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IOWA
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ASSOCIATION

DEFENSE UPDATE

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Preparing to Depose a Fire Origin and Cause Expert

Marc Fennell, IAAI-CFI
Senior Investigator
J.S. Held, LLC

The deposition of a fire origin and cause expert is the conclusion of the plaintiff's theory of their case. It has been recommended, that before obtaining their expert's deposition, the defense should have completed fact discovery—all pertinent documents/photos obtained, interrogatories completed, and relevant fact witnesses deposed. Hopefully, the fire expert you have retained or absorbed from your client has reviewed all fire investigation-related documents that have been received in the course of written discovery and oral testimony evidence from other witnesses and/or opposition experts. Deposing plaintiff's fire origin and cause expert is your opportunity to understand and hopefully establish a strategy to limit the exposure of your client or provide an argument to eliminate your client's liability altogether. The

importance of being prepared to depose Plaintiff's fire origin and cause expert cannot be overemphasized.

The qualifications of the fire origin and cause expert are therefore the first objective that should be investigated from a strategic and defensive perspective. It can be argued that the majority of fire origin and cause experts do not meet the definition of a qualified fire expert/investigator. The true sense of the word "expert" is up for interpretation. However, there is an industry standard known as NFPA 1033-*Standard for Professional Qualifications for Fire Investigator*. This standard applies to any person who investigates fires. NFPA 1033 states that a fire investigator (fire origin and cause expert) is **required** to have a basic current knowledge

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- Brent Ruther, Aspelmeier, Fisch, Power, Engberg & Helling, P.L.C.
- Joshua Strief, Elverson Vasey & Abbott, LLP, Des Moines, IA

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IDCA President's Letter



Kami Holmes
IDCA President

The year 2020 will definitely be a year to remember, though if you are like me, there are many things you'd like to forget; most recently the derecho storm that hit Iowa a few weeks ago. I truly hope that you are all doing well at this time, but if you are not, please reach out. In addition, if there is anything the IDCA might be able to assist with, please let us know.

This past year has gone by so fast, and it's hard to believe that the [Annual Meeting and Seminar](#) is quickly upon us. Although for the first time in IDCA history we will not be having an in-person meeting, I am excited about the virtual meeting we have planned and hope that you will experience this unparalleled event with me! Though it will be different, I have no doubt that it will still be an exceptional event as we have some great speakers lined up for you!

This year's Annual Meeting and Seminar will be divided between two days and provides 11.5 hours of CLE, with 3.5 of those hours being pre-recorded on-demand sessions available to you at your leisure. On Thursday, September 17, the meeting will begin at 12:30 pm. and run until 5:00 p.m. On Friday, September 18, the meeting will begin at 8:00 a.m. and run until 1:15 p.m. Many of our speakers are presenting live from a television studio and all of our speakers will be available to engage with the audience and answer questions during each session. There are a number of registration options including full registration, Thursday or Friday registrations, and claims professional registrations. In addition, new this year are the registration discounts for attorneys who have been in practice four years or less. Make sure you check out the [IDCA website](#) and take a look at the Schedule of Events and brochure.

Speaking of the IDCA website, I am excited to be able to give you all an update on our website at the Annual Meeting and to show

you what we have done, as we have added some pretty amazing things over the summer, the first of which is a [communities section](#). The community section of our website is designed like most other community forums you might be involved with: you can ask questions, post tips, or write just about anything to interact with other members on the community forum. There is already an abundance of great threads and topics on a variety of issues, from expert witnesses to trends people have been seeing, so make sure to check it out.

The key to maintaining a great association is providing benefits to its members which aid in their practice and making sure that members feel heard and valued. I hope that you feel your membership in the IDCA provides you with these things, however if you are questioning value, please reach out and let us know what we can do to better the association. The board really does work hard to address the needs of our members and to make sure that we are providing up to date benefits. To be able to provide these things, our association needs to have meaningful involvement of its members and have open lines of communication. We welcome input from and involvement of our members on all levels!

