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IN THE SUPREME COURT OF IOWA

Cornelius Davis, M.D., Plaintiff, **v.** **Iowa District Court for Scott County,** Defendant.	**Supreme Court No. 19-1008** Scott County Case No. LACE127285

Review on Writ of Certiorari from the Iowa District Court for Scott County
The Honorable Mark R. Lawson, Judge

Defendant Iowa District Court for Scott County's Brief Supporting Annulment of Writ for Certiorari and Defendant's Request for Oral Argument

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Bryan A. Garner, *Black's Law Dictionary* (11th ed. 2019)

Routing Statement

The Supreme Court should retain this case pursuant in part to Iowa R. App. P. 6.1101(2) because it presents:

(a) Issues of first impression;

(b) Fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Supreme Court; and

(c) Substantial questions of enunciating or changing legal principles.

Statement of the Case

Nature of the Case

The civil action underlying this original jurisdiction matter appealing case management and sanction orders of the Iowa District Court for Scott County ("District Court") centers on claims by a doctor who challenged peer review and credentialing activities by his former colleagues and hospital by suing them and Davenport Surgical Group ("DSG") for monetary damages.

On May 16, 2019, in conformity with local rule and pursuant to the scheduling orders previously entered in this case, the District Court convened a mandatory, court-sponsored settlement conference at the Scott County Courthouse in Davenport.

Plaintiff, however, did not attend.

Because Plaintiff was missing, the presiding judge—the Honorable Mark Lawson—ruled that the settlement conference should be postponed until Plaintiff could be present. Judge Lawson then asked DSG's counsel if she wished to make an oral motion for sanctions based on Plaintiff's failure to attend the conference. She did, and the District Court granted that motion the very next day in an order that assessed Plaintiff $4,000 in sanctions.

Plaintiff's certiorari proceeding seeks to overturn that sanctions order.

Course of Proceedings and
Disposition in the District Court

On February 12, 2016, Plaintiff filed his Petition against Defendant Genesis Health System d/b/a Genesis Health Group, Genesis Health System, Genesis Medical Center-Davenport (collectively, "Genesis"). App. 015. More than one year later, on June 2, 2017, he amended his Petition to add DSG as a party defendant, as well as two individually named DSG surgeons, Dr. Joseph Lohmuller and Dr. K. John Hartman. App. 014. Plaintiff also individually named two Genesis doctors, Dr. George Kovach and Dr. Nicholas Augelli. *Id.*

Discovery and motion practice thereafter continued as the case moved toward a June 2019 trial. App. 004-015.

The District Court's Local Rules and two pretrial orders entered early in the litigation made clear that no trial could occur in this civil action until a mandatory pre-trial settlement conference was completed. App. 016, 019, 096-098.

That mediation, by written order of the District Court, was scheduled to occur on May 16, 2019, at the Scott County Courthouse in Davenport. App. 019. The express language mandating the pre-trial settlement conference specified that lawyer attendance was not enough, as Chief Judge Marlita Greve's August 11, 2016 Order and her January 25, 2018 Order each

stated, "All *parties* with authority to settle must be present." App. 016-018, 019-021 (emphasis added).

The appointed mediation date came with all lawyers present as ordered. Dr. Lohmuller attended as DSG's party representative, with authority to settle on his behalf as well as on behalf of DSG and Dr. Hartman. Jason Enzler, an in-house counsel at Genesis, attended as Genesis's party representative, with authority to settle on behalf of the Genesis entities and Genesis doctors Dr. Augelli and Dr. Kovach.

But Plaintiff was missing—he elected to skip the mediation, his counsel stated, because Plaintiff was too busy with his medical practice in Texas to travel to Iowa (indeed, Plaintiff's counsel stated Plaintiff was in surgery that day).

Plaintiff's failure to attend led Judge Lawson to terminate the May 16, 2019 settlement conference and to invite DSG's oral motion for sanctions. DSG made this motion, which the District Court granted in a written order issued the next day. App. 027-030.

Plaintiff filed a motion to rescind the May 17, 2019 sanction order on May 23, 2019. App. 031-038. District Judge Henry Latham II granted DSG's motion for summary judgment on June 5, 2019, dismissing the case against it. App. 048-090. Judge Lawson then denied the sanction

reconsideration motion on June 7, 2019. App. 091-095. Enlargement motions by Genesis and Plaintiff on the summary judgment ruling remain pending. App. 004-005.

