

Iowa Expanded Media Coverage Handbook

Iowa Freedom of Information Council

Iowa Freedom of Information Council

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History of Expanded Media Coverage of Iowa Courts

May 8, 1979: Chief Justice W. Ward Reynoldson appointed a committee to study whether cameras should be allowed in Iowa courtrooms to enhance public awareness and understanding of the judicial process. Justice J.L. Larson was the committee chair.

November 21, 1979: Upon recommendation of the committee, the Iowa Supreme Court agreed to suspend the ban against cameras in the courtroom for a one-year experiment to begin January 1, 1980.

January 14, 1980: The first trial to be covered under Expanded Media Coverage (EMC) began in Waterloo, Black Hawk County. Michael Earl Moses was convicted of first degree murder. Grant Price, news director of KWWL-TV, Waterloo, was the media coordinator for the trial coverage.

December 12, 1980: The Supreme Court extended the EMC experiment for one more year.

December 22, 1981: Upon recommendation of the EMC committee, the Supreme Court agreed to “permanent” revision of Canon 3B to allow expanded media coverage in Iowa courtrooms. (The EMC rules are now Iowa Court Rules, Chapter 25.)

The Council was designated by the Iowa Supreme Court as the coordinator for the EMC, notifying the judges and attorneys involved when EMC is requested.

Bicentennial of the Bill of Rights

The bicentennial of the Bill of Rights in the federal Constitution was commemorated by the reprinting of the text of the First Amendment on the back cover of the third edition of the Expanded Media Coverage handbook. Reprinted below are other pertinent Amendments: the Fourth, Fifth, Sixth and Eighth.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the Assistance of Counsel for his defense.

Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

INTRODUCTORY NOTE BY CHIEF JUSTICE MARSHA K. TERNUS

Court proceedings in Iowa are, as a general proposition, open to the public. Such openness is a hallmark of our nation's justice system. Although it is true that anyone can attend a court hearing and learn about the court system first-hand, few individuals have the time or inclination to do so. Instead, most people rely on the media to keep them informed of the work of the courts. Therefore, it is imperative that courts collaborate with the media to enable coverage of court proceedings to the fullest extent possible without impinging on the rights of litigants to a fair trial.

Since the adoption of court rules for expanded media coverage in 1979, Iowa's courts have been open to audio and visual media coverage. Under our rules, the Iowa Freedom of Information Council plays a key role in coordinating expanded media coverage. Inside this edition of the Expanded Media Coverage handbook, you will find the Iowa FOI Council and judicial branch rules governing the use of cameras and other recording devices in Iowa courtrooms. Thanks to the careful oversight of the Council and the high standards of professionalism of Iowa's media, Iowa's court proceedings are highly visible outside the courthouse walls.

On behalf of the Iowa Judicial Branch, I applaud the Council for its continuing efforts to coordinate expanded media coverage of the courts, and I commend the members of Iowa's news media for their cooperation and their interest in the work of the courts.

Iowa FOI Council Guidelines

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| 1. INFORMATION REQUIRED FOR REQUESTS | 5. REGIONAL MEDIA COORDINATORS |
| 2. TIME AND MANNER OF MAKING REQUESTS | 6. MEDIA DISPUTES |
| 3. FILING COURT APPLICATIONS | 7. CONTACTS WITH COURTS |
| 4. OBJECTIONS TO COVERAGE APPLICATIONS | |

Here are guidelines the Iowa Freedom of Information Council will follow with regard to Canon 3A(7), since the Council is designated by the Iowa Supreme Court to help administer EMC. These guidelines are not intended for use by the courts; rather, they constitute operational guidelines of the Iowa FOI Council.

1. INFORMATION REQUIRED FOR REQUESTS

The news organization seeking expanded media coverage shall obtain all information about the proceeding it wishes to cover with news cameras or microphones, including the official case name and docket number and the names of the presiding judge, the clerk of court, the court administrator and the attorneys of record. If a party is not represented by counsel, that party's name, address and telephone number also shall be included.

2. TIME AND MANNER OF MAKING REQUESTS

When the proceeding to be covered is scheduled sufficiently in advance, the requesting news organization shall give its regional coordinator or the FOI Council's central office not less than eighteen (18) days' advance notice of its request for expanded media coverage. This notice to the central office may be by telephone or mail to Iowa Freedom of Information Council, 114 Meredith Hall, Drake University, Des Moines, IA 50311, (515) 271-2295, but in either case, all information listed in item 1 must be provided. Since applications for expanded media coverage must reach the court 14 days in advance, the expanded media coverage requests must be made ahead of the 14-day deadline so there is sufficient time to process and mail the application. If a formal request has been made for coverage of a legal proceeding within the 14 days required by the rules, regional media coordinators may allow additional news media to participate in expanded or pooled coverage, providing:

- (1)(a) requests are made to the regional coordinator within a minimum of five days before the scheduled proceeding or (1)(b) requests are made at least one day before any objection hearing is held (whichever is the earlier) and
- (2) the requests do not jeopardize compliance with the rules for expanded news coverage.

No requests for coverage should be made on a speculative or tentative basis. A request to a court to cover a legal proceeding should be understood to be a commitment to cover the proceeding.

When a court proceeding is not scheduled at least 14 days in advance, an arraignment, for example, requests for expanded coverage generally should go directly to the regional media coordinator and not to the central office.