As this is my last President's Letter to you, I would like to thank you all for the amazing opportunity to serve as your president. I have loved almost every minute of it. I am a very proud member of this organization, and I have no doubt that it will continue to thrive for many years to come under the leadership we have and through the support of our members!

Iowa Lawyers Assistance Program

The practice of law is stressful, and the additional challenges faced by COVID-19 and the Iowa Derecho can compound that stress. The Iowa Lawyers Assistance Program can help, <http://www.iowalap.org/>

Continued from Page 1

beyond the high school level and recognizes 16 topics that shall be identified by definition.

The 16 topics are:

- Fire science
- Fire chemistry
- Thermodynamics
- Thermometry
- Fire dynamics
- Explosion dynamics
- Computer fire modeling
- Fire investigation
- Fire analysis
- Fire investigation methodology
- Fire investigation technology
- Hazardous materials
- Failure analysis and analytical tools
- Fire protection systems
- Evidence documentation, collection, and preservation
- Electricity and electrical systems

There is an industry accepted guideline known as NFPA 921-*Guide for Fire and Explosion Investigations*, which sets the standard for investigation and analysis of fire and explosion incidents. One of the most common ways that fire origin and

cause experts breach NFPA 921 is the use of negative corpus (a/k/a elimination of known causes) in their investigation and determination of cause. This usually will result in a determination that the fire was intentionally set or that the fire was the result of your client's actions or product. To put it into perspective, think of a hypothesis when a fire expert writes in their report that "All other causes were eliminated, therefore it was the fault of . . . (your client)," even though there is no evidence to support their hypothesis. NFPA 921 states the following about negative corpus methodology: "*This process is not consistent with the scientific method, is inappropriate, and should not be used because it generates untestable hypotheses, and may result in incorrect determinations of the ignition source and first fuel ignited.*" How many times have you received or viewed a report where there is no fire science involved to determine the cause of the fire?

Defense counsel need to understand that fire investigation, as a profession and as a science, has advanced significantly during the past few decades. *Daubert* hearings are becoming more common and generally expected if a fire origin and cause expert methodology is in question. Defense counsel should question the qualifications of fire experts because the fire investigation profession contains a significant number of unqualified fire investigators/experts who do not meet the qualifications for fire investigator set forth in NFPA 1033. Even those fire experts who can pass a test of their knowledge are more than likely to have questionable methodology. Their methodology should follow NFPA 921, and if it does not, defense counsel should ask the plaintiff's fire investigator expert why he or she failed to follow NFPA 921.

We will discuss more about how to depose a fire origin and cause expert during the IDCA Annual Meeting presentation 'How to Properly Prepare for a Fire Expert Deposition and Litigation' on Thursday, September 17 at 1:40PM.



New Lawyer Profile



Adam Babinat

In every issue of *Defense Update*, we will highlight a new lawyer. This issue, we get to know Adam Babinat at Redfern, Mason, Larsen & Moore, P.L.C., in Cedar Falls.

Adam J. Babinat is an Associate at Redfern, Mason, Larsen & Moore, P.L.C. in Cedar Falls, where he practices primarily in commercial litigation at the district and appellate levels. Adam grew up in Waterloo, Iowa, and graduated from the

University of New Hampshire with a bachelor's degree in English in 2014 before earning his law degree from Drake University Law

School in 2017. After graduating from law school, Adam spent two years practicing at O'Connor & Thomas, P.C. in Dubuque, Iowa, before returning to the Cedar Valley in 2019.

Adam is an active member of the Iowa State Bar Association, Illinois State Bar Association, and Black Hawk County Bar Association. He currently serves on the board of directors for Pathways Behavioral Services in Waterloo and has previously served on the City of Dubuque Housing Commission.

Adam and his wife Emily live in Cedar Falls. They enjoy spending time with friends and family, trying new restaurants, and exploring Black Hawk County on their bicycles. Adam is also an avid Milwaukee Bucks fan, and he tries to make it to the Fiserv Forum at least once each season.



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*Schedule of Events
& Registration*

**IDCA's 56th GOING VIRTUAL
ANNUAL MEETING & SEMINAR
September 17-18**

2020

REGISTER ONLINE

IOWADEFENSECOUNSEL.ORG/ANNUALMEETING2020

Iowa Defense Counsel Association, 1255 SW Prairie Trail Pkwy Ankeny, IA 50023
515-244-2847 | iowadefensecounsel.org

About IDCA

IDCA members are more than 310 lawyers and claims professionals actively engaged in the practice of law or in work relating to the handling of claims and the defense of legal actions. IDCA's mission is to be the trusted professional voice for the defense of civil litigants.



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Annual Meeting & Seminar—Going Virtual

Same great sessions – same annual meeting business – we're just taking this conference virtual!

In order to keep our members health and engagement strong, we have reorganized the 2020 Annual Meeting schedule into two, half-days (4 hours each) as follows:

**Thursday, September 17, 12:30–5:00 p.m. &
Friday, September 18, 8:00 a.m.–1:15 p.m.
(Annual Meeting included)**

CLE HOURS

Annual Meeting participants will receive a total of 11.5 CLE hours (including 2.0 Ethics Hours), approval pending. CLE hours are posted to your IDCA account following the meeting and available at www.iowadefensecounsel.org when you log-in with your user credentials.

Thursday, 9/17/20: Approved for 4.0 State CLE Hours (includes 1.0 Ethics Hours). Activity Number: 352511

Friday, 9/18/20: Approved for 4.0 State CLE Hours (includes 1.0 Ethics Hours). Activity Number: 352512

On-Demand Webinars: Approved for 3.5 CLE Hours. Activity Number: 352513

REGISTRATION

Save money and register by **September 8, 2020**. Rates increase after this date.

REGISTER ONLINE AT IOWADEFENSECOUNSEL.ORG

Receive immediate confirmation and receipt when you register online!

Members must sign in to receive the IDCA member rate.

If you are not a member, you will need to create an account before you can register. We invite you to take advantage of IDCA's first-time member promotion. Join now and receive complimentary dues until December 2021 and the member rate to attend the IDCA Annual Meeting. This offer is for first-time members only.

FAX: (515) 334-1483 or **MAIL:** Iowa Defense Counsel Association, 1255 SW Prairie Trail Parkway, Ankeny, IA 50023-7069

Allow two business days for confirmation and receipt to be emailed if registering by fax or mail.

QUESTIONS

Email Kristen Dearden at meetings@iowadefensecounsel.org or call (515) 334-1482.

For security purposes, do not email registration and payment information. This is not a secure way to transmit your credit card information. IDCA is not responsible for credit card information sent by email.

REGISTRATION INCLUDES

Full registration includes access to the virtual meeting for both days totaling 8.0 CLE hours, access to the complementary on-demand sessions totaling 3.5 CLE hours and the IDCA Annual Meeting business session on Friday, September 18.

Daily registrations will include 4.0 CLE hours for Thursday and Friday will include 4.0 CLE hours plus IDCA Annual Meeting business session. Access to the on-demand webinars apply to full and daily registrations.

Materials are provided on the event website, iowadefensecounsel.org/AnnualMeeting2020. An email will be sent to all registered attendees once session handouts and on-demand sessions are available.

Virtual Schedule-at-a-Glance

THURSDAY, SEPTEMBER 17TH

12:30–12:35 p.m.	Welcome & Opening Remarks
12:35–1:35 p.m.	Keynote Address: Communicate with Attitude
1:35–1:40 p.m.	Sponsored Break
1:40–2:40 p.m.	How to Properly Prepare for Fire Litigation and Depositions
2:40–2:45 p.m.	Sponsored Break
2:45–3:45 p.m.	Anchors “Aweigh:” Defense Techniques for Defending Damage Claims
3:45–4:00 p.m.	IDCA Website Updates
4:00–5:00 p.m.	Like It or Lump It: An Ethical Approach to Neuropsychological Evaluations of Chronic Pain Patients

FRIDAY, SEPTEMBER 18TH

8:00–8:05 a.m.	Day Two Welcome & Opening Remarks
8:05–9:05 a.m.	Brain Injury Cases: Practical Approaches for Evaluating Merits and Disproving Faulty Assertions
9:05–9:10 a.m.	Sponsored Break
9:10–10:10 a.m.	The Federal Court Today
10:10–10:15 a.m.	Sponsored Break
10:15–11:15 a.m.	New Attorneys Flip the Script: Reverse Panel on Developing Great Lawyers
11:15 a.m. –12:15 p.m.	Ethical and Security Challenges Representing Clients Remotely
12:15–1:15 p.m.	IDCA Awards, Annual Business Meeting & Legislative Update
1:15 p.m.	Adjourn

EVENT WEBSITE iowadefensecounsel.org/AnnualMeeting2020

IDCA has an event website focused solely on the IDCA Annual Meeting, www.iowadefensecounsel.org/AnnualMeeting2020. From here, you have access to your two-day virtual agenda, session handouts, Zoom meeting links and information, information about our sponsors, notification of any last-minute changes and the ability to see who is registered (you must be logged into your IDCA account for the attendee list). Ensure this is your first stop for all meeting information.

Schedule Of Virtual Events

Thursday, September 17, 2020

12:30–12:35 p.m.

Welcome & Opening Remarks

Kami Holmes, Grinnell Mutual & Steve Doohen, Whitfield & Eddy, PLC



MATT BOOTH

12:35–1:35 p.m.

Keynote: Communicate with Attitude

Matt Booth, MAC, CSP, Attitude Expert & Author

From the day you were born, you've depended on the ability to communicate. A soft touch, that warm gentle hug from your family and somewhere between that first cry for breath and yesterday's long-winded lunch,

the process has changed. You now live in a world full of clutter, confusion, and information overload. With each step forward in technology, you seem to take a step back from personal connection and then are forced to catch up. Success comes to people not because they are smarter or more talented than you, but because they can communicate their ideas clearly and thus gaining buy-in from staff and co-workers. Virtually every facet of your personal and professional life hangs on your ability to communicate.

1:35–1:40 p.m.

Sponsored Break



MARC FENNEL

1:40–2:40 p.m.

How to Properly Prepare for Fire Litigation and Depositions

Marc Fennell, IAAI-CFI, Senior Investigator, J.S. Held LLC, Chicago, IL

Sponsored by: J.S. Held LLC

Proper litigation that involves a fire claim usually includes a fire origin and cause expert. There are standards and guidelines that the fire expert is expected

to follow. This includes, but not limited to proper investigation, documentation, report writing and testimony. This presentation provides a basic understanding of fire cause analysis and the detection of respect to resolving defensive subrogation issues involving fire related claims. A representative case study will be presented that illustrates the application of these tools.

2:40–2:45 p.m.

Sponsored Break



KEVIN REYNOLDS

the advent of “reptile” plaintiff’s lawyers and obscenely high verdicts, is this the best approach? How can plaintiffs’ tactic of “anchoring” the lay-person jury to an astronomically high number can be countered? Will a defense “number” serve as a “floor?” My goal is to get you thinking about how you might go about making a defense argument on the issue of damages in your next serious injury or damages case.

2:45–3:45 p.m.

Authors “Aweigh:” Defense Techniques for Defending Damage Claims

Kevin Reynolds, Whitfield & Eddy, PLC

As defense lawyers we are intimately familiar with the defenses of liability and causation. In the majority of cases that I’ve tried, this has been my focus, sometimes to the exclusion of any argument on damages. But with

3:45–4:00 p.m.

IDCA Website Update

Kami Holmes, Grinnell Mutual

4:00–5:00 p.m.



DR. ROBERT ARIAS, PH.D

Like It or Lump It: An Ethical Approach to Neuropsychological Evaluations of Chronic Pain Patients

Dr. Robert Arias, Ph.D., Arias Neuropsychology & Behavioral Medicine, Lincoln, NE

Neuropsychological evaluations are a standard part of evaluating chronic pain patients, particularly before surgical procedures. Many of these evaluations simply result

in a rubber stamp approval, despite numerous risk factors predictive of bad outcome. This presentation examines factors that predict good or bad outcomes from interventions targeted at ameliorating pain and when to say “NO”.

Schedule Of Virtual Events

Friday, September 18, 2020

8:00-8:05 a.m.

Day 2: Welcome & Announcements

Steve Doohen, Whitfield & Eddy, PLC

8:05-9:05 a.m.



DR. DAVID FAUST

Brain Injury Cases: Practical Approaches for Evaluating Merits and Disproving Faulty Assertions

Dr. David Faust, Professor Department of Psychology, University of Rhode Island

Dr. Nathan Cook, Instructor of Physical Medicine and Rehabilitation, Harvard Medical School

Brain injury claims and experts such as neuropsychologists can present considerable challenges under high stakes conditions. These cases may necessitate some modifications in usual strategies and tactics, and sufficient know how or input to separate warranted claims from pseudo-science or worse. This practical presentation addresses methods for appraising cases and challenging faulty assertions effectively.

9:05-9:10 a.m.

Sponsored Break



FRANK SEVERINO

9:10-10:10 a.m. The Federal Court Today

Frank Severino, Chief Deputy Clerk of Court, U.S. District Court, Southern District of Iowa

The United States District Court can be an intimidating place for attorneys to practice law. The presentation will provide an overview of what attorneys should know about the court before filing or appearing in cases. There will be a discussion about trends, best practices, and tips for successfully litigating cases in federal court. The COVID-19 pandemic creates new challenges for attorneys particularly when preparing for hearings and presenting cases to a jury. Knowing the expectations of the court and the obstacles you may encounter will help attorneys be better prepared and more confident in their presentation. There will be an update on current practices and procedures in the pandemic era.

10:10-10:15 a.m.
Sponsored Break

10:15-11:15 a.m.

New Attorneys Flip the Script: Reverse Panel on Developing Great Lawyers

Panelists: Anna Mallen, Whitfield & Eddy; Olivia Brook, Ahlers & Cooney; Blake Hanson, Bradshaw Law Firm



ANNA MALLEN



OLIVIA BROOK



BLAKE HANSON

Everyone has been, or is, a new lawyer. The uphill battle from Law school to being a practicing attorney is always evolving. Toss in a global pandemic and everything changes once again. In this unique reverse panel, listen to a candid discussion among new and more experienced attorneys about court procedure, marketing, lawyer well-being, and more as they engage the audience for their take on these topics. No matter what level of experience you have as a practicing attorney in Iowa, you are guaranteed to learn a lot from this interactive experience amongst Iowa lawyers.

11:15 a.m.-12:15 p.m.

Ethical and Security Challenges Representing Clients Remotely



TODD C. SCOTT

Todd C. Scott, V.P. Risk Management, Minnesota Lawyers Mutual Insurance Company

Focusing on the firm's management and security practices is critical now that many lawyers are working remotely. This program will examine how to ethically and effectively manage remote office challenges over a broad range of topics including: remotely managing people, documents, finances, technology, security, crisis management, and most importantly, client services.

12:15-1:15 p.m.