Concurrently, Plaintiff sought certiorari review of the sanctions order, with DSG standing as the real party in interest. DSG resisted.

On July 16, 2019, this Court issued a writ of certiorari and stayed the May 17, 2019 sanctions order.

This briefing moves this certiorari proceeding under the original jurisdiction of the Supreme Court to the next step, with DSG's undersigned counsel providing argument for annulment of the writ on behalf of the Defendant Iowa District Court for Scott County as required by Iowa Rule of Appellate Procedure 6.107(5).

Statement of the Facts

Genesis Health System hired Plaintiff on January 16, 2013, to provide cardiothoracic and vascular surgical services. He began employment in July 2013. *See* DSG summary judgment filings and order, listed in the District Court docket at App. 006, 009. In September 2013, Plaintiff provided care to patient G.A., who suffered a crushed leg in a car accident. *Id*. G.A. suffered complications that resulted in her transfer to the University of Iowa Hospitals, where her leg was amputated. *Id*. After the transfer, Genesis initiated a peer review of Plaintiff's treatment of G.A. before the Surgery Service Committee ("SSC") on September 25, 2013. *Id*. The SSC sought additional information about G.A.'s care and transfer as part of its peer review process, and DSG surgeon John Hartman responded to the SSC's request by letter on October 21, 2013. *Id.*

Patient issues continued to arise as the peer review continued. *Id*. On February 3, 2014, Dr. Lohmuller and Dr. George Kovach, Vice President of Medical Affairs at Genesis Medical Center, met with Plaintiff following a post-surgery patient death the prior weekend. *Id*. Plaintiff alleges that Dr. Lohmuller stated during this conversation Plaintiff had experienced six patient deaths, and Dr. Kovach corrected him to note it was four deaths. *Id*. Dr. Lohmuller told Plaintiff that Genesis would further investigate his

cardiac care because Plaintiff's patient death rate was at 10 percent. *Id*. Plaintiff voluntarily agreed to stop taking cardiac cases while he was under investigation. *Id*.

Genesis formally suspended Plaintiff on February 14, 2014. *Id*. The Medical Executive Committee ("MEC") at Genesis concluded Plaintiff's "surgical technique, clinical judgment, and post-operative care of patients presents an immediate danger to patients if the suspension is not imposed." *Id*. The MEC ended its investigation on April 16, 2014, and recommended revocation of Plaintiff's clinical privileges. *Id*.

Plaintiff challenged the recommendation and proceeded through continued peer review and appeals. *Id*. On June 22, 2015, Genesis informed Plaintiff that it would uphold the revocation of his privileges and membership, effectively terminating his employment contract. *Id*.

This case followed, with Plaintiff filing his initial Petition in February 2016. App. 015. In June 2017, Plaintiff amended his Petition to assert eight counts against Genesis, DSG, and four physicians and alleged these entities and doctors engaged in wrongdoing to "destroy [his] reputation, contract, and career." App. 014.

The District Court's pretrial orders in this longstanding action included a command in accordance with Seventh Judicial District practice to

schedule a required settlement conference where all parties and their counsel were obligated to attend. App. 016, 019. By separate order, the District Court set the mandatory settlement conference for May 16, 2019, at the Scott County Courthouse. App. 019-021.

On May 8, 2019, DSG sought permission to be excused from participating in the settlement conference. App. 022-024. Judge Lawson denied that motion the same day. App. 025-026.

The May 16, 2019 mediation date then arrived.

DSG was represented at the mediation in person by Dr. Lohmuller, who cleared his schedule of patient appointments to attend, and its counsel who traveled there from Des Moines. Plaintiff's lawyer also attended.

But, Dr. Davis, the sole party plaintiff, was a no-show.

Because Plaintiff was missing, the District Court determined the settlement conference could not proceed. Judge Lawson cancelled the mediation and DSG's attorney made an oral motion for sanctions. App. 027-030.

In its Ruling on Oral Motion for Sanctions for Failure to Appear at Settlement Conference entered on May 17, 2019, the District Court evaluated Plaintiff's failure to attend the settlement conference and the conduct of his lawyer in permitting that to occur. App. 028-029.

