

Wills and Trusts Law Update  
Drake University Law School General Practice CLE  
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Natalie B. Lynner  
Professor of Law  
Drake University Law School

With Research Assistance from  
Trynann Utzinger  
Drake University Law School J.D candidate  
Projected graduation December 2020

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## Iowa Legislative Developments

### 1. Iowa Small Estates Statute §635

Chapter 365 of the Iowa Code dealing with the administration of small estates was also recently amended. Having taken effect July 1, 2020, the small estates statute is now applicable to more individuals. The gross value of a probate estate that permits administration of an estate pursuant to this chapter was raised from \$100,000 to \$200,000.

### 2. Disinterment and Final Disposition of Human Remains SF 2135

This bill was introduced to clean up Iowa law on the disinterment of cremated remains. The law was last amended in the 1970s when there were few cremations. Now, cremation is the choice in about half of the deaths in the nation. The Act states that disinterment of a dead body or fetus without court order, shall be allowed for the purpose of autopsy or reburial only, and then only if supervised by a funeral director. Cremated remains may be disinterred without a court order if supervised by a funeral director. Cremation is only allowed when a state or county medical examiner has certified that the death was due to natural causes. The Act states that the preferences of a person authorized to control final disposition of a decedent's remains will be given due consideration as well as public health concerns and any court order controlling the disposition of bodily remains.

### 3. Certification of Trusts §633A.4604

Senate File 112<sup>1</sup> amended Iowa Code § 633A.4604—the certification of trusts. The amendment changes how trusts are certified. Instead of the previously required statement that it was signed by all currently active trustees of the trust, the amendment requires that all acting trustees or their attorneys must sign the certification, and such signatures must be done under the penalty of perjury in front of a notary public.

### 4. Trust Code Amendment §633A.4215

Senate File 2232 made amendments to the Iowa Trust Code, § 633A. This adjustment created directed trusts, involved the transfer of trust assets into other trusts, and the required notice to beneficiaries. Due to the creation of directed trusts, some of the amendments to the code include the creation of new definitions in accordance therewith as well as adding trust directors to the list of fiduciaries. The powers and duties of trustees are also placed on trust directors through new sections to the code. The amendment also permits delivery of notice to a beneficiary's representative so long as there is no conflict of interest. A new section, § 633A.4215, specifically outlines the requirements for transferring assets from one trust to another.

### 5. Non-substantive amendments to Guardianship legislation passed 2019

In the 2020 legislative session, there were two House Files that affected guardianships: HF2535 and HF2536 . These did not make any further substantive changes to guardianships, but instead

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<sup>1</sup> Senate File 112: <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=sf112>

made non-substantive code and section adjustments. HF2536 does, however, add “or conservator” to many guardianship procedures.

#### First year under new Adult Guardianships procedures<sup>2</sup>

Adult guardianship proceedings were significantly amended in the 2019 legislative session by House File 610. The legislative amendment changes statutory terminology, establishes new procedure for starting an adult guardianship, and new rules for the administration of guardianships. Overall, the amendments are aimed at offering more protections for the individual subject to the guardianship.

The terminology changes included replacing the term “proposed ward” and “ward”. Prior to the appointment of a guardian, the person who is subject to the guardianship is referred to in court proceedings as “respondent” instead of “proposed ward”. After a guardian is appointed, instead of referring to the subject of the guardianship as “ward”, they are now referred to as the “protected person”.

The procedures at the outset of a guardianship hearing were also altered. New with this amendment is the requirement that proposed guardians’ consent to a background check. The background check comes with a \$15 non-waivable fee. Further, respondents are entitled to the appointment of an attorney. The attorney is to ascertain, if possible, the respondent’s wishes and advocate for the least restrictive means to accomplish those wishes. The respondent also has the right to attend the guardianship hearing, and failure to appear for the hearing must be accompanied by a valid reason.

There were significant changes made to the administration of guardianships. Specifically, the initial care plan and annual care plans that must be filed with the court. After appointment as guardian, the new guardian is required to file an initial care plan within 90 days. The statute now requires a considerable amount of information that must be included in the report, significantly extending the time and attention required to complete the report. For guardianships established prior to January 1, 2020, no initial care plan was required. However, those guardians are now required to file an initial care plan with their first annual care plan after the new laws took effect. Further, annual care plans are required. There is no exception to filing these reports as there had been in the past, and they must be filed no less than once per year. The information required closely resembles that required in the initial care plan. There are also significant changes to the actions a guardian may take without court approval and the actions for which the guardian must obtain court approval.

#### Minor Guardianships<sup>3</sup>

The “Iowa Minor Guardianship Proceedings Act” imposed significant changes on guardianships involving minors. The act was aimed at offering more protection to biological parents, proposed guardians, and minors, as well as imposing more requirements on guardians of minors.

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<sup>2</sup> House File 610 for Guardianships of Adults: <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=HF610>

<sup>3</sup> House File 591 for Guardianships of Minors: <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=HF591>

The largest change to minor guardianships was that juvenile court now has exclusive jurisdiction over hearing these cases as opposed to probate court.

There is now a background check requirement, similar to that required for adult guardianships. These checks include searches of criminal records, child sex abuse registries, dependent adult abuse registries, and sex offender registries.

There are also changes to the administration of minor guardianships. If there is a biological parent as well as a guardian, they must come to an agreement for the responsibilities of each in relation to the minor, and they must also state how long they think the guardianship will last. Parents not agreeing to a guardianship, as well as the minor at issue, are entitled to court appointed representation to advocate for their positions. The court may also appoint a visitor to meet with all parties involved and give a report to the judge on the guardianship. The guardian will also now require court approval prior to denying all visitation, communication, and interaction between the minor and their parents. Similar to the adult guardianships, there is now also an extensive initial care plan requirement. Biological parents may now also be responsible for some court costs.

Unchanged from the old law, biological parents can petition the court to terminate a guardianship. However, under the new law, if they agreed to the guardianship, it will be terminated unless termination would be harmful to the child and the child's interests in continuing the guardianship is greater than the parent's interests in terminating it.

#### **Failed Legislation of Note:**

**1. Bills relating to opening, administering, and terminated adult guardianships and minor guardianships**

Several pieces of legislation were introduced to change various aspects of the guardianship law that was passed in 2019.

**2. Probate Costs and Fees §633.31 and §635**

Senate File 604<sup>4</sup> was aimed at amendment Iowa Code § 633.31—the costs in probate. It was presented by the Iowa State Bar Association Probate and Trust Law Section. The ISBA has proposed similar legislation for several years. The law currently assesses fees on the “value of personal property and real estate of such a person.” This vague language gave rise to the practice of some counties assessing non-probate assets as part of the value of personal property of the individual. Counties across Iowa applied this language differently causing different fees to be paid by estates.

