

**APPENDIX B: Glossary of Common Legal Terms**

**Acquit**—to find not guilty

**Administrative Law**—created by government agencies in the form of rules, regulations, orders and decisions

**Admonition**—instructions from a judge to a trial jury to avoid talking to other persons about the trial they are hearing and to avoid news broadcasts and newspaper or magazine stories that discuss the case or issues in the case

**Adjudication**—pronouncement of judgment, especially used in juvenile proceedings

**Affidavit**—a written statement sworn or declared to be true and correct

**Affirm**—to approve, agree or uphold; a case on appeal that is affirmed is one where the result is not changed from the trial court decision

**Affirmative Defense**—such as insanity or intoxication, asserted by a criminal defendant to excuse actions legally; when asserted by a civil defendant, it amounts to a counterclaim against the original petition; the party who raises an affirmative defense must present evidence to support it

**Allegation**—the declaration or statement of a party in a case, setting out what the party expects to prove in court

**Amicus Curiae**—“friend of the court”; one who makes an argument or provides information in a case, usually through a written brief, even though they are not a party to the case; filed by a person or a group with an interest in the legal issue under consideration

**Answer**—the responsive pleading filed by a defendant to the allegations of a petition

**Appeal**—the procedure by which a party seeks to reverse or modify a decision of a lower court

**Appearance**—the document filed by which a party or attorney submits to the formal jurisdiction of a court

**Appellant**—the party appealing a decision of a lower court

**Appellate Court**—the court with jurisdiction to review and modify decisions and judgments of a lower, trial court

**Appellee**—the other party in an appeal; the party against whom the appellant appeals a lower court decision

**Arraign**—to bring a person charged with a crime to court to answer the charge made against him or her; an arraignment is the defendant's initial court appearance

**Bail/Bond**—to set free a person arrested or imprisoned on certain conditions to ensure he or she will appear for further court proceedings; the conditions may include posting of a monetary bail bond, reporting to a pre-trial release officer, prohibiting the defendant from leaving the county or state, or other similar conditions.

**Beyond a Reasonable Doubt**—the standard by which the prosecution in a criminal case must prove its allegations against a defendant

**Brief**—written document prepared by counsel setting forth facts and law in support of a party's position on an issue before the court

**Burden of Proof**—the standard which must be shown by the person bringing a legal action; the burden of proof in a civil case (preponderance of the evidence) is different from that in a criminal case (beyond a reasonable doubt)

**Caption**--the heading on court documents which shows the name of the case, including the names of the parties, jurisdiction of the court, and the case number

**Caselaw**—type of law whose principles are derived from prior appeals court decisions; in contrast to statutory law, the laws enacted by Congress or state legislatures

**Certiorari**—an order (or “writ”) issued by an appellate court accepting a case for appeal and ordering a lower court to forward records of a proceeding for review by the higher court

**Change of Venue**—moving trial of a case from one county to another, typically in order to preserve the parties' right to a fair trial

**Circumstantial Evidence**—evidence of an indirect nature, often the only evidence available in a case in which there are no eyewitnesses

**Citation**—referring to an appellate court opinion contained in a case reporter that gives the name, volume number and page number where the opinion can be found, as well as the year the opinion was rendered

**Civil Law**—legal actions which seek money damages, an injunction, or a restraining order; jail or prison sentences are not involved; burden is proof by a “preponderance of the evidence”

**Common Law**—principles and rules of law that derive their authority from community usage and custom, instead of from statutes

**Comparative Negligence**—doctrine used in civil cases where damages are computed based on the percentage of negligence (or fault) of each party involved

**Compensatory Damages**—damages awarded to an injured party in a civil suit to make up for or compensate only for the injury sustained

**Concurrent Sentence**—when a defendant convicted of more than one crime, has his or her sentences served together (at the same time), rather than one after another

**Concurring Opinion**—written opinion by an appellate judge or justice in which the author agrees with the decision of the court, but states different reasons as the basis for his or her decision

**Condemnation**—legal process in which private real estate is taken for public use without the owner's consent, but with payment of “just compensation” as determined by a court

**Consecutive Sentence**—when a defendant, who is convicted of more than one crime, must serve his or her sentences one after another; the opposite of concurrent sentence

**Conservator**—a person appointed by a court to manage the financial affairs of a minor or incompetent

**Contempt of Court**—an act of disobedience or disrespect for a judge (such as violation of a court order) which may be punished by a fine and/or jail sentence

**Continuance**—to delay or postpone a matter, trial or hearing until a later time

**Contributory Negligence**—an act or omission by the plaintiff amounting to a failure to use the normal degree of care under a set of circumstances which, in combination with a defendant's negligence, is the direct cause of the plaintiff's injury; contributing to the injury

**Convict**—to find one guilty of a criminal offense

**Counterclaim**—claim or “cross petition” filed by a defendant seeking damages or other remedies from the plaintiff

**Court Reporter**—a trained stenographer who keeps a verbatim record of court proceedings and prepares the transcript of the proceedings as needed for verification or appeal purposes

**Criminal Law**—legal actions where a government accuses a person of violating laws or statutes; payment of fines or imposition of jail or prison sentences are punishments used if a person is convicted; burden is proof “beyond a reasonable doubt”

**Cross Examination**—questioning of a witness in a trial or deposition by the opposing party

**Damages**—monetary compensation recovered in court by a party who suffered a loss or injury through the unlawful or negligent acts of another

**De Novo**—meaning “anew, afresh”; review of a matter "de novo" is a full review or retrial of a case

**Decree**—decision or order of the court in non-jury cases

**Default**—occurs when a defendant fails to appear or plead within the time allowed after a petition has been filed in a civil case

**Defendant**—the party against whom a civil or criminal action is brought

**Deferred Judgment**—when a conviction is not entered of record pending successful completion of a period of probation; after which, the guilty plea or verdict will not appear on the defendant's permanent criminal record

**Deferred Sentence**—when a conviction is entered of record, but the court delays handing down a sentence until certain conditions (completion of counseling, for example) are met

**Deposition**—sworn testimony of a witness taken outside of court and transcribed by a court reporter

**Dicta**—remarks in a court opinion that do not speak directly to the legal issue in question

**Direct Evidence**—testimony of facts by eyewitnesses, as opposed to circumstantial (indirect) evidence

**Directed Verdict**—issued by a judge because the party with the burden of proof has not produced sufficient evidence to prove its case; results in dismissal of the case against the defendant

**Disbarment**—when a lawyer's license to practice is revoked by the Iowa Supreme Court due to misconduct or violation of ethical rules; a “suspension” is when the license is suspended for a limited period of time

**Discovery**—various procedures which enable the parties to an action to learn the factual details of the other side's case; includes written interrogatories, depositions, production of documents, and the like

**Dissent**—term commonly used to denote the disagreement of one or more justices of an appeals court with the majority decision; may or may not include a full opinion

**Dissolution of Marriage**—term for divorce in Iowa

**Double Jeopardy**—the Constitutional prohibition against more than one prosecution against the same person for the same offense

**Due Process**—the Constitutional guarantee that each person shall receive the protection of a fair legal procedure and trial; law in its regular course of administration through the courts of justice

**Easement**—the right of a person to use the land of another, or a portion of the land, for a special purpose, such as for a roadway, utility line, and the like; normally acquired by purchase but can be acquired by eminent domain

**Eminent Domain**—the power of the government to take private property for public use; condemnation

**En Banc**—all the justices of an appeals court hearing a case together, as opposed to a smaller panel of justices

**Entrapment**—action by government officers or agents to induce a person to commit a crime not otherwise or previously contemplated by the person

**Equity**—legal remedies based on a system of fairness and natural right, rather than statutes; for example, a court order providing non-monetary relief, such as an injunction or a restraining order

**Evidence**—anything used to prove fact or disprove alleged fact; direct evidence is proof by witnesses who saw acts done or heard words spoken, while circumstantial evidence is indirect proof or facts

**Ex Parte**—court order granted on behalf of one party without a formal hearing or opportunity for the opposing party to contest the matter

**Ex Post Facto**—“after the fact”

**Examination**—questioning of a witness during trial; direct examination is by the party who called the witness, while cross examination is by the opposing party

**Exclusionary Rule**—rule prohibiting the use of illegally obtained evidence in criminal prosecutions

**Exhibit**—paper, document, or item admitted into evidence and shown to a court or jury during trial or hearing

**Expert Witness**—witness qualified to speak authoritatively by reason of special education, training or experience with the subject

**Extradition**—the removal or return by one state to another of an individual accused or convicted of an offense in the other state

**Felony**—crime of more serious nature than misdemeanor; there are four classes of felonies in Iowa (see Chapter 2)

**Forcible Entry and Detainer**—court proceeding to restore possession of land to its owner (such as allowing a landlord to evict a tenant)

**Gag Order**—court order imposing a prior restraint on publication by the media; limits the information the media may print about matters

**Garnishment**—a proceeding whereby property, money or credits of a debtor that are being held by another, third party may be seized and applied to the debts of the debtor; garnishment of a debtor's wages that are held by the employer, for example

**Grand Jury**—panel of citizens who meet in secret and after reviewing evidence submitted by prosecutors, determine if charges should be filed against individuals

**Guardian**—one who is appointed by the court to be responsible for the physical well-being of a person due to that person's age, incapacity or disability

**Guardian ad Litem**—attorney appointed by the court during a pending case to represent the interests of a child or a party judged to be incompetent

**Habeas Corpus**—the name given a variety of orders (writs) whose object is to bring a person before a court or judge; literally "you have the body"

**Harmless Error**—in an appellate decision, a holding that there was an error committed during the trial court case, but that the error was not so significant as to influence or affect the outcome of the case

**Hearsay**—evidence not allowed in court because it is beyond the scope of personal knowledge of the witness who is testifying; information not directly known by the person who is testifying

**Holographic Will**—a will written, dated and signed by a person in his or her own handwriting

**Hostile Witness**—a witness subject to cross-examination by the party that called him or her to testify because of hostility or antagonism shown by the witness during direct examination

**Hung Jury**—one which cannot reach a final verdict; stalemate

**In Camera**—privately, in the judge's chambers

**Indemnification**—where one person agrees to hold another person harmless from loss or payment of an obligation

**Indeterminate Sentence**—the type of prison sentence in Iowa; the judge sentences an individual to an indeterminate term not to exceed a maximum amount, with the actual time served to be determined by prison and parole board officials

**Indictment**—written accusation presented by a grand jury accusing an individual of a crime; pronounced *in-DITE-mint*

**Information**—document filed by prosecutors formally charging a person with a crime

**Injunction**—an order, or writ, issued by a court directing a person to do something or prohibiting them from doing something

**Instructions**—statements of what the law is, given by the judge to jurors before they begin their deliberations

**Interlocutory**—meaning a court order or decree is provisional or temporary, not final; also refers to an appeal taken before there is a final order by the trial court

**Interrogatories**—written questions submitted by one party to the other, to be answered in writing under oath

**Intervention**—a proceeding in a suit or action by which a third party is allowed by the court to become a party to the suit

**Intestate**—one who dies without a will; state law then proscribes how the estate (property) is distributed

**Jail**—administered by counties; a prisoner can only be sentenced to a county jail for terms of one year or less

**Judgment**—the decision of a court determining the outcome of issues in a lawsuit (not to be confused with verdict, which is the decision of a jury in a trial)

**Judicial Notice**—recognition of certain facts of common knowledge that judges and jurors may accept act upon without formal proof

**Jurisdiction**—ability of a court to exercise power over either a person or the issues of a lawsuit

**Jury**—the panel of citizens selected to decide the merits of a case (also called a petit jury)

**Lien**—an encumbrance on property imposed to secure the payment of a debt or judgment obligation

**Litigant**—one involved in a lawsuit

**Mandamus**—court order directing a public official or lower court to perform a particular act

**Malpractice**—lawsuit brought against a professional (e.g., doctor, lawyer) for loss caused by the professional's failure to meet the standards of practice for that profession

**Miranda Warning**—the statement of legal rights which must be given to a person under arrest or suspected of a crime and in custody before law enforcement may interrogate the person

**Misdemeanor**—crime of less serious nature than felony; there are three classes of misdemeanors in Iowa (see Chapter 2)

**Mistrial**—trial terminated before its normal conclusion due to an extraordinary event or prejudicial error

**Mitigating Circumstance**—a situation that while it does not justify or excuse an action, may be considered as reducing the degree of liability or culpability

**Moot**—unsettled or undecided; a moot issue is one where it is no longer necessary for a court to make a judgment on the issue due to the occurrence of other things; too late to matter; pronounced *MOOt*, not *MEWt*

**Negligence**—the failure to do something which a reasonable person would have done under similar circumstances

**Next Friend**—one acting for the benefit of an infant or other person without being appointed as guardian

**Nolo Contendere (No Contest)**—a plea to a criminal case, rather than guilty or not guilty, indicating that the defendant will not challenge or contest the charges; same effect as a guilty plea, without the actual admission of guilt

**Nunc Pro Tunc Order**—a corrective order, to remedy a minor omission or error, or clarify a point, contained in a prior court order

**Objection**—the act of taking exception to a statement or procedure during trial for the purpose of calling the court's attention to improper evidence or practice

**Of Counsel**—a phrase describing lawyers who are not the principal attorney of record in a case but who are assisting; also describing lawyers who contract with law firms independently, rather than being partners or associates (employees) of a firm

**Opinion**—written statement issued by a court that explains the reasoning behind the judgment and states the rule of law in the case

**Opinion Evidence**—what an expert witness thinks or believes with regard to facts in dispute, as opposed to personal knowledge of the facts

**Ordinance**—statute enacted by the legislative body of a county or city

**Overrule**—a judge's denial of a motion or objection

**Parole**—conditional release, usually under supervision of a parole officer, of a prisoner who has served part of a prison sentence

**Per Curiam**—unsigned opinion issued by an entire appellate court as opposed to one written by a specific justice on behalf of the court

**Peremptory Challenge**—term used to describe the process where the prosecution or defense may reject a certain number of prospective jurors without particular reason or cause

**Perjury**—lying under oath

**Personal Recognizance**—type of bail bond consisting of a written promise to appear in court when required, without the posting of cash bond or security

**Petitioner**—the party who files a petition for dissolution of marriage

**Plaintiff**—party bringing the lawsuit; in a criminal case, the municipality or the State of Iowa

**Pleading**—the general term for documents filed in a lawsuit (original petition, answer, request for documents, etc.)

**Power of Attorney**—document authorizing another person to act as one's agent or attorney

**Preliminary Hearing**—held by a judge to determine if there is enough evidence to force a person to stand trial for criminal charges

**Preponderance of Evidence**—the standard by which the plaintiff in a civil case must prove its allegations against a defendant; essentially means that there is a greater likelihood of the allegations being true than not

**Pre-Sentence Investigation**—report prepared by the Department of Correctional Services and reviewed by the judge at the time of sentencing which documents the defendant's history and often recommends the sentence a criminal defendant should receive; the report is a confidential record, and even the defendant cannot keep a copy following sentencing

**Presumption of Innocence**—the principle that every defendant enjoys, a presumption of innocence until such time as the prosecution meets its burden of proof against that defendant

**Pre-trial Release**—a condition of release pending trial; in addition to posting of a bond (either monetary or personal recognizance), the defendant may be placed under the limited supervision of the local Department of Correctional Services to ensure attendance at trial

**Prima facie**—meaning something is sufficient to establish a fact or raise a rebuttable presumption

**Prison**—administered by the state; a prisoner can only be sentenced to a state prison for terms of more than one year

**Probable Cause**—in criminal law, meaning there is reasonable ground to suspect a person has committed a crime; in civil law, meaning there is a reasonable belief of certain facts on which a claim is based

**Probate**—the process of submitting a will to the court for administration of a deceased's property

**Probation**—when a sentence imposed against a criminal defendant is suspended and the person is allowed to remain in the community rather than be incarcerated; typically supervised by a probation officer, the person must meet certain conditions in order to remain in the community

**Public Defender**—a lawyer employed by the State of Iowa to serve as defense counsel for indigent defendants; private attorneys are also often appointed by the court to represent indigent defendants at State expense, subject to later repayment by indigent defendants who are found guilty or plead guilty to criminal offenses

**Punitive Damages**—money awarded to punish a defendant and deter others from committing similar acts  
**Quash**—to avoid, vacate, terminate or annul a summons or order

**Reasonable Doubt**—the state of mind of jurors in a criminal case in which they are not firmly convinced of the truth of the charges or the case brought by the prosecution against the defendant

**Rebuttal**—introduction of evidence at the end of a trial to contradict (or rebut) prior evidence or testimony

**Record**—the complete history of a case, including all documents filed by the attorneys, orders filed by the judge, exhibits received into evidence and the testimony of witnesses, arguments of counsel and comments of the judge, as recorded by the official court reporter

**Remand**—action by an appellate court returning a case to a lower court for further proceedings

**Replevin**—an action to recover possession of personal property from a person who has wrongly taken and refused to return the property