The District Court first found that it was unreasonable for Plaintiff's counsel to appear alone considering how the court previously had denied DSG's motion to be excused from attending the settlement conference. App. 028. In other words, as of May 8, 2019, the District Court already had made clear to counsel and the parties that personal attendance at the settlement conference was mandatory as directed by the pretrial order. App. 025.

Second, the District Court determined Plaintiff's lawyer acted unreasonably by not informing the court attendant of his client's intent not to appear, when she contacted him by phone earlier in the week about continuing the settlement conference because the summary judgment motions remained pending. App. 028.

The District Court next ascertained that Plaintiff's willful failure to attend cost Dr. Lohmuller the ability to schedule patients the afternoon of the conference and caused DSG to incur expenses such as travel costs and fees of counsel. App. 029. It granted the oral sanctions motion and assessed Plaintiff the sum of $4,000. App. 029.

Plaintiff moved to rescind the sanctions order, which DSG resisted. App. 031-043. The District Court denied Plaintiff's motion to set aside the sanctions order. App. 091-095. The District Court granted summary

judgment on June 5, 2019, dismissing DSG and its doctors from this case. App. 089.

Summary of Argument

This certiorari action presents the opportunity for this Court to confirm that Iowa judges hold inherent authority and express power under the Iowa Rules of Civil Procedure to manage their dockets, to foster conciliation, and to enforce directives so a party cannot disregard court orders without consequence.

Plaintiff filed a civil suit following a hospital peer review that resulted in termination of his employment as a vascular surgeon. He included as defendants DSG and two of its doctors who participated in the hospital's peer review.

On May 16, 2019, the Iowa District Court for Scott County convened a mandatory settlement conference pursuant to local rule and case-specific orders requiring all *parties* to attend on that date. DSG and its designated corporate representative Joseph Lohmuller, M.D. attended—Plaintiff did not. The District Court then imposed a $4,000 sanction on Plaintiff.

Because the District Court convened the settlement conference with full authority to do so and entered its sanction order within its wide discretion, the Iowa Supreme Court should affirm by annulling the writ of certiorari, lifting its stay, and remanding the matter for enforcement of the sanction.

Argument

This Court Should Annul the Writ of Certiorari Because the District Court Held Full Authority to Mandate a Pre-Trial Settlement Conference by Its Case-Specific Order and Further Possessed the Wide Discretion to Enforce that Order by Sanctioning a Noncompliant Party

Before conducting civil trials, Iowa's Seventh Judicial District requires that parties first attend a settlement conference mediated by a judge. *See* Local Rule 7.1, App. 097-098. The Iowa Supreme Court has described this practice as one "that *requires the personal attendance of parties*, as well as their lawyers, at any settlement conferences unless excused by the settlement conference judge." *Sterner v. Fischer*, 505 N.W.2d 490, 491 (Iowa 1993) (emphasis added).

Through this action, he seeks to vacate the sanctions order imposed for non-compliance with the order by failing to attend and asserts four arguments that challenge the validity and effect of Local Rule 7.1.

Yet Plaintiff's rule challenges, even if meritorious, disregard the inherent authority of Iowa courts to manage dockets, the specific power Iowa Rule 1.602 provides for mandatory settlement conferences, and the discretion afforded to Iowa judges when a party disobeys court orders.

Therefore, because it acted lawfully, Defendant Iowa District Court for Scott County requests that this Court annul the writ of certiorari.

1. Rules, custom, and common law empowered the District Court to enter a case-specific order mandating a pre-trial settlement conference where all parties must attend.

The Iowa District Court generally concurs with Plaintiff's articulation of the standard of review applicable to his original certiorari petition under Iowa Rule of Appellate Procedure 6.107. It further agrees that an original certiorari action proceeds under a correction of errors at law standard of review. *Ostergren v. Iowa Dist. Ct. for Muscatine Cty.*, 863 N.W.2d 294, 297 (Iowa 2015); *State v. Iowa Dist. Ct. for Warren Cty.*, 828 N.W.2d 607, 611 (Iowa 2013).