3. FILING COURT APPLICATIONS

The central office will file formal applications and notices for expanded media coverage, using Supreme Court approved forms whenever possible, and will mail copies of the filings to the presiding judge, the court clerk, the court administrator, the attorneys of record, the parties not represented by counsel, the requesting media organizations, and the regional media coordinator.

4. OBJECTIONS TO COVERAGE APPLICATIONS

The central office will monitor action on the application for expanded media coverage and notify the requesting news organizations and the regional media coordinator of any resistances or objections. The regional media coordinator shall assist in monitoring for objections whenever possible. The central office, in consultation with the requesting news organizations and the regional media coordinator, will determine the position and action that will be taken on any resistance or objection. A central office representative shall appear on behalf of the requesting news organization at court proceedings, whenever possible, or may designate a representative when he or she cannot personally attend the court hearing. The central office may seek the advice and representation of legal counsel at any court proceeding or may ask the regional media coordinator or the requesting news organizations to obtain legal advice and representation. Expenses for legal counsel shall be allocated on a case-by-case basis with the consent of the central office, the regional media coordinator and the requesting news organizations.

5. REGIONAL MEDIA COORDINATORS

The regional media coordinator shall be the FOI Council's local representative. The regional media coordinator and his or her assistants shall make all equipment demonstrations to the court, with the assistance of the requesting news organizations. The regional media coordinator shall also make equipment placement, camera and microphone pooling and personnel scheduling decisions and arrangements for expanded media coverage and shall serve as the liaison between the participating news organizations and the court during the proceedings with expanded media coverage. All questions by participating news organizations during coverage of a proceeding shall be made to the regional media coordinator.

6. MEDIA DISPUTES

Compliance with the Supreme Court rules shall be of paramount importance for all news organizations participating in expanded media coverage of a given proceeding. Any dispute on expanded media coverage participation, including pooling and scheduling matters, shall be brought to the attention of the regional media coordinator and the central office. The FOI Council, in consultation with the regional media coordinator, shall attempt to mediate any dispute. If, however, an accommodation of the parties cannot be reached, the central office shall be empowered to make a final decision on the matter in his or her sole discretion. The court or its judges shall not be asked to intervene in any media administration matter.

7. CONTACTS WITH COURTS

All requests and questions dealing with policies and procedures affecting coverage of legal proceedings under Canon 3A(7) should be directed to the regional media coordinator or the central office of the Iowa FOI Council: 114 Meredith Hall, Drake University, Des Moines, IA 50311, (515) 271-2295. Judges, clerks and court administrators should not have to respond to requests for coverage except as those requests are made by the media coordinator or the central office.

IOWA COURT RULES, CHAPTER 25: RULES FOR EXPANDED MEDIA COVERAGE

25.1 DEFINITIONS

25.2 GENERAL

25.3 PROCEDURAL

25.4 TECHNICAL

25.5 RULES SPECIFIC TO THE SUPREME COURT AND COURT OF APPEALS

Rule 25.1 Definitions.

As used in this chapter:

“Expanded media coverage” includes broadcasting, televising, electronic recording or photographing of judicial proceedings for the purpose of gathering and disseminating news to the public.

“Good cause” for purposes of exclusion under these rules means that coverage will have a substantial effect upon the objector which would be qualitatively different from the effect on members of the public in general and that such effect will be qualitatively different from coverage by other types of media.

“Judge” means the magistrate, district associate judge or district judge presiding in a trial court proceeding or the presiding judge or justice in an appellate proceeding.

“Judicial proceedings” or “proceedings” as referred to in these rules shall include all public trials, hearings or other proceedings of a trial or appellate court, for which expanded media coverage is requested, except those specifically excluded by these rules.

“Media coordinator” as referred to in these rules shall include media coordinating councils as well as the designees of such coordinators or councils.

Rule 25.2 General.

Broadcasting, televising, recording and photographing will be permitted in the courtroom and adjacent areas during sessions of the court, including recesses between sessions, under the following conditions:

25.2(1) Permission first shall have been granted expressly by the judge, who may prescribe such conditions of coverage as provided for in these rules.

25.2(2) Expanded media coverage of a proceeding shall be permitted, unless the judge concludes, for reasons stated on the record, that under the circumstances of the particular proceeding such coverage would materially interfere with the rights of the parties to a fair trial.

25.2(3) Expanded media coverage of a witness also may be refused by a judge upon objection and showing of good cause by the witness. In prosecutions for sexual abuse, or for charges in which sexual abuse is an included offense or an essential element of the charge, there shall be no expanded media coverage of the testimony of a victim/witness unless such witness consents. Further, an objection to coverage by a victim/witness in any other forcible felony prosecution, and by police informants, undercover agents and relocated witnesses, shall enjoy a rebuttable presumption of validity. The presumption is rebutted by a showing that expanded media coverage will not have a substantial effect upon the particular individual objecting to such coverage which would be qualitatively different from the effect on members of the public in general and that such effect will not be qualitatively different from coverage by other types of media.