**Respondent**—the party against whom a petition in equity, such as a petition for dissolution of marriage, is filed

**Restitution**—equitable remedy under which a person is restored to his/her original standing, prior to loss or injury; often used to describe compensation owed by a criminal to a victim

**Restraining Order**—court order prohibiting a person from engaging in a particular act, typically for a specific time period; for example, a party may obtain a restraining order to prevent another person from harassing or threatening the party

**Scheduled Violation**—criminal offense for which the exact amount of fine is fixed by statute, such as traffic offenses

**Search Warrant**—written order signed by a judge which directs law enforcement officers to search a particular place and seize particular property which is stolen, illegal to possess, or constitutes evidence of a crime

**Self-Defense**—an affirmative defense in a criminal case, also known as justification; the act of protection of one's person or property done in reasonable belief of immediate danger from another

**Sentence**—the punishment in a criminal case following a verdict or plea of guilty; “concurrent” sentences are multiple sentences served at the same time, while “consecutive” sentences are served one after the other; “indeterminate” sentences have a maximum length, but it is up to the state parole board to decide the actual length of sentence

**Separate Maintenance**—monetary allowance granted to a one spouse for support for that spouse and children while living apart from the other spouse

**Sequestration**--the process of confining the jury, not permitting its members to return home or separate, during the course of trial until a verdict is reached

**Shock Sentence (Shock Probation)**--when the court allows a defendant sent to prison to be released after only 90 days; designed to give a defendant a taste of serious punishment and "shock" them into law-abiding behavior without completion of a full prison sentence

**Specific Performance**—order for the performance of a certain act, often the completion of a contract, in order to provide equitable relief; person seeking specific performance of a contract must show that money damages cannot adequately compensate for the loss

**Stare Decisis**—Latin for "let the decision stand", the basis behind the common law system, requiring that judges follow precedent case law when determining issues

**Statute**—law passed by the Iowa legislature or U.S. Congress, as opposed to caselaw as developed by courts; similar to city or county ordinances

**Statute of Limitations**—the time limit within which a civil or criminal action must be brought after its cause arises

**Stay**—the stopping of a judicial action or proceeding by order of a court

**Stipulation**—an agreement by counsel about sets of facts or evidence pertaining to a pending matter

**Subpoena**—document which commands a person to appear before a court or judicial entity; a subpoena duces tecum commands a person to appear and bring with them specified documents

**Summary Judgment**—order issued by a court dismissing a case when there is no genuine issue of material fact in dispute

**Suppression Hearing**—hearing held on defendant's motion to have certain evidence kept out of trial, due to its allegedly being obtained in violation of law or the defendant's Constitutional rights

**Suspended Sentence**—when the court places a convicted person on probation, rather than sending him or her to jail or prison

**Sustain**—the judge’s acceptance of a motion or objection

**Testimony**—evidence given by a witness under oath

**Tort**—a civil injury or wrong committed to the person or property of another; examples include personal injury actions (such as from car accidents), product liability, libel, invasion of privacy, wrongful death, or malpractice

**Transcript**—the official record of proceedings in a trial or hearing

**Trial Court**—the first court to hear a lawsuit or case; the forum where the facts are determined and the law is initially applied (as opposed to an appellate court, to which trial court decisions are appealed and reviewed)

**Undue Influence**—something that destroys free will and causes a person to do something he or she would not do if left to himself or herself

**Venue**—the specific county, city or place where a case will be tried

**Verdict**—decision made by a jury on the factual issues of a case (not to be confused with judgment, which is the decision of a court determining the outcome of issues)

**Voir Dire**—the preliminary questioning of prospective jurors before trial to aid in selecting a fair and impartial jury; pronounced *vo-are dear*

**Waiver**—voluntarily giving up a known right

**Warrant**—an order or writ issued by a judicial officer, typically designed to arrest an individual on pending charges or search a person or place

**Verdict**—final decision or finding of a jury

**Willful**—intentional misconduct committed by a party, as opposed to actions done negligently or carelessly

**With Prejudice/Without Prejudice**—used when referring to a judgment of dismissal; dismissal with prejudice means the action cannot be refiled and is a final judgment, while dismissal without prejudice means a new suit can be brought on the same cause of action at a later time

**Witness**—a person who testifies to what he or she has observed, done, seen, or heard

**Writ**—court order requiring the performance of a specified act