While the District Court concedes that Plaintiff preserved his ability to challenge Local Rule 7.1 and its mandate that he attend a pre-trial settlement conference through the grounds set forth in his certiorari petition and the four arguments in his appellate brief, it asserts he waived other challenges to the orders in issue by isolating his preserved challenges to what Plaintiff claims was the District Court's lack of jurisdiction to adopt Local Rule 7.1 and its illegal action in enforcing the local rule, he waived error on other issues. Specifically, his waiver extends to any challenge to the District Court's inherent power to compel parties to attend pretrial conferences, including a court-supervised mediation, or to its discretion to sanction a violation of orders entered in part under Iowa Rule Civil Procedure 1.602.

The District Court additionally believes the limited remedies available through certiorari bears noting. "When reviewing the district court's action, we 'either sustain [the writ] or annul it. No other relief may be granted.'" *Ostergren*, 863 N.W.2d at 297 (quoting *Crowell v. State Pub. Defender*, 845 N.W.2d 676, 682 (Iowa 2014)).

Further, reviews under Iowa Rule of Appellate Procedure 6.107 can find illegality only "when the court's findings lack substantial evidentiary support, or when the court has not properly applied the law." *State Pub. Def. v. Iowa Dist. Ct. for Plymouth Cty.*, 747 N.W.2d 218, 220 (Iowa 2008) (quoting *Christensen v. Iowa Dist. Ct. for Polk Cty.*, 578 N.W.2d 675, 678 (Iowa 1998)).

Neither has occurred here.

■ ■ ■

Plaintiff's argument assailing the authority of the District Court to set a mandatory settlement conference and to compel all parties to attend in person, of course, ignores what courts and lawyers long have recognized: *the correct means to challenge an illegal or improvident court order is to seek review of it prior to disobeying it.*

"[I]n the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives . . . .

[R]espect for judicial process is a small price to pay for the civilizing hand of law . . . ." *Walker v. Birmingham*, 388 U.S. 307, 320-21 (1967).

Plaintiff took the riskier approach and now seeks appellate absolution by arguing he cannot be sanctioned for disregarding a court order that he argues exceeded the direct or implicit authority of the presiding judge.

Notably, Plaintiff's certiorari application did not challenge the amount of the sanctions award or its components. It instead limited its grounds for review to the District Court's authority under Local Rule 7.1 or otherwise to command parties to attend a pretrial settlement conference and its power to sanction a party who disregarded a case-specific order setting such a mediation and commanding that party to attend personally.

This jurisdictional attack fails, however, because the settlement conference dictates in this case fell directly within the powers assigned to the District Court and its judges by common law, rule, and practice, making the mediation scheduling order in this case authorized by correctly applied law.

First, irrespective of the validity of Local Rule 7.1, Iowa District Court judges are vested with jurisdiction by Iowa Rule of Civil Procedure 1.602 to manage cases through pretrial conferences, scheduling orders, and special procedures. In this broad grant of case management authority, Rule

1.602 subpart (1) permits the conducting of pretrial conferences "[f]acilitating settlement of the case." Additionally, Rule 1.602, subpart (3) empowers the District Court to "consider and take action with respect to . . . (g) [t]he possibility of settlement and imposition of a settlement deadline or the use of extrajudicial procedures to resolve the dispute, . . . [and] (p) [s]uch other matters as may aid in the disposition of the action."

Local Rule 7.1 fits squarely within these provisions by authorizing and directing the judges within the Seventh Judicial District to set settlement conferences in which all parties must participate,[1] and the District Court in this case properly could and did rely on common sense, common knowledge, and the inherent power of a court to manage its docket by ordering a

[1] Plaintiff argues in his briefing that the Iowa Supreme Court never approved Local Rule 7.1 as contemplated by Iowa Rule Civil Procedure 1.1806. Yet, he provides no evidentiary record to indicate the presence or absence of such approval. However, endorsement of the rule occurred in *Sterner v. Fischer*, 505 N.W.2d 490 (Iowa 1993). In *Sterner*, the District Court sanctioned an attorney who attended a settlement conference without the plaintiff, even though he had obtained a judge's permission excusing his client's attendance. The sanction imposed under Local Rule 7.1 in *Sterner* was affirmed because a notice of appeal filed after judgment did not raise a timely challenge. Notably, the *Sterner* court in no way intimated that the Seventh Judicial District lacked authority or approval to adopt and apply Local Rule 7.1, nor did it hold that that District Court for Scott County was powerless to sanction a party who failed to attend a mandatory pretrial settlement conference. Further, no action by the Supreme Court or the Seventh Judicial District to set aside Local Rule 7.1 has occurred in the 16 years since *Sterner* was decided.

settlement conference, just as subparts (1) and (3) of Iowa Rule Civil Procedure 1.602 contemplate and permit.

