IN THE IOWA SUPREME COURT

Supreme Court No. 21-0348

Polk County No. JGJV248693

IN THE GUARDIANSHIP OF

J.W.

A Minor Child

APPEAL FROM THE IOWA JUVENILE COURT OF POLK COUNTY

FINAL BRIEF OF APPELLANT

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STATEMENT OF CASE

Nature of the case: This is an appeal form the granting of a motion to dismiss in an action for guardianship over a minor child, alleging both that the parents of the minor child had allowed others to serve as *de facto* guardians for the minor child, and that the parents of the minor child were unwilling or unable to serve as guardians. The basis of the motion to dismiss are alleged ethical violations by the Petitioner, alleged by the Mother in the underlying action.

Course of Proceedings: The Petitioner, Jacob van Cleaf, an attorney admitted to the practice of law in the State of Iowa, acting *pro se*, filed a Petition for Involuntary Guardianship of a Minor on December 8th, 2020, listing himself and Amelia Mohr, his office manager, as co-petitioners, alleging that Mohr had served as a *de facto* guardian since 2013 and van Cleaf since 2015, detailing their efforts to provide care for the minor child, listing where the minor child had historically lived. The Petition also detailed the lack of involvement by the parents of the proposed ward, as well as the basis for van Cleaf's belief that the parents were unwilling or unable to serve as guardians to the proposed ward. App. p. 8. Van Cleaf also filed a Motion for Emergency Appointment of Co-Guardians on the same day, containing largely the same allegation. App. p. 19. The Juvenile Court

denied the Emergency Motion on December 18th, 2020, and set a status hearing on January 5th, 2021, via go to meeting. App. p. 36. The Court also appointed counsel for the proposed ward and Mother, J.L.W., via separate orders. App. p. 32, 34.

On January 4th, 2021, van Cleaf filed a Motion for Alternative Service, alleging that Mother was evading service, attaching as evidence a screenshot of a conversation between Mother and Mohr. App. p. 39.

At the hearing on January 5th, 2021, where van Cleaf and Wildt appeared in the same room using the same webcam, the Court denied van Cleaf's Motion for Alternative Service, and set another status hearing for January 28th, 2021, via go to meeting. App. p. 49.

The attorney for the minor child filed a Motion to Bifurcate Roles & Order Mediation on March 27th, 2021. App. p. 51.

On January 27th, 2021, van Cleaf filed a Notice to Court of Alleged Ethical Issues and Request for Enumeration of the Same, explaining that Alexis Dahlhauser, the attorney appointed to Mother, had emailed him alleging the he had ethical issues in this case which she believed he needed to disclose to the court, and asking her to specifically enumerate what she believed those ethical issues to be. App. p. 53. Mother filed an

Enumeration, listing only the rules which she alleged to have been violated. App. p. 55.

On January 28th, 2021, hearing was held, with van Cleaf attending from his office and Mohr attending from her home, and the parties discussing Mother's allegations of unethical behavior. The court set hearing on the matter for February 25th, 2021, via go to meeting. App. p. 57. The Court also entered a separate order granting the Motion to Bifurcate and appointing Stephen Allison as Court Visitor to the proposed ward. App. p. 59, 62.

Mother filed a Brief on Ethical Violations on February 23rd, 2021. App. p. 65. The Attorney for the proposed ward filed a Brief on Behalf of Minor Child on February 24th, 2021, and the Court Visitor filed a Special Court Visitor Report on February 24th, 2021. App. p. 78. Mohr filed a Motion to Continue the hearing, stating that she had come to believe that the proceedings were too complex for her to handle without an attorney, and requesting additional time to seek one. App. p. 81. Mother resisted Mohr's Motion to continue. App. p. 83.

Van Cleaf filed a Brief on February 25th, 2021, detailing his arguments against the allegations of the opposing parties, and containing several attached affidavits. App. p.85.

Facts: Prior to the commencement of the underlying action, Petitioner or other attorney's with his firm, represented Respondent in five (5) separate actions in the State of Iowa, to wit: (1) Zachary Burtis vs. J.L.W., Cerro Gordo County, Case No.: DRCV067972; (2) Zachary Burtis vs. J.L.W., Polk County, Case No.: DRCV050982; (3) J.L.W. vs. Demaris Fisher, Polk County, Case No.: DRCV051444; (4) J.L.W. vs. Zachary Burtis, Polk County, Case No.: DADA022829; and (5) Saroeun Ngan vs. J.L.W., Polk County, Case No.: DRCV051621. App. p. 212. All members of Petitioner's firm had ceased representation by December 13th, 2016. App. p. 217. Petitioner filed a motion for Involuntary Guardianship December 8th, 2020. App. p. 8.

On February 25th, 2020, when hearing was held on Mother's motion, the only testimony provided was by Petitioner. (Transcript 35: 5-6. 35:12 – 36:6, 36:12 – 37:13, 58:18-20, 59:3-4, 59: 7-10). Petitioners testimony consisted of appraising the court that he now believed that date he became a *de facto* guardian was 2017, and that he intended to amend the petition in this action to so reflect if permitted. (Transcript 33:25 – 34:7). On cross examination, Petitioner testified that he had gained knowledge of Mother's parenting ability during representation, but that said information was all

known either generally or to adverse parties and thus he did not believe it to be disqualifying. (Transcript 36:21 – 37:11).

ROUTING STATEMENT

Under Iowa Rule of Appellate Procedure 6.1101(3)(a), this case should be transferred to the Iowa Court of Appeals. Oral argument is not requested.

ARGUMENT

I - THE DISTRICT COURT LACKED JURISDICTION TO MAKE FINDINGS WITH REGARD TO WHETHER THERE WAS A VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

Standard of Review/Preservation of Error

Questions of jurisdiction are also reviewed for correction of errors at law. *State v. Bruegger*, 773 N.W.2d 862, 869 (Iowa 2009), *State vs. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Lack of subject matter can be raised "at any time." *State v. Mandicino,* 509 N.W.2d 481, 482 (Iowa 1993) (citing *State v. Ryan,* 351 N.W.2d 186, 187 (Iowa 1984)).

