extension. Iowa Code §147.140(4).
- Plaintiff can dismiss voluntarily without prejudice and refile. <u>Ronnfeldt v. Shelby Cnty. Chris A. Myrtue Mem'l Hosp.</u>, 984 N.W.2d 418 (Iowa 2023).
- Defense can waive basis for dismissal through litigation conduct.
 <u>S.K. v. Obstetric & Gynecologic Associates of Iowa City and</u> <u>Coralville</u>, 2024 WL 4714425 (Iowa 2024).



<u>McGrew v. Otoadese</u>, 969 N.W.2d 311 (Iowa 2022)

- Iowa Code section 668.11: Requires disclosure of expert opinion within 180 days of Defendant's Answer in Professional Liability cases.
- The relevant distinction is <u>the basis of the opinion when the expert's</u> <u>opinion formed</u>: Was the opinion formed during treatment or formed as part of litigation?
 - Distinction is NOT simply whether the expert is a treating provider or retained expert.
 - Treating provider could form additional opinions as part of litigation those are going to require disclosure.
 - Distinction is NOT simply the subject matter of the opinion (ie. causation)
 - Causation opinion can be formed during treatment or as part of litigation when it is formed matters.

<u>McGrew v. Otoadese</u>, 969 N.W.2d 311 (Iowa 2022)

- Iowa R. of Civ. Pro. 1.500(2)(a): requires disclosure of <u>identity</u> of <u>any</u> expert, regardless of whether retained for litigation, when the opinion was formed, the basis for opinion, or the subject matter.
- Includes treating providers and retained experts
- Consider whether any fact witnesses also formed expert opinions as part of their role in the case
 - Professional service providers?
 - Construction related quotes to correct damage?
 - Law enforcement?
 - Land surveyor?

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McGrew v. Otoadese, 969 N.W.2d 311 (lowa 2022) Rule 1.500(2)(b): requires signed report <u>only</u> from retained experts Distinction is the <u>STATUS</u> of the expert – not the basis of the opinion If an expert is retained for litigation, they must provide a report Does not apply to treating providers, even if they form additional opinions as part of litigation

McGrew v. Otoadese, 969 N.W.2d 311 (Iowa 2022)

- Rule 1.500(2)(c): requires disclosure of subject matter, summary facts and opinions for <u>any</u> expert
 - This Rule applies to <u>all</u> experts, including treating physicians and including opinions formed during treatment or as part of litigation
 - "flexible construction," "should not be interpreted too restrictively"
 - "mere list of topics or subject areas" is insufficient
 - McGrew reversed redaction of medical records records had been disclosed
- <u>Putman v. Walther</u>, 973 N.W.2d 857, 866 (Iowa 2022) (identification of construction company in response to expert interrogatory and production of the company's inspection letter, photos, and bid constituted sufficient disclosure).

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TIMELINE REMINDER FOR EXPERTS

- 1) 60 days after Answer §147.140 Certificate of Merit
- 2) 180 days after Answer §668.11 Disclosure
- 3) Trial Scheduling Order (or 90 days before trial) Rule 1.500 disclosures
- 4) 30 days before Trial 1.508(3) duty to supplement

Rule 1.508(4): Testimony at trial limited to fair scope of disclosures/deposition/report/supplement

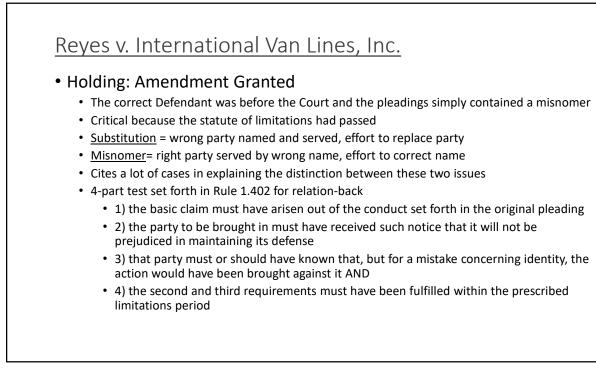
7) Misnomer or Wrong Defendant?

• Reyes v. International Van Lines, Inc., 9 N.W.3d 793 (Iowa Ct. App. 2024)

• Facts:

- Plaintiff David Reyes injured after Driver fell asleep and crashed while driving van for work.
- Attempting to sue employers
- Plaintiff sued Joshua Shawn, Inc. d/b/a International Van Lines
 - This entity was formed after the accident
- Correct entity was International Van Lines, Inc.
- Entities shared a registered agent, registered agent was served for Joshua Shawn, Inc. d/b/a International Van Lines
- After the statute of limitations ran, Plaintiff moved to correct misnomer





8) Nuisance Does Not Require Negligence

• Vagts v. Northern Natural Gas Co., 8 N.W.3d 501 (Iowa 2024)

Facts:

- Dairy farm with natural gas pipeline running under property
- Pipeline uses an electrical current to prevent corrosion (required by federal regulation)
- Cows began to display bizarre behavior, milk production and quality decreased, cows died at an abnormally high rate of 17% instead of 5%, testimony included the difficulty of having to put down otherwise health cows
- Testing by hired expert, local electrical coop, and Defendant showed stray voltage.
- · Holding: Proof of negligence is not an element in a nuisance claim
 - "Nuisance is whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as to unreasonably interfere with the comfortable enjoyment of life or property."
 - District Court's instructions were a correct statement of the law not required to add negligence

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9) Immunity Updates

- <u>Randolph v. Aidan, LLC</u>, 6 N.W.3d 304 (Iowa 2024)
 - Iowa Code § 670.4(1)(j) immunity within Iowa Municipal Tort Claims Act for claim "based upon" act or omission in inspection applied to negligent hiring claim due to "case within the case."

Thank You!