Undeniably, the success of any mediation largely can depend on the participation and state of mind of the parties. Local Rule 7.1 and the District Court order at issue each implicitly recognizes that parties seeking compromise and resolution need to engage one another while receiving face-to-face guidance and advice of the mediator without filters or distortions.

Therefore, whether through Local Rule 7.1 or by the express language of its Rule 1.602 orders, the District Court lawfully and rationally required Plaintiff and Defendants to participate *in person*. Further, as the *Sterner* case instructs, a party's disregard of such a mandate need not be condoned or excused.

Accordingly, Plaintiff's arguments that the District Court lacked authority to order a settlement conference and could not compel the parties to attend it lack support in law and fact. *See* Barry A. Lindahl, IOWA PRACTICE SERIES—CIVIL AND APPELLATE PROC., §§ 22.3, 22.6 (Thomson Reuters 2018).

This Court's decisions reinforce this. *See Iowa Civil Liberties Union v. Critelli*, 244 N.W.2d 564 (Iowa 1976); *Ostergren*, 863 N.W.2d 294.

Those cases squarely hold that Iowa courts possess inherent power to regulate litigants and litigation practices and procedures by rule and order.

In *Critelli*, the Supreme Court turned away a challenge asserting that the Iowa District Court for Polk County exceeded its authority by adopting and enforcing a local rule designed to expedite criminal case trials:

> Notwithstanding Article V, § 14, of the Constitution of Iowa, which assigns a duty to the legislature to provide a general system of practice for the courts in this state, our cases have consistently recognized the inherent common-law power of the courts to adopt rules for the management of cases on their dockets in the absence of statute. In *State v. Ensley*, 10 Iowa 149 (1859), the court recognized the inherent power of a trial court to make a rule that a defendant not in custody whose application for change of venue was sustained must enter a recognizance within 48 hours of that time. In *Shane v. McNeill*, 76 Iowa 459, 41 N.W. 166 (1889), the court held that a statute authorizing the judges of this state in convention to draw rules of practice in all the districts of the state did not abrogate the common-law power of courts to make such rules.

Id. at 568-69.

And, as the words of *Critelli* foretold, "The power involved here is one which is usually possessed and exercised by trial courts of general jurisdiction." *Id*.

In *Ostergren*, the Supreme Court upheld an administrative order allowing persons protected by no-contact orders to petition to terminate or modify such orders. This Court ruled that the challenged administrative order "merely manifests the district court's 'authority to do what is

reasonably necessary for the administration of justice in a case before the court.'" *Ostergren,* 863 N.W.2d at 300 (quoting *State v. Iowa Dist. Ct. for Johnson Cty.*, 750 N.W.2d 531, 534 (Iowa 2008) and citing *In re K.N.*, 625 N.W.2d 731, 734 (Iowa 2001) (acknowledging court "authority to ensure the orderly, efficient, and fair administration of justice")).

The *Sterner*, *Critelli*, and *Ostergren* decisions reinforce why the District Court was empowered to apply the Seventh Judicial District's mandatory pre-trial settlement conference policy and to enter the corresponding case-specific Rule 1.602(3) settlement conference order. That order encompassed matters committed to the District Court's authority to administer justice and, independently, to command the parties and their lawyers to appear at the Scott County Courthouse for the May 16, 2019 mediation as a matter of case management.

This existence of this authority, distinct and independent from Local Rule 7.1, supports annulment of the writ of certiorari issued in this matter.

2. By imposing sanctions on Plaintiff for failing to attend a mandatory pre-trial settlement conference, the District Court did not abuse its wide discretion to enforce its orders.

As noted earlier, the District Court concurs that the standard of review is set by Iowa Rule of Appellate Procedure 6.107, which governs original certiorari petitions alleging a judge exceeded his or her jurisdiction or acted

illegally, such as Plaintiff claims here. The District Court accepts that the "proper means to review a district court's order imposing sanctions is by writ of certiorari." *Everly v. Knoxville Cmty. Sch. Dist.*, 774 N.W.2d 488, 492 (Iowa 2009).

The District Court also agrees that certiorari review of its sanctions order is for abuse of discretion. *Rowedder v. Anderson*, 814 N.W.2d 585, 589 (Iowa 2012); *see also First Am. Bank & C.J. Land, LLC v. Fobian Farms, Inc.*, 906 N.W.2d 736, 744 (Iowa 2018). In this regard:

- Abuse occurs when the District Court "exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *First Am. Bank*, 906 N.W.2d at 744 (quoting *Schettler v. Iowa Dist. Ct.*, 509 N.W.2d 459, 464 (Iowa 1993)).
- Fact findings of the District Court are binding on certiorari review whenever they are supported by substantial evidence. *Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009).
- "Evidence is considered substantial when reasonable minds could accept it as adequate to reach a conclusion." *State v. Garrity*, 765 N.W.2d 592, 595 (Iowa 2009).

The District Court accepts that Plaintiff preserved his general ability to challenge its sanctions order by his timely application to this Court for a writ of certiorari. However, as noted previously, Plaintiff's petition and briefing limited his foundational challenge to the power and authority of the District Court to order a settlement conference under Local Rule 7.1, and to

enforce that local rule. Plaintiff thereby waived challenges to the inherent power of the District Court to enforce its orders and the discretion afforded it to do so through the entry of sanctions under Iowa Rule of Civil Procedure 1.602. Likewise, because Plaintiff did not challenge the amount of the sanction award, he waived argument on that point.

■ ■ ■

When a party fails to obey a court order, the District Court has the authority and discretion to award the "reasonable expenses incurred because of any noncompliance . . . including attorney's fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust." Iowa Rule 1.602(5); *see also Reis v. Iowa Dist. Ct. for Polk Cty.*, 787 N.W.2d 61, 73 (Iowa 2010) (discussing how Rule 1.602(5) "provides discretion for trial courts to hold pretrial conferences and enter pretrial orders" and authorizes "sanctions to be levied against a party or a party's attorney" for failure to adhere to a pretrial order).

The sanctions order Plaintiff now challenges was authorized by law, flowed from valid pretrial orders, and remains justified as a matter committed to the wide and sound discretion of the District Court.

Importantly, the District Court entered *two* separate orders regarding its requirements for a settlement conference.

The District Court's August 11, 2016 Order, entered before DSG was added as a party, stated, "Settlement Conference is scheduled on 01/12/2018 at 2:00 PM at the Scott County Courthouse 400 W 4th St, Davenport, IA 52801. All parties with authority to settle must be present." App. 016.

Then, the District Court's January 25, 2018 Order, entered once DSG became a party, stated, "Settlement Conference is scheduled on 05/16/2019 at 2:00 PM at the Scott County Courthouse 400 W 4th St, Davenport, IA 52801. All parties with authority to settle must be present." App. 019.

This plain language demonstrates the implausibility of Plaintiff's argument that the order compelling the "parties" to attend the settlement conference was vague and failed to provide "the necessary clarity to advise the parties that they personally must be present in addition to counsel." Plaintiff's Brief p. 27. [2] For example, one commonly cited legal dictionary

[2] Context reinforces this implausibility. The Iowa Rules of Civil Procedure use the terms "party" and "parties" to describe the litigants—the stakeholders—the persons with standing. The rules never equate the term "party" with "attorney" or use them interchangeably. Thus, when Chief Judge Greve issued both settlement conference orders and stated, "All parties with authority to settle must be present," she, as any judge, reasonably could believe that lawyers knew what this meant or could question it if not.

defines "party" as "[o]ne by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment." *See.* Bryan A. Garner, *Black's Law Dictionary* (11th ed. 2019).

The District Court's *two* scheduling orders clearly directed the parties to attend a settlement conference, never were questioned,[3] and on their face support why no abuse of discretion occurred when it imposed sanctions.

Plaintiff's conduct reinforces this conclusion.

First, the District Court observed directly how Plaintiff brazenly disregarded its clear settlement conference order when he skipped the court-supervised mediation and, in a more egregious fashion than in *Sterner*, did so without obtaining advance approval. *Sterner*, 505 N.W.2d at 491. The District Court had the opportunity to weigh this noncompliance against a representation at the settlement conference by Plaintiff's counsel that his

[3] The record reflects that Plaintiff and his lawyer made no effort to seek clarification about what they now claim denied them adequate notice due to vagueness. In the 33-month interval between issuance of the first order mandating that the parties attend a settlement conference and the mediation date, Plaintiff and his attorney never questioned what was unquestionable. In addition, considering how Plaintiff and his lawyer have advanced degrees, it strains credulity to assert that the nine-word command of the scheduling orders that "[a]ll parties with authority to settle must be present" could not be understood. Indeed, by one measure (available in the Microsoft Word program that generated this brief), that sentence has a Flesch-Kincaid Grade Level readability index of 7.5.

client was performing a cardiothoracic surgery in Texas that day, but nevertheless could participate in the mediation telephonically.[4]

Irrespective of why he chose not to attend, had Plaintiff attended the May 16, 2019 settlement conference in person, the presiding judge may have been able to point out the deficiencies in his lawsuit and encourage him to accept an amount much lower than his previous eight-figure demand. He likely could have warned Plaintiff that his case contained fatal deficiencies and risked dismissal on the pending summary judgment motions, which ultimately occurred on June 5, 2019. DSG and the District Court plainly suffered from Plaintiff's failure to appear, which is predictable given how a settlement conference without the party who commenced the lawsuit can prove "unproductive." *See Sterner*, 505 N.W.2d at 491.

This failure to attend not only disregarded a lawful order, it stood in stark contrast to how DSG had proceeded. As the sanctions order and reconsideration denial detailed, rather than simply not showing up without warning, DSG filed a motion to be excused from attending the settlement conference. App. 022-024, 027-030, 091-095. After that motion was denied, DSG designated Dr. Lohmuller to attend the court-supervised

[4] Plaintiff, whose professional competency underlies his lawsuit, apparently could suspend surgical activities to answer questions and, perhaps, even to engage in detailed conversations with the presiding judge as the mediator.

mediation, to entertain settlement demands, and to confer with the presiding judge on its behalf.

Further, while Plaintiff accurately argued to the presiding judge that he *could* have conducted the settlement conference in his absence (of course, thereby tacitly conceding the underlying authority to order the mediation), the District Court likewise had the discretion to recognize that proceeding with the conference without Plaintiff would be futile or unproductive. *See Sterner*, 505 N.W.2d at 491.

As such, the presiding judge had the first-hand facts and discretion to evaluate whether Plaintiff and his counsel "acted reasonably under the circumstances," to determine they had not, and to impose sanctions on them for their non-compliance. *Barnhill v. Iowa Dist. Ct. for Marshall Cty.*, 797 N.W.2d 621, 2011 WL 222531, *11 (Iowa Ct. App. Jan. 20, 2011); *Reis*, 787 N.W.2d at 73 (discussing how Iowa Rule 1.602(5) "provides discretion for trial courts to hold pretrial conferences and enter pretrial orders" and authorizes "sanctions to be levied against a party or a party's attorney" for failure to adhere to a pretrial order).

Beyond that, Iowa Rule of Civil Procedure 1.602(5) states that if a party fails to obey a scheduling or pretrial order, the court "may make such orders with regard thereto as are just." Plaintiff's attempt to evade this

command by arguing Local Rule 7.1 does not authorize sanctions is unavailing. He concedes this when his brief states, "The Supreme Court has many times ruled that there is an inherent power of the district court to enforce pretrial orders by imposing sanctions." Plaintiff's Brief 34-35.

In this instance, the sanctions order recognized a valid order authorized by Rule 1.602(2) and/or (3) in which the District Court commanded DSG and Plaintiff to attend the May 16, 2019 settlement conference.[5] Nothing in Local Rule 7.1 could or did divest the District Court of the power granted by Iowa Rule of Civil Procedure 1.602(5) and, in the words of Plaintiff's Brief, the "inherent power of the district court to enforce pretrial orders by imposing sanctions." Plaintiff's Brief 34-35.

Finally, because his certiorari application only set forth challenges to Local Rule 7.1 and the District Court's authority to compel personal attendance at a settlement conference, Plaintiff waived review of the propriety of the $4,000 amount set forth in the May 17, 2019 order.

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[5] Plaintiff's unequal and disparate impact argument (Brief Point III) misses the point. The relevant balancing of rights and measurement of equal treatment is not between Plaintiff and the other Defendants, but between Plaintiff and DSG. The former did not show up, while the latter's corporate representative cancelled medical appointments to attend with his attorney, just as the District Court had commanded. Plaintiff's unequal treatment argument misguidedly seeks to use the claimed noncompliance of others as a free pass to avoid liability for the prejudice and economic costs Dr. Lohmuller and DSG incurred at the hands of the sanctioned party.

Nevertheless, that amount should stand, especially considering the wide discretion afforded the District Court and the record made before it on May 16, 2019, establishing:

- Dr. Lohmuller, a DSG surgeon, had to forgo treating patients for half a day to attend the settlement conference;
- His attendance caused a $1,500 economic loss; and
- His medical group incurred some $2,500 in attorney fees and costs by having its lawyer travel from Des Moines to be with him at the settlement conference.

Combined, the nature of Plaintiff's conduct and its effect on DSG supported entry of the sanctions order and the amount assessed as the sanction.

In sum, just as the District Court had the authority and power to require a settlement conference and to command that all parties attend a court-supervised mediation at the appointed hour and place, the presiding judge was within his discretion to (a) cancel the mediation due to Plaintiff's absence and (b) assess Plaintiff a $4,000 sanction. *See* Iowa Rule 1.602(5) (stating that when a party fails to obey a court order, the court has the authority and discretion to award the "reasonable expenses incurred because of any noncompliance . . . including attorney's fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust").

As the Iowa Court of Appeals noted in *Johnston v. Van Dam*, No. 14-2135, 873 N.W.2d 552, 2015 WL 7567724 (Iowa Ct. App. Nov. 25, 2015), "To ensure our district courts have the tools to effectively manage pretrial and trial conduct, we have recognized the inherent power of the district court to impose sanctions." *Id*. 2015 WL 7567724 at *2, citing *Fry v. Blauvelt*, 818 N.W.2d 123, 130 (Iowa 2012); *see also* Plaintiff's Brief at 34-35.

Because the District Court did not abuse that power or its wide discretion by entering the sanctions order, this Court should annul the writ of certiorari. *See Crowell*, 845 N.W.2d at 682.

Conclusion

Pursuant to its express and inherent authority, the District Court:

(a) Lawfully entered pretrial orders, including one compelling the parties to attend a May 16, 2019 settlement conference, and

(b) Properly exercised its wide discretion by sanctioning Plaintiff for his failure to comply with that pretrial order.

Accordingly, the Iowa Supreme Court should annul the writ of certiorari issued in this case, lift its stay, remand the matter for enforcement of the sanctions award, and assess Plaintiff all costs for this original jurisdiction action.

Dated: October 11, 2019.

Respectfully submitted,

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Request for Oral Argument

Defendant Iowa District Court for Scott County requests the opportunity to be heard orally on this original jurisdiction certiorari action.

Dated: October 11, 2019.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a true copy of **Defendant Iowa District Court for Scott County's Brief Supporting Annulment of Writ of Certiorari with Request for Oral Argument** was served upon one of the attorneys of record for each party to the above-entitled cause through the Court's electronic filing system to each such attorney at his/her last known e-mail address as shown below on October 11, 2019.

/s/ Trisha Richey

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Certificate of Filing

The undersigned certifies that on October 11, 2019, she filed **Defendant Iowa District Court for Scott County's Brief Supporting Annulment of Writ of Certiorari with Request for Oral Argument** with the Clerk of the Supreme Court via EDMS, in accordance with Iowa R. App. P. 6.701(2) and Iowa R. 16.1221(1).

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Attorney's Cost Certificate

The undersigned certifies the actual cost of reproducing the necessary copies of the preceding **Defendant Iowa District Court for Scott County's Brief Supporting Annulment of Writ of Certiorari with Request for Oral Argument** was $0.00 and that amount has been paid by the attorneys for that Defendant.

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Certificate of Compliance with Type-Volume Limitation and Typeface and Type-Style Requirements

The undersigned certifies that Defendant Iowa District Court for Scott County's Brief Supporting Annulment of Writ of Certiorari with Request for Oral Argument complies with the:

1. Type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because, according to the word count software used to prepare this Brief, it contains 6,233 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1); and

2. Typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 MSO word processing software in 14-point Times New Roman font.

Dated: October 11, 2019.

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