

# CIVIL PRACTICE AND PROCEDURE UPDATE

12/13/2024

Sarah Crane

Polk County District Court

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## 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

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## # of Cases Assigned to Business Court

- 2024: 56
- 2023: 46
- 2022: 28
- 2021: 22
- 2020: 22
- 2019: 26 - (1/15/2019 change to allow motion by one party)
- 2018: 13
- 2017: 14
- 2016: 14
- 2015: 11
- 2014: 4
- 2013: 8

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## 2) Chapter 15: Rules of Remote Procedure

- Rule 15.102: “Except as provided by statute or the rules of this chapter, all court proceedings are presumed to be held in person.”
- Rule 15.302: Procedure for request
  - On Party motion (15.302(1))
  - On Court’s motion (15.302(3))
  - Certification requirement: good faith attempt to communicate with parties regarding request (15.302(2))

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## 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 presumed in person and others presumed remote
- Juvenile: Rule 15.503 - Specific juvenile proceedings avored in person and others avored remote
- Family Law: Rule 15.602 - In-person avored for contested or evidentiary family law proceedings

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### 3) Updates on Motion Practice

- Avoid the “Return to Queue”
  - What is the Opposing Party’s position?
  - Discovery Motion: Certification of effort to speak to opposing counsel/party required – Rule 1.517(5)
  - Remote Proceeding Motion: Certification of effort to speak to opposing counsel/party required – Rule 15.302(2)
- Please try to resolve disputes before filing for contempt

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## 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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1. You should include the paragraphs you are responding to in your response.  
**1. Admitted.**
2. 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.**

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## 4) Administrative Orders – 5<sup>th</sup> District

- 2023-32: special panel jury questionnaire process is now electronic – sent to the jurors to complete electronically in advance
  - Amends 2019-61: eligibility criteria, must request special panel 6 weeks in advance, must be approved by Chief or Assistant Chief
- 2023-35: requests for daily copy at trial
  - Request must be made to the Trial Judge at time of pretrial conference or 10 days prior to trial
  - If Court Reporter unable to accommodate, Parties may follow Iowa Supreme Court 7/21/2023 Supervisory Order regarding use of private court reporter
- 2023-39/2024-2: request to report non-evidentiary hearing
  - Need to request court reporter in your motion or responsive filing; good cause standard for later requests

<https://www.iowacourts.gov/iowa-courts/district-court/judicial-district-5/announcements/>

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## 5) Procedural Fairness

Puente v. Civil Service Commission of Iowa City,  
7 N.W.3d 15 (Iowa 2024)

- reverses District Court dismissal
- finds “petition for judicial review” substantially complied as notice of appeal
- “We do not take lightly the statutory prerequisites for invoking the district court’s jurisdiction. *But neither do we exalt form over substance ...*”

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## Prior Procedural Fairness Cases

- Toney v. Parker, 958 N.W.2d 202 (Iowa June 21, 2021) (reversing District Court dismissal due to late-filed MSJ resistance and noting district court “elevated form over substance”)
- No Boundry, LLC v. Hoosman, 953 N.W.2d 696 (Iowa Jan. 22, 2021) (reversing District Court denial of motion to set aside default noting “longstanding policy” in favor of resolving disputes on the merits)
- Jones v. Iowa Dept. of Transportation, 887 N.W.2d 590 (Iowa 2016) (reversing District Court dismissal; holds resubmitted filing can relate back when submitted prior to deadline, rejected for minor errors after deadline, promptly resubmitted)

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## 6) Certificates of Merit: Iowa Code 147.140

- Applies to personal injury or wrongful death claim against health care provider based on negligence
- Requires certificate of merit within 60 days of defendant’s answer (much shorter than the 180 days in 668.11)
- Significant area of recent litigation

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#### RECENT CERTIFICATE OF MERIT RULINGS

- Must be under oath. Miller v. Catholic Health Initiatives-Iowa, Corp, 7 N.W.3d 367 (Iowa 2024).
- “Affirms and states as follows” is insufficient. Shontz v. Mercy Medical Center-Clinton, Inc., 7 N.W.3d 775 (Iowa 2024).
- Cannot be signed by attorney on behalf of expert. Estate of Fahrman v. ABCM Co., 999 N.W.2d 283 (Iowa 2023).
- Retired physician with inactive license is not in compliance. Hummel v. Smith, 999 N.W.2d 301 (Iowa 2023).
- Certificate of Merit (and 668.11 disclosures) not required for negligent retention claim against medical clinic. Jorgensen v. Smith, 2 N.W.3d 868 (Iowa 2024)
- BUT – you do still need one for the “case within the case” – the medical negligence that you claim would have been prevented but for the negligent retention. Struck v. Mercy Health Servs.-Iowa Corp., 973 N.W.2d 533 (Iowa 2022).

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#### RECENT CERTIFICATE OF MERIT RULINGS

- Failure to comply cannot be cured. Miller, 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. Ronnfeldt v. Shelby Cnty. Chris A. Myrtue Mem’l Hosp., 984 N.W.2d 418 (Iowa 2023).
- Defense can waive basis for dismissal through litigation conduct. S.K. v. Obstetric & Gynecologic Associates of Iowa City and Coralville, 2024 WL 4714425 (Iowa 2024).

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## 6) Expert Witness Disclosures and Standards

- McGrew v. Otoadese, 969 N.W.2d 311 (Iowa 2022).
- Expert disclosure issues continue to be litigated.
- There are three different disclosure obligations relating to experts addressed in McGrew:
  - Certification under Iowa Code section 668.11
  - Rule 1.500(2)(b) report requirement
  - Rule 1.500(2)(c) disclosure requirement

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### McGrew v. Otoadese, 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 the basis of the opinion - when the expert's opinion formed: 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.

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

- Iowa R. of Civ. Pro. 1.500(2)(a): requires disclosure of identity of any 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 (Iowa 2022)

- Rule 1.500(2)(b): requires signed report only from retained experts
  - Distinction is the STATUS 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

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## 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 any expert
  - This Rule applies to all 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
- Putman v. Walther, 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

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## 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

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## Reyes v. International Van Lines, Inc.

- **Holding: Amendment Granted**
  - The correct Defendant was before the Court and the pleadings simply contained a misnomer
  - Critical because the statute of limitations had passed
  - Substitution = wrong party named and served, effort to replace party
  - Misnomer= right party served by wrong name, effort to correct name
  - Cites a lot of cases in explaining the distinction between these two issues
  - 4-part test set forth in Rule 1.402 for relation-back
    - 1) the basic claim must have arisen out of the conduct set forth in the original pleading
    - 2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense
    - 3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it AND
    - 4) the second and third requirements must have been fulfilled within the prescribed limitations period

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## 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 healthy 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

- Randolph v. Aidan, LLC, 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.”

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Thank You!