The bill clarified that a rate of 0.2% would be assessed based on listed probate assets in the inventory report only for services performed in a decedent's estate administered by Iowa Code Chapters 633 and 635. It excluded all non-probate assets from the assessments of costs—assets like life insurance, revocable trusts, joint tenancies, etc. Court administered trusts, conservatorships, guardianships, and probate estates would continued to be assessed a charge.

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<sup>4</sup> Senate File 604: <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=SF604>

It was assumed that the law will reduce the overall estate value subject to fees by an average of 50%.

This bill was assigned to the Ways and Means Committee in March of 2020 and was previously recommended for passage in all subcommittees.<sup>5</sup>

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<sup>5</sup> Some attorney websites say this legislation has been enacted, but that is inaccurate.

## Iowa Case Law

### **Iowa Supreme Court Cases**

#### **1. *Matter of Coe College*, 935 N.W.2d 581 (Iowa 2019) (freedom of disposition)**

This case comes before the Iowa Supreme Court on appeal from the district court's determination that there is an applicable restriction on the alienability of paintings in Coe College's possession. Coe College appealed, and the Iowa Supreme Court retained jurisdiction.

Eugene Eppley commissioned Grand Wood to paint murals in one of his hotels. When the hotel was sold, Eppley had the paintings removed. Eppley loaned the paintings to Coe College, where they were displayed for twenty years. During that period, ownership of the paintings transferred from Eppley to the charitable Eppley Foundation. The Eppley Foundation terminated the loan agreement and donated the paintings to Coe College. The gift letter stated, in part: "the Grant Wood paintings be given to the Coe College and that this would be their permanent home, hanging on the walls of Stewart Memorial Library." The gift letter also permitted Coe College to temporarily loan the paintings to other institutions as a means to raise funds to maintain the paintings, and included a lengthy description of an accompanying memorial to Eppley. The Eppley Foundation was dissolved for nonpayment of fees.

From 1976 to 2016 Coe College accounted for the paintings as unrestricted assets. As part of a routine audit, however, auditors determined that this classification was a mistake, and in 2016 reclassified the paintings as permanently restricted net assets. Coe College sought judicial interpretation of the paintings because the classification significantly affected the college's endowment fund value. The district court found that the gift letter did put a permanent restriction on the alienation of the paintings, thereby supporting the reclassification. Accordingly, Coe College appealed. The issues on appeal were whether there was a restriction on the alienation of the paintings, and if so, whether the restriction should be removed or modified under Iowa Code § 540A.106 or § 633A.5102.

On the issue of alienability, Coe College argued that the paintings were an unrestricted gift. It points out that the corporation was sophisticated, and it did not create a trust, did not use any inalienability language, and didn't include any reversion provisions if the paintings failed to be hung in the library. Further, it was classified as an unrestricted gift for over forty years. In contrast, the attorney general (party to the case because the Eppley Foundation has ceased to exist), argued that the gift letter specifically says that Coe College would be the permanent home of the paintings and includes provisions for including a bronze and marble plaque. In determining this issue, the supreme court relied on a heightened emphasis on Eppley's intent. The court held that the gift was subject to restriction. The term "permanent home", in the court's view, meant that the paintings were to be permanently displayed at Coe College, not to only remain in their possession. Further, because of the extensive plans to create a memorial to honor Eppley alongside of the paintings, the court determined that a symbiotic relationship between the paintings and memorial was intended.

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) permits modification or release on restrictions regarding the management, investment, or purpose of trusts. This was the first case in which the Iowa Supreme Court interpreted this act. The act provides three ways in

which restriction terms may be amended. The first of which was inapplicable because the Eppley Foundation no longer exists. The second and third options required that the paintings be classified as “institutional funds” and not as “program-related assets”. Additionally, they closely overlap with what must be shown to invoke the common law doctrine of cy pres. In determining the appropriateness of restriction modification or release, the court required showing of: no trust language to the contrary; the existence of a charitable trust; a specific trust purpose has become illegal, impractical, or impossible; and a general charitable intention by the donor. The court found that the gift letter did not include any language that would prevent application of either statute. The court also found that the gift letter did not provide for any alternative dispositions of the paintings in the event they were no longer displayed in the library. Accordingly, cy pres could be applied. Despite lacking any formal trust language, since the court found that the gift was accompanied by restrictions on alienation of the paintings, a charitable trust was formed. The purpose of the trust was to honor Eppley and “dignifying and beautifying the Coe campus through the display of the Wood paintings.” Coe College did not claim that this purpose was illegal. Further, the court found that Coe did not adequately show that the purposes were impractical or impossible. The college’s endowment fund decreased in value by \$5.4 million with the reclassification. However, the college offered no evidence of financial hardship as a result—a fact of which the court noted could change the outcome of the case.

The Iowa Supreme Court upheld the district court’s determination that there is a restriction on the alienation of these paintings, and that there are no grounds for modifying or releasing those restrictions.

## **2. *Youngblut v. Youngblut*, 945 N.W.2d 25 (Iowa 2020) (tortious interference with an expectancy)**

This case came before the Iowa Supreme Court on appeal from denial of a motion for directed verdict and the jury’s verdict on a tortious interference with inheritance claim.

Earl and Agnes Youngblut ran an annual farming operation covering approximately 1500 to 1800 acres of land. They parented 12 children, three of whom predeceased them. Of the surviving children, Harold and Leonard were the only two sons, both of whom spent a majority of their lives assisting with the family farming operation. Earl and Agnes formed a corporation, Youngblut Farmland Ltd. (YFL), and transferred a bulk of the farming operation’s assets into the corporation. In preparation for estate planning, over a period of decades the two transferred shares of YFL to their surviving children. By 2006, Harold became president of YFL and Earl and Agnes anticipated that he would continue to run it while the other children would redeem their shares for cash.

In 2011, Earl and Agnes executed mirror wills. The wills left the totality of their property to each other, but when the second of them died, their YFL shares and the South Farm were to go to Harold, and the rest and residue of the estate was to be divided equally among Leonard and the remaining daughters. In 2013, Leonard began emailing family members regarding the planned disposition of Earl and Agnes’s property, and proposed new distribution plans and threatened litigation. After moving into an assisted living facility, Earl and Agnes executed new mirror wills, with the only change being that the South Farm will go to Leonard if he tenders his YFL shares to Harold for \$1, and the residue of the estate was to be split between the seven daughters. The new will also included an in terrorem clause.

Earl and Agnes died on June 1st and June 2nd, 2014, respectively, and their wills were probated. In the month prior to their death, Harold became aware of the new wills and believed his siblings had improperly influenced their parents. The deadline to contest the will was October 20, 2014, and no will contest was brought. After Leonard transferred his YFL shares to Harold for \$1 (despite being worth an estimated \$400,000), Harold sued Leonard and three of their sisters for tortious interference with an inheritance. The three sisters settled with Harold. Leonard moved for summary judgment in part on the basis that Harold was barred from bringing a tortious interference claim because he failed to also file a timely will contest. Leonard's summary judgment was denied and the case proceeded to jury trial, where the jury found in Harold's favor. Leonard appealed.

The court only reached one of Leonard's arguments in its analysis: the notion that tortious interference claims can be brought independently of a timely will contest. The trial court relied on two Iowa precedent cases when it denied Leonard's motion for summary judgment: *Frohwein v. Haesemeyer*, 264 N.W.2d 792 (Iowa 1978) and *Huffey v. Lea*, 491 N.W.2d 518 (Iowa 1992). In each case, respectively, the court held that there does exist an independent cause of action for the tortious interference with an inheritance, and that issue preclusion does not prohibit bringing such a claim with a will contest.

In this decision, however, the court has overturned *Frohwein* and *Huffey*. The court sites four main reasons for this decision. First, probate courts are intended to provide an efficient and centralized means for resolving issues regarding a decedent's estate and distributing the assets. The court finds allowing a separate and subsequent challenge to a will based in tortious interference would defeat this purpose. Second, undue influence is well-developed in probate law, and the elements to be proven and the difficulty in doing so are not only similar in tortious interference cases, but are routinely heard in probate courts. Third, with new developments in the law, the foundation of *Huffey* has been eroded. The court no longer stands by its reasoning in that case, and instead finds that there is a substantial overlap in witnesses and evidence presented in tortious interference cases and will contests. Finally, the court finds that final probate decrees have a *res judicata* effect on those who have been given notice per Iowa's legislative scheme.

It is on this reasoning the court held a party must join a tortious interference with inheritance claim together with a timely will contest. This holding is limited to claims alleging tortious interference by inducement through wrongful means and does not prevent plaintiffs from seeking additional remedies through such means. In light of these holdings, the court reversed the lower court, finding that Harold's tortious interference claim was a *de facto* substitute for a will contest, and should have been barred for failing to join it with a timely will contest.

### 3. *Matter of Estate of Franken*, 944 N.W. 2d 853 (Iowa 2020) (will administration)

This case comes before the Iowa Supreme Court on grant of further review following the Iowa Court of Appeal's decision to affirm the district court's grant of summary judgment. The Rottinghauses filed a claim against the estate of Sandra Franken f/k/a/ Fipp seeking contractual damages on the grounds that the estate violated their right of first refusal to Sandra's property. The district court

granted the estate's motion for summary judgment on the ground that the claim was barred by the statute of limitations provided in Iowa Code § 614.17A (2016).<sup>6</sup>

The Rottinghouses sold a portion of their farm to Sandra and James Kipp in 1973. In the deed, it stated the Rottinghouses had a right of first refusal as to the property. Only James signed the deed at that time. After his death, Sandra re-married and executed a quitclaim deed to convey the property to herself and her new husband. Five years later, the couple conveyed the property to Sandra alone. When she died, her husband received a life estate in the property. When he died and the life estate was extinguished, Sandra's estate became the titleholder of the property. Sandra's estate sold the property to a third party and the Rottinghouses were only made aware of the sale when they witnessed the third-party on the property. The district court rejected the Rottinghouses' argument that there is a distinction between an action to recover or establish any interest in or claim to real estate against the holder of the record title to the real estate in possession and an action for damages under Iowa Code § 614.17A when it granted the summary judgment in favor of the estate. The Iowa Court of Appeals then affirmed that decision. However, on further review, the Iowa Supreme Court vacated the court of appeals' decision and reversed the district court's decision.

The Iowa Supreme Court held that the statutory language at issue in section 614.17A is clear and unambiguous. The statute only bars actions seeking to recover or establish an interest or claim in real estate. The statute does not address an action for damages, and since the two do not overlap, the statute is clear in that claims for damages are not barred here. The lower courts also erred in relying on *West Lakes*, according to the Iowa Supreme Court. There is an affirmative defense when the action is against the holder of the record title to the real estate in possession. However, since the claim here was against the estate, it is inapplicable.

The estate set forth four alternative grounds on which the decision should be affirmed: the contract claim merged into the deed; the claim is barred by the statute of frauds; the claim fails as a matter of law because the contract's existence cannot be established; and the claim is barred by the statute of limitations in Iowa Code § 614.1(5). The Iowa Supreme Court denies all four claims. First, the merger claim failed because the Rottinghouses did not attempt to enforce any agreement or condition not incorporated into the deed. Second, because Sandra did not sign the original deed, the estate claims there was no contract. This argument failed because the deed conveyed the property to Sandra and her husband by name and they took and held possession of the property. Third, the claim was not barred by § 614.17A because the statute bars certain types of actions that seek to enforce a possessory interest in real estate. This is inapplicable here because this was a claim for damages. Further, the deed clearly evidences the right of first refusal as the code section requires. The Court found that "the specific claim presented in this appeal is whether the estate breached the right of first refusal when it sold the property to a third party in 2016" and as such, "the action clearly falls within the statute of limitations". This claim was not barred by the ten-year statute of

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<sup>6</sup> IA Stat. Ann. §614.17A ("After July 1, 1992, an action shall not be maintained in a court, either at law or in equity, in order to recover or establish an interest in or claim to real estate if all the following conditions are satisfied: (a) the action is based upon a claim arising more than ten years earlier or existing for more than ten years, (b) the action is against the holder of the record title to the real estate in possession, (c) the holder of the record title to the real estate in possession and the holder's immediate or remote grantors are shown by the record to have held chain of title to the real estate for more than ten years.")

limitations because the specific claim is for the property sale to a third-party, not the original conveyance. Accordingly, the Iowa Court of Appeals vacated the court of appeals' decision reversed the district court and remanded the case for further proceedings.

4. *Iowa Supreme Court Attorney Disciplinary Board v. Kozlik*, 943 N.W.2d 589 (Iowa 2020) (attorney malpractice)

This case came before the Iowa Supreme Court on review of an Iowa Supreme Court Grievance Commission's report. The report concluded that Michael Kozlik violated Iowa Rule of Professional Conduct 32:8.4(c) and recommended a public reprimand. On this review, the Iowa Supreme Court found that Kozlik violated Iowa Rules of Professional Conduct 32:8.4(b)<sup>7</sup> and 32:8.4(c)<sup>8</sup> and revoked Kozlik's license to practice law in Iowa.

The ethical violations arise out of Kozlik's administration of his uncle's estate. As administrator of his uncle's estate, Kozlik wrote himself twelve checks totaling \$39,350 over the course of two years. Kozlik did not seek prior court approval. The unauthorized payments were noticed when Kozlik's aunt, the sole beneficiary of his uncle's estate, died. The administrator and executor of his aunt's estate requested accountings from the uncle's estate to adequately inventory her estate. After Kozlik's substantial delays, a meeting was held between administrators and executors of the estates. In the meeting, Kozlik admitted to making payments from the estate to himself without court approval, claimed he didn't know he needed court approval, and promised to pay back the funds. After repayment, the remaining matters were litigated and Kozlik was removed as administrator.

Kozlik self-reported to the Iowa Bar Association and an ethical complaint moved forward at the same time as the litigation. The complaint charged Kozlik with violations of Iowa Rules of Professional Conduct 32:8.4(b) and 32:8.4(c). At the hearing, Kozlik admitted to making the payments without court approval, and alleged he did not know that approval was required and stated that he did not have the requisite intent to steal. Accordingly, the commission dismissed the charge associated with violating rule 32:8.4(b), but found that Kozlik did violate rule 32:8.4(c) and recommended a public reprimand.

On review, the Iowa Supreme Court found that Kozlik violated both rules alleged in the complaint. Misappropriation of funds is a violation of both rules. The court found that the payments were not mere mistake. Kozlik had filed several documents in other cases he had worked on stating the rules associated with proper administrator fees and the necessity to obtain court approval. Further, the payments were not made in any correlation with the time allegedly to be billed for. Looking to the circumstances to infer his intent, coupled with the high standards attorneys are held to, the court found that Kozlik's actions amounted to misappropriation of funds. Further, there was no correlation between payments and alleged time expended in administering the very simple estate, and the supposed fees were well in excess of what is statutorily permitted. As such, the court found that there was no colorable future claim to the funds which would mitigate the necessity to revoke his license. As such, Kozlik's license was revoked, as is standard when an attorney converts funds

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<sup>7</sup> Iowa R. Prof. Cond. 32:8.4(b) ("It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.").

<sup>8</sup> Iowa R. Prof. Cond. 32:8.4(c) ("It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.").

without having a colorable future claim to them. Instances involving attorney misappropriation of funds do not consider mitigating and aggravating circumstances.

5. *Iowa Supreme Court Attorney Disciplinary Board v. Goedken*, 939 N.W.2d 97 (Iowa 2020)  
(attorney malpractice)

This case came before the Iowa Supreme Court on review from the Iowa Supreme Court Grievance Commission's report finding that Duane Goedken violated six rules of professional conduct and recommending his law license be suspended for ninety days. The Iowa Supreme Court agreed with the commission's findings and suspended Goedken's license indefinitely with the option to apply for reinstatement after no less than ninety days.

Goedken was admitted to practice law in Iowa in 1963. Since then, he has represented clients in various trust and estate matters. In 2014 Goedken had a heart attack. In late 2017 to early 2018, he experienced vision issues requiring surgical intervention. In December of 2018, Goedken's daughter passed away from breast cancer. Many, but not all, of the delinquencies Goedken received for his representation of clients in trust and estate matters occurred within this period. Goedken received nine total delinquency notices for one trust and five estates. He also failed to appear for hearings in two of the estates. The disciplinary board also attempted several communications to Goedken, to which he failed to reply. The board notified that a complaint would be opened against him if he failed to cure his outstanding delinquencies. Since Goedken failed to cure the delinquencies, the board opened a formal complaint. Goedken acknowledged receipt of that as well as the subsequent notices but failed to respond. As such, the board filed a certificate with the court and notified Goedken that his license would be suspended. He failed to have the certificate removed and his license was suspended. He was required to notify his clients of the suspension and withdraw from all cases. He failed to do so and practiced with a suspended license until four months later when he took steps to remove the certificate. His license was reinstated, and the present complaint was later brought.

The commission found that Goedken violated six Iowa Rules of Professional Conduct: 32:1.3, diligence in his handling of one trust and five estates; 32:1.4(a)(3), keeping the client reasonably informed; 32:1.16(a)(1), withdrawing from representation; 32:1.16(d), protecting the client's interests; and 32:8.4(d), conduct prejudicial to the administration of justice.

The Iowa Supreme Court affirmed the commission's findings as to violations of each. Goedken's history of delinquencies dating back to the 1980's in probate matters, including those at issue here, show his consistent failure to perform his obligations, thereby violating rule 32:1.3. His violations of rules 32:1.16(a)(3), 32:1.16(a)(1), and 32:1.16(d) are all interrelated as to his actions while his law license was suspended. Goedken failed to notify his clients of his suspension, failed to notify two clients of scheduled hearings, continued to practice law despite his suspended license (admitting in court that his restriction on using EDMS slowed him down), and in doing so affected the timing and substance of his representation. In violation of rule 32:8.1(b), Goedken acknowledged receipt of all board communications, but simply failed to respond. He admitted in court that he avoided opening mail from the board because it upset him. Finally, the cumulative effects of all of Goedken's behavior was prejudicial to the administration of justice in that it prolonged the legal process and required additional hearings, ultimately wasting much of the judicial system's time and resources.

Aggravating and mitigating factors were considered by the court prior to affirming the ninety-day suspension. Mitigating factors involved Goedken's personal stresses and health issues. Aggravating factors included his history of similar offenses including several reprimands and prior license suspensions, his attitude towards the commission in his hearing and failure to respond to the board, and failure to acknowledge wrongdoing. In its heavy reliance on case law for similar professional conduct hearings, the Iowa Supreme Court followed the commission's findings and suspended Goedken's license for ninety days for violating six professional rules of conduct.

### **Iowa Court of Appeals Cases (unpublished)**

1. *Matter of Estate of Glaser*, 2020 WL 4200830 (Iowa Ct. App. 2020) (barring creditors).

This case came before the Iowa Court of Appeals on appeal from the district court's order allowing an amendment to the pleadings after the bench trial took place, the court's finding that the statute of limitations did not bar the new claim, and the court's order setting aside Glaser's conveyances to Kindsfather due to Glaser's intent to defraud creditors. Kindsfather appealed, and the Iowa Court of Appeals reversed in part and affirmed in part in an unpublished opinion.\*

Prior to his death, Glaser conveyed to Kindsfather via quitclaim deed three pieces of land for the consideration of one dollar each. After his death, Glaser's cousin Judy Bowling was named the administrator of his estate. Various creditors, including the Iowa Department of Revenue, filed claims against Glaser's estate. The DOR claimed it was owed over \$100,000 for income taxes and encouraged Bowling to file a motion to set aside the fraudulent conveyances so that the land could be used to satisfy creditor claims.

At the close of the two-day trial, the administrator requested leave to amend the motion to include a claim about farm transfers. The farm transfers at issue were conveyances Glaser made to Kindsfather's mother, which her mother then conveyed to Kindsfather. The court allowed the amendment over Kindsfather's objection and ultimately found that because it related back to the original claim, the statute of limitations did not bar the claim. Further, the court found that the conveyances were made to defraud creditors and ordered that the conveyances be set aside and property returned to Glaser's estate. Kindsfather appealed.

On appeal, Kindsfather contends that the amendment regarding farm transfers should not have been allowed, that the clean hands doctrine bars the property from returning to the administrator, that the homestead exemption prevents the return of the property, and that by ordering all of the property to be returned and not just the amount required to satisfy creditors is excessive.

The Iowa Court of Appeals held that the amendment adding a claim for the farm transfers was not an abuse of discretion. The motion did not make any mention of the farm property, and the terms provided in the motion were specifically limited to the three properties, which on its surface was not fair notice for a claim concerning the farm transfers. However, well before trial Kindsfather was aware of the administrator's intention to discuss the farm transfers and concern about the farm transfers. As such, there was no abuse of discretion for allowing the motion. However, the statute of limitations precludes the claim on the farm transfers. The appeals court could not say that the farm claims arise out of the claims set forth in the motion.

The Iowa Court of Appeals did not find that the clean hands doctrine barred the administrator from recovering the properties. Iowa Code § 633.368 states that such action is permissible. Further, the court reiterated the point that common law doctrines yield when there is legislation on point. The court also found the homestead exemption argument was not successful. The law is clear in that there is no homestead exemption with wrongfully appropriated property. Further, on the claim of excessive relief, Iowa Code § 633.368 allows for administrators of estates to recover fraudulently conveyed property. As such, the Iowa Court of Appeals reversed the district court in regards to the farm transfer and affirmed on all other points.

\*final publication decision is pending

2. *Conner v. Decker*, 941 N.W.2d 355 (Iowa Ct. app. 2019) (undue influence)

This case came before the Iowa Court of Appeals on appeal from the district court's order granting a judgment notwithstanding the verdict, vacating punitive damages awarded by the jury, and a new trial if the plaintiffs did not file a remittitur on the actual damages awarded. The plaintiffs brought claims of tortious interference with inheritance, unjust enrichment, and mistake claims. The Court of Appeal's decision is unpublished.

Harriette died in 2015 and was survived by three children, LinDa, Dale, and Neil, and her predeceased son's widow, Eva. Prior to Harriette's death, she held joint bank accounts with Eva's husband, Ivan. After Ivan died, Harriette added Eva as an equal beneficiary in her will with the three siblings, named Eva as executor and attorney-in-fact, and named Eva on the joint accounts. After Harriette's death, the three siblings did not receive any portion of the joint accounts, and accordingly sued Eva for tortious interference with inheritance, unjust enrichment, and mistake. The jury found for the siblings on all accounts and awarded compensatory and punitive damages. Eva moved for a new trial and judgment notwithstanding the verdict (JNOV) on the grounds that the jury returned inconsistent answers, in finding that Eva did tortiously interfere with their inheritance and also finding that she acted in good faith. The district court granted the JNOV as to the tortious interference claim, set aside the punitive damages, and awarded a new trial on the actual damages issue if plaintiffs did not file a remittitur. The district court's decision was then appealed.

Relying on precedent, the Iowa Court of Appeals affirmed the district court's order. The court agreed with the district court that the record, even when viewed most favorably to the siblings, lacked substantial proof that Eva engaged in fraud or undue influence to support a tortious interference claim. Additionally, the court found that the jury's answers on the verdict form were too logically inconsistent to be reconciled. Punitive damages were not appropriate once the tortious interference with inheritance verdict was set aside, because the remaining claims required no showing that Eva acted with malice. As such, the punitive damages were properly vacated. The district court calculated the maximum appropriate compensatory damages based on the amount in the joint accounts, the inheritance taxes already paid by the siblings, and the amount each individual would be entitled to under the distribution plan in the will. The court here agreed with the district court's calculations and upheld its decision to offer a new trial or remittitur, as the district courts have broad discretion in this regard. Accordingly, the Iowa Court of Appeals affirmed the district court's decision.

3. *Matter of Estate of Kline*, 2019 N.W.2d 359 (Iowa Ct. App. 2019) (undue influence and intentional interference with inheritance)

This case came before the Iowa Court of Appeals on appeal from the probate court's denial of undue influence and intentional interference with inheritance claims. The Iowa Court of Appeals issued an unpublished opinion on the matter.

Tom Kline and Mary Culp were the two surviving children of Charles Kline. Charles died on November 19, 2016, at 85 years old. Throughout his lifetime, Charles would have one or more of his children named on his accounts with him in an effort to help him understand the documents and accounting, as he had a fifth-grade education and could not read or write.

Charles moved into an assisted living facility in 2012, and by 2014, Mary and Charles were joint owners on all five of Charles' accounts. Mary managed all of the accounts and paid Charles' expenses. She also routinely paid her own expenses from his accounts and used a credit card in her name linked to his account. Charles executed a will in 2015 that left his property to his children in equal shares. Mary was named executor, and at the same time, she was also named attorney-in-fact.

Charles died in November 2016, and almost immediately Mary began transferring assets, arranging the funeral, and disposing of personal property. At no time did she file the will with the probate court or seek to be appointed executor. Tom initiated a meeting with Mary to discuss the estate and learned that only \$4500 would pass through the estate, with \$558,000 remaining in the accounts Mary now controlled. Tom filed a petition alleging undue influence and intentional interference with a bequest.

The probate court did not find evidence of undue influence or tortious interference, and the Iowa Court of Appeals reviewed the decision de novo. In reviewing, the court adhered to precedent.

In examining the undue influence claim, the court utilized a three-step analysis: first, whether a confidential relationship existed between Mary and Charles; second, whether Mary can prove she acted in good faith; and third, whether Mary can also prove that Charles acted freely and knowingly. The court found that Tom established that Mary had a relationship with Charles so that she had his trust and confidence and could have exercised control over him. Accordingly, the burden shifted to Mary to rebut the presumption of undue influence in the account transfers. Mary's actions and testimony regarding her involvement with Charles' accounts lacked candor and good faith, according to the court. Given the record, Mary was unable to rebut the presumption of undue influence. Further, Mary presented no evidence aside from her own testimony to support her notion that Charles acted freely and knowingly. As such, the court held that the money in the accounts must be handled under the distribution plan set forth in Charles' will.

The court examined all five elements required to prove tortious interference with a bequest: 1) an inheritance was expected; 2) the alleged interferer knew of the expected inheritance; 3) the inheritance was improperly interfered with through undue influence or other tortious means; 4) there was a reasonable certainty to receive the inheritance but for the interference; and 5) damages were suffered as a result. The court found in Tom's favor on all points, relying in part on the analysis and facts set forth in the undue influence claim.

In line with the court's analysis, it held that Mary did exert undue influence over her father, and that the assets within the accounts must pass through the will's distribution plan. The court further held that Mary did tortuously interfere with Tom's inheritance, and the case was reversed and remanded for further proceedings.

4. *Matter of Sandahl Trust (2010)*, 2020 WL 5934263 (Iowa Ct. App. 2020) (revoking or amending revocable trust)

This appeal is before the Iowa Court of Appeals because Craig Sandahl's children appealed the district court's finding that a document signed by Craig the day before his death was not an amendment to the Sandahl Trust (2017). In an unpublished opinion\*, the Iowa Court of Appeals affirmed the lower court's decision.

Craig Sandahl, as part of his estate planning and desire to avoid death or transfer related taxes, established several trusts to hold all or substantially all of his assets. The Sandahl Trust was the primary trust. Craig amended the trust and his estate plans several times over the years, with the most recent being in 2017. In October of 2017, Craig's health deteriorated, and his family began talks with him regarding the state of the trust and his assets. Craig's grandsons discussed with Craig's attorneys the status of the trust and discovered that nearly six million dollars would go to charity. Prior to Craig's death, he discussed with two of his grandsons and one of his attorneys the potential for amending his estate plans. His grandson, Ryan, titled the summary document of these discussions "Craig Sandahl Follow-Up Estate Discussion, October 13, 2017". One day after signing this document, Craig died. Craig's family contends it is a formal amendment to the trust. The Iowa State Bank as successor trustee petitioned for the terms to be judicially interpreted.

After examining the four-corners of the document as well as extrinsic evidence regarding the trust, the lower court determined that the document was too ambiguous, and that Craig did not intend for the document to be an amendment. The children appealed that decision.

The Iowa Court of Appeals quoted a large portion of the district court's decision, agreeing with the analysis. The document was declared ambiguous, in part, because it did not mention the trust, it was not entitled as an amendment as Craig's previous amendments had been titled, it did not give specific instructions regarding amounts of money or beneficiaries, and it was written in the third person. Further, his estate planning attorneys were working on drafting a formal amendment after this document was received. Overall, the court found the document to read as instructions to his estate planning attorneys rather than an amendment. The Iowa Court of Appeals agreed that the document was "vague, obscure, and ambiguous and requires speculation as to Craig's intent". Accordingly, the district court's decision that the document was not an amendment was affirmed.

\*final publication decision is pending

5. *Matter of Matthew Brandon Waltman Irrevocable Trust*, 946 N.W.2d 536 (Iowa Ct. App. 2020) (revoking or amending trust)

This appeal was before the Iowa Court of Appeals in response to the probate court twice denying two separate motions to reconsider filed by Karen Nutkiewicz. Karen filed the motions to reconsider after the court approved a plan to terminate a family farm trust after making final distributions. The

Iowa Court of Appeals affirmed the probate court's denial of the motions in an unpublished table opinion.

Donald and Lavonne Richter established an irrevocable trust with their three children, Gary, Kathy, and Karen as beneficiaries and Gary as trustee. The trust provided that distribution payments would be terminated when each beneficiary reached 55 years-old. A modification agreement was executed to extend the age to 65, but later Gary and Karen acknowledged that the agreement failed to comply with Iowa Code § 633A.2203 (2018). Accordingly, they filed a joint motion to invalidate the agreement and terminate distributions from the trust immediately.

A two-day mediation session was scheduled wherein Karen refused to participate and Gary and Karen came to an agreement. The agreement was submitted to the court and the court entered an order granting the motion. Two weeks later, Karen moved to reconsider the order, claiming she received no notice of any proceeding. The motion was denied, and she again moved the court to reconsider—a motion that was again denied. Karen appealed.

The Iowa Court of Appeals affirmed the probate court's denial of Karen's motions to reconsider. Karen claimed on appeal that the lower court violated her right to due process. However, in the lower court she never received a ruling on a constitutional claim, and the appeals court refused to consider the issue. Further, Karen's attorney of record received notice of the proceedings via EDMS, and according to Iowa Rule of Civil Procedure 1.442(2), Iowa Rule of Electronic Procedure 16.315(1)(b), and Iowa Code section 633A.1109(1), such service was proper.

6. *Matter of Estate of Siefkas*, 942 N.W.2d 8 (Iowa Ct. App. 2020) (pay-on-death contracts)

This court came before the Iowa Court of Appeals following the district court's denial of Michael Siefkas's motion to reconsider. Michael made three arguments on appeal: 1) the district court erred in finding the account at issue should be included in the probate inventory; 2) that the court erred in finding the account is subject to attorney's fees; and 3) the court erred in finding that the account is an estate asset. The Iowa Court of Appeals modified the court order and affirmed it as modified.

Robert Siefkas passed away and left four sons. At the time of his death, he left a duly executed will and held three joint accounts with his son. At issue on appeal is one checking account that held approximately \$190,000 and was jointly held with Robert, Michael, and Steven. After Robert's death, Steven and Michael split the remainder of the account. After Michael was replaced as executor of the estate, he moved to remove the account from the estate's inventory form. The district court found that the account was properly included on the form. The district court denied Michael's request to reconsider, enlarge, or amend, which in part asked for clarification on whether the account was an estate asset. The motion was denied without that clarification, and this appeal followed.

The Iowa Court of Appeals found that the account was not an estate asset. The document creating the account explicitly listed the account as "Joint (Right of Survivorship)" and listed Robert, Steven, and Michael. There were also no allegations of the account being created out of mistake or any allegations of wrongdoing by Michael and Steven. Based on the record, the appeals court found that the account was not an estate asset. However, it was still properly listed on the inventory form. The court quoted Iowa Admin. Code r. 701-86.1, stating: "Property owned as joint tenants with right of

survivorship... is not part of the decedent's probate estate, but is includable in the decedent's gross estate for inheritance tax purposes." As such, the account was still required to be included in the inventory form. As for Michael's argument that the account should not be included in calculating attorney's fees, the court stated that fees are calculated based on the "gross assets of the estate listed on the inventory form." Since the court found the account is required to be listed, it was also subject to attorney's fees. The court accordingly amended the order and affirmed as modified.

7. *Skye v. Matthew Trust*, 941 N.W.2d 350 (Iowa Ct. App. 2019) (litigation of trust attorney fees)

This case came before the Iowa Court of Appeals after the district court entered an order against Kai Skye in favor of his sons Matthew and David. The order required Kai to pay \$32,000 in attorney's fees plus interest on behalf of his sons. Kai did not appeal the district court's finding of trust validity and only appealed the attorney fees issue. In an unpublished table opinion, the Iowa Court of Appeals affirmed the award.

Kai established a trust in 1995 naming himself as trustee and his sons Matthew and David as beneficiaries. The trust was designed for the sons to use in the case of emergency or to fund their educational pursuits. The trust was later modified to allow termination only upon the two son's deaths. When Kai held the title of trustee, he frequently moved assets into and out of the trust and frequently met with portfolio managers regarding investment opportunities. At one point the trust contained over five-million dollars in assets. Later, when Kai was no longer trustee, he brought a petition for declaratory judgment to invalidate the trust. His primary argument was that the trust was never a valid trust because the IRS denied treating the trust as a Voluntary Employees' Beneficiaries Association. The district court rejected this argument and further found that Kai acted with unclean hands in bringing the petition and was acting for his own personal benefit. This decision was not appealed, but the award of attorney's fees on behalf of the sons was appealed.

The Iowa Court of Appeals affirmed the award of attorney's fees. Iowa Code § 633A.4507 permits fee-shifting in proceedings that involve the administration of a trust. Further, the Iowa Supreme Court has established a two-step analysis to apply the statute. Fees can be shifted if the party is entitled to fees and the fees are reasonable. The statute permits fees to be awarded, and in establishing the reasonableness of fees the court analyzed the five Trimble factors. The district court is considered an expert in establishing the reasonableness of fees, and the appeals court here agreed with the analysis. Further, the fees were to be paid by Kai and not from the trust because the sons, as beneficiaries, prevailed, and ordering the fees to be paid by the trust would be unjust in disturbing the corpus of the trust.

8. *Kula v. Manternach*, 2020 WL 2988282 (Iowa Ct. App. 2020) (durable power of attorney)

This case came before the Iowa Court of Appeals after the district court dismissed a petition brought by five of Doris Kula's nine children against two of her children, Leanna and Daniel, who were her attorneys-in-fact prior to her death. In an unpublished opinion, the Iowa Court of Appeals adopts the district court's findings and affirmed the dismissal.

Doris Kula's daughter, Leanna, was named and authorized signer on her bank account and was also named one of her attorneys-in-fact pursuant to a durable general power of attorney that Doris signed in the presence of her attorney. Despite executing these documents, Doris maintained

control over her finances with minimal assistance from Leanna. Leanna helped Doris write checks and took her to the bank so that Doris could cash her pension checks, as she preferred to work with cash. After Doris died one of Leanna's sisters requested a full accounting of Doris's finances. Since Doris worked primarily with cash and maintained her own records, Leanna could only offer an estimation. Five of the children were unsatisfied and brought suit, alleging violation of fiduciary duty. After a four-day trial the district court dismissed the petition.

The siblings alleged that the district court erred in finding that the attorneys-in-fact were not required to provide an accounting, in determining that when Leanna signed the checks she was acting pursuant to her role as authorized signer on the account not as power of attorney, and in finding Leanna credible in her testimony. On appeal, the court notes that there is not much to add, as the district court issued a fourteen-page, single spaced ruling. Like the district court, the appeals court found no credible evidence of improper financial management and no proof that the attorneys-in-fact benefited in any way from any financial transactions. The Iowa Court of Appeals affirmed the decision without further opinion.

9. *Shelton v. Trust Created by Joint Trust Agreement of Larry E. Shelton and Katherine Shelton*, 946 N.W.2d 540 (Iowa Ct. App. 2020) (intentional omission of a child)

This case came before the Iowa Court of Appeals after the district court denied defendants' motion for summary judgment. On appeal, defendant beneficiaries and co-trustees argue that their motion for summary judgment should have been granted because the claim was barred by the statute of limitations set forth in Iowa Code § 633A.3110. The Iowa Court of Appeals reversed the district court's ruling and remanded the case for summary judgment to be granted.

In 1991 Shawn was sentenced to life in prison. In 1999, his parents, Larry and Katherine, established a trust as part of their estate planning. The trust named all five of their children as beneficiaries. The trust was to be split into five equal shares with one share going to each child, except for the share that would go to Shawn. That share was to be split in half, with half going to Shawn's son and the other half to remain in trust until Shawn was no longer incarcerated. In 2007 the trust was amended to split the trust into four portions, with one share each going to two daughters and the remaining to shares to go to the third daughter. Shawn, his son, and his brother were no longer beneficiaries. Another amendment was made later that same year, wherein the trust was to be divided equally into three shares, with one share each going to the three daughters. Larry passed away in 2016 and Katherine passed away in 2017. In 2018 Shawn filed a declaratory-judgment petition alleging the amendments were fabricated. In the same petition, he asked the court to determine his status as beneficiary if it found the amendments to be valid. The sisters as defendants filed a motion for summary judgment under Iowa Code § 633A.3110—stating provision requires claims to be brought within one year. Shawn argued the applicable statute of limitations was found in Iowa Code § 614.1(4) and was a five-year limit. The district court denied the motion for summary judgment, stating it could not conclude that § 633A.3110 was the applicable statute, as it is for challenging the validity of a trust, not the validity of subsequent amendments.

On appeal the Iowa Court of Appeals determined § 633A.3110 was the applicable statute of limitations. Under the Iowa trust code, a "trust" is defined to include all amendments to the original trust. As no exceptions in the trust code apply, chapter 633A is the controlling provision. Accordingly, since no notice was given to Shawn, he had one year from his mother's death to bring

his claim. Having failed to do so, his claim was barred by the statute of limitations and the case was reversed and remanded for entry of summary judgment.

10. *Matter of Joan T. Goetzinger Living Trust Dated May 30, 2014*, 949 N.W.2d 444 (Iowa Ct. App. 2020) (duty to keep adequate records of administration)

This case came before the Iowa Court of Appeals after the district court denied a request for payment of all attorney's fees. On appeal, former trustee Gail Miller alleged that her services as trustee required all of her requested fees to be paid from the trust, that the district court was not impartial, and that her attorney's fees necessitated full payment from the trust. The Iowa Court of Appeals did not find any argument persuasive and affirmed the district court's decision.

Joan Goetzinger established a trust that became irrevocable when she died in 2015. The trust explicitly stated that its purpose was to care for her mother and the trustee had no obligation to preserve the principal for the remainder beneficiaries. Gail Miller was one of the remainder beneficiaries and also became trustee once Joan died. Joan's mother, Gladys, filed an action seeking judicial oversight of the trust administration when Gail repeatedly refused to provide for her basic needs by the trust. One and a half years passed before Gladys was able to obtain the items she required, and Gail repeatedly refused to follow court orders. Gail was persuaded to resign as trustee but also attempted to enter into a settlement agreement that released her from all liability and attempted to remove the discretionary spending ability for Gladys's benefit from the trust. The new trustee found the agreement to be extremely one sided and the district court refused to accept it—an issue not appealed. Rather, Gail requested \$42,059.81 in trustee fees and attorney's fees of \$73,989.83, all to be paid from the trust. The district court permitted reimbursement of \$8,505.20 for trustee fees and \$3,745.50 in attorney's fees.

On appeal, the Iowa Court of Appeals agreed with the district court's findings. Gail was entitled to reimbursement of reasonable fees. She submitted a claim for \$30,000 for investment related expenses and utilized a calculation that was not permitted in the trust instrument. Accordingly, that sum was properly denied. Further, she did not provide adequate documentation for her time spent fulfilling obligations to the trust. Beyond failing to properly account for and document her time, she spent a majority of it not fulfilling her obligations but attempting to shirk them—time for which she was not entitled to compensation.

Gail failed to raise her allegations of impartiality with the district court and as such it was not properly preserved for appeal. As such, the Iowa Court of Appeals did not address that claim.

A trustee is only eligible to be reimbursed for reasonable attorney's fees and expenses. Here, the district court ordered reimbursement for the amount of fees incurred as a result of filing the annual report and necessary tax preparation. Beyond that, the remainder of the fees were incurred as a result of attempting to shirk her responsibilities to Gladys and the trust. Accordingly, the Iowa Court of Appeals agreed with the district court that this limited figure was appropriate reimbursement.

The district court's ruling was affirmed in its entirety.