Argument

The Juvenile Court of Polk County lacks subject matter jurisdiction to make findings or ruling with regard to whether there is a violation of the Rules of Professional Conduct. Subject matter jurisdiction is conferred by constitutional or statutory power. *Klinge v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006), citing *In re Estate of Falck,* 672 N.W.2d 785, 789 (Iowa 2003). The parties themselves can neither confer subject matter jurisdiction on a court by act or procedure, nor can a party waive or vest subject matter jurisdiction by consent. *Id*. (Citiations omitted). Rule 34.10(1) limits subject matter jurisdiction to determine whether an act constitutes a violation of the Iowa Rules of Professional Conduct, or any similar rules, to the Iowa Supreme Court, the disciplinary board, and the grievance commission. As

the Juvenile Court of Polk County is neither the Iowa Supreme Court, the disciplinary board, nor the grievance commission, it lacked the authority to consider whether any act alleged was in violation of any portion of the Rules of Professional Conduct, and as such any findings and rulings it made with respect to the same should be vacated. See *Klinge v. Bentien*, 725 N.W.2d 13, 16 (Iowa 2006), citing *In re Estate of Falck,* 672 N.W.2d 785, 789 (Iowa 2003) ("If a court enters a judgment without jurisdiction over the subject matter, the judgment is void and subject to collateral attack.").

Not withstanding and without waiving for the forgoing argument, Petitioner has offered argument further argument concerning alleged ethical violations later herein *arguendo*.

II - PETITIONER HAS ESTABLISHED BOTH A PRIMA FACIE CASE AND CLAIM FOR CONSIDERATION AT A POTENTIAL GUARIDAN

Argument

Exhibit B, C, E and F each contain statements of things observed by those individuals prior to the time Petitioner claims to have become a de facto guardian. App. p. 165, 174, 181, 186. Exhibits B contains a statement that Petitioner would drop off food with Amelia Wildt at some point commencing in 2015. App. p. 168. Exhibit C and E contain statements that concerning how the proposed ward's enrollment in daycare and Mother's

conduct and parenting prior to Van Cleaf & McCormack ending all representation. App. p. 174, 181-83. Exhibit F contains statements Mother made about her attorneys and the affiants mistaken belief that Mother and Amelia Wildt were romantic partners due to how much Amelia was caring for the proposed ward. App. p. 186. While Petitioner would argue that said information is not available as a result of the attorney-client relationship, and thus does not relate to representation, all argument in this brief concerning said exhibits excepts the above described statements. As such, any statements after this point about the ability to make any burden of proof via the statements contained in said exhibits, as well as any statements concerning what could be established if the parties were to testify to the contents contained in those exhibits, is exclusive of the above described statements.

The information contained in Exhibits A-H is sufficient to establish a prima facie case for guardianship under Iowa Code § 232D.204(1). Iowa Code § 232D.204(1) provides that to establish a prima facie claim for guardianship, you must demonstrate by clear and convincing evidence that:

"a. There is a person serving as a de facto guardian of the minor.
b. There has been a demonstrated lack of consistent parental participation in the life of the minor by the parent. In determining whether a parent has demonstrated a lack of consistent participation in the minor's life, the court may consider all of the following:

(1) The intent of the parent in placing the custody, care, and supervision of the minor with the person petitioning as a de facto guardian and the facts and circumstances regarding such placement.
(2) The amount of communication and visitation of the parent with the minor during the alleged de facto guardianship.
(3) Any refusal of the parent to comply with conditions for retaining custody of the minor set forth in any previous court orders."

The exhibits in question establish that Petitioner had taken custody of the proposed ward and established her primary residence, arranged and attended to her medical care and optometry care, transported the proposed ward to school, supplied the proposed ward with shoes and clothing, provided discipling and moral instruction for the proposed ward, and feeding the proposed ward. Taken together, all this is sufficient to establish Petitioner functioned as a de facto guardian, meeting the first element under the statute. App. p. 161-208. Further, the same exhibits establish that Mother left the proposed ward in Petitioner's care with the intent the proposed ward remain there and Petitioner provide for the proposed ward and act as a de facto guardian, and that Mother visited or communicated with the proposed ward inconsistently at best, meeting the second element under the statute. App. p. 161-208. As both elements are met by the contents of the exhibits, they establish a prima facie case, and thus a claim for guardianship under Iowa Code § 232D.204(1). Further, the petition contains all allegations necessary

to establish a prima facie claim for guardianship under Iowa Code § 232D.204(1) at paragraphs 1, 2, 4, 5, 9, 10, and 13 – 17. App. p. 8-14. The information contained in Exhibits A-H is sufficient to establish a prima facie case for guardianship under Iowa Code § 232D.204(2). Iowa Code § 232D.204(2) provides that to establish a prima facie claim for guardianship, you must demonstrate by clear and convincing evidence that:

"a. No parent having legal custody of the minor is willing or able to exercise the power the court will grant to the guardian if the court appoints a guardian.
b. Appointment of a guardian for the minor is in the best interest of the minor."

Exhibits A, F, and H, detail Mother's inability and unwillingness to control or discipline the proposed ward. App. p. 163-64, 187, 203-204. Exhibit H discusses Mother's inability or unwillingness to provide a stable and clean home environment for the proposed ward, while exhibits A, B, C, D, E, G, and H all discuss Mother's inability or unwillingness to provide clean clothes, hygiene, and proper food for the proposed ward. App. p. 161-185, 190-208. As all the described deficiencies are powers the court would grant a guardian, the information in the exhibits satisfy these elements. Exhibits A, B, C, D, E, G, and H all describe that Petitioner meets the needs Mother is unwilling or unable to, and exhibit H contains the affiant's account of Mother admitting being in Petitioner's care is what's best for the minor

child, establishing the second element. App. p. 161-185, 190-208. Again, as both elements are established by the contents of exhibits A-H, said exhibits establish a prima facie case for claim for guardianship under Iowa Code § 232D.204(2). App. p. 161-208. Further, the petition contains all allegations necessary to establish a prima facie claim for guardianship under Iowa Code § 232D.204(2) at paragraphs 1, 4, 5, 18 – 21. App. p. 8-16. Petitioner has an interest in being considered as guardian for the proposed ward in this case. Iowa Code § 232D.308(1) provides that in an action for guardianship

> "[t]he court shall appoint as guardian a qualified and *suitable person* who is willing to serve subject to the preferences as to the appointment of a guardian set forth in subsections 2 and 3."

