IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-0289
Story County No. OWCR062790

THERON M. CHRISTENSEN,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR STORY COUNTY,
Defendant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY
THE HONORABLE STEPHEN OWEN, JUDGE

BRIEF OF AMICUS CURIAE STATE OF IOWA SUPPORTING PLAINTIFF

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ATTORNEYS FOR AMICUS CURIAE STATE OF IOWA

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INTEREST AND FUNDING OF AMICUS CURIAE

The Iowa Code lists the duties of the Iowa Attorney General. *See* Iowa Code § 13.2. First among those enumerated duties is a statutory obligation to participate in appellate court proceedings in which the State is interested. *Id.* § 13.2(1)(a). The Iowa Code also demands that the Attorney General supervise and educate county attorneys and assistant county attorneys:

> 1. It shall be the duty of the attorney general, except as otherwise provided by law to:
>
> . . . .
>
> g. Supervise county attorneys in all matters pertaining to the duties of their offices, and from time to time to require of them reports as to the condition of public business entrusted to their charge.
>
> . . . .
>
> k. Inform prosecuting attorneys and assistant prosecuting attorneys to the state of all changes in law and matters pertaining to their office and establish programs for the continuing education of prosecuting attorneys and assistant prosecuting attorneys. . . .

Id. §§ 13.2(1)(*g*), (*k*) (where Iowa Code section 13A.1(4) defines a "prosecuting attorney" as a "county attorney, district attorney, or any attorney charged with responsibility of prosecution of violation of state laws").

The State has two primary interests in the outcome of this appeal. To begin with, the State has an inherent interest in the criminal proceedings it initiates. *See, e.g.*, *State v. Russell*, 897 N.W.2d 717, 723–24 (Iowa 2017) ("[W]e conclude the State clearly has a specific interest in the outcome of this litigation as the party prosecuting the criminal case. As the prosecuting party, the State's interest in the outcome of the case is separate and distinct from that of the general population.").

And just as important is the State's substantial interest in ensuring the fair and consistent treatment of its prosecutors in criminal courts throughout the State. Those prosecutors can only faithfully discharge their oaths of office by enforcing State laws without favor or prejudice. *See* Iowa Code §§ 63.10, 331.751(2), 331.756. Because impartiality is paramount, monetary sanctions for attorney's fees leveled against an assistant county attorney implicate the State's broader prosecutorial interests–especially if that portends a broader, far-reaching attack on the impartial exercise of prosecutorial discretion throughout the State's ninety-nine counties.

The State of Iowa now appears as amicus curiae in furtherance of these two interests—not only in support of Assistant Story County Attorney Theron M. Christensen, but also in support of all prosecutors supervised by the

Attorney General, so that they may seek and obtain justice without fear of retribution from any particular opposing counsel or district court.

No party's counsel authored this brief, either in whole or in part. No party or party's counsel contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief, except to the extent that all Iowa taxpayers fund the Iowa Attorney General's Office.

ARGUMENT

I. The district court exceeded its authority and acted illegally by imposing a monetary sanction for attorney's fees against an individual assistant county attorney in a criminal case.

The district court here ordered "that the prosecuting attorney, Mr. Theron Christensen, shall immediately pay a monetary sanction in the amount of $2072.00 to the law office of Matthew Lindholm." D0083, Order for Specific Sanctions at 18 (2/15/2024). The $2,072 monetary sanction was directly tied to the amount of attorney's fees Defendant sought to recover. *Id.* at 1, 12–13. The district court also taxed court costs beginning on October 18, 2023, to Assistant Story County Attorney Christensen. *Id.* at 12.

"Certiorari is appropriate when a lower court or tribunal has exceeded its authority or otherwise acted illegally." *State v. Iowa Dist. Ct. for Warren Cty.*, 828 N.W.2d 607, 611 (Iowa 2013). Here, the district court exceeded its

authority and acted illegally when it imposed a monetary sanction for attorney's fees against a prosecutor in a criminal case. That is both because it lacked the authority to do so and because the imposition of the sanction amounted to a rejection of society's longstanding public policy preference for independent, fearless prosecutors. Regardless of whether the district court's frustration with the prosecutor was justified, the orders at issue on appeal are not. *See* D0061, Order Sustaining Defendant's Motion for Sanctions (11/29/2023); D0074, Order Denying Motions to Reopen the Record and Reconsider (1/15/2024); D0083. If the district court (or opposing counsel) believed Assistant County Attorney Christensen behaved unethically, the proper course would be referral to the Office of Professional Responsibility.

A. Iowa law does not authorize awarding attorney's fees as a sanction against an individual prosecutor in a criminal case.

The most fundