

**STATE AND DISTRICT JUDICIAL NOMINATION COMMISSION
AND OFFICE OF THE GOVERNOR
JOINT JUDICIAL APPLICATION**

Please complete this application by placing your responses in normal type, immediately beneath each request for information. Requested documents should be attached at the end of the application or in separate PDF files, clearly identifying the numbered request to which each document is responsive. Completed applications are public records. If you cannot fully respond to a question without disclosing information that is confidential under state or federal law, please submit that portion of your answer separately, along with your legal basis for considering the information confidential. Do not submit opinions or other writing samples containing confidential information unless you are able to appropriately redact the document to avoid disclosing the identity of the parties or other confidential information.

PERSONAL INFORMATION

- 1. State your full name.**

Carin Margaret Forbes

- 2. State your current occupation or title. (Lawyers: identify name of firm, organization, or government agency; judicial officers: identify title and judicial election district.)**

Assistant Story County Attorney

- 3. State your date of birth (to determine statutory eligibility).**

October 8, 1977

- 4. State your current city and county of residence.**

Ames, Story County, Iowa

PROFESSIONAL AND EDUCATIONAL HISTORY

5. **List in reverse chronological order each college and law school you attended including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.**

University of Iowa, Iowa City, Iowa

Dates of attendance: Fall, 1996 through Spring, 2000

Degree awarded: Bachelor of Arts

Majors of study: Communication Studies and Philosophy

Drake University Law School

Dates of attendance, Fall, 2000 through Spring, 2023.

Degree awarded: Juris Doctorate

6. **Describe in reverse chronological order all of your work experience since graduating from college, including:**
- a. **Your position, dates (beginning and end) of your employment, addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the name of your supervisor or a knowledgeable colleague if possible.**

Assistant Story County Attorney

1315 S. B Avenue, Nevada, Iowa 50201

Dates of Employment: February, 2022 to present.

Supervisor: Timothy Meals

Executive Director, Legal Aid Society of Story County

Address at time of employment: 937 6th Street, Suite 101, Nevada, Iowa 50201; Now: 220 H Ave., Nevada, Iowa 50201

Dates of Employment: April, 2008 through February, 2022.

Executive Director: October, 2015 through February, 2022

Supervisors: Jay Kamath (Executive Director 2008-2010); Tara van Brederode (Executive Director 2010-2015)

Adjunct Professor, Des Moines Area Community College

2006 S. Ankeny Blvd., Ankeny, Iowa 50023

Dates of employment: fall semester, 2006-spring semester, 2008

Partner Attorney, Feilmeyer, Feilmeyer, Keenan, Forbes & Fultz, PLC

Former Address (firm has been dissolved): 618 Douglas Ave., Ames, Iowa 50010

Dates of association with firm: October, 2003-March, 2008

Name of knowledgeable colleague: Christine Moon

- b. Your periods of military service, if any, including active duty, reserves or other status. Give the date, branch of service, your rank or rating, and present status or discharge status.**

None.

- 7. List the dates you were admitted to the bar of any state and any lapses or terminations of membership. Please explain the reason for any lapse or termination of membership.**

Iowa Supreme Court bar admission: September 15, 2003.

US District Court for the Northern District of Iowa: October, 2003. Terminated in 2008 because license was unnecessary as a staff attorney at Legal Aid Society of Story County. Federal license remains unnecessary as Assistant Story County Attorney.

US District Court for the Southern District of Iowa: October, 2003. Terminated in 2008 because license was unnecessary as a staff attorney at Legal Aid Society of Story County. Federal license remains unnecessary as Assistant Story County Attorney.

- 8. Describe the general character of your legal experience, dividing it into periods with dates if its character has changed over the years, including:**

- a. A description of your typical clients and the areas of the law in which you have focused, including the approximate percentage of time spent in each area of practice.**

Private Practice (2003-2008)

During the time period that I was engaged in private practice, I estimate that my caseload was 50% court appointed work for indigent clients. Of the court appointed work, approximately 50% was adult criminal defense work, 40% was juvenile delinquency defense and work with parents and children in Child in Need of Assistance cases, and 10% consisted of mental health and substance abuse commitment cases.

For the remainder of my caseload in private practice, I estimate that 30% was related to family law and 10% was related to probate (specifically guardianships, conservatorships and the drafting of wills and powers of attorney). I also estimate that approximately 10% was transactional, related to real estate transactions and other business transactions.

Legal Aid Society of Story County (2008-2022)

All clients represented by this organization were 150% or below the federal poverty guidelines for family size. Nearly 50% of the work at Legal Aid is family law. This consisted of: divorces, child custody cases for unmarried parents, child support cases, and subsequent modifications actions. Legal Aid uses a complete representation model, representing clients from the start of their case to the final order, giving them the same representation they could expect to receive from a private law firm. The remaining types of cases by percentage were approximately as follows:

- Non-fee generating probate matters (guardianships and conservatorships, powers of attorney and will drafting): 15%.
- Landlord and tenant actions (usually Forcible Entry and Detainer cases): 11%.
- Civil protective order cases: 5%.
- Administrative actions (Social Security and unemployment): 6%.
- Debtor/creditor (not bankruptcy): 5%.
- Other housing cases: 1%.
- Miscellaneous issues and advice: 9%.

My personal caseload followed the same percentage as the caseload of the office in general.

Assistant Story County Attorney (2022-Present)

Since taking this position, 100% of my practice has been criminal law focused. I have a “general indictable docket” which means that I may be assigned to any case prosecuted as a serious misdemeanor or higher. In addition I am also currently assigned some simple misdemeanor domestic abuse cases. I have prosecuted everything from first degree murder to forgery to operating while intoxicated cases.

I do not have clients in this position. I do regularly navigate victims. Victim cases, inclusive of individuals and businesses, make up approximately 60-70% of my caseload at any given time. Non-victim cases would include things like possession of a controlled substance, operating a motor vehicle while intoxicated with no injury or accident, and the like.

- b. The approximate percentage of your practice that has been in areas other than appearance before courts or other tribunals and a description of the nature of that practice.**

Approximately 10% of my entire practice has been either transactional in nature (real estate transactions, creation of business entities, etc.), probate cases in which there was no court filing (such as the creation of wills, plenary powers of attorney

and advanced healthcare directives) or involved only legal advice without filing a case in court.

c. The approximate percentage of your litigation that was: Administrative, Civil, and Criminal.

2003-2008 (private practice):

- 50% criminal and juvenile (including CINA actions); and
- 50% civil.

2008-2022 (Legal Aid):

- 85% Civil; and
- 15% Administrative.

2022-Present (Assistant County Attorney):

- 100% criminal.

d. The approximate number of appeals in which you participated within the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel. If desired, you may also provide separate data for experience beyond the last 10 years.

I have not participated in any appeals except those that are administrative in nature within the last 10 years. The percentage of these cases are reflected in the numbers in the answer to question 8(a) above. Beyond the last 10 years, I had one criminal appeal and one small claims appeal. The small claims appeal was appealed to the Story County District Court. The criminal appeal was appealed to the Iowa Supreme Court.

9. Describe your pro bono work over at least the past 10 years, including:

- a. Approximate number of pro bono cases you've handled.**
- b. Average number of hours of pro bono service per year.**
- c. Types of pro bono cases.**

The vast majority of my legal career has been dedicated to public service work. At Legal Aid, my entire legal practice consisted of helping to ensure people had equal access to justice in civil cases regardless of income. As the Executive Director, I continued to manage an active client caseload in addition to my administrative duties. As a criminal prosecutor, I seek to serve the public by upholding our laws and working for the best interests of the community, which includes the rights of the accused. In private practice, I worked on the court-appointed list for criminal defense, juvenile and mental health commitment cases to help provide indigent persons with representation. While I did take a few *pro bono* cases in private practice, I do not have the statistics on the hours I spent on those cases at this time.

10. If you have ever held judicial office or served in a quasi-judicial position: None
- a. Describe the details, including the title of the position, the courts or other tribunals involved, the method of selection, the periods of service, and a description of the jurisdiction of each of court or tribunal.
 - b. List any cases in which your decision was reversed by a court or other reviewing entity. For each case, include a citation for your reversed opinion and the reviewing entity's or court's opinion and attach a copy of each opinion.
 - c. List any case in which you wrote a significant opinion on federal or state constitutional issues. For each case, include a citation for your opinion and any reviewing entity's or court's opinion and attach a copy of each opinion.
11. If you have been subject to the reporting requirements of Court Rule 22.10: Not Applicable.
- a. State the number of times you have failed to file timely rule 22.10 reports.
 - b. State the number of matters, along with an explanation of the delay, that you have taken under advisement for longer than:
 - i. 120 days.
 - ii. 180 days.

iii. 240 days.

iv. One year.

12. Describe at least three of the most significant legal matters in which you have participated as an attorney or presided over as a judge or other impartial decision maker. If they were litigated matters, give the citation if available. For each matter please state the following:
- a. Title of the case and venue,
 - b. A brief summary of the substance of each matter,
 - c. A succinct statement of what you believe to be the significance of it,
 - d. The name of the party you represented, if applicable,
 - e. The nature of your participation in the case,
 - f. Dates of your involvement,
 - g. The outcome of the case,
 - h. Name(s) and address(es) [city, state] of co-counsel (if any),
 - i. Name(s) of counsel for opposing parties in the case, and
 - j. Name of the judge before whom you tried the case, if applicable.

Case No. 1

- a. *State of Iowa v. Trevin David Nicholson*, Story County Case No. FECR060964.
- b. This was a first degree murder case of a two year old boy in which the mother's boyfriend (Trevin Nicholson) was accused of shaking and slamming the child's head, causing the death of the child. Mr. Nicholson was also charged with Child Endangerment Resulting in Death.
- c. This was my first jury trial experience and my first trial experience as a criminal prosecutor. We were able to get a guilty verdict on both charges and get justice for the victim child and his family. This was a very difficult, complex case and was extremely rewarding to be a part of. I am very proud of my contributions that ultimately secured the guilty verdicts.
- d. The State of Iowa.
- e. As co-counsel, I worked with the file and the large amount of evidence we had as the State of Iowa to find the specific evidence that would be presented to the jury at trial. I worked with witnesses, including the police who responded to the 911 call, the main police detectives, the emergency first responders, the doctors who took care of the child, and others in order to prepare them for testimony. I attended depositions of State witnesses that were utilized by the defense. I prepared the proffer agreement used to gain evidence from the mother of this

child (Danielle Obrecht) who also had her own criminal charges. I prepared direct examinations of several witnesses in the case, including the main detectives, first responders and other lay witnesses. I spoke with the victims in this case, including the child's father and the child's grandparents on both the mother's and father's side. I was responsible as the main contact for opposing counsel in the office and worked with them on scheduling depositions and other matters. I prepared the sentencing and presented the State's recommendations to the Court. I prepared minutes of testimony for witnesses in the case.

- f. This case had already been filed when I was hired at the Story County Attorney's Office. I entered an appearance in the matter on March 14, 2022.
- g. The State secured a guilty verdict on Murder in the First Degree and Child Endangerment Resulting in Death. These verdicts merged at sentencing. The defendant was sentenced to life in prison.
- h. Main counsel on this case was Monty Platz, Assistant Attorney General, Des Moines, Iowa.
- i. Opposing Counsel was Erin Carr and Raya Dimitrova of the Carr Law Firm, PLC in Des Moines, Iowa.
- j. This case was tried before The Honorable Judge John Haney, Second Judicial District of Iowa.

Case No. 2

- a. *State of Iowa v. Heath Brian Risdal*, Story County Case No. SMSM062285, Iowa Supreme Court Case No. 07-0058.
- b. This was my one and only appeal to the Iowa Supreme Court. This case involved criminal charges related to the violation of a civil no contact order. Mr. Risdal plead guilty to the charge, resulting in a no contact order being issued by the ruling judge between Mr. Risdal, the victim, and his children for a period of 5 years. The portion of the protective order that denied contact between Mr. Risdal and his children was appealed, first to the District Court for the Second Judicial District of Iowa, and then to the Iowa Supreme Court on discretionary review.
- c. Mr. Risdal entered a guilty plea to the charges of Violation of a Protective Order in violation of Iowa Code section 708.7(4) and Harassment in the Third Degree, in violation of Iowa Code section 708.7(4). As part of the sentence regarding the charge of Violation of a Protective Order, the District Associate Court ordered that the "Defendant shall have no contact with Melinda Risdal and her children for a period of five years." Heath Risdal was the legal father of Melinda Risdal's children. This order essentially denied Mr. Risdal of his parental rights to his children without any specific finding that Mr. Risdal posed a danger to his children. I argued that this ruling was violation of Article 1, section 9 of the Iowa Constitution and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. I have included my poof brief as a writing sample.

- d. Heath Risdal.
- e. I was appointed to represent Mr. Risdal on the criminal charges, moved to correct the sentence to allow Mr. Risdal contact with his children (this was denied), appealed the issue of the protective order to the District Court (this was denied) and filed a brief in support of that appeal, applied to the Iowa Supreme Court for discretionary review (this was granted), filed a memorandum arguing that the portion of the no contact order regarding Mr. Risdal's children be stayed (this was denied), and filed an Appellant's Proof Brief and Notice of Oral Argument. Oral Argument was not needed as the State moved to vacate the portion of the no contact order at issue and Procedendo was entered on February 1, 2008.
- f. I was appointed on June 2, 2006. I completed my representation of Mr. Risdal on March 21, 2008.
- g. Mr. Risdal was successful in this appeal. The portion of the no contact order prohibiting him from having contact with his children for a period of 5 years was vacated.
- h. No co-counsel.
- i. The offices involved with this case were the Story County Attorney's Office and the Office of the Iowa Attorney General. The specific attorney from the Story County Attorney's office was Ms. Keisha Cretsinger. The Assistant Attorney General to this case was Sheryl A. Soich.
- j. This Case was not tried, as it was appealed from a sentencing order that resulted from a guilty plea. The Honorable Steven P. Van Marel entered the original judgment on May 25, 2006. The first appeal to the District Court was heard before the Honorable Timothy J. Finn and the sentencing order issued by the District Associate Court was upheld by Judge Finn's Order on December 8, 2006. The remand was issued without oral argument by The Honorable Justice Michael J. Streit on January 29, 2008.

Case No. 3

- a. *In Re the Marriage of Brandy Lynn Walker and Israel David Walker*, Story County Case No. CDDM012890.
- b. This was a particularly complex divorce and modification action and is being shared with the permission of my former client, Brandy Lynn Walker (now Brandy Lynn Hibbs, and will henceforth be referred to as Ms. Hibbs). Ms. Hibbs has four children with her former spouse. Her spouse did not originally participate in the original divorce until after the final decree was entered in default against him. Two of Ms. Hibbs's children have severe autism spectrum disorder, one of which is non-verbal. In addition, Mr. Walker had mental health and substance abuse problems factored into this case throughout my representation of Ms. Hibbs. Order entered in this case by default judgment on August 23, 2018, granting Ms. Hibbs. sole legal and primary physical care of the children, and supervised visitation to Mr. Walker; the default was set aside by

agreement on October 15, 2018 in which Mr. Walker was granted joint legal custody of the children and was allowed unsupervised visitation if he could meet the safety requirements of the two children who were on the autism spectrum. The case was subsequently modified on March 21, 2021, granting Ms. Hibbs both sole legal and primary physical care.

- c. This case is very memorable to me and a great example of how the legal system can positively impact individual people and how well it can work for families in crisis, even if it takes time to do so. It was a heartbreaking situation, but one that could have been a far poorer outcome without the judicial system. My client had (and still has) a lot on her plate as she is parenting all four children, two with special needs and one who is nonverbal and can be aggressive toward her, on her own. We started out with Ms. Hibbs having sole legal care of all of her children and with Mr. Walker having supervised visitation after Mr. Walker failed to participate in the case and default judgment was entered against him. However, after the default judgment was entered, Mr. Walker filed to set aside the default decree. After consultation with Ms Hibbs, she graciously agreed to give Mr. Walker the chance to be able to help make decisions about the children and to have unsupervised visitation in a secure environment outside of her home. Unfortunately, Mr. Walker's mental health and substance abuse issues further deteriorated as time went on, making him essentially unable to have input into parenting decisions. He was frequently unavailable, and was not competent to help in any meaningful way. In addition, my client's non-verbal child was becoming even more aggressive to her as time passed and she was looking at the very difficult decision to place him outside of the home. As a joint legal custodian, she would have been unable to do that without Mr. Walker's participation. We were able to secure her sole legal custody so that she could make those kinds of decisions without Mr. Walker. I have attached my final proposed modification decree that I drafted for the Court as a writing sample.
- d. Brandy Lynn Hibbs, formerly known as Brandy Lynn Walker.
- e. I was Ms. Walker/Hibbs's attorney.
- f. The first filing was on December 17, 2017. On May 14, 2018, after the default Decree was entered, I withdrew from representation. I re-entered an appearance on June 21, 2018 after the Respondent filed a motion to set aside the default judgment. I stayed on as Petitioner's counsel at that time through the modification on March 22, 2021. I withdrew for a final time on January 23, 2022.
- g. My client was eventually awarded sole legal custody of all four children and child support. Mr. Walker's parenting time rights did not change after the agreement to set aside the default; however, to my knowledge, he did not obtain the proper safety measures and equipment necessary to allow him to have visitation outside of my client's home.
- h. There was no co-counsel.

- i. Mike Lewis of the Lewis Law Firm represented the Respondent for the motion to set aside the default judgment only. The address for that firm is 212 Water Street, Cambridge, Iowa 50046; phone number is 515-220-4400. The Respondent did not otherwise have counsel.
- j. This case was not tried; however, there were evidentiary hearings to prove up Ms. Hibbs's allegations when Mr. Walker failed to participate. The following judges signed final orders in the case: The Honorable Judge Timothy Finn (original Decree); The Honorable Judge Dale Ruigh (Stipulation on Motion to Set Aside Default Judgment); The Honorable Judge James Ellifson (Modification of Decree of Dissolution of Marriage).

13. Describe how your non-litigation legal experience, if any, would enhance your ability to serve as a judge.

Though my transactional experience is limited, I believe that it has increased my attention to detail overall, which enhances not only my day to day legal practice, but would enhance my ability to serve on the bench.

For example, legal descriptions of property on various documents filed with the County Recorder must be worded exactly. Abstracts of title on property must be carefully examined by the attorney crafting the title opinion such that anything that may be a barrier to marketable title is excepted in the opinion. Furthermore, an intimate knowledge of how certain things might affect the conveyance of good title to a property and how those things may be cleared from title was essential. Finally, transfer of title itself must be done within a certain timeframe and must follow procedure exactly in order for the transfer to be successful.

Real estate work also requires strong logic skills, and this practice served to enhance and expand those skills for me. Creating a flow sheet from an abstract was reminiscent of the symbolic logic classes I took for my philosophy major as an undergraduate (which, incidentally, I enjoyed but never thought I would use in real life). Strong logic skills are essential for a judge to render sound legal decisions, especially when deciding complex legal matters.

14. If you have ever held public office or have you ever been a candidate for public office, describe the public office held or sought, the location of the public office, and the dates of service.

None

15. If you are currently an officer, director, partner, sole proprietor, or otherwise engaged in the management of any business enterprise or nonprofit organization other than a law practice, provide the following information about your position(s) and title(s):

- a. **Name of business / organization.**
- b. **Your title.**
- c. **Your duties.**
- d. **Dates of involvement.**

None

- 16. List all bar associations and legal- or judicial-related committees or groups of which you are or have been a member and give the titles and dates of any offices that you held in those groups.**

1. Iowa State Bar Association, 2003-Present
2. Story County Bar Association, 2003-Present. Member of the Katie Finn McMillimen Scholarship Committee, 2008.

- 17. List all other professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed above, to which you have participated, since graduation from law school. Provide dates of membership or participation and indicate any office you held. "Participation" means consistent or repeated involvement in a given organization, membership, or regular attendance at events or meetings.**

1. Central Iowa Symphony, 2006-Present. I am a volunteer violinist in this organization. I also volunteered as a member of the board of directors of that organization and served as Vice President from 2009-2011.
2. Animal Rescue League of Iowa, 2015—2021 The Legal Aid Society of Story County participated in the "Shelter Cat Getaway" program, for which we provided foster care for homeless cats at the office. I was the main contact for this program and spoke at events for the League about our office's involvement. Our participation had to cease in 2021 when the building owner changed at Legal Aid. Participation in that program was wonderfully beneficial to our staff, the cats, the ARL and our clients (who often wanted to interact with the cats when they were feeling stressed).

- 18. If you have held judicial office, list at least three opinions that best reflect your approach to writing and deciding cases. For each case, include a brief explanation as to why you selected the opinion and a citation for your opinion and any reviewing entity's or court's opinion. If either opinion is not publicly available (i.e., available on Westlaw or a public website other than the court's electronic filing system), please attach a copy of the opinion.**

Not applicable.

19. If you have not held judicial office or served in a quasi-judicial position, provide at least three writing samples (brief, article, book, etc.) that reflect your work.

Attached.

OTHER INFORMATION

20. If any member of the State Judicial Nominating Commission (for Court of Appeals and Supreme Court applicants) or 2B District Judicial Nominating Commission (for District Judge and District Associate Judge Applicants) is your spouse, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father, mother, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister, state the Commissioner’s name and his or her familial relationship with you.

None.

21. If any member of the State Judicial Nominating Commission (for Court of Appeals and Supreme Court applicants) or 2B District Judicial Nominating Commission (for District Judge and District Associate Judge Applicants) is a current law partner or business partner, state the Commissioner’s name and describe his or her professional relationship with you.

None.

22. List the titles, publishers, and dates of books, articles, blog posts, letters to the editor, editorial pieces, or other published material you have written or edited.
Legal Aid Society of Story County Fills a Niche for Indigent Civil Legal Representation, Vol. 76 No. 2, The Iowa Lawyer, 20 (March 2016).

23. List all speeches, talks, or other public presentations that you have delivered for at least the last ten years, including the title of the presentation or a brief summary of the subject matter of the presentation, the group to whom the presentation was delivered, and the date of the presentation.

Title of Presentation	City, State	Event Sponsor	Month & Year
Dealing With Pro Se Parties	Des Moines, Iowa	Iowa Bar Association	6/2014

Dealing With Pro Se Parties	Des Moines, Iowa	Iowa Bar Association	6/2014
Forcible Entry and Detainer	Ames, Iowa	Legal Aid Society of Story County	Around Spring, 2009
Presentation at Story County Human Services Council	Ames, Iowa	Story County Human Services Council	12/2018
United Way Agency Spotlight (radio spot on KASI AM)	Ames, Iowa	United Way of Story County	Yearly from 2015 to 2021.
Funding Presentation to Nevada City Council Ad Hoc Committee	Nevada, Iowa	Nevada City Council	Yearly each November from 2015-2020.
ASSET Agency Hearing (funding presentation)	Ames, Iowa	ASSET	Yearly each January from 2016-2021
Presentation at Mid-America (for United Way Campaign)	Nevada, Iowa	United Way	November, 2017
Legal Aid Services Overview. (This was a presentation to an adult religious education class on social issues at Collegiate United Methodist Church).	Ames, Iowa	Collegiate United Methodist Church	January 12, 2020
Landlord Tenant Issues and COVID-19 (a presentation and interview about the various proclamations by Governor Reynolds and the CARES Act as it relates to eviction actions for nonpayment of rent, along with an overview of related services provided by Legal Aid.	Via Zoom (Ames, Iowa)	KHOI Radio	April 28, 2020

24. List all the social media applications (e.g., Facebook, Twitter, Snapchat, Instagram, LinkedIn) that you have used in the past five years and your account name or other identifying information (excluding passwords) for each account.

Social media application	Account name or other identifying information
Facebook	Carrie Forbes (Carrie Tigges)

Instagram/Threads	@cmf341
X (Twitter)	@carrief341
Snapchat	@cm4bes
TikTok	@carrie4bes
Reddit	u/Inevitable_Risk_3671

25. List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinction in college or law school) other than those mentioned in answers to the foregoing questions.

Academic Distinction: Honors, Drake University Law School, 2003.

26. Provide the names and telephone numbers of at least five people who would be able to comment on your qualifications to serve in judicial office. Briefly state the nature of your relationship with each person.

Name	Nature of Relationship	Telephone number
The Honorable Judge Bethany Curry	Judge Currie and I went to law school together. I have also practiced in front of her as an attorney.	515-382-7434 (court attendant)
The Honorable Judge Amy Moore	Judge Moore provided reduced fee mediation services and pro bono work for many of our Legal Aid clients prior to her appointment on the bench. I have also practiced in front of her as an attorney	515-382-7434 (court attendant)
The Honorable Judge Michael Moon (retired)	I practiced in front of Judge Moon often before he retired. Additionally, after his retirement, he helped Legal Aid by volunteering as an attorney to help clients who were just outside of our fee guidelines, and by providing reduced fee mediation services for cases involving children.	641-751-2000
Jay Kamath	Jay was the Executive Director of Legal Aid during my employment from 2008-2012	319-594-0283
Erin Lee Schneider	Erin was my co-worker at Legal Aid while she was employed there.	515-271-2948
Tara van Brederode	Tara was my co-worker at Legal Aid and was the Executive Director from 2012-2015.	515-348-1688

Peggy Michelotti

Peggy was my staff attorney at Legal Aid and is the current Executive Director of that organization. 515-382-2471

27. Explain why you are seeking this judicial position.

I sincerely believe I would enjoy this work based on my core values as a person. I view our judicial system as the backbone of our nation's freedom. It is, in fact, the "trenches" of our political system at the most basic level; that every person in our nation have the rights and protections afforded to them through the constitutions of Iowa and of the United States. We see those rights in action in a courtroom. This is where "we the people" are: they are the parties, the families, the attorneys, the jury and the Judge. I have always had a deep sense of respect for the judicial system and for the individuals who are chosen to uphold that system.

While every level of the judiciary has the function of upholding our freedoms through the power of judicial review, it starts with the District Court. It starts "small," with one ruling from one Judge at this level. Precedent setting cases begin with regular people in regular court practicing every day law.

I find a sense of purpose in being a part of this system at the level where change begins. This is why I chose to work in the trenches, why I chose to move from private practice to a position where I help indigent members of our community gain access to the judiciary system on a full time basis, why I chose to lead that cause as the Executive Director of the Legal Aid Society of Story County in 2015, and why I took the opportunity to learn criminal law from a new perspective and help do justice for victims, their families, and the community as a prosecutor. I firmly believe that all people should have access to our system, and that all people should be treated with respect and dignity in the courtroom. I have translated this belief as a prosecutor in the way that I choose to treat defendants and opposing counsel while still doing my job as a representative of the State of Iowa.

I do not have cases on my legal roster that have set amazing legal precedence; rather, I get to be a part of helping to make a difference in people's lives, both on an individual basis and with the community as a whole. I have a strong commitment to justice and love of the law, and to using my law degree in serving the public. My legal career has demonstrated this commitment, and I can think of no better or fulfilling way to demonstrate this than a judgeship.

I have a passion and drive to make sure the courts level the playing field for all members of the community and to ensure that everyone is treated with kindness, compassion, and fairness while upholding the law and respect for the legal system and the courtroom. Our legal system works amazingly well if all players are treated fairly and we all use the same rules. It is in the

courtroom where justice is served, and I would love to be in a position to demonstrate this passion as a judge.

I also know that a judgeship would intellectually fulfilling for me. I very much enjoy legal writing and researching, and I am a strong legal writer. I also enjoy learning new things about the law and have dived headfirst into this as a prosecutor after 13 years in family and civil law. I have the drive to learn new subjects and areas of law, and I look forward to doing that as a Judge.

Finally, I believe that my experiences, both professionally and personally, will be a unique and positive addition to the bench.

28. Explain how your appointment would enhance the court.

My experience in private practice, my experience in serving underprivileged members of the community at Legal Aid, and in serving the community as a criminal prosecutor, would make an excellent addition to the bench.

My experience as an Assistant Story County Attorney has added much needed jury trial experience to my legal resume. I have also learned the nuances of criminal prosecution and the sometimes very difficult task of crafting resolutions that serve both the public and the victims, and taking into account the defendant's needs as it relates to that person's rehabilitation. While I experienced clients with severe mental health issues at Legal Aid, I did not understand or appreciate the limitations in dealing with criminal defendants with severe mental health issues that affect their ability to be law-abiding members of the community. I am a supporter of the mental health court pilot project that is beginning here in Story County and I firmly believe that this will better serve the needs of the community in that regard.

My experience at The Legal Aid Society of Story County has taught me to constantly examine and dismantle my implicit biases toward people. I do not look down upon individuals who may not have the means and privileges that I do. This is not to say that I do not have implicit bias at all. I believe that we all have these biases, and to say otherwise is disingenuous. However, I have developed the skills such that I am able to recognize when I am making assumptions about people based on these biases so that I can consciously remove those biases when giving legal advice, making arguments for my clients at hearing, or even proposing plea agreements to the defense.

This is not to say that I will favor individuals in my rulings who come in front of me as a judge that are indigent, or is a person of color, or a woman, or an undocumented immigrant, or of any other non-privileged class or race. What it does mean is that will I work very hard to remain cognizant of my implicit biases in order to not attribute poor choices to socio-economic class, skin color, gender, etc. My goal as a judge is to rule on cases based on the unique set of facts

before me, and not any assumptions I have made about a party before the case is presented. All parties will be on equal footing.

I have also learned how to navigate cases with pro-se opposing parties. In many of my cases at Legal Aid, both parties were indigent, and the opposing party is also unable to obtain legal representation. I have had many experiences where pro se parties are constantly calling and requesting legal advice (but do not understand that what they are asking for is legal advice). I have also had experiences where a pro se party gets very upset because they are unable to get an attorney through Legal Aid as well (not grasping the concept of conflicts of interest). The patience that I have had to exercise with my clients very often also needs to extend to the opposing parties in these circumstances.

My legal experience has helped me develop the ability to competently assess complex fact patterns. For example, at Legal Aid, due to my caseload, I did not have the time to overthink my legal advice to my clients. I have the skills to swiftly identify any legal issues presented, assess the strengths and weaknesses in the facts presented by my clients, and set their expectations accordingly. If I did not know the answer, I know how to effectively and efficiently research the topic at hand in order to give them competent advice. My clients often had extremely complex fact patterns and unique situations, and mirrored scenarios presented in exams at law school.

As a criminal prosecutor, I have learned how to keep up with an ever changing and full docket, keep track of very swift deadlines and manage a large caseload with very different legal issues: everything from one-witness operating while intoxicated cases, to complex fraud and ongoing criminal conduct cases, to assault cases and a first degree murder case. I have learned to quickly spot potential issues with cases, research those issues, and write arguments supporting the State's position and articulate those arguments in court.

Finally, I have a plethora of courtroom experience through my experiences at Legal Aid and at the Story County Attorney's office. At Legal Aid, I was generally in the courtroom about once or twice a month for an evidentiary hearing. I had represented clients in temporary matters hearings, domestic abuse protective order hearings, elder abuse protective order hearings, forcible entry and detainer hearings, small claims defense hearings, unemployment appeals hearings, Social Security disability hearings, contested guardianship hearings, etc. As a prosecutor, I am generally in the courtroom multiple times a week for evidentiary hearings, including arraignments, evidentiary suppression hearings, guilty plea hearings, sentencing hearings, probation hearings, and the like. I have participated in at least 4 jury trials in the last year and a half and have learned the inner workings of those kinds of trials, from voir dire to closing arguments. I have excellent courtroom skills and am very comfortable with the rules of evidence.

Private Practice

The I spent in private practice has complemented my legal experience. In private practice, the

majority of my cases were court appointed criminal and juvenile work, where I learned the ins and outs of that procedure. I enjoyed researching the different facets of criminal law and applying them to my fact scenario. I enjoy the constitutional issues that come from the trial level of those types of practices and I am now enjoying re-igniting my passion for that as a criminal prosecutor.

I also gained experience in various other areas of the law. I did some transactional type work, including writing title opinions and closing mortgages for clients. This is where I learned how to write a balance sheet, which served me very well as the Executive Director at Legal Aid in creating operating and grant budgets. I helped to create some small businesses, I wrote Real Estate Purchase contracts, and I learned how to write simple, effective wills, trusts and powers of attorney. I also did my one and only appeal to the Iowa Supreme Court in private practice.

Personal Life

I grew up in Davenport, Iowa as the daughter of parents who are both sight disabled. My mother suffered an eye disease in her teenage years and is completely blind. My father has been legally blind since an accident when he was a toddler. Both of my parents are independent, and were full time professionals who worked in public service until retirement. My mother, who earned a PhD in English Literature, worked as an English professor at St. Ambrose University until she became employed by the Iowa Department for the Blind in the late 1980s. She finished her career at the Iowa Department for the Blind, retiring as the Program Director for the Adult Orientation Center. Her role was to provide blind Iowans with the tools they needed to become successful and independent, as she was provided. My father, who earned a Master's Degree in Social Work, worked for the Iowa Department of Human Services as a social worker, from foster care work to adult protective services, until his retirement.

I am asked frequently what it is like growing up with blind parents, and I always struggle with the answer to this. The truth is that I don't really know because I have never had parents that could see, so I do not have anything to compare it to. In reality, it probably was not much different than growing up with sighted parents. I have seen this described as having a sense of "diverse normality," and I would call that accurate. I have described previously in this application that I am able to take people as they are, and that we are more alike than we are different. My personal experience in growing up with disabled parents has contributed to this sense. I grew up in a household that was a different experience than my friends, and yet it was not really all that different.

In watching my parents make every day adaptations so that they could live independently, my self-confidence and independence grew as well. Small things, like marking the microwave with pieces of tape so my mother could find the buttons, or my dad using a high-powered magnifier so that he could read the newspaper, and other adaptations for which sighted people do not have to think twice about, had big impact on their lives. This taught me creative problem solving skills at

an early age, the and the independence and self-confidence to know that I could do hard things as my parents did.

I also have a deep appreciation and understanding of the need to provide services in order to “level the playing field.” My parents were able to be independent, contributing members of the community and society precisely because they were able to learn those skills through services provided by the Iowa Department for the Blind Adult Orientation Center. Additionally, they were able to take advantage of the State of Iowa’s offer to obtain college and postgraduate degrees at no cost, which enhanced their quality of life in their careers and were able to thus enhance the quality of life of both my younger brother and me.

I believe deeply that my unique experiences in private practice, my experience as a staff attorney at Legal Aid, my leadership experience in being the Executive Director at Legal Aid, my new experience as a criminal prosecutor, and my personal upbringing will add many outstanding qualities to the bench, and I look forward to utilizing those skills in a judiciary capacity in the courtroom.

29. Provide any additional information that you believe the Commission or the Governor should know in considering your application.

I have applied for this position in the past, and I believe that my lack of jury trial experience was a gaping hole in those applications that I have chosen to fill, in part, to become a better candidate for appointment to the bench. While I would happily continue to work as a criminal prosecutor and enjoy what I do in that office, my knowledge, skillset, and temperament are more suited to the judiciary. I am a strong applicant who will continue to use my commitment to public service as a judge to ensure that the legal system continues to function in a fair manner for everyone, uphold the rule of law, and to do justice in our community.

I appreciate your consideration of my candidacy.

I hereby certify all the information in this joint judicial application is true and correct to the best of my knowledge.

Signed: Cann M. Forbes

Date: October 19, 2023

Printed name: Cann M. Forbes

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

UPON THE PETITION OF

BRANDY LYNN WALKER, (legally
known as Brandy Lynn Hibbs)

Petitioner,

AND CONCERNING

ISRAEL DAVID WALKER,

Respondent.

Equity
No CDDM012890

***MODIFICATION OF DECREE OF DISSOLUTION
OF MARRIAGE***

This matter is before the Court for hearing upon a Petition for the modification of the previously entered decree of dissolution of marriage. Petitioner appeared in person and by her attorney, Carin M. Forbes. Respondent appeared not. The Court, being fully advised in the premises, makes the following determinations:

PART 1. FINDINGS OF FACT

The Court adopts the following findings of fact:

1. **PETITIONER.** Petitioner's name is **Brandy Lynn Hibbs**, formerly known as Brandy Lynn Walker; Petitioner is an adult resident of Story County, Iowa.
2. **RESPONDENT.** Respondent's name is **Israel David Walker**; Respondent is an adult. Respondent's current whereabouts are unknown. He is last known to be a resident of Boone County, Iowa.
3. **PETITIONER'S ATTORNEY.** Petitioner's attorney is Carin M. Forbes, whose business address is Legal Aid Society of Story County, 937 6th Street, Nevada, IA 50201, whose telephone number is 515-382-2471, and whose fax number is 515-382-4041.
4. **DECREE OF DISSOLUTION OF MARRIAGE.** The original decree of dissolution of marriage was entered by default on April 23, 2018. On June 12, 2018, the Respondent moved to set aside default. The parties reached a settlement agreement on the motion to set aside that modified certain portions of the default decree. That agreement was filed and approved by this Court on October 15, 2018.
5. **PETITION FOR MODIFICATION.** The petition for modification was filed on December 4, 2020.
6. **SERVICE OF ORIGINAL NOTICE.** The Original Notice for this modification action was served upon the Respondent by publication in the Ames Tribune on January 12, 2021, January 19, 2021 and January 26, 2021. Proof of publication of this notice has previously been filed herein. The Petition has signed and there is on file an affidavit indicating the efforts that Petitioner made to ascertain the whereabouts of the Respondent. This Court entered an Order allowing such service based on

the statements made by the Petitioner in her affidavit. The Respondent is deemed to have been properly served.

7. **DEFAULT.** On March 22, 2021, this Court held a hearing to consider the entry of a default Decree. Respondent did not personally appear at this hearing, nor has he filed an answer or otherwise participated in this case. Respondent was served by publication, therefore a notice of intent to file written application of default is not required in this case (I.R.C.P. 1.972(4)(d)). Petitioner has filed a separate motion for the entry of a default judgment. That motion should be granted.
8. **MINOR CHILDREN.** The parties have four minor children whose welfare will be affected by this action: R.H.W., who was born in 2006; M.G.W., who was born in 2007; A.G.W., who was born in 2010; and A.J.W., who was born in 2014.
9. **PRIOR AGREEMENT, RELEVANT TERMS:** The agreement made by the parties awarded them both joint legal care of the minor children. Petitioner was awarded primary physical care while the Respondent was awarded visitation so long as he could provide a secure environment given the special needs of the children.

Petitioner is requesting that the Court modify the current decree to award her with sole legal care of the children. She is not seeking further modifications at this time.

10. **SUBSTANTIAL CHANGE IN CIRCUMSTANCES.** There have been substantial changes in circumstances since the date of entry of the decree and the Stipulation on Motion to Set Aside Default Judgment that was approved by this Court on October 15, 2018 that was not contemplated by either party:

10.1. The Respondent, Israel Walker has had little to no participation in decision making for the parties' minor children since October 15, 2018. Furthermore, due to apparent exacerbation of substance abuse issues, mental health issues, or some combination of the two, the Respondent is not in a place to be able to meaningfully participate in making decisions concerning the health, safety and welfare of the parties' minor children. Finally, due to the aforementioned concerns, Respondent's judgment cannot be trusted to make reasonable decisions and give input regarding the health, safety and welfare of the minor children.

10.2. On June 28, 2019, Petitioner was convicted of Operating While Intoxicated, 2nd Offense, in Boone County Case No. FECR113117.

11. **PERSONAL JURISDICTION & VENUE.** Both parties and the minor children still reside in the State of Iowa and have since the entry of the decree. No court of this or any other state have made a determination that the minor children, parents of the minor children, or any person acting as a parent to the minor children do not presently reside in this state.

12. FACTS SUPPORTING REQUESTED MODIFICATION: It is in the best interests of the minor children to modify the existing Court order to award the Petitioner with sole legal care of the minor children for the following reasons:

12.1. Petitioner has been the primary caretaker of the parties' minor children since birth, and has made the majority of the major decisions concerning their health, safety and welfare; however, during the marriage, Mr. Walker participated in this decision making, attended school conferences, doctor appointments, and the like. R.H.W. and M.G.W. have diagnoses of severe autism spectrum disorder. R.H.W. is nonverbal. Both R.H.W. and M.G.W. attend a special needs school. After the October 15, 2018 order, Mr. Walker has made himself unavailable to participate in decision making, leaving Ms. Hibbs to make decisions regarding the children on her own.

12.2. The Respondent has been diagnosed with bipolar disorder and has a history of discontinuing his medications against medical advice.

12.3. Mr. Walker has pending criminal charges for domestic abuse assault causing bodily injury, a class D felony, involving his most recent ex-wife. While this Court cannot base a modification action on pending criminal charges, it has caused Ms. Hibbs concern such that she is no longer comfortable hosting visitation in her home. The current Court order requires Mr. Walker to provide a safe environment to host visitation due to the special needs of R.H.W. and M.G.W. Mr. Walker has not provided such an environment. At the time of the original Decree and subsequent modification order, Ms. Hibbs would host Mr. Walker's visitation at her home approximately 2 times per week. This visitation was regular until approximately 1 year ago, when Mr. Walker would begin missing previously scheduled visits with the children. Additionally, Mr. Walker would come to visitation apparently intoxicated. His last visitation with the children was in October, 2020. Prior to October, 2020, his last visitation with the children was in June, 2020. He has since requested one visit with his children in February, 2020; however, this request was made at 10:00 p.m. on a school night and it was unknown where this visitation would take place. Additionally, Ms. Hibbs suspected Mr. Walker was intoxicated at the time of this request. Mr. Walker had typically displayed very unpredictable behavior during the marriage and his alcoholism was a concern at that time, however he had never assaulted the Petitioner and his behavior subsequent to the entry of the parties' stipulation has caused greater concern as to his stability. The Court is concerned that Mr. Walker is experiencing a more severe deterioration of his mental state than was present at the time the original decree was entered.

12.4. Mr. Walker has been arrested and convicted of OWI 2nd offense since the October 15, 2018 order.

12.5. Mr. Walker's current whereabouts are unknown. Ms. Hibbs attempts to ascertain Mr. Walker's whereabouts have proven fruitless. He does not maintain contact with Ms. Hibbs or the children enough to know what is in their best interests, which is especially concerning given the special needs of M.G.W. and R.H.W. Additionally, if he were available, his judgment to make decisions in the children's best interests at this time is suspect at best.

12.6. The needs for R.H.W. have also changed since the entry date of the decree. R.H.W. has developed a seizure disorder and has become significantly aggressive, particularly toward Ms. Hibbs. As a result, Ms. Hibbs may need to make some difficult decisions about placement for R.H.W. in the very near future, and Mr. Walker is not in a position to be able to help make these decisions while keeping the best interests of R.H.W. in mind. The Court finds that it is not in the best interest of the children to require Ms. Hibbs to obtain Mr. Walker's input regarding placement of R.H.W.

PART 2. ORDER

Based upon the findings of fact as set out in Part 1 above, IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:

1. **DEFAULT.** Respondent is in default in accordance with the Iowa Rules of Civil Procedure.
2. **LEGAL CUSTODY.** The current Order shall be modified such that the Petitioner is the sole legal custodian of the parties' minor children, R.H.W., who was born in 2006; M.G.W., who was born in 2007; A.G.W., who was born in 2010; and A.J.W., who was born in 2014.
3. **REMAINDER OF DECREE.** All other portions of the parties' original Decree of Dissolution of Marriage not modified by this order shall remain as ordered in said Decree.
4. **COURT COSTS.** Respondent shall be responsible for the costs of this action as taxed by the clerk of court.
5. **NECESSARY DOCUMENTS.** Each of the parties shall execute and deliver to the other any documents that may be reasonably required to accomplish the intent of this instrument. If a party fails or refuses to execute a document of conveyance as prescribed herein, the Clerk of Court shall act as commissioner as provided in Iowa Code section 624.29 *et seq.*

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 07-0058

STATE OF IOWA,

Plaintiff-Appellee,

v.

HEATH BRIAN RISDAL,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF STORY COUNTY
THE HONORABLE TIMOTHY J. FINN, JUDGE

**APPELLANT'S PROOF BRIEF
AND
NOTICE OF ORAL ARGUMENT**

CARIN M. FORBES (ICIS №: AT0002583)
Feilmeyer, Feilmeyer, Keenan, Forbes & Fultz, plc
618 Douglas Ave., P.O. Box 270
Ames, IA 50010-0270
Tel.: 515-239-5000
Fax: 515-239-5010
Email: cmf@amesiowalaw.com
ATTORNEY FOR DEFENDANT-APPELLANT

TABLE OF CONTENTS

Table of Authoritiesi

Statement of Issues Presented for Review..... 1

Statement of the Case3

Routing Statement5

Argument5

Conclusion23

Request for Oral Argument23

TABLE OF AUTHORITIES

Cases

Callender v. Skiles, 591 N.W.2d 182 (Iowa 1999).....5

In Re. Marriage of Muell, 403 N.W.2d 774 (Iowa Ct. App. 1987).....20

In Re. Marriage of Rykhoek, 525 N.W.2d 1 (Iowa Ct. App. 1994).....20

In the Interest of C.M., 219 N.W.2d 204 (Iowa 2002) 10

In the Interest of S.A.J.B., 678 N.W.2d 645 (Iowa 2004)6

Santi v. Santi, 633 N.W.2d 312 (Iowa 2001).....5,6, 13

State v. Blanford, 306 N.W.2d 92 (Iowa 1981)..... 15

State v. Gonzales, 582 N.W.2d 515 (Iowa 1998) 16

State v. Leckington, 713 N.W.2d 288 (Iowa 2006) 16

Troxel v. Granville, 530 U.S. 57 (2000).....6

United States v. Salerno, 481 U.S. 379 (1987).....7

Statutes and Rules

Iowa Code § 232.107	11, 19
Iowa Code § 232.111	10
Iowa Code § 232.116	10
Iowa Code § 236.5	17, 20
Iowa Code § 598.41	12, 19, 20
Iowa Code § 600A.1	10
Iowa Code § 600A.8	10, 20
Iowa Code § 664A.1	12, 13
Iowa Code § 664A.3	12
Iowa Code § 664A.5	12
Iowa Code § 901.5(7A)	4, 6-9, 11-13, 15, 18-19, 21
Iowa R. Crim P. Form 4.3.....	17
Iowa R. Crim P. Forms 4.1-4.3, 4.5-4.8	8

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. The District Associate Court erred when it unconstitutionally applied Iowa Code section 905.1(7A)(2005), ordering the defendant to have no contact whatsoever with his children for a period of 5 years.

Santi v. Santi, 633 N.W.2d 312 (Iowa 2001)

Troxel v. Granville, 530 U.S. 57 (2000)

Callender v. Skiles, 591 N.W.2d 182 (Iowa 1999)

In the Interest of S.A.J.B., 679 N.W.2d 645 (Iowa 2004)

Iowa Code § 901.5(7A) (2005)

United States v. Salerno, 481 U.S. 379 (1987)

Iowa R. Crim P. Forms 4.1-4.3, 4.5-4.8

Iowa Code § 232.111

Iowa Code § 600A.8

Iowa Code § 232.116

Iowa Code § 600A.1

In the Interest of C.M., 219 N.W.2d 204 (Iowa 2002)

Iowa Code § 232.107

Iowa Code § 598.41

Iowa Code § 664A.3

Iowa Code § 664A.5

Iowa Code § 664A.1

II. The District Associate Court erred and abused its discretion when it made findings that the defendant is a threat to the safety of Melinda Risdal and her immediate family in its order dated June 20, 2006.

State v. Blanford, 306 N.W.2d 93 (Iowa 1981)

Iowa Code § 901.5(7A)(2005)

State v. Gonzales, 582 N.W.2d 515 (Iowa 1998)

State v. Leckington, 713 N.W.2d 288 (Iowa 2006)

Iowa Code § 236.5

III. The District Associate Court abused its discretion when it prohibited all contact between the defendant and his children for a period of five years, pursuant to Iowa Code section 901.5(7A).

Iowa Code § 598.41

Iowa Code § 232.107

Iowa Code § 600A.8

Iowa Code § 236.5

In Re Marriage of Rykhoek, 525 N.W.2d 1 (Iowa Ct. App. 1994)

In Re Marriage of Muell, 408 N.W.2d 774 (Iowa Ct. App. 1987)

Iowa Code § 901.5(7A)

STATEMENT OF THE CASE

Nature of the Case: The defendant, Heath Brian Risdal, appeals the no contact order contained in the Judgment Entries entered May 25, 2006 by the Honorable Steven P. Van Marel, and upheld on appeal to the District Court on December 8th 2006 by the Honorable Timothy J. Finn, prohibiting the defendant from having contact with his children for a period of 5 years.

Course of Proceedings, Disposition and Facts: On May 12, 2006, a Complaint and Affidavit was filed in this matter, charging the defendant with Violation of a Protective Order, in violation of Iowa Code section 236.8 (2005). Said Complaint and Affidavit alleged that the defendant communicated with the alleged victim, Melinda Risdal, through their eleven-year-old son.

On May 14, 2006, the defendant appeared on this charge in front of Magistrate Kathy Skinner. The undersigned was appointed on said date at public expense, and preliminary hearing was set. On May 16, 2006, the District Associate Court entered an Order indicating that the Initial Appearance Order setting the preliminary hearing was in error because defendant was charged with a simple misdemeanor, and continued the initial appearance.

On May 18, 2006, the defendant entered an Appearance and Plea of Guilty in this matter, waived time for sentencing, and asked that sentence be pronounced without hearing. As a factual basis for the plea of guilty, defendant made the following statement: "that on or about May 7, 2006, I communicated with Melinda

Risdal in a manner that violated a valid No Contact Order, and that I did these acts in Story County, Iowa.” On May 23, 2006, the State filed sentencing recommendations, requesting a no contact order between the victim and members of the victim’s immediate family for a period of five years. A sentencing hearing was not requested by either party, nor was the same set by the District Associate Court.

On May 25, 2006, the District Associate Court entered judgment in this matter, granting the State’s request that the defendant have no contact with the victim or members of the victim’s immediate family for a period of five years. The Court did not specify the section of the Iowa Code with which it was using as authority for the no contact order, nor did it make any specific findings thereto. The defendant and the victim have children together, with whom the defendant had regular contact with prior to the issuance of the no contact order.

On June 2, 2006, the defendant filed a Motion for Correction of Sentence/Motion for Modification of Existing No Contact Order, alleging that Iowa Code section 236.14 only allows the Court to extend no contact orders up to one year, and that there were no findings made that defendant poses a threat to the safety of his children. On June 20, 2006, the Court held a hearing on said motion and entered what appears to be a correctional order in this matter. The Court stated in part: “Pursuant to Chapter 901.5 (7A) of the Iowa Code, the Court finds that contact by the defendant with Melinda Risdal and her children pose a threat to the safety of Melinda Risdal and her children. The Court notes that in this case the

defendant violated previously imposed no contact orders by contacting Melinda Risdal through her children.” The Court further ordered that the existing no contact order in this matter remain in effect and did not make any further modifications thereto.

On June 28, 2006, defendant’s Notice of Appeal was filed herein, appealing the Court’s order dated June 20, 2006 to the Iowa District Court for the Second Judicial District. Oral argument was submitted on said appeal on August 14, 2006 to the Honorable Timothy J. Finn. On December 8, 2007, Judge Finn affirmed the decision of the District Associate Court regarding the no contact order at issue.

The defendant filed his Application for Discretionary Review on January 4, 2007. The Application was granted by this Court on August 6, 2007.

ROUTING STATEMENT

The case at bar presents issues involving substantial constitutional questions as to the validity of a statute, and it involves substantial issues of first impression, and should be retained by the Supreme Court. Iowa R. App. P. 6.401(2)(a), (2)(c).

ARGUMENT

I. The District Associate Court erred when it unconstitutionally applied Iowa Code section 901.5(7A)(2005), ordering the defendant to have no contact whatsoever with his children for a period of 5 years.

The issue at hand poses questions of substantive due process in light of Article 1, section 9 of the Iowa Constitution and the Due Process Clause of the

Fourteenth Amendment of the United States Constitution. The standard of review for constitutional issues is de novo. *Santi v. Santi*, 633 N.W.2d 312, 316 (Iowa 2001).

The right and interest of parents in the care, custody and control of their children has long been recognized as a fundamental liberty interest, both at the Federal and State level. *Troxel v. Granville*, 530 U.S. 57 (2000) (fit parents have a fundamental constitutional right to limit visitation between their children and third parties); *Santi v. Santi*, 633 N.W.2d 213 (Iowa 2001) (decisions made by married parents to deny or limit visitation by third parties has “historically been protected by the highest level of scrutiny”); *Callender v. Skiles*, 591 N.W.2d 182 (Iowa 1999) (Iowa Code section 600B.41A impedes the fundamental liberty interest of parents to the extent that it does not give putative fathers standing to overcome paternity); *In the Interest of S.A.J.B.*, 679 N.W.2d 645 (Iowa 2004) (Equal Protection provides indigent parents the right to have court appointed counsel in involuntary termination of parental rights actions brought under Iowa Code chapter 600A). Statutes and applications thereof that impinge on a fundamental liberty interest must withstand strict scrutiny in order to be constitutionally valid. *Santi* 633 N.W.2d at 318. Strict scrutiny requires that any State infringement on the liberty interest be narrowly tailored to serve a compelling state interest. *Id.*

The District Associate Court in this case was authorized by Iowa Code section 901.5(7A)(2005) to order that the defendant have no contact with “the victim of the offense, persons residing with the victim, members of the victim’s

immediate family, or witness to the offense” if there are findings made that the defendant poses a threat to the safety of the victim of the offense, persons residing with the victim, members of the victim’s immediate family, or witness to the offense. The duration of the order may be for up to 5 years or for the maximum term of confinement, whichever is greater. Iowa Code § 901.5(7A)(b)(2005). The no contact order in question bars contact between the defendant and Melinda Risdal, and the defendant and “her children” for a period of 5 years. Judgm. Entries 1 (May 25, 2006); Or. 1 (June 20, 2006).

By placing a no contact order between the defendant and his children for a period of five years, the District Associate Court has, in essence revoked the defendant’s parental rights for that period of time. The defendant is allowed no contact with his children whatsoever: he cannot visit them, write letters, have telephone contact, or use any other method of communication with them in any way. He cannot participate in the care, custody or control of his two children for the duration of the no contact order as it currently stands. The revocation of parental rights for a period of five years by the District Associate Court, and as affirmed by the District Court on appeal, under the circumstances of this case, does not serve a compelling state interest. Furthermore, even if this Court finds that a compelling State interest has been served in this matter, the law has not been applied in a manner that is narrowly tailored to serve the State’s interest.

The State has a compelling interest in preventing crime and in public safety. *United States. v. Salerno*, 481 U.S. 739 (1987). However, that compelling

interest has not been served in this case. In this case, the defendant was accused of violating a civil no-contact order. It is apparent that the District Associate Court has interpreted Iowa Code section 901.5(7A) in such a way so that it may limit or deny contact between the defendant and his children for a period of five years if it finds that the defendant was communicating with the protected party through his children, even if there is no evidence that the children have been harmed as a result. See Or. 1. No crime is being prevented by initiating a no contact order between the defendant and his children, as the defendant was allowed to have contact with his children previously. Furthermore, not only do no contact orders require that the defendant have no contact with the victim directly, but they also require that the defendant not communicate or attempt to communicate with the named victim through third parties. See Iowa R. Crim P. Forms 4.1-4.3, 4.5-4.8. While a protective order form was not issued as part of this criminal action, the Judgment entry indicates specifically that the defendant is not to have contact with the victim for a period of five years. Judgm. Entries 1. The word "contact" would certainly also include contact through third parties. There is no difference in the level of the victim's safety by placing a no contact order between the defendant and his children, because the no contact order issued by the Court between the defendant and the victim makes it illegal for the defendant to contact the victim through third parties, including his children. Therefore, no compelling state interest has been served by requiring defendant to have no contact with his children for a period of 5 years.

Even if this Court finds that the State has a compelling interest in this case, the statute, as it applies to parents and their children, is not narrowly tailored to serve that interest. First, it is not narrowly tailored in that the District Associate Court did not require proof that the children themselves are being harmed as a result of the actions by the defendant, even when the children are not the victims of the crime for which the defendant is being sentenced. It is apparent that the District Associate Court concluded that all that is required by the language of Iowa Code section 901.5(7A) (2005) is that the sentencing court make findings that *one* of the following parties will be harmed by allowing the defendant to have contact: the victim of the offense, persons residing with the victim, members of the victim's immediate family, or witness to the offense. See Or. 1. The District Associate Court did not consider potential harm to the children, nor did it consider whether it was in the best interests of the children to order no contact between the children and their father for a five year period. See Judgm. Entries 1; Or. 1. Furthermore, there is nothing in the record to indicate that the children were in danger or had suffered harm from having contact with the defendant, and there is nothing in the record to indicate that the no contact order would be in the best interests of the children. Moreover, the statute itself does not require these findings when applying such a no contact order between children and their parents. See Iowa Code § 901.5(7A) (2005). At the very least, narrow tailoring in this case should require that the Court make findings that the defendant in question

is a threat to the safety of his or her children before banning contact between them for a period of 5 years.

By contrast, Iowa Code chapters 232 and 600A allow interference and/or termination of parental rights only when the court finds that without the interference or termination, harm to the child will result *and* it is in the best interests of the child or children to do so. For example, both chapters have specific code sections that list specific grounds for terminating parental rights. Iowa Code § 232.111; Iowa Code § 600A.8. Both chapters also indicate that when applying the specific grounds for termination of parental rights, the best interests of the child is the paramount consideration when a court is determining whether to sever the legal relationship between a parent and a child. Iowa Code § 232.116(2) (“In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental and emotional condition and needs of the child.”); Iowa Code § 600A.1 (“The best interest of the child subject to the proceedings of this chapter shall be the paramount consideration in interpreting this chapter.”). These sections of Iowa code allow the State to interfere with parental rights, but are written in such a way that each serve a compelling State interest and are narrowly tailored to that interest. See *In the Interest of C.M.*, 219 N.W.2d 204, 210 (Iowa 2002) (quoting *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (The State has the duty “to assure that every child within its borders receives proper care and treatment, and

must intercede when parents fail to provide it."). Iowa Code section 901.5(7A) (2005) fails to do either of these things when it is applied to defendants and their children.

Second, Iowa Code section 901.5(7A) is not narrowly tailored in that alternative types of contact are not required to be considered by the sentencing court under the statute when the no contact order will affect the defendant's parental rights. In this case, even if it were true that the defendant poses some sort of safety threat to his children, the District Associate Court failed to consider alternatives other than a complete ban on contact. It did not consider supervised visitation, telephone contact or written contact, all of which could be easily monitored to assure that the defendant is not putting his children in any danger or acting in a way that is not in his children's best interests, nor was it required to under the statute. See Iowa Code § 901.5(7A) (2005).

By contrast, there are several sections of the Iowa Code that do require consideration of alternative forms of visitation where there is evidence that a child may be harmed by traditional, unsupervised visitation with a parent. For example, Iowa Code section 232.107 indicates that when a child is removed via a Child in Need of Assistance proceeding due to evidence that there had been illegal drugs present in the child's body, the court's order "shall allow the child's parent reasonable visitation or supervised visitation with the child" unless there is "substantial evidence" that even supervised visitation would create an imminent risk to the child. Regarding custody matters in divorce cases, Iowa Code section

598.41(3) lists considerations a court must use in determining custody arrangements, one of which is “whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.” Iowa Code § 598.41(3)(i). Iowa Code section 598.41(1)(a) further indicates that liberal visitation rights shall be awarded to the non-custodial parent where reasonable and in the best interests of the child. It is clear that in order to withstand strict scrutiny, narrow tailoring requires a consideration of the best interests of the child and a consideration of other, more restrictive types of visitation are necessary when considering whether to deny contact between a parent and a child entirely for an extended period of time.

While Iowa Code section 901.5(7A)(2005) no longer exists, Iowa Code chapter 664A has essentially replaced section 901.5(7A)(2005). Iowa Code section 664A.3 requires temporary no contact orders to be issued for certain criminal public offenses while the matters are pending, and Iowa Code section 664A.5 allows the sentencing court to modify or terminate the already-issued temporary order. If the court chooses to modify the temporary order into a permanent no-contact order, it may extend that no-contact order for a period of 5 years. Iowa Code § 664A.5. “No contact order” is defined in Iowa Code section 664A.1 as a court order issued in a criminal proceeding that requires the defendant to have “no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim’s immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members

of the alleged victim's family." It appears that the issuing court does not have a choice as to whom the no contact order pertains to, and, like Iowa Code section 901.5(7A) (2005), does not have special provisions for dealing with instances in which the victim's immediate family is also the defendant's children. See Iowa Code § 664A.1; Iowa Code § 664A.5. Therefore, if this Court finds that Iowa Code section 901.5(7A) (2005) is unconstitutional as it pertains to defendants and their children, then that ruling should also apply to the new Iowa Code chapter 664A is unconstitutional in the same way.

It is very clear that the defendant's constitutional right to custody and control of his children were infringed upon when the District Associate Court issued a five year no contact order between him and his children. Furthermore, it is clear that the right in question is a fundamental one, and that any statute that infringes upon this right must be held to strict scrutiny. *Santi* 633 N.W.2d at 318. Finally, Iowa Code section 901.5(7A)(2005) does not withstand strict scrutiny as applied in this case. Therefore, this Court should reverse the no contact order as it applies to the defendant and his children, contained in the District Associate Court's order of Judgment Entry herein.

II. The court erred and abused its discretion when it made findings that the defendant is a threat to the safety of his children in its Order dated June 20, 2006.

In the District Associate Court's order dated June 20, 2006, it indicated that "Pursuant to Chapter 901.5(7A) of the Iowa Code the Court finds that contact by the defendant with Melinda Risdal and her children pose a threat to the safety of Melinda Risdal and her children. The Court notes that in this case the defendant violated previously imposed no contact orders by contacting Melinda Risdal through her children." Or. 1. In finding that the defendant poses a threat to the safety of Melinda Risdal and her children, the Court considered facts that were not in evidence.

As indicated herein, there were no evidentiary hearings in this matter. Defendant personally appeared in court one time before Magistrate Kathy Skinner for his initial appearance on May 14, 2006. Init. Appear. 2 (May 14, 2006). Defendant then filed a written appearance and plea of guilty on May 18, 2006, and was sentenced without hearing on May 25, 2006. There exists no evidence in the record or otherwise to support the court's finding that the defendant is a threat to the safety of victim or the defendant's children.

The Court did note that the defendant communicated with the protected party (Melinda Risdal) through his children. Judgm. Entries 1. This notation appears to be derived from the Complaint and Affidavit filed herein on May 12, 2006, which indicates that the defendant "did communicate with Melinda Risdal through there [sic] 11 year old son," as there is no other document in this matter from which it could be derived. Compl. and Aff. 1 (May 12, 2006). The Court's order is by the record, and there is no evidence that the defendant is a threat to the

safety of the victim or the defendant's children. The Court cites no support for its finding of fact and no evidence was presented by any party in this matter that would support the same. Therefore, the Court had to considered facts not in evidence to reach the conclusion that the defendant is a threat to the safety of the victim and his own children.

A court's use of facts not in evidence to make findings is always error, but is not reversible error unless those facts are necessary to support the result reached by the court. *State v. Blanford*, 306 N.W.2d 93, 98 (Iowa 1981). Iowa Code section 901.5(7A) (2005) requires that the issuing court make findings of fact that the defendant in question is a threat to the safety of the protected parties. It was necessary, therefore, for the District Associate Court to make the findings of fact in the instant case, according to the Iowa Code section under which the no contact order was issued. Iowa Code § 901.5(7A)(2005). The finding made by the District Associate Court that the defendant communicated with the victim through his son does not support a conclusion that the defendant a threat to the safety of the victim or his children. The court failed to make the required findings of fact, thus committing reversible error. See *Blanford* at 98.

Even if the court did not consider facts not in evidence when it concluded that the defendant is a threat to the safety of the victim and his own children, it is clearly an abuse of discretion for the court to assume that the defendant's alleged actions in communicating with the victim through his children amounts to a threat to the victim's safety and the safety of the defendant's children without further

evidence to support that conclusion. The specific allegations of the Complaint and Affidavit filed in this matter are that defendant asked his children to tell the victim about parenting issues (i.e. “they have been taking naps”), the identity of the individual picking the defendant up from work, and to “call mom names like white trash.” Compl. and Aff. These statements clearly do not amount to a threat to anybody’s safety. The findings that the court espouses in support of the conclusion that the defendant is a threat to the safety of the victim and his children are clearly untenable, and should therefore be vacated. Furthermore, the substance of the communication between the defendant and the protected party is not a fact necessary to establish any basis for a plea of guilty in this case, and would therefore also be improper for the court to consider as evidence in this matter. *State v. Gonzales*, 582 N.W.2d 515 (Iowa 1998). However, it is unclear if the court in fact did consider the substance of the communication from its June 20, 2006 order. Moreover, even consideration of the substance of the communication by the court constitutes an abuse of discretion as it is unresponsive of the conclusion reached. *State v. Leckington*, 713 N.W.2d 288 (Iowa 2006).

The District Court in its Order on the original appeal in this matter indicates that the facts necessary to support the conclusion that the defendant is a safety threat to Melinda Risdal and his own children are “clearly found in the complaint as well as in the guilty plea and are fair game for the court to consider.” Or. 3 (Dec. 8, 2006). This is in error. While it is true that the defendant pled guilty to violating a civil no contact order, it is not the case that the court that issued the

original no contact order under Iowa Code chapter 236 must make a finding that the defendant engaged in domestic abuse. It is true in a *contested* action under chapter 236 that it is required that a finding of domestic abuse by a preponderance of the evidence made in order to issue a protective order; however, it is very common to have consent agreements in which there is no finding of domestic abuse. Iowa Code § 236.5. This type of consent agreement is contained within the standard forms of the Iowa Rules of Criminal Procedure. Iowa R. Crim. P. Form 4.3 Provides the standard form for protective orders by consent agreement. Under the “findings” portion of the standard order there is a check box next to paragraph 3 and states the following: “If checked, the respondent committed a domestic abuse assault against the protected party.” Iowa R. Crim P. Form 4.3. The only required findings are that the Respondent was personally served, and that the Respondent consents to the agreement. Iowa R. Crim P. Form 4.3.

There was no record made whatsoever in this instance regarding the type of civil no contact order that the defendant had violated; specifically whether or not the no contact order was by consent agreement or by contested hearing. It was therefore improper for the District Court to assume that a finding of domestic abuse had been previously made in the original civil protective order. Furthermore, it was likewise improper for the District Court to assume that, because a civil protective order existed between Melinda Risdal and the defendant, that the defendant is a threat to the safety of his children. Or. 3. The civil protective order that was violated by the defendant, whether or not it contained a

finding of domestic abuse, has nothing whatsoever to do with his children, and it is unreasonable for the District Court to make findings to that extent without a factual basis for doing so independent of the civil no contact order that exists between Melinda Risdal and the defendant. Finally, if the District Associate Court did consider the civil no contact order as evidence that the defendant is a threat to the safety of the victim and his children, it did not indicate such as it was required to under Iowa Code section 901.5(7A)(2005). See Judgm. Entries 1; Or. 1 (June 20, 2006).

The District Court also points to the defendant's plea of guilty to a simple harassment charge that was prosecuted at the same time under a separate case number. Or. 4 (Dec. 8, 2006). It should be noted that the victim of the harassment is a person other than Melinda Risdal or the defendant's children, and does not, therefore, support the conclusion that the defendant is a threat to the safety of Melinda Risdal or her children. Judgm. Entries. 1. Furthermore Iowa Code section under which the defendant pled guilty to harassment indicates that a person commits harassment when he or she communicates with another with the "intent to intimidate, annoy, or alarm another person..." Iowa Code § 708.7 (1)(a). The Judgment Entry itself does not indicate under which ground the defendant pled guilty, and that guilty plea was not submitted as evidence in the instant case. Therefore, it can not be assumed that the defendant threatened anybody's safety, as mere annoyance does not equate to a safety threat. Finally, if the District Associate Court did consider the plea of guilty to simple harassment as evidence

that the defendant is a threat to the safety of Melinda and his children, it did not indicate such as it was required to under Iowa Code section 901.5(7A)(2005).

III. The court abused its discretion when it prohibited all contact between the defendant and his children for a period of five years, pursuant to Iowa Code section 901.5(7A).

The Iowa Legislature has made it very clear that parental rights are very important, and only in the most extreme cases should these rights be limited or taken away. It also has made it very clear that the interests of the child in these matters is paramount, and recognizes the important of maximized continued contact with both parents in all but the most egregious of circumstances. The legislature has further indicated through statute that if it is necessary to restrict contact between a parent and child, that it must be done in the least restrictive way possible. Some examples of this include the following: Iowa Code section 598.41(1)(a) indicates that in a Decree of Dissolution of Marriage, the court must award “liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents...*unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent*” (emphasis added); Iowa Code section 232.107 indicates that if a child is removed from the parental home based upon evidence of an illegal drug in the child’s body, the court shall allow reasonable visitation between the parent and the child “unless the court finds that substantial evidence exists to believe that reasonable visitation

or supervised visitation would cause an imminent risk to the child's life or health," Iowa Code section 600A.8 lists grounds for termination of parental rights, including abandonment of the child, failure to provide support without good cause, chronic substance abuse, abduction, two or more incidents of domestic abuse assault, and imprisonment for crimes against the child; Iowa Section 236.5(1)(d) indicates that a court issuing a civil protective order under Chapter 236 may award temporary custody and/or visitation rights, and in doing so must give "primary consideration to the safety of the victim and the children," and if the court so finds that the safety of the victim and/or the children are in jeopardy, it can "condition or restrict visitation as to time, place, duration, or supervision."

Furthermore, the Iowa Supreme Court and the Court of Appeals have construed the visitation provision of Iowa Code section 598.41 strictly, and have upheld the notion that any restrictions on contact and visitation with children should be placed on parents if, without the restrictions, direct physical harm or significant emotional harm to the child or parent would result, and that such restrictions would be in the best interest of the child. *In Re Marriage of Rykhoek*, 525 N.W. 2d 1, 4-5 (Iowa Ct. App. 1994) (finding that conditions should not be imposed on a non-custodial parent's visitation unless the absence of those conditions are likely to result in physical or emotional harm to the parent or child, in accordance with Iowa Code § 598.41(1)). *In Re Marriage of Muell*, 408 N.W.2d 774, 776 (Iowa Ct. App. 1987) (liberal visitation rights to the non-custodial parent are in the best interest of the child).

Although the legislature did not indicate specific grounds that courts must find in order to impose a no contact order under Iowa Code section 901.5(7A), other than “a threat to the safety of the victim, persons residing with the victim, members of the victim’s immediate family, or witness to the offense,” it is clear that through the enactment of other laws concerning visitation and parental rights, it did not intend for courts to forbid all contact between a parent and child for a period of five years if there are less restrictive types of contact that would address any safety concerns involved.

The District Associate Court’s only articulated reason for forbidding contact between the defendant and his child for five years is because the defendant allegedly communicated with the victim through his son. Judgm. Entries 1. There is no evidence in this matter on the record that would support the conclusion that the defendant poses a threat to the safety of the victim or his children as a result of this communication. Even if that conclusion were supported by the record, it is clear from other statutes that the legislature intended to allow contact between a parent and a child to the extent that it would not pose a threat to the child’s safety or the safety of others.

Although the defendant argues that he is absolutely not a threat to the safety of his children, if this Court finds that the defendant does pose a risk to his children’s safety, there are several ways in which the defendant and his children can have contact in a way that would ensure that he is not placing his children in danger. Letters written by the defendant to his children are subject to review,

permitting the State to further monitor for violations of any existing no contact orders. Phone calls between the defendant and his children can be monitored, at least on the child's end of the conversation, to ensure that the defendant is not endangering the safety of his children. Finally, supervised visitation would allow physical visitation between the defendant and his children, and it would insure that the Defendant is not communicating to his children in a way that threatens their safety.

The Court did not consider any alternatives whatsoever when it issued the five-year no contact order between the defendant and his children, nor did it consider the well being of the defendant's children, or the rights of the defendant as the father to his children. In light of these considerations and the legislature's intent, it is clearly unreasonable and an abuse of discretion for the Court to impose a complete ban on contact between the defendant and his children for five years when there are other, less restrictive means of contact available that would satisfy the court's safety concerns.

The District Court on appeal reasoned that because the defendant put his children "in the middle of disruptive relationship" by using his children as a means of communicating with the victim, that the five-year no contact order was appropriate. Or. 4 (December 8, 2006). The District Court also reasoned that the no contact order was warranted because "any communication with Mr. Risdal can and likely will subject [Melinda] to fear for her safety." Id. While the defendant's actions in this matter were clearly inappropriate in that he should not be using his

children to communicate with Melinda, it does not follow that communication of general parenting matters necessarily will subject the victim to fear for her safety. Furthermore, as stated previously herein, the no contact order between the defendant and his children does not give any further protection to the victim than the no contact order between her and the defendant. Moreover, communicating to Melinda in the manner that the defendant had done here, once again, does not prove that the defendant is a threat to the safety of his children. Finally, as indicated, there are other less restrictive means of visitation that would allow any potential safety concerns to be addressed that are short of banning contact between the defendant and his children altogether.

CONCLUSION

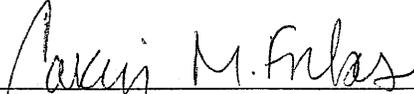
For all of the above reasons, the defendant, Heath Brian Risdal, respectfully requests that this Court reverse the decision of the District Associate Court with respect to the five year no contact order between the defendant and his children, and enter an order vacating the same.

REQUEST FOR ORAL ARGUMENT

Attorney for the defendant-appellant requests to be heard orally in the presentation of this matter.

Dated September 10, 2007.

ICIS №: AT0002583
Tel.: 515-239-5000
Fax: 515-239-5010
Email: cmf@amesiowalaw.com



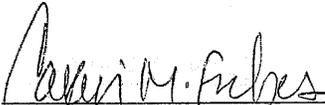
CARIN M. FORBES
Feilmeyer, Feilmeyer, Keenan, Forbes & Fultz, plc
618 Douglas Ave., P.O. Box 270
Ames, IA 50010-0270
Attorney for Defendant/Appellant

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on September 10, 2007, I served this document by mailing a copy to all parties or attorneys in this matter whose names and addresses are shown below.

I further certify that on September 10, 2007, I filed this Petition on Appeal by mailing two copies thereof to the Clerk of the Iowa Supreme Court, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

ICIS №: AT0002583
Tel.: 515-239-5000
Fax: 515-239-5010
Email: cmf@amesiowalaw.com



CARIN M. FORBES
Feilmeyer, Feilmeyer, Keenan, Forbes & Fultz, plc
618 Douglas Ave., P.O. Box 270
Ames, IA 50010-0270
Attorney for Defendant/Appellant

Attorney General
Criminal Appeals Division
Hoover Building
1305 E. Walnut St.
Des Moines, IA 50319

Heath Brian Risdal
2637 S. Cornellia
Souix City, IA 51106

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

STATE OF IOWA,

Plaintiff,

vs.

RAHEEN OMAR DUBOSE,

Defendant.

Criminal

Nº FECR062743

***RESISTANCE TO MOTION TO
SUPPRESS***

COMES NOW the State of Iowa, by and through Assistant County Attorney Carin M. Forbes, and for this Resistance to Motion to Suppress respectfully states to the Court as follows:

1. The State concurs with paragraphs one and two of the motion filed by the defense.
2. The defendant was arrested in this matter on April 1, 2023 by Missouri State Trooper Corporeal C.J. Sullivan. A warrantless search was conducted of the defendant's vehicle.
3. The warrantless search was based on the following facts:
 - a. Defendant, who was the driver of the vehicle, was pulled over for speeding on US Highway 136 going westbound.
 - b. Both the defendant and his only passenger, Terrance Little, were arrested by Corp. Sullivan due to outstanding warrants. The defendant had a warrant from Arkansas for forgery. Mr. Little had an active Federal warrant with full US extradition for fraud.
 - c. The vehicle was inventoried prior to towing. The inventory search was completed using standard practices by the Missouri Highway Patrol.
 - d. The defendant was pulled over on a two lane highway in a rural area with a narrow shoulder. There were no options available for the vehicle to be parked legally and safely nearby, and no options for a third party to pick up the vehicle.
 - e. The defendant was asked if he needed anything from his vehicle prior to the inventory search. The defendant wanted his luggage; however, the large

amount of luggage present would not be allowed at the jail. Corp. Sullivan advised the defendant as to how to proceed to have his luggage released to him by the tow company.

- f. During the inventory search, Corp. Sullivan observed a \$100 bill on the floor between the driver's seat and the center console of the vehicle. This bill was loose on the floor and was not in any container when found.
 - g. Corp. Sullivan retrieved the \$100 bill and noted that it had the wrong paper consistency. His assisting officer, Master Sgt. Hilliard, agreed that the bill had the wrong paper consistency. Both Corp. Sullivan and Master Sgt. Hilliard believed that the bill was counterfeit.
 - h. The vehicle was towed to Missouri Highway Patrol Troop H, Zone 3 (hereinafter referred to as "Zone 3").
 - i. After the defendant's arrest, but prior to the non-inventory search of the vehicle, a Visa debit card and a counterfeit \$100 bill was located in the defendant's wallet.
 - j. After Mr. Little's arrest, but prior to the non-inventory search of the vehicle, five debit/gift cards were located in Mr. Little's wallet.
 - k. A thorough search of the vehicle was then conducted in Zone 3. During that search, numerous counterfeit \$100 bills and gift cards were found. In addition, there were several items seized that were believed to be used to manufacture the counterfeit currency.
4. An exception to the warrant requirement is an inventory search of a motor vehicle, allowing law enforcement to conduct this search according to a standardized criteria or established routine adopted by the law enforcement agency conducting the search. *Colorado v. Bertine*, 479 U.S. 367 (1987). The policies behind the warrant requirement are not implicated in an inventory search. *South Dakota v. Opperman*, 428 U.S. 364 (1976). It was during a proper inventory search that Corp. Sullivan found the initial counterfeit \$100 bill in the defendant's vehicle.
- a. The inventory search of the vehicle was conducted in Missouri; therefore, Missouri law controls. The Missouri courts follow the U.S Supreme Court when determining whether a vehicle may be lawfully impounded under *Bertine*, in that a police officer is not required to give a defendant an opportunity to make alternative arrangement to avoid impoundment. *State of Missouri v. McDowell*, 519 S.W.3d 828 (Mo. App. Ct. 2017).

- b. However, the criteria for proper impoundment under Iowa jurisprudence is met, as there were no alternatives to impoundment in this case, and no containers within the vehicle itself were searched when the contraband was discovered. See *State v. Ingram*, 914 N.W.2d 794 (Iowa 2018).
5. An exception to the warrant requirement is a search incident to arrest, which allows the defendant's effects in his possession at the place of detention to be searched and seized without a warrant. *United States v. Edwards*, 415 U.S. 800, 803 (1974) (citing *Abel v. United States*, 362 U.S. 217 (1960)). It was during a search incident to the defendant's arrest that a second counterfeit \$100 bill and gift card was found.
6. The subsequent search of the defendant's vehicle at Zone 3 was proper under the automobile exception to the warrant requirement.
 - a. An automobile may be searched without a warrant when an officer has probable cause that contraband or evidence of a crime would be found. *Chambers v. Maroney*, 399 U.S. 42 (1970); *Carroll v. United States*, 267 U.S. 132 (1925). Corp. Sullivan had probable cause that contraband or evidence of a crime would be found when he came upon the counterfeit money that was discovered during the inventory search and the search incident to the defendant's arrest.
 - b. The exigency requirement is always satisfied by a vehicle's inherent mobility. *California v. Carney*, 471 U.S. 386, 390 (1985).
 - c. The United States Supreme Court, as well as both Iowa and Missouri courts, recognize that the automobile exception to the warrant requirement allows law enforcement to search any place in which contraband may be found. See *State of Missouri v. Lane*, 937 S.W.2d 721 (Mo. banc. 1997) (finding that the search of a duffel bag contained in a car was proper under the automobile exception after a search performed of other containers with the defendant's consent within the vehicle revealed marijuana); *Allensworth*, at 796 (finding that a search of a steering column in a vehicle for marijuana was proper under the automobile exception); *United States v. Ross*, 456 U.S. 798, 823 (1982) ("If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of that vehicle and its contents that may conceal the object of the search").

WHEREFORE, the State respectfully requests that the defendant's motion to suppress evidence be denied.

Respectfully Submitted,

By:

A handwritten signature in black ink that reads "Carin M. Forbes". The signature is written in a cursive style with a large initial 'C'.

Carin M. Forbes
Assistant Story County Attorney
1315 South B Avenue
Nevada, Iowa 50201
Telephone: (515) 382-7255
Facsimile: (515) 382-7270
Email: cforbes@storycountyowa.gov