IDCA Awards and Annual Business Meeting & Legislative Update

Schedule Of Virtual Events

IDCA Annual Meeting On-Demand Webinars

Annual meeting attendees will have access to three pre-recorded sessions for an additional 3.5 CLE hours.

Access to these webinars are within the Annual Meeting website at IOWADEFENSECOUNSEL.ORG/ANNUALMEETING2020

1.0 hour | Mediation/Settlement Panel Discussion: A Look from the Inside, Outside and the Underside

Panelists: Mark Brownlee, Boehlert Brownlee ADR; Paul Thune, Thune Law Firm P.L.C., Chief District Court Judge Michael D. Huppert, District 5C

Moderator: Jason Madden Bradshaw Law Firm

A sitting district court judge and seasoned mediators will discuss the nuts and bolts, and best-practices for getting cases settled when necessary, whether it be at mediation, settlement conferences or otherwise.

1.0 hour | COVID-19 Litigation in Iowa

James W. Bryan, Anderson & Associates

This presentation takes a look at the status of coverage and tort litigation that has arisen out of the COVID-19 pandemic. Where do things stand with the early litigation filed across the country concerning business interruption coverage and various tort claims attributable to the virus. The presentation also looks at the action taken by the Iowa legislature to address COVID-19 litigation in Iowa.

1.5 hours | Case Law Updates

Appellate I Negligence/Torts

Crystal Pound, Simmons Perrine Moyer Bergman P.C.

Appellate II Contracts/Commercial

Luke Jenson, Swisher & Cohrt, PLC

Appellate III Employment/Civil Procedure

Spencer Vasey, Elverson Vasey Law Firm

Participants will receive a brief overview of the past year's appellate decisions affecting negligence/torts, contracts/commercial, and employment law and civil procedure in Iowa.

IDCA Attendee Registration For Virtual Annual Meeting



Name _____

Firm _____

Address _____

City, State, Zip _____

Email _____ Phone _____

Registration Costs

	Full Registration		Thursday Only		Friday Only	
	On/Before Sept. 8	After Sept. 8	On/Before Sept. 8	After Sept. 8	On/Before Sept. 8	After Sept. 8
Member	\$275	\$325	\$185	\$235	\$120	\$170
In Practice 4 Years or Less – Member	\$175	\$225	\$100	\$150	\$75	\$125
Non-Member*	\$475	\$525	\$285	\$335	\$240	\$290
In Practice 4 Year or Less – Non-Member*	\$275	\$325	\$200	\$250	\$150	\$200
Claims Professional**	\$100	\$150	\$100	\$150	\$100	\$150

*Take advantage of IDCA's new member promotion. Join now and receive complimentary dues until December 2021 and the member rate to the IDCA Annual Meeting. First-time members only.

**Claims Professionals Rate: Not receiving CLE

Payment

Payment must be received and accompanied with order form to secure registration.

Check _____ Pay to the order of **IDCA**. Please include this form with the payment.

Credit Card: VISA _____ MasterCard _____ American Express _____

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Name on Card _____ Signature _____

Address (if different than above) _____

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How to Register

Register online, IOWADEFENSECOUNSEL.ORG/ANNUALMEETING2020

or return completed form and payment to:

Iowa Defense Counsel Association, 1255 SW Prairie Trail Parkway, Ankeny, IA 50023-7068, Fax: (515) 334-1483

For security purposes, do not email payment information.

Early-bird registration ends September 8, 2020.

Cancellation Policy

If written cancellation is received by September 9, 2020, a full refund less a \$50 processing fee will be issued. No refunds for cancellations after September 9, 2020; no refunds for no log-ins.



IDCA Annual Meetings

September 17–18, 2020

56TH VIRTUAL ANNUAL MEETING & SEMINAR

September 17–18, 2020
Register Online

September 16–17, 2021

57TH ANNUAL MEETING & SEMINAR

September 16–17, 2021
Embassy Suites by Hilton, Des Moines Downtown
Des Moines, Iowa