11. *Matter of Inman Family Living Trust*, 949 N.W.2d 433 (Iowa Ct. App. 2020) (principal and income dispute in trust administration)

This case came before the Iowa Court of Appeals after the district court, in response to trustee's application for guidance, determined that Ella Mae Inman could demand the trustee to distribute all gross income from the trust to her. The Iowa Court of Appeals ultimately reversed the district court's ruling and remanded the case for an order in accordance with its decision.

Ella Mae and Leland Inman established the Inman Family Living Trust in 2014. Leland later died in 2016. In 2017, Ella Mae's children filed a petition with the court seeking a determination that the trust became irrevocable when Leland died, and that Ella Mae could not amend or modify the trust. The issue was resolved via settlement agreement wherein the parties agreed that the trust would continue, that Ella Mae was entitled to enjoy "all income" from the trust for the remainder of her life, and that the trustee could invade the principal of the trust only "to provide for the proper care, support, maintenance, and education of Ella Mae Inman." The agreement was approved by the district court.

In 2019, Ella Mae requested from the trustee all gross income from the trust, which would require the principal to be invaded to pay for trust expenses and fees. The trustee applied to the court for guidance. The district court concluded that the "all income" provision in the settlement agreement meant Ella Mae could demand all gross income. This appeal followed. The Iowa Court of Appeals ultimately determined that the "all income" provision was ambiguous, and that the definitions found in Iowa Code Chapter 637 were informative. The court found Ella Mae to be, by definition, an "income beneficiary." Income beneficiaries are entitled to only the net income, also by definition. The only way to overcome these definitions is if the settlement agreement included alternative provisions. The Iowa Court of Appeals found that "all income" was not sufficient to constitute an alternative provision. Further, interpreting "all income" to include gross income as opposed to just net income would create conflict between different sections of the settlement agreement. Namely, the provision that authorizes invasion of the principal of the trust only "to provide for the proper care, support, maintenance, and education of Ella Mae Inman." If "all income" were to be interpreted as gross income, the trust fees and expenses would be paid from the principal, which would contradict the section setting forth permissible reasons to invade the principal. Accordingly, the district court was reversed.

12. *Matter of Dorothy Driesen Trust Dated July 23, 2002*, 948 N.W.2d. 534 (Iowa Ct. App. 2020)  
(accountings and responses in trust administration)

This case came before the Iowa Court of Appeals on appeal from Jay Driesen after the district court issued an order approving the final report of the trustee, confirmed title of the real estate owned by the trust, and imposed sanctions on Jay. The Iowa Court of Appeals, relying on precedent, affirmed the district court's order.

This appeal is classified by the court as another attempt by Jay to collaterally attack a judgment entered in 2008. Dorothy, Jay's mother, established a revocable trust in 2002. In 2007, Dorothy's daughter sought to establish a guardianship for Dorothy and to change the trustee of the trust. An amendment was executed to remove Jay as trustee and to instead appoint People's Bank of Rock Valley. Also in the amendment was a provision to remove Jay as beneficiary. Jay shortly thereafter attempted to transfer 150 acres of farmland owned by the trust to a Nevada LLC. Dorothy brought suit to quiet that title. In a hearing that consolidated all matters, a guardianship was established, Jay was removed as trustee and as beneficiary, the deed to convey title was voided, and the

amendment was found to be valid. The order was affirmed on appeal. In another lawsuit, Jay asserted that there was an amendment to the trust made in 2002 that made the trust irrevocable and thereby negated the 2007 actions. The court held this was barred by claim preclusion because Jay raised this issue in the prior lawsuit and lost.

After Dorothy's death in 2017, Jay attempted to transfer real estate from Dorothy's trust to himself and a trust he created, as well as further attempts to collaterally attack the 2008 decision. The deeds were declared invalid and the district court sanctioned Jay by issuing an injunction prohibiting Jay from bringing any future claims to collaterally attack any part of the 2008 judgment. The court also found that Jay's repeated attempts to attack the 2008 judgment were attempts to oppress and harass others by causing unnecessary litigation and expense. In Jay's appeal brief, he does not mention the court's recent orders despite being the claimed basis for his appeal. The brief also did not offer any authority to demonstrate he was entitled to any relief. Accordingly, Jay was found to have waived all issues on appeal. The court also found that not only did he waive all issues on appeal, but since he only attempted to again collaterally attack the 2008 decision, any claims were barred by claim preclusion.

13. *Matter of Teresa Kasparbauer Revocable Living Trust*, 949 N.W.2d 660 (Iowa Ct. App. 2020)  
(attorney malpractice)

This case came before the Iowa Court of Appeals in response to the district court issuing sanctions against the attorney who had previously represented the Teresa Kasparbauer Revocable Living Trust. The Iowa Court of Appeals affirmed the district court's imposition of sanctions.

The litigation surrounding the Teresa Kasparbauer Living Trust was extensive following Teresa's death. The first case was brought by Teresa's grandchildren against the trust's beneficiaries, Teresa's children. The court found in that case that the notice given to the grandchildren was ineffective, that two of the children exerted undue influence over Teresa, and that two of the children used their positions as guardians and conservators to engage in self-dealing. The court also ordered that the grandchildren be issued a one-seventh interest in the trust and that a constructive trust be placed on all of the trust's assets.

In the second case, the grandchildren filed a petition asking the court to order an accounting, to remove the daughters who had violated their fiduciary duties to be removed as trustees, and to distribute the trust's assets. Ultimately, Mr. Rhinehart withdrew from representing the trust and the children and grandchildren entered into a settlement agreement on all matters except for sanctions.

Throughout the course of both cases as well as appeals from both cases, the children, represented by Attorney R. Scott Rhinehart, filed several motions the grandchildren alleged were frivolous. Included in the allegedly frivolous filings were, in part: motions to dismiss, motions for summary judgment, motions for attorney's fees, motions to quash subpoenas. Also included in the various filings were attempts to re-litigate issues that the courts had already ruled on. The grandchildren asked the district court to impose sanctions against Mr. Rhinehart for violating Iowa Rule of Civil Procedure 1.413.

Rule 1.413 creates the duties of reading, inquiry, and purpose. Violation of any one of the duties violates the rule and is grounds for sanction. The district court found that several of Mr. Rhinehart's

filings violated the inquiry and purpose requirements. The court further noted that he had been an attorney for over 30 years and had an extensive history of sanctionable conduct. Additionally, he requested attorney's fees at an inflated rate when representing the children and the trust. The Iowa Court of Appeals agreed with the district court that Mr. Rhinehart had engaged in sanctionable conduct, in part by submitting filings for which there was absolutely no case law or statutory support. The main purpose of issuing sanctions is deterrence, and the Iowa Court of Appeals agreed that \$5000 was sufficient to deter future frivolous behavior, especially when considering Mr. Rhinehart did not attempt to meet his burden to show that he was unable to pay such a sanction. The appeals court further rejected Rhinehart's contention that he was only criticizing the district courts' and appeals courts' decisions. As such, the district court's imposition of sanctions was affirmed.