- 25.2(4) Expanded media coverage is prohibited of any court proceeding which, under Iowa law, is required to be held in private. In any event, no coverage shall be permitted in any juvenile, dissolution, adoption, child custody, or trade secret cases unless consent on the record is obtained from all parties (including a parent or guardian of a minor child).
- 25.2(5) Expanded media coverage of jury selection is prohibited. Expanded media coverage of the return of the jury's verdict shall be permitted. In all other circumstances, however, expanded media coverage of jurors is prohibited except to the extent it is unavoidable in the coverage of other trial participants or courtroom proceedings. The policy of these rules is to prevent unnecessary or prolonged photographic or video coverage of individual jurors.
- 25.2(6) There shall be no audio pickup or broadcast of conferences in a court proceeding between attorneys and their clients, between co-counsel, between counsel and the presiding judge held at the bench or in chambers, or between judges in an appellate proceeding.
- 25.2(7) The quantity and types of equipment permitted in the courtroom shall be subject to the discretion of the judge within the guidelines set out in this chapter.
- 25.2(8) Notwithstanding the provisions of any of these procedural or technical rules, the presiding judge, upon application of the media coordinator, may permit the use of equipment or techniques at variance therewith, provided the application for variance is included in the advance notice of coverage provided for in rule 25.3(2). Objections, if any, shall be made as provided by rule 25.3(3). Ruling upon such a variance application shall be at the sole discretion of the presiding judge. Such variances may be allowed by the presiding judge without advance application or notice if all counsel and parties consent to it.
- 25.2(9) The judge may, as to any or all media participants, limit or terminate photographic or electronic media coverage at any time during the proceedings in the event the judge finds that rules established under this chapter, or additional rules imposed by the presiding judge, have been violated, or that substantial rights of individual participants or rights to a fair trial will be prejudiced by such manner of coverage if it is allowed to continue.
- 25.2(10) The rights of photographic and electronic coverage provided herein may be exercised only by persons or organizations which are part of the news media.
- 25.2(11) A judge may authorize expanded media coverage of investigative or ceremonial proceedings at variance with the procedural and technical rules of this chapter as the judge sees fit.

Rule 25.3 Procedural.

- 25.3(1) Media coordinator and coordinating councils. Media coordinators shall be appointed by the supreme court from a list of nominees provided by a representative of the media designated by the supreme court. The judge and all interested members of the media shall work, whenever possible, with and through the appropriate media coordinator regarding all arrangements for expanded media coverage. The supreme court shall designate the jurisdiction of each media coordinator. In the event a media coordinator has not been nominated or is not available for a particular proceeding, the judge may deny expanded media coverage or may appoint an individual from among local working representatives of the media to serve as the coordinator for the proceeding.

25.3(2) Advance notice of coverage.

- a. All requests by representatives of the news media to use photographic equipment, television cameras, or electronic sound recording equipment in the courtroom shall be made to the media coordinator. The media coordinator, in turn, shall inform counsel for all parties and the presiding judge at least 14 days in advance of the time the proceeding is scheduled to begin, but these times may be extended or reduced by court order. When the proceeding is not scheduled at least 14 days in advance, however, the media coordinator or media coordinating council shall give notice of the request as soon as practicable after the proceeding is scheduled.
- b. Notice shall be in writing, filed in the appropriate clerk's office. A copy of the notice shall be sent by ordinary mail to the last known address of all counsel of record, parties appearing without counsel, the appropriate court administrator, and the judge expected to preside at the proceeding for which expanded media coverage is being requested.
- c. The notice form in rule 25.5 is illustrative and not mandatory.

25.3(3) Objections. A party to a proceeding objecting to expanded media coverage under rule 25.2(2) shall file a written objection, stating the grounds therefore, at least three days before commencement of the proceeding. All witnesses shall be advised by counsel proposing to introduce their testimony of their right to object to expanded media coverage, and all objections by witnesses under 25.2(3) shall be filed prior to commencement of the proceeding. The objection forms in rule 25.5 are illustrative and not mandatory. All objections shall be heard and determined by the judge prior to the commencement of the proceedings. The judge may rule on the basis of the written objection alone. In addition, the objecting party or witness, and all other parties, may be afforded an opportunity to present additional evidence by affidavit or by such other means as the judge directs. The judge in absolute discretion may permit presentation of such evidence by the media coordinator in the same manner. Time for filing of objections may be extended or reduced at the discretion of the judge, who also, in appropriate circumstances, may extend the right of objection to persons not specifically provided for in this chapter.

Rule 25.4 Technical

25.4(1) Equipment specifications. Equipment to be used by the media in courtrooms during judicial proceedings must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria, where applicable:

- a. Still cameras. Still cameras and lenses must be unobtrusive, without distracting lighting or sound.
- b. Television cameras and related equipment. Television cameras are to be electronic and, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the judicial proceedings being covered are unable to determine when recording is occurring.
- c. Audio equipment. Microphones, wiring, and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the judicial proceedings being covered. Any changes in existing audio systems must be approved by the presiding judge. No modifications of existing systems shall be made at public expense. Microphones for use of counsel and judges shall be equipped with off/on switches to facilitate compliance with rule 25.2(6).

d. Advance approval. It shall be the duty of media personnel to demonstrate to the presiding judge reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this section. Failure to obtain advance judicial approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least fifteen minutes prior to the scheduled time of commencement of the proceeding.

25.4(2) Lighting. Other than light sources already existing in the courtroom, no flashbulbs or other artificial light device of any kind shall be employed in the courtroom. With the concurrence of the presiding judge, however, modifications may be made in light sources existing in the courtroom (e.g., higher wattage light bulbs), provided such modifications are installed and maintained without public expense.

25.4(3) Equipment and pooling. The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the courtroom shall apply:

a. Still photography. Not more than two still photographers, each using not more than two camera bodies and two lenses, shall be permitted in the courtroom during a judicial proceeding at any one time.

b. Television. Not more than two television cameras, each operated by not more than one camera person, shall be permitted in the courtroom during a judicial proceeding. Where possible, recording and broadcast equipment which is not a component part of a television camera shall be located outside of the courtroom.

c. Audio. Not more than one audio system shall be set up in the courtroom for broadcast coverage of a judicial proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the courtroom, if such pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside of the courtroom.

d. Pooling. Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the media coordinator, and the presiding judge shall not be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular judicial proceeding.

25.4(4) Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the courtroom designated by the presiding judge. The area or areas designated shall provide reasonable access to the proceeding to be covered.

25.4(5) Movement during the proceedings. Television cameras and audio equipment may be installed in or removed from the courtroom only when the court is not in session. In addition, such equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the courtroom while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

25.4(6) Decorum. All still photographers and broadcast media personnel shall be properly attired and shall maintain proper courtroom decorum at all times while covering a judicial proceeding.

Rule 25.5 Rules specific to the supreme court and court of appeals.

25.5(1) Video recording, Internet streaming, and expanded media coverage of oral arguments.

a. All regularly scheduled supreme court and court of appeals oral arguments shall be subject to video recording, streaming over the Internet, and expanded media coverage. The rules in this chapter allowing objections to expanded media coverage do not apply to supreme court and court of appeals oral arguments.

b. The prohibitions in rule 25.2(4) on the types of cases subject to expanded media coverage do not apply to supreme court and court of appeals oral arguments.

25.5(2) Expanded media coverage.

a. The rules in this chapter pertaining to expanded media coverage apply only to media coverage occurring within the supreme court and court of appeals courtrooms. Recordings of supreme court and court of appeals oral arguments made from other locations within the judicial building are not subject to the rules on expanded media coverage.

b. A written request for expanded media coverage within the supreme court and court of appeals courtrooms must be filed with the clerk of the supreme court no later than the Friday immediately preceding the week in which the argument is to be held.

REGIONAL MEDIA COORDINATORS

REGION #1

Brian Cooper
Telegraph Herald
801 Bluff
Dubuque, IA 52004
(563) 588-5662

REGION #2

Nancy Raffensperger Newhoff
Waterloo-Cedar Falls Courier
P.O. Box 540
Waterloo, IA 50704
(319) 291-1400 or -1445

REGION #3

Peggy Senzarino
Mason City Globe Gazette
300 N. Washington
Mason City, IA 50401
(641) 421-0500

REGION #4

Katie Williams
Fort Dodge Messenger
P.O. Box 659
Fort Dodge, IA 50501
(800) 622-6613

REGION #5

Jeff Grant
N'West Iowa Review
227 9th St.
Sheldon, Iowa 51201
(712) 324-5347

REGION #6

Mitch Pugh
Sioux City Journal
515 Pavonia St.
Sioux City, IA 51102
(712) 293-4201

REGION #7

RoseAnn Shannon
KETV
2665 Douglas Street
Omaha, NE 68131
(402) 978-8951

REGION #8

Geoff Greenwood
KCCI-TV
888 9th St.
Des Moines, IA 50309
(515) 247-8846 or (800) 947-8841

REGION #9

Stephani Finley
News Advertiser
503 W. Adams
Creston, IA 50801
(641) 782-2141, x236

REGION #10

Lyle Muller
Cedar Rapids Gazette
P.O. Box 511
Cedar Rapids, IA 52406
(319) 398-8210

REGION #11

Mike Ortiz
KWQC
805 Brady St.
Davenport, IA 52803
(563) 383-7156

REGION #12

Matt Milner
Ottumwa Courier
213 E. 2nd St.
Ottumwa, IA 52501
(641) 683-5359

REGION#13

Jeff Abell
The Hawk Eye
800 S. Main Street
Burlington, IA 52601
(800) 397-1708

APPELLATE COURTS

Geoff Greenwood
KCCI-TV
888 9th St.
Des Moines, IA 50309
(515) 247-8846 or (800) 947-8841

QUESTIONS ABOUT EMC

Q: Do the rules of procedure in Iowa Court Rules, Chapter 25 authorize photographing jurors during that phase of the trial in which the jury is returning its verdict?

A: Yes. Rule 25.2(5) specifies, “Expanded media coverage of jury selection is prohibited. Expanded media coverage of the return of the jury’s verdict if permitted.” In all other circumstances expanded media coverage of jurors is prohibited except to the extent “it is unavoidable in the coverage of other trial participants or courtroom proceedings.”

Q: What should a reporter do if steps are taken to prevent expanded media coverage of a proceeding?

A: The following objection statement is a guideline that can be read by the reporter: “Your Honor, I am [name], a reporter for [newspaper, television or radio station]. I would like the opportunity to resist prevention of expanded media coverage of these proceedings. I would like to request the opportunity to contact counsel and have counsel present after a short recess. [If the court allows you this opportunity, immediately contact counsel. If the request is denied, then proceed as follows.] A request for expanded media coverage was made by the media coordinator in advance of these proceedings. Expanded media coverage should be allowed because it will not materially interfere with the rights of the parties to a fair trial. There are alternatives to denying participation such as questioning jurors and change of venue, both of which have been traditionally recognized by courts.”

If the objection is made by a witness, the reporter should then continue as follows:

“Since the objection is made by a witness, the witness must show good cause for excluding expanded media coverage. Good cause cannot be shown because the effect of coverage will be no different on this witness than on other similarly situated members of the public under these same circumstances and expanded media coverage will not have an effect that is qualitatively different from the coverage of these proceedings than will otherwise occur. We therefore request that expanded media coverage be allowed. Thank you.”

Q: What are the ethical restrictions on attorneys’ comments and information dissemination during litigation?

A: The Iowa Code of Professional Responsibility for Lawyers (Iowa Court Rules, Chapter 32), which delineates the ethical rules governing attorneys’ conduct, includes several provisions concerning the types of public, out-of-court statements that may (and may not) be made by attorneys during various stages of the litigation process. Different requirements apply during different stages of proceedings; the requirements also vary depending upon the nature of the proceeding. As a general matter, the rules permit attorneys to disseminate information contained in the public record but restrict other types of comments, particularly those which are deemed to have a possible impact upon the fairness of the proceeding.

Glossary

A

- ABSTRACT OF RECORD:** A complete history of the case in abbreviated form, found in the court file.
- ADMINISTRATIVE LAW:** Law created by government agencies as rules, regulations, orders and decisions, usually to implement legislation.
- ALLEGATION:** The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what the party expects to prove.
- AMICUS CURIAE:** A friend of the court; one who volunteers information--usually in a written brief--upon some matter of law; filed by a person or a group with an interest in the legal issue under consideration.
- ANCILLARY PROCEEDING:** A proceeding or lawsuit growing out of a related suit, such as a proceeding to enforce a court judgment.
- ANSWER:** A pleading filed by a defendant or respondent in response to the plaintiff's allegation of facts.
- APPEARANCE:** The formal proceeding in which a defendant submits to the jurisdiction of the court.
- APPELLANT:** The party appealing a decision or judgment to a higher court. In an appeal, the appellant usually is listed first in the case. (In an appeal, *Doakes v. Jacobs*, *Doakes* is the appellant).
- ARRAIGNMENT:** When a prisoner is formally brought to the court to answer to a criminal charge.
- ARREST WARRANT:** Issued by a judicial officer, it allows a law enforcement officer to arrest the person named and bring the person before the court to answer to a specific charge.
- ATTACHMENT:** A proceeding in which a plaintiff acquires a court order prohibiting the defendant from selling or transferring money or property that might be needed to pay a judgment.

B

- BAIL BOND:** An obligation signed by the accused to guarantee payment of a specified amount of money if he or she fails to appear in court. The bond may be in cash or in an instrument assuring payment of cash (like a mortgage on a home).
- BENCH WARRANT:** An order issued by the court for the appearance of a person before the court. The individual may be a defendant or a witness.
- BINDING INSTRUCTION:** One in which the jury is told that if they find certain conditions to be true they must find for the plaintiff, or defendant, as the case might be.
- BIND OVER:** To hold a person for trial.
- BLACK'S LAW DICTIONARY:** The law dictionary used by most judges and lawyers.

BURDEN OF PROOF: The duty of one party to prove a fact in dispute.

BRIEF: A written or printed document prepared by counsel to file in court, usually containing both facts and law in support of a position.

C

CERTIORARI: A discretionary writ issued by an appellate court ordering officers of a lower court to forward records of a proceeding so that the case can be reviewed by the higher court.

CHANGE OF VENUE: The transfer of a suit begun in one court or district to another for trial.

CIRCUIT COURT, EIGHTH: The court to which federal cases in Iowa are appealed. The court has offices in St. Louis and Minneapolis.

CIRCUMSTANTIAL EVIDENCE: Evidence of an indirect nature, often the only evidence available in a case in which there are no eye witnesses.

CIVIL AND CRIMINAL LAW: Civil law does not have prison terms as penalties; criminal law usually does; civil suits usually result in money damages, an injunction or a restraining order. In criminal law, the plaintiff is the state; civil suits may include only private parties, or a private party and a government agency. In criminal cases, the state must prove its case with evidence “beyond a reasonable doubt.” In most civil cases, only a “preponderance of the evidence” is needed.

CODE OF PROFESSIONAL RESPONSIBILITY: The rules established by the Iowa Supreme Court that regulate the conduct and ethics of Iowa attorneys. **CODICIL:** An amendment to a will.

COMMON LAW: Law that traces its authority from the usages and customs of English law and is based on precedent from court judgments and decrees.

COMPARATIVE FAULT: A way of assigning fault in civil cases. The acts of the opposing parties are compared and fault is assigned by percentages.

COMPLAINANT: In Iowa, synonymous with plaintiff. (The complainant is listed first in the name of the case; in *Jacobs v. Doakes*, Jacobs is the complainant or plaintiff).

COMPLAINT: The pleading that begins a civil law suit.

CONDEMNATION: The legal process in which private real estate is taken for public use without an owner’s consent but with payment of just compensation.

CONSERVATOR: One who is approved or appointed by the court to manage the affairs of a minor or incompetent.

CONTEMPT OF COURT: A finding by a judge that a person violated a court order or hindered a court in the administration of justice. Contempt may be imposed as a punishment or in an effort to remedy the actions of the person.

CORROBORATING EVIDENCE: Supplementary evidence that confirms facts already presented.

COSTS: The expenses of prosecuting or defending a lawsuit. Costs do not include attorney fees.

COUNTERCLAIM: A claim presented by a defendant seeking damages or other remedies from the plaintiff.

CROSS-EXAMINATION: The questioning of a witness in a trial or in a deposition by the adverse party.

D

DAMAGES: Monetary compensation for loss, detriment or injury to a person, property or rights because of the unlawful act or negligence of another.

DE NOVO: Anew, afresh. A “trial de novo” is a retrial of a case.

DECLARATORY JUDGMENT: One that declares the rights of the parties or expresses the opinion of the court on a question of law.

DECREE: A decision or order of the court. A final decree is one that fully and finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree that is not final.

DEFAULT: A “default” occurs when a litigant fails to perform a mandatory act in the time allowed.

DEFERRED JUDGMENT: A judgment entered by the court in a criminal case in which the penalty is delayed for a period of time, usually with the intent of setting it aside if the defendant fulfills certain court requirements.

DEPOSITION: The testimony of a witness or a party taken under oath and before a court reporter; generally during the discovery phase of a case.

DIRECT EVIDENCE: Testimony of facts by eye witnesses; distinguished from circumstantial, or indirect evidence.

DIRECTED VERDICT: An instruction by the judge to the jury to return a specific verdict.

DISCOVERY: A pre-trial process in which parties to a lawsuit may gather facts and evidence from other parties or witnesses. Depositions and interrogatories are part of the discovery process.

DISMISSAL: A court order dismissing a case without the entry of a decree. The issues of the case can be relitigated. In a case dismissed “with prejudice,” the issues cannot be relitigated. Cases that are settled between the parties usually are dismissed with prejudice.

DOMICILE: A person’s permanent home. A person may have several residences but only one domicile.

DOUBLE JEOPARDY: A constitutional prohibition against more than one criminal prosecution or punishment for the same crime. A criminal prosecution, however, does not prohibit a civil action by persons injured.

DUE PROCESS: The constitutional assurance of a fair and impartial hearing for all those coming before the court.

Procedural due process insures that a person receives adequate notice and an opportunity to be heard on a matter that may affect his or her rights.

E

EMINENT DOMAIN: Government's power to take private property for public use by condemnation.

EN BANC: When all judges of an appellate court hear an appeal, the court is said to be sitting en banc.

ENTRAPMENT: An act by government officers or agents to induce a person to commit a crime not previously contemplated by the person.

EQUITY OR EQUITABLE REMEDIES: A court order or judgment providing non-monetary relief, such as an injunction, a restraining order or a writ of mandamus. Traditionally, plaintiffs sought money damages in a court of law and equitable remedies in a separate court of equity, but Iowa law no longer distinguishes between these two civil courts.

ESCHEAT: The right of the state to property upon which no one can make a valid claim.

ESCROW: The holding of an instrument such as a deed or money by one person until a certain time or until a certain action occurs. At that time, the escrowed item is released according to the terms of the escrow agreement.

ESTOPPEL: A person's own act, acceptance of facts or inaction that precludes later claims or action to the contrary.

EX PARTE: A court order granted on behalf of one party without a formal hearing or an opportunity for the opposing party to contest the order--for example, an order allowing additional time to file a brief.

EX POST FACTO: After the fact.

EXHIBIT: A paper, document or other article produced and exhibited to a court during trial or hearing. In Iowa, exhibits are public records and may be copied for public or private use.

EXPERT WITNESS: A person qualified to speak authoritatively by reason of special education, training or experience with the subject.

EXTRADITION: The surrender by one state (Missouri) to another (Iowa) of an individual accused or convicted of an offense outside one (Missouri) and within the territorial jurisdiction of the other (Iowa) .

F

FALSE ARREST: Any unlawful restraint of a person's liberty, whether in prison or elsewhere.

FELONY: A crime more serious than a misdemeanor. Generally, an offense punishable by imprisonment in a penitentiary.

FIDUCIARY: One who stands in a position of trust and confidence to another.

FORCIBLE ENTRY AND DETAINER: A court proceeding for restoring possession of land to one who has been wrongfully deprived of possession--for example, an order allowing a landlord to evict a tenant.

G

GARNISHMENT: A proceeding in which property or money of a debtor can be obtained by a creditor--typically, getting part of a person's wages from an employer.

GUARDIAN: One who is approved or appointed by the court to look after the physical well-being of a minor or incompetent.

GUARDIAN AD LITEM: One who is appointed by the court to look after the interests of a minor or incompetent involved in litigation.

H

HABEAS CORPUS: "You have the body." The name given a variety of writs whose purpose is to bring a person before a court. It is usually directed to an official, such as a sheriff, commanding him to bring a prisoner before the court.

HARMLESS ERROR: An error committed by a trial court that does not prejudice the rights of either party. An appellate court will not reverse a judgment where the error was harmless.

HEARING: A judicial or quasi-judicial proceeding to determine definite issues of fact or law. Generally less formal than a trial.

HEARSAY: Evidence not based on the personal knowledge of the witness but rather from what others have said.

HOLOGRAPHIC WILL: A will written, dated and signed by a person in his or her own handwriting.

I

IMPUTED NEGLIGENCE: Negligence that is indirectly attributable to a person, such as the negligence of an employee is often attributable to an employer.

INADMISSIBLE: Evidence that cannot be submitted at trial.

IN CAMERA: In the judge's chambers.

INCOMPETENT EVIDENCE: Another term for inadmissible evidence.

INDICTMENT: A written accusation by a grand jury, charging a person with a crime.

INFORMATION: A criminal accusation against a person; filed by a public official instead of by a grand jury.

INJUNCTION: A court-ordered equitable remedy either prohibiting or requiring a certain act or thing.

INSTRUCTION: A direction given by the judge to the jury concerning the law of the case. **INTER ALIA:** Among other things or matters.

INTERLOCUTORY: An adjective that means a court order or decree is provisional or temporary, not final, or an appeal taken before there is a final order by the trial court.

INTERROGATORIES: Part of the discovery process; written questions given by one party and to another who must then provide written answers under oath.