While there is little caselaw interpreting the current minor guardianship statute, the Court of Appeals has had occasion to define "suitable person" as it appears in other statutes related to who is entitled to be considered as guardians under other juvenile statutes. *See In re J.C.*, 857 N.W.2d 495 (Iowa 2014). In *In re C.L.C.,* the Court of Appeals determined that two individuals unrelated to the minor children met the standard of "suitable person," and thus had an interest in being considered as guardians, due to their close relationship with the minor children in question during the two

(2) years prior to the need for guardianship. 479 N.W.2d 340, 344 (Iowa App. 1991). In reaching this conclusion, the Appellate Court indicated that:

"For nearly two years, Scott and Mia have established a family relationship with the children. They have spent time with the children through the week and on weekends. They have taken the children to medical appointments, given birthday presents and provided financial support in excess of $5,000. This couple has been involved in the routine care of these children, and the children have come to rely upon their love and care. "

Id. In the current case, Petitioner has spent time with the proposed ward through the week for several years and almost every weekend for three years, before caring for the proposed ward in his home from the summer of 2020 until November 30th, 2020. App. p. 161-208. Petitioner has transported the proposed ward to and from daycare, participated in education related decisions concerning the proposed ward, provided discipline and instructions for the proposed ward, and provided financial aid for the proposed ward for years. App. p. 161-208. Petitioner has been part of the routine care of the proposed ward for years and the proposed ward has come to rely upon his regular presence in their life. App. p. 161-208. As such, Petitioner has a stronger interest in being considered as a guardian for the proposed ward than the intervenors in *C.L.C.* Iowa Code 232D.301(1) provides that proceedings for a minor guardianship may be initiated by the filing of a petition by "any person with an interest in the welfare of a minor,"

As Petitioner has such an interest, he is permitted to establish said claim against Mother, regardless of her status as a former client. *See* Rules 32:1.6(b)(5); 32:1.9(c)(1), (2). Further, Petitioner has plead sufficient facts to establish said interest in paragraphs 2, 7(a), 9 (b), 10, 12, and 21. App. p. 8-16.

III - THE COURT ERRED BY LIMITING CONSIDERATION OF EXHIBITS "A" – "H" TO EVALUATION OF WHETHER PETITIONER HAD A CLAIM UNDER RULE OF PROFESSIONAL CONDUCT 1.6(b)(5)

Standard of Review/Preservation of Error

The standard of review for evidentiary rulings for an abuse of discretion. *State v. Webster*, 865 N.W.2d 223, 231 (Iowa 2015); *See State v. Nelson,* 791 N.W.2d 414, 419 (Iowa 2010). "An abuse of discretion occurs when the trial court exercises its discretion `on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Rodriquez,* 636 N.W.2d 234, 239 (Iowa 2001) (quoting *State v. Maghee,* 573 N.W.2d 1, 5 (Iowa 1997)). "`A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law.'" *Id.* (quoting *Graber v. City of Ankeny,* 616 N.W.2d 633, 638 (Iowa 2000)).

Error has been preserved through the evidence and arguments presented on the record and Petitioner's brief in this matter.

Argument

Petitioner argued at in his brief, and at several points on the record, that the affidavits which were Exhibits A – H were relevant to determining whether certain facts were generally known, which is relevant to analysis as to whether there is a conflict of interest under Rule 32:1.9. (Petitioner's Brief; Transcript 54:14-55:9, 88:5-14). The Court also admitted, in reversing its prior ruling and allowing Exhibit J to be admitted, that evidence of what is known by other parties is relevant to it's analysis as to whether there is a conflict under Rule 32:1.9 (Transcript 75:13 – 76:2). As the information contained in these exhibits was relevant to what, if any, information sought to be used by Petitioner is generally known, these exhibits should have been admitted for consideration in said analysis. *See* Rule 32:1.9(c)(1) (Permitting generally known information to be used to the disadvantage of a former client), *See also* Note [3] on Rule 32:1.9 ("Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying.") and Note [8] ("However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.")

IV - MOTHER'S MOTION SHOULD HAVE BEEN CONSTRUED AS A MOTION TO DISMISS AND BEEN DENIED AS SUCH.

Standard of Review/Preservation of Evidence

"We review a district court's ruling on a motion to dismiss for the correction of errors at law." *Dier v. Peters*, 815 N.W.2d 1, 4 (Iowa 2012). A motion to dismiss may be granted when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted. *Geisler v. City Council of Cedar Falls*, 769 N.W.2d 162, 165 (Iowa 2009) (citing Iowa R. Civ. P. 1.421(1)(f)). We accept as true the facts alleged in the petition and typically do not consider facts contained in either the motion to dismiss or any of its accompanying attachments. *Id*.

Error has been preserved through the evidence and arguments presented on the record.

Argument

Mother's motion is largely analogous to a motion to a motion to disqualify. While mother never tendered a written motion explaining her position, she did, through counsel, argue that (1) petitioner had previously represented her, (2) that this should be considered a conflict of interest, (3) that this conflict of interest means that petitioner is not entitled or permitted to bring a claim against her, thus (4) Petitioner's claim should be dismissed. App. p. 65. As such, mother is in essence alleging that even if all Petitioner's allegations are true, he is not entitled to relief, and seeks the

remedy of dismissal. These assertions parallel the standard for a motion to dismiss, and thus Mother's motion should be construed as such a motion.

Mother's Motion to Dismiss should be denied. Motions to dismiss should not be liberally granted, and should result in a dismissal only if initiating party "failed to state a claim upon which any relief could be granted under any state of supporting facts that could be established." *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001), citing *Schreiner v. Scoville,* 410 N.W.2d 679, 680 (Iowa 1987), citing *Murphy v. First Nat'l Bank,* 228 N.W.2d 372, 375 (Iowa 1975). As discussed above, the petition in this action makes sufficient allegations to establish a prima facie claim for guardianship by Petitioner under both arms of Iowa Code § 232D.204, and establishes his interest in consideration as a guardian under Iowa Code § 232D.308(1). Having done so, Petitioner has alleged facts which, if true, would entitled him to the relief sought, meaning that a motion for dismissal should not be granted. Further, Mother, nor any other individual arguing in this case, the Court in making its ruling, has cited authority indicating that granting a motion to dismiss is appropriate despite a petitioner having set forth facts which, if true, would entitle him to relief. As such, Mother's motion to dismiss should have been denied.

V – IF MOTHER'S MOTION IS NOT A MOTION TO DISMISS, IT IS A MOTION TO DISQUALIFY AND SHOULD BE DENIED AS

MOOT OR FOR PETITIONER BEING ABLE AUTHORIZED TO PROCEED UNDER THE RULES OF PROFESSIONAL CONDUCT.

Standard of Review/Preservation of Evidence

The scope of review of a ruling on attorney disqualification motions is for abuse of discretion. *Doe v. Perry Cmty. Sch. Dist.,* 650 N.W.2d 594, 597 (Iowa 2002). We will not find an abuse unless it is shown that the discretion was exercised on grounds clearly untenable, or to an extent, clearly unreasonable. *State v. Morrison,* 323 N.W.2d 254, 256 (Iowa 1982). An abuse may arise from an erroneous conclusion and judgment by the court. *Id.* (citing *Best v. Yerkes,* 247 Iowa 800, 816, 77 N.W.2d 23, 32 (1956).

When violation of a constitutional right, the standard of review is de novo. *State v. Tague* 676 N.W.2d 197, 202 (Iowa 2004), citing *State v. Naujoks,* 637 N.W.2d 101, 106 (Iowa 2001). The court makes an "independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Turner,* 630 N.W.2d 601, 606 (Iowa 2001).

Error has been preserved through the evidence and arguments presented on the record and Petitioner's brief in this matter.

A. MOTHER'S MOTION SHOULD BE DISMISSED AS MOOT AS PETITIONER IS NOT "ANOTHER PERSON" WITHIN THE MEANING OF RULE 32:1.9

The Juvenile Court does have the authority to determine if a conflict of interest exists for the purpose of ruling on a motion to disqualify counsel, and in doing so is guided by the principals of the Rules of Professional Conduct. *Bottoms v. Stapleton* 706 N.W.2d 411 415 (Iowa 2005). As Mother is a former client of Petitioner's firm, the existence of a conflict would be governed by Rule 32:1.9. However, if one is found the sole remedy authorized by any existing law is disqualification of the attorney from representing the new client against their former client. *See Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Walters,* 603 N.W.2d 772, 777-78 (Iowa 1999); *Doe v. Perry Community School Dist.*, 650 N.W.2d 594, 597 (Iowa 2002). This is the only remedy applied in existing case law, and thus the only remedy available to Mother.

To interpret "another person" as it appears in Rule 32:1.9(a) to include the attorney representing themselves would promote an absurd result. To interpret this rule in this fashion would mean that an attorney could never bring an action against a former client, despite the existence of Rule 32:1.6(b)(5), as Rule 32:1.9(a) contains no language excepting occasions when "the rules would or require with respect to a client." As such, if "another person" did include the attorney representing themselves, no attorney could ever represent themselves in an action for fees, something we

know to be permitted by Note [11] on Rule 32:1.6, and it would promote numerous absurd results, as argued later. *See State v. Gonzalez*, 718 N.W.2d 304, 308 (Iowa 2006), citing *Harden v. State,* 434 N.W.2d 881, 884 (Iowa 1989) (We look for a reasonable interpretation that best achieves the statute's purpose and avoids absurd results) and quoting *T & K Roofing Co. v. Iowa Dep't of Educ.,* 593 N.W.2d 159, 162 (Iowa 1999) ("we avoid interpreting a statute in such a way that portions of it become redundant or irrelevant."). As Petitioner is not representing someone from whom he could be disqualified from representing, mother's motion is moot. Further, if Petitioner could somehow be found capable of being disqualified from self-representation, that would raise issues concerning the possible denial of his constitutional right to access to the courts under the 1st, 4th, and 14th Amendments of the Constitution of the United States of America, and Article I, Sections 6 and 9 of the Constitution of the State of Iowa.

B - THE COURT ERRED IN RULING THAT RULE 32:1.6(b)(5) DOES NOT PERMIT PETITIONER TO BRING A CLAIM FOR GUARDIANSHIP OF THE PROPOSED WARD.

The Iowa Rules of Professional Conduct permit an attorney to make necessary disclosures of information relating to representation to bring a claim against a former client. Rule 32:1.9(c)(2) provides that a lawyer shall

not reveal information relating to representation of a former client "except as these rules would permit or require with respect to a client." The use of the term "client" in Rule 32:1.9(c)(2), rather than 'former client" implies that this rule is meant to allow you to apply any rule permitting disclosure against a former client which you could against a current one. Iowa Rule of Professional Conduct 32:1.6(b)(5) authorizes an attorney to reveal information relating to the representation of a current client to the extent the lawyer reasonably believes necessary to prosecute such a claim:

"**to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client**, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;"

emphasis added. As such, an attorney with a legal claim or interest can file against a client, current or former, to bring said action and make disclosures of information necessary to do so. *See State v. Adams,* 554 N.W.2d 686, 689 (Iowa 1996) ("We do not speculate as to the probable legislative intent apart from the words used in the statute."), and *State v. Welton,* 300 N.W.2d 157, 160 (Iowa 1981) (stating, "when a statute is plain and its meaning is clear, courts are not permitted to search for meaning beyond its expressed terms"). See Also *Office of Consumer Adv. V. Iowa Utils. Bd.,* 744 N.W.2d 640, 643(Iowa 2008), citing *Hollinrake v. Iowa Law Enforcement Acad.,* 452

N.W.2d 598, 601 (Iowa 1990); *Pottawattamie Cty. v. Iowa Dept., ETC.,* 272 N.W.2d, 448, 454 (Iowa 1978), citing *Motor Club of Iowa v. Dept. of Transp.,* 251 N.W.2d 510, 518 (Iowa 1977) ("In construing and interpreting administrative rules, we apply the principles governing construction and interpretation of statutes").

There is no basis for the Court's determination that, with respect to Rule 32:1.6(b)(5) there is a distinction between a claim for fees and a claim for guardianship. The rule uses the word "claim" with further descriptors, no definition, and nothing else to establish its meaning. Neither the rule, nor any comment on it, mention or allude to any manner in which a claim for fees is distinct from any other form of claim an attorney might wish to make under the rule, and thus should not be interpreted as doing so. *See State v. Coleman*, 907 N.W.2d 124, 135 (Iowa 2018), quoting *State v. Finders*, 743 N.W.2d 546, 548 (Iowa 2008) ("[O]ur goal 'is to ascertain legislative intent in order, if possible, to give it effect.' "), and quoting also *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004) (It is not the Court's role to "change the meaning of a statute"). By finding Petitioner's claim for guardianship impermissible under the Rule while acknowledging a claim for fees would be permitted without pointing to any element of the rule which would serve as a basis for distinguishing the two, the Court is reading a

distinction into the rule where there is none. *See Homan v. Branstad*, 887 N.W.2d 153, 170 (Iowa 2016) ("We cannot read into the [rule] what we think it ought to say. What the [promulgating body] actually said guides our interpretation.").

The Court's interpretation of the statutory intent of Rule 32:1.6 is improper as it ignores the intent to effectuate the principal that the beneficiary of a fiduciary relationship not be permitted to exploit said relationship to the detriment of the fiduciary.

C - THE COURT'S INTERPRETATION OF RULE 32:1.6(b)(5) BOTH PROMOTES ABSURD RESULTS AND PERMITS CLIENTS TO WEILD ATTORNEYS' FIDUCIARY DUTIES TO THEIR DETRIMENT IN VIOLATION OF THE INTENT OF THE RULES OF PROFESSIONAL CONDUCT.

The Court's interpretation of Rule 32:1.6(b)(5) is counter to the stated purpose for said rule. Note [11] on 32:1.6 explains that a the rule permits suit to be brought by an attorney against clients to prevent clients from exploiting the fiduciary relationship to the detriment of the fiduciary. To allow a former client to obtain dismissal of a claim their former attorney might have against due to former representation is to, in effect allow the former client to weild the attorney's fiduciary duty as against the attorney, to said attorney's detriment, in direct violation of the stated intent of the rule.

Such a result would also be counter to the principal that "Courts must be vigilant to prevent a motion for disqualification from being wielded as a weapon for harassment or misuse." *Hoffmann v. Internal Med., P.C.,* 533 N.W.2d 834, 836 (Iowa Ct.App.1995), citing *Killian v. Iowa Dist. Court,* 452 N.W.2d 426, 430 (Iowa 1990).

Further, application of such a remedy would yield absurd results, by allowing former client's to shield themselves from liability for their post-representation actions, by invoking the ghost of an extinguished attorney client relationship. In the current case, the Petitioner alleges that his tenure as a de facto guardian began in 2017, after any representation by his firm had ceased and the duty to Mother as a client of the firm ended. The actions and events giving rise to Petitioner's claim for guardianship had nothing do to with the practice of law, the furtherance of any legal action, or any facet of the attorney client relationship; Petitioner was a private citizen interacting with another private citizen. *See Bump c. District Court of Polk County*, 5 N.W.2d 914 (Iowa 1942) (Defining the "practice of law" as the preparation of pleadings, management of litigation for clients, and similar activities). By ruling that Rule 32:1.6(b)(5) does not apply to Petitioner's claim and dismissing this action, the Court has established that an attorney cannot

bring action against a former client for conduct after the attorney client relationship has ended if there is any potential for information from the prior representation of the client to be relevant to the action the attorney seeks to bring. As such, any time there is a factual nexus between prior representation and a client's post representation conduct, the former client can shield themselves from litigation by invoking the prior representation. Such a precedent would literally allow a former client to run roughshod over the rights of their former attorney, so long as they could demonstrate a factual relationship between the original representation and their current actions, for example:

(a) a personal injury defense or criminal defense attorney couldn't bring action against a former client for a subsequent car accident, because they might have confidential information relevant to the person's ability to drive;

(b) an attorney who marries a former client they represented in a custody matter would be barred from seeking custody of any subsequently produced children, as they might have information relevant to the former client's ability to parent;

(c) a defense attorney who represents someone in an assault or harassment case would not be able to bring an action seeking to enjoin the former

client from being in their presence, as they might have information relevant to the former client's history of harassing or assaultive behavior;

(d) a lawyer who represents their spouse in an action for worker's compensation would not be able to bring any action address earning ability, and thus could not argue spousal support, should they ever divorce their spouse;

(e) A lawyer who represented a craftsmen or business person in an action where the former client was alleged to have committed fraud or not have performed up the covenant of workmen like quality couldn't bring an action against the same client alleging fraud or breach of the covenant of workmen like quality, because he may have relevant information from his prior representation.

The list goes one. *See State v. Gonzalez*, 718 N.W.2d 304, 308 (Iowa 2006), citing *Harden v. State,* 434 N.W.2d 881, 884 (Iowa 1989) (We look for a reasonable interpretation that best achieves the statute's purpose and avoids absurd results) and quoting *T & K Roofing Co. v. Iowa Dep't of Educ.,* 593 N.W.2d 159, 162 (Iowa 1999) ("we avoid interpreting a statute in such a way that portions of it become redundant or irrelevant."). While the list goes on, one need look no further than the current case, wherein Mother, after representation came to an end, not only allowed, but encouraged and

relied upon her former attorney, now dealing with her outside the confines of any attorney-client relationship or expectation of the same, to care for, provide for and raise her minor child when she see's fit to do so, then hold up the ghost of the attorney-client relationship which ended before the conduct complained of, at least with respect to Petitioner, to shield herself from legal claims based on her post representation conduct. In some instances this may constitute a violation to the attorney's right to access to the courts under the 1st, 4th, and 14th Amendments of the Constitution of the United States of America, and Article I, Sections 6 and 9 of the Constitution of the State of Iowa. See *Wolff v. McDonnell,* 418 U.S. 539, 579, 94 S.Ct. 2963, 2986, 41 L.Ed.2d 935, 964 (1974) (Holding the right to access to the courts is grounded "in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violation of fundamental constitutional rights."), *Lunday v. Vogelmann*, 213 N.W.2d 904, 909 (Iowa 1973) (citing *Republic Pictures Corporation v. Kappler*, 151 F.2d 543, 547 (8 Cir. 1945), aff'd mem., 327 U.S. 757, 66 S.Ct. 523, 90 L.Ed. 991 (1946)) ("It follows such access cannot be unreasonably constrained for a particular class of persons without also violating the equal protection clause)".

The Court's interpretation of Rule 32:1.6(b)(5) is also counter to public policy as in some cases it would prevent the Court from acting in the best interest of a minor child or putting the child in the placement that serves their best interest. In the current case, Petitioner has an established history and relationship with the proposed ward, who is a minor child; he has, as a result of Mother's conduct unrelated to representation, been a regular figure in the proposed wards life and has served as a source of stability, instruction, discipline, and has been responsible for helping meet many of the proposed's ward's needs when Mother could not or chose not to. Despite this, granting Mother the remedy she seeks precludes Petitioner from consideration as a potential guardian in this action, and likely in any other action concerning guardianship for this proposed ward. Such a remedy may also be counter to public policy if it results in a party not being considered as a potential guardian if such placement might be in the child's best interest. The Court's determination that applying Rule 32:1.6(b)(5) would undermine confidentiality is unfounded, as no special care need be taken to avoid action being brought against a client. Any cause of action an attorney might seek to bring against a client would require that the client undertake some action which would give rise to the claim in question. All a client need do to preserve the confidentiality of the attorney client relationship is conduct

themselves in the same fashion they would to avoid granting any lay person the same cause of action.

D - THE COURT ERRED IN ITS DETERMINATION THAT PETITIONER'S PRIOR REPRESENTATION OF RESPONDENT WAS SUBSTANTIAL RELATED, AS ALL INFORMAITON RELEVANT TO SAID REPRESENTATION IS EITHER GENERALLY KNOWN OR AVAILABLE TO ADVERSE PARTIES, OR OUTDATED

Mother would only have a tenable claim that Petitioner violated Iowa Rule 32:1.9 if the matters were substantially related. *Doe v. Perry Community School Dist.*, 650 N.W.2d 594, 598 (Iowa 2002). In determining whether matters are substantially related, the court is to (1) consider the nature and scope of the prior representation, (2) examine the nature of the present lawsuit against the former client, (3) then consider whether the client might have disclosed a confidence to his or her attorney in the course of the prior representation which could be relevant to the present action. *Doe v. Perry Community School Dist.*, 650 NW 2d 594, 598 (Iowa 2002), *citing Hoffmann v. Internal Med., P.C.,* 533 N.W.2d 834, 837 (Iowa Ct.App.1995); *See also* notes [2] and [3] on Iowa Rule of Professional Conduct 32:1.9 (Embracing, generally, the same analytical framework). In performing this analysis, the court must carefully examine the specific conduct of each particular case; it may not "paint with broad strokes". *Hoffmann v. Internal*

Med., P.C., 533 N.W.2d 834, 836 (Iowa Ct.App.1995), citing *United States v. Standard Oil Co.,* 136 F.Supp. 345, 367 (S.D.N.Y.1955). Even if the former client might have disclosed information in the course the prior representation that might be relevant to the present action, that information still would not be disqualifying if it were otherwise disclosed to the public or other parties adverse to the former client, or if the information has been rendered obsolete by the passage of time. *See* notes [3] on Rule 32:1.9 ("Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related.").

Any information Petitioner would be privy to as a result of his representation of Mother, which is relevant to this action, is generally known or known to adverse parties, and thus not disqualifying. Almost every allegation in the petition can be spoken to by third parties, unrelated to representation, whose association with or contact with Mother is unrelated to any representation provided. *See* App. p. 161-208. Several of the filings by other parties in the prior actions against Mother, which are available to anyone seeking to obtain them via EDMS or the relevant clerk of court, further demonstrate

information alleged to be generally know. *See* Filed in DRCV051621: Affidavit of Ashley Kubby, (discussing Mother's reliance on other to care for her children, Mother's tendency to leave her children with others, Mother's refusal to provide for her children, Mother's failure to provide medical care, and co-parenting), Affidavit of Maylee Erickson (discussing the children's lack of hygiene in Mother's care, Mother's tendency to shirk the responsibilities of parenting when not subject to scrutiny, and Mother's conduct being generally adverse to the medical health of her children); filed in DRCV067972: Petitioner's Exhibit 112 (detailing Mother's lack of stability, failure to provide her children with appropriate clothing, the poor hygiene of the children in Mother's care, and the children demonstrating signs that Mother fails to adequately feed them in her care).

In addition to filings of adverse parties demonstrating general knowledge, their filings also demonstrate that this information is in the hand of adverse parties. *See* Affidavit of Saroeun Ngan, filed in DRCV051621 (discussing Mother's reliance on other to care for her children, children's lack of hygiene in Mother's care, Mother's poor hygiene, Mother's drinking problem and mother's refusal to participate in medical care), Between these sources, nearly every allegation made by Petitioner in this action concerning

the conduct of Mother during or proximate to any period of representation is demonstrated to be either generally known, or known to adverse parties. The only information in the Petition which is not demonstrated to be generally known or in the hands of adverse parties would be Petitioner's own interactions with the minor child in his capacity as de facto guardian, which would not be related to representation. Petitioner alleges his tenure as a de facto guardian began in 2017. (Transcript 33:25 – 34:5). It is uncontroverted that Petitioner's firm ceased in early December of 2016. As there was no representation after that point, no information obtained or generated after said point could be said to be related to representation, as there was no longer representation for it to be related too. Further, the nature of these interactions (caring for a minor child, providing for a minor child, educating a minor child, attending school events for said child, etc.) are clearly outside the scope of representation and even the practice of law, making it clear that these activities are unrelated to representation and information gained through them did not come about through an attorney-client relationship. *See Bump c. District Court of Polk County*, 5 N.W.2d 914 (Iowa 1942) (Defining the "practice of law" as the preparation of pleadings, management of litigation for clients, and similar activities). However, even if this were not the case and Petitioner were prohibited from

testifying about his own interactions with the proposed ward after representation ended, Petitioner asserts he could still meet his burden using only the information which is generally known or known to adverse parties. Any information Petitioner would be privy to as a result of his representation of Mother which is not generally known, is out of date and thus not disqualifying. Van Cleaf & McCormack's Law Firm, LLP's most recent representation of Mother was in 2016. As such, the most recent information relevant to representation is four years old. While this may seem a short period of time, given the generally known frequency with which Mother changes roommates, employment status, paramours, and homes, any such information would no longer be accurate, and thus would be out of date. Further, given Mother's generally known substantial change in her behavior since the end of representation, any information from prior to the end of representation would no longer be accurate either. *See* App. p. 175, 181-183. *See Also* Affidavit of Maylee Erickson, filed in Polk County Case No.: DRCV051621.

E - THE COURT ERRED BY DETERMINING THAT PETITIONER COULD NOT PROCEED WITHOUT REVEALING INFORMATION RELATING TO PRIOR REPRESENTATION OF MOTHER AND THAT PETITIONER HAD VIOLATED THE RULE OF PROFESSIONAL CONDUCT BY INCLUDING PROHIBITED

INFORMATION IN HIS PETITION OR OFFERING EXHIBIT J AT HEARING.

The Court's finding that Petitioner could not proceed without revealing information relating to prior representation of Mother was contrary to the weight of evidence. It is uncontroverted that Petitioner's firm ceased to represent Mother after early December of 2016. As there was no representation after that point, no information obtained or generated after said point could be said to be related to representation, as there was no longer representation for it to be related too. As discussed above, Exhibits A – H establish a *prima facie* cause of action for guardianship with information from after the end of representation, consisting of the observations of individuals who have never represented Mother in this case. App. p. 161-208. Further, as discussed above, even excluding the testimony in Exhibits A – H which the affiants observed during the time representation was ongoing, the contents of said affidavits, if testified to at trial, may be sufficient to prove Petitioner's action for guardianship in its entirety. App. p. 161-208. As Petitioner has demonstrated that he could prove his case without need of information relating to representation, the Court's ruling that Petitioner could not proceed without revealing such information would be counter to the weight of evidence.

Exhibit J is not prohibited from disclosure. The Court had previously stated that Exhibit J was originally an exhibit filed by the opposing party as Petitioner's Exhibit 112 in Cerro Gordo County Case No.: DRCV067972. (Transcript 75:13 – 76:2). Rule 32:1.9(c)(1) provides that:

"c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client*, or when the information has become generally known*."

Emphasis added. Petitioner's Exhibits 106, 107, 108, 109, and 113 of Cerro Gordo County Case No.: DRCV067972 each contain some or all of the same information contained in Exhibit J, despite all having different authors from separate groups or organizations, leading to a reasonable inference that this information has become generally known. *Manning v. Wells Fargo Financial, Inc.*, 756 N.W.2d 480 (Iowa App. 2008), Citing *Butler v. Hoover Nature Trail*, 530 N.W.2d 85, 88 (Iowa App. 1994) (holding that an inference is legitimate is if is "rational, reasonable, and otherwise permissible under the governing substantive law."). Further, as Cerro Gordo County Case No.: DRCV067972 is in no way sealed, it is a public record, meaning that it's contents are generally open to the public, and thus known

to all members of the public so interested, and as such generally known. *Id*. As such, Exhibit J is not prohibited from disclosure.

The information in the petition in this action was not prohibited from disclosure. As discussed above, Rule 32:1.9(c)(1) permits use of information that had become generally known. As discussed above, almost every element of the petition can be established as being generally known by Exhibits A – H. Those few elements not testified to are part of Polk County Case No.: DRCV051444, which is in no way sealed and a public recorder, meaning that it's contents are generally open to the public, and thus known to all members of the public so interested, and as such generally known. *Id*. As such, the information contained in the petition is not prohibited from disclosure.

F - THE COURT ERRED BY FINDING RULE 32:1.8 RELEVANT TO THIS MATTER.

The Court's finding that Amelia Wildt became the de facto guardian of the proposed ward during her employment at Petitioner's firm and while Petitioner was representing Mother is unsupported by fact. In reaching said conclusion the Court made three underlying findings: when Amelia Wildt commenced employment with Van Cleaf & McCormack Law Firm, when during 2013 Amelia Wildt became the de facto guardian of the proposed ward, and when Petitioner commenced representation of Mother. No

evidence or testimony was ever offered to establish when in 2013 Amelia Wildt either (1) commenced her employment with Petitioner's firm, or (2) became the de facto guardian of the proposed ward. Despite being offered the chance to cross-examine Petitioner concerning this information, or offer independent evidence to this point, no party in this action has ever produced evidence on these matters. (Transcript 35: 5-6. 35:12 – 36:6, 36:12 – 37:13, 58:18-20, 59:3-4, 59: 7-10). The Court, despite extensively questioning Petitioner, never asked when these things occurred. As such, the only evidence before the court concerning any of the three underlying findings is the appearance filed by Petitioner in said Cerro Gordo County Case, which is file stamped March 15th, 2013. While it is possible that Amelia Wildt's employment coincides with or predates Petitioner's representation of Mother, and that Amelia Wildt became a de facto guardian thereafter, it is similarly possible, and no less probable, for the events to have occurred in another order. For example, Amelia could have become de facto guardian prior to her employment, or prior to Mother becoming a client[1]. As nothing in the record speaks to the order of events or makes one sequence any more

[1] It is the belief of Petitioner that Amelia Wildt, f/k/a Amelia Mohr, was the de facto guardian of the proposed ward as of January of 2013, though Petitioner did not have reason to know this until much later. Amelia Wildt began her employment at Van Cleaf & McCormack Law Firm in May of 2013. Mother consulted with Petitioner the week of March 4th, 2013, and retained Petitioner on March 9th, 2013. Amelia Wildt and Mother met in 2012.

likely than any other, the Court's conclusion that events happened in this fashion is not supported by evidence.

Rule 32:1.8 was not applicable to Petitioner at the time he asserts he became a de facto guardian, as Mother was a former client. Petitioner's firm last represented Mother on October 27th, 2016, when Colin McCormack's motion to withdraw from representation was granted. Since that point, Mother has been a former client. The Petitioner only asserts to have become a de facto guardian of the proposed ward as of sometime in 2017, meaning this action was filed after Mother had become a former client. The text of Rule 32:1.8 refers only to current clients, indicating that it is only applicable to a current client. Further, Note [1] on rule 32:1.7 makes it clear that the duties to former clients are controlled by Rule 32:1.9. As Mother is not a current Rule 32:1.8 generally does not apply to her.

The Court erred by findings that Rule 32:1.8(a) should apply to in this case.

The text of Rule 32:1.8(a) provides that :

"(a) A lawyer shall not enter into a **business transaction** with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:
(1) the **transaction and terms** on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the **transaction**; and

> (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the **transaction** and the lawyer's role in the **transaction**, including whether the lawyer is representing the client in the transaction."

Emphasis Added. The text of the rule makes it clear and unambiguous that it's provisions are mean to apply solely to business transactions between an attorney and his client. *State v. Welton,* 300 N.W.2d 157, 160 (Iowa 1981) (stating, "when a statute is plain and its meaning is clear, courts are not permitted to search for meaning beyond its expressed terms"); *See* notes [1] – [4] on Rule 32:1.8 (Discussing at length the applicability of rule to business, property and financial transactions, where a lawyer may have an unfair advantage). To interpret Rule 32:1.8(a) in the fashion the Court did causes portions of the text to become irrelevant by expanding the scope of the rule beyond the limiting definition of "business transactions." *See State v. Gonzalez*, 718 N.W.2d 304, 308 (Iowa 2006), quoting *T & K Roofing Co. v. Iowa Dep't of Educ.,* 593 N.W.2d 159, 162 (Iowa 1999) ("we avoid interpreting a statute in such a way that portions of it become redundant or irrelevant."). By interpreting this rule to be applicable outside business transactions, the Court is not interpreting what is on the page, but reading into the rule the text it would like the rule to have. *See Homan v. Branstad*, 887 N.W.2d 153, 170 (Iowa 2016) ("We cannot read into the [rule] what we

think it ought to say. What the [promulgating body] actually said guides our interpretation.").

Had Mother been a current client and Rule 32:1.8(a) been applicable outside business transactions, Petitioner had no duty to advise Mother with regard to allowing Petitioner to become de facto guardians, as that status was not yet legally significant. Being a de facto guardian had no special legal significant until Iowa Code § 232D went into effect on January 1st, 2020, and Petitioner did not become aware of this change in the law until. *See* Iowa Code § 232D.204(1) (establishing de facto guardian status). (Transcript 63:8-23).

As said status had no legal significance, it did not grant ownership, possessory, security, or pecuniary interest adverse to Mother, and thus Rule 32:1.8(a) imposed no duties on Petitioner.

Petitioner was incapable of violating Rule 32:1.8(a)(4) because no such rule exists. I copy of the Iowa Rules of Professional Conduct downloaded from "https://www.legis.iowa.gov/law/courtRules/courtRulesListings" listing "December 2020" in the top left corner makes no listing of a Rule 32:1.8(a)(4). As no such rule exists, Petitioner could not have violated it.

G - THE COURT'S ERRED BY APPLYING THE REMEDY OF DISMISSAL AS IT IS NOT SUPPORTED BY LAW

The appropriate remedy for violations of Iowa Rule of Professional Conduct 32:1.9 or 32:1.7 is disqualification of the attorney in violation from serving as counsel. In *In re Davenport Communications L.P.,* in discussing an attorney's ethical obligations under both the American Bar Association Code of Professional Responsibility and the Iowa Rules of Professional Conduct, specified that the remedy for violation of a duty not to represents an adverse interest in a substantially related matter is disqualification. 109 B.R. 362, 366 (Bankr.S.D.Iowa 1990). Case law from within the state has been consistent about this. *See Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Walters,* 603 N.W.2d 772, 777-78 (Iowa 1999); *Doe v. Perry Community School Dist.*, 650 N.W.2d 594, 597 (Iowa 2002). This is the only remedy applied in existing case law. As such, if a violation of Iowa Rules of Professional Conduct 32:1.9 or 32:1.7 is found in this case, the remedy is that Petitioner be disqualified from representing the adverse interest

The remedy of dismissal is unsupported by law. The Court acknowledged at the onset of hearing in this matter that it could find no relevant case law governing how to process. (Transcript 23:12 – 17). This statement, paired with the no party citing any caselaw authorizing dismissal, and the court citing no authority to grant dismissal, gives rise to a reasonable inference that the Court found no case law authorizing dismissal as a remedy.

Manning v. Wells Fargo Financial, Inc., 756 N.W.2d 480 (Iowa App. 2008), Citing *Butler v. Hoover Nature Trail*, 530 N.W.2d 85, 88 (Iowa App. 1994) (holding that an inference is legitimate is if is "rational, reasonable, and otherwise permissible under the governing substantive law."); See Also Comment 20 in the Preamble to Chapter 32 ("In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation.")

CONCLUSION AND RELIEF REQUESTED

Due to the error made by the district Court in ruling on Mother's Motion, the Court's decision to dismiss Jacob van Cleaf's Petition should be reversed and remanded for further proceedings, and all findings concerning alleged ethical violations should be vacated for lack of subject matter jurisdiction.

Respectfully Submitted,

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COST CERTIFICATE

The undersigned hereby certifies that the cost of printing the foregoing Appellant's Final Brief was nothing, as the brief was submitted digitally.

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CERTIFICATE OF FILIING

I hereby certify that I did file the within Appellant's Final Brief with the Clerk of the Supreme Court, Des Moines, Iowa, by electronic filing through EDMS on the 9th day of August, 2021.

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The undersigned hereby certifies that a copy of the Appellant's Final Brief was served upon the below listed parties via the Iowa Courts EDMS system on or about August 9th, 2021.

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CERTIFICATE OF COMPLIANCE

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