INTERVENTION: A process in which a third party is permitted by the court to join into a lawsuit or legal action; constitutes greater involvement than amicus curiae.

INTESTATE: One who dies without a will. The state then decides how the estate is distributed.

IRRELEVANT: Evidence that does not relate to, support or apply to the matter at issue.

J

JUDGMENT: See “Verdict”.

JUDICIAL NOTICE: Acceptance or recognition of certain facts of common knowledge that judges and jurors may properly take and act upon without formal proof.

JURISDICTION: The ability of the court to exercise its power over either a person or the issues of a lawsuit.

JURY: Grand--A jury of inquiry that receives complaints and accusations in criminal cases, hears the evidence and issues indictments in the cases in which the jury is satisfied that a trial should be held. Only evidence from the prosecution's side is presented. Pettit--The ordinary jury of 12 or fewer persons for the trial of a civil or criminal case.

L

LETTERS ROGATORY: A request by one court of another in a separate jurisdiction that a witness be examined upon interrogatories that accompany the request.

LEVY: The obtaining of money by legal process through seizure and sale of property.

M

- MALFEASANCE:** The commission of an act prohibited by law. Misfeasance is improper performance of a legal act.
- MALICIOUS PROSECUTION:** An action without probable cause that is instituted to injure the defendant.
- MANDAMUS:** A writ from a court that directs a public official or a lower court to perform a particular act.
- MATERIAL EVIDENCE:** Evidence that addresses the substantial issues in a dispute.
- MISDEMEANOR:** Criminal offenses less than felonies; generally those punished by a fine or imprisonment other than in penitentiaries. In Iowa, misdemeanors may be simple, serious or aggravated--in terms of increasing severity of penalties: 30 days in jail or a fine of \$100 for a simple misdemeanor, a year and/or a fine of \$1,000 for a serious misdemeanor and two years and/or a fine of \$5,000 for an aggravated misdemeanor.
- MISTRIAL:** A trial that cannot stand because of errors in jurisdiction or proceedings or the failure of a jury to reach a verdict.
- MITIGATION OF DAMAGES:** A plaintiff's duty to try to lessen the damage or harm done by a defendant's wrongful action. For example, if a defendant vacates an apartment with 10 months remaining on the lease, the landlord has a duty to try to rent the apartment during that period and cannot keep it empty, expecting the defendant to pay the full cost.
- MOOT:** A point or issue that is not or cannot be decided judicially, perhaps because circumstances in the case have changed and a substantive legal issue no longer exists.

N

- NEGLIGENCE:** Doing something that a reasonable person, guided by ordinary considerations, would not do; or not doing something that a reasonable person would do.
- NEXT FRIEND:** One acting for the benefit of an infant or other person without being formally appointed as guardian.
- NOLO CONTENDERE:** Literally, "I will not contest it." Rather than pleading innocent or guilty, a person does not contest the charge and accepts a sentence. There is, however, no admission of guilt. Iowa law does not use this plea, although federal courts do.
- NOMINAL PARTY:** One who is named as a party or defendant in a lawsuit only because the technical rules of pleading require it.
- NON-OBSTANTE VEREDICTO (Judgment NOV) :** Notwithstanding the verdict. A judgment entered by order of court for one party, although there has been a jury verdict to the contrary.
- NORTHWESTERN REPORTER:** The official series of books containing the published opinions of the Iowa Supreme Court and the Iowa Court of Appeals. Cases at the district level are "not reported" because they do not

appear in the Northwestern Reporter.

O

OBJECTION: Asking the court to rule that certain evidence or procedure is improper.

OF COUNSEL: A phrase commonly applied to a lawyer employed to assist in the preparation or management of a case or its presentation on appeal, but who is not the principle attorney of record.

OPINION EVIDENCE: What an expert witness thinks, believes or infers in regard to facts in dispute, as opposed to personal knowledge of the facts.

OUT OF COURT SETTLEMENT: A case that is compromised, settled or withdrawn by private agreement of the parties involved after litigation has begun.

P

PAROLE: The release of a prisoner before the expiration of his sentence but requiring that certain terms and conditions be satisfied, including rules for the parolee's behavior.

PER CURIAM: An unsigned opinion issued by an entire appellate court as opposed to one written by a specific justice on behalf of the court.

PEREMPTORY CHALLENGE: The challenge that the prosecution or defense may use to reject a certain number of prospective jurors without saying why.

PLAINTIFF: A person who begins a legal action.

PLEADING: The process in which the parties in a suit or action alternately present written statements of their contentions. The petition, answer, counterclaim and reply are the most common pleadings.

POWER OF ATTORNEY: Authorization of another to act as one's agent or attorney. Authorization may be either specific or general.

PREJUDICIAL ERROR: The opposite of "harmless error." Synonymous with "reversible error" in that it warrants the appellate court to reverse the judgment before it.

PRELIMINARY HEARING: A hearing to determine if an accused should be held over for trial in a criminal case.

PREPONDERANCE OF THE EVIDENCE: Generally the burden of proof in civil cases.

PROBATE: The act or process of proving a will.

PROBATION: Allowing a person convicted of some offense to remain free of jail or prison but under the supervision

of a probation officer.

PUNITIVE DAMAGES: Money awarded to punish a defendant and deter others from committing similar acts.

R

REASONABLE DOUBT: In a criminal case, the level of doubt that must be overcome by the prosecution for jurors to reach a guilty verdict.

REBUTTAL: A lawyer's argument that challenges, or rebuts, the arguments or statements of opposing counsel. Also, testimony that contradicts testimony already presented.

RECORD: The complete history of a case, including all written documents filed by the attorneys, all orders of judgments filed by the judge, all exhibits received into evidence and all testimony of witnesses, arguments of counsel and comments of the judge recorded by the court reporter.

REFEREE: A person the court appoints in a case to take testimony, hear the parties and report back to the court. The referee is an officer exercising judicial powers and is an arm of the court for further action. In Iowa, referees are commonly used in probating estates and in child welfare matters.

REMAND: An action by an appellate court returning a case to a lower court for further action.

REPLY: The pleading filed in response to the Answer filed by the defendant. At trial, the argument presented by the plaintiff's lawyer that responds to statements made by the defendant's lawyer.

RESTRAINING ORDER: A court order prohibiting a person from engaging in a particular act usually for a specified time period. These often are obtained "ex parte", or by one party. For example, a wife may obtain a restraining order preventing her spouse from harassing or threatening her.

RULE NISI OR RULE TO SHOW CAUSE: A court order demanding that one party show cause why certain requested relief should not be granted.

RULES OF PROCEDURE: Formal published rules that in Iowa govern civil and criminal cases, and the appeals of those cases. Federal courts have separate published rules.

S

SCHEDULING CONFERENCE: A conference among the parties and the court where a trial date is determined and discovery deadlines are set. Scheduling conferences may be held before a court administrator, unless there is disagreement between the parties on deadlines.

SEARCH AND SEIZURE, UNREASONABLE: Evidence that is obtained in an unlawful search cannot be used in any

criminal proceeding. Usually, allegations that evidence was obtained through an illegal (unreasonable) search and seizure are heard by the court prior to trial.

SEARCH WARRANT: An order in writing by a justice or magistrate, in the name of the state, directing an officer to search a specified house or other premises. Usually required for a legal search.

SENTENCES: Concurrent-- Sentences served at the same time for more than one crime. Consecutive--Sentences one after the other. Indeterminate--in felony cases, a sentence of up to 25 years. The parole board is given authority to decide the final length of sentence.

SEPARATE MAINTENANCE: Allowance granted to a spouse, usually the wife, for support for the spouse and children while living apart from the spouse but not divorced.

SEQUESTER: A court order requiring the jury in a case to be kept apart from all persons but court officers during the conduct of and deliberations upon a trial. A device to prevent interference with the conduct of the trial.

SPECIFIC PERFORMANCE: An equitable relief ordering the performance of a certain act, often the completion of a contract. In order to obtain specific performance of a contract, the plaintiff must show that money damages cannot compensate for a loss.

STARE DECISIS: "The decision stands." An issue that has been decided by case law precedent.

STAY: A court order stopping a court proceeding.

STIPULATION: An agreement by opposing parties, usually in writing, about any fact or matter pertaining to the case.

SUBPOENA: A court order to cause a witness to appear and give testimony. Witnesses can be subpoenaed to give a deposition during the process of discovery, as well as at trial.

SUBPOENA DUCES TECUM: A subpoena that demands that the witness bring certain documents or records when called to give testimony.

SUMMARY JUDGMENT: Judgment granted by a court when there is no genuine issue of material fact in dispute.

SUMMONS: An order issued by the clerk of court informing a defendant that a suit has been filed against her or him, and summoning the defendant to appear before the court and file an Answer to the complaint.

SUPERSEDEAS: A court order halting the effect of a trial court judgment during the appeal process. When money damages have been awarded, the court can require the defendant to file a supersedeas bond sufficient to guarantee payment of the judgment if it is affirmed by the appeals court.

T

THIRD-PARTY CLAIM: A claim by a defendant against a party not already in the lawsuit.

TORT: A civil injury or wrong committed against the person or property of another. Personal injury suits, such as those arising from car accidents, plane crashes, etc., are tort actions, as are suits alleging product liability,

libel, invasion of privacy, wrongful death, or medical malpractice.

TRANSCRIPT: The court reporter's official record of words spoken at a hearing or a trial.

TRUE BILL: When a grand jury finds sufficient evidence to warrant a criminal charge, it returns to the court a "true bill" of indictment against the wrongdoer.

U

UNDUE INFLUENCE: Any attempt to influence someone to do or say something he would not otherwise do or say.

V

VENIRE: A term used to refer to a group, or pool, of persons summoned for jury duty.

VENUE: The particular county, city or place where a case will be tried.

VERDICT: The conclusion rendered by a jury. **Decision--**The written opinion of an appellate court. **Judgment--**A court order finally disposing of all aspects of the case. In a criminal case, it is the order of the court imposing a sentence, or releasing the defendant from the custody of the court. In civil cases, it is the order of the court imposing damages, if any, and assessing costs. **Order--** A court administrative order determining some aspect of the conduct of the case, such a setting bail, setting a time for a hearing, or scheduling the filing of briefs. **Ruling--**A court's decision in response to a motion filed by a party. A ruling usually interprets a question of law.

VOIR DIRE: The questioning of potential jurors in a case by the lawyers for both parties and, occasionally, by the court itself.

W

WAIVER: Voluntarily giving up a known right.

WEIGHT OF EVIDENCE: The balance of credible evidence in favor of one party over another.

WILLFUL: Intentional misconduct on the part of a person. Distinguished from that done negligently or carelessly.

WITH/WITHOUT PREJUDICE: See "Dismissal".

WITNESS: One who testifies to what he or she has done, seen, heard or otherwise observed.

WRIT: A court order requiring the performance of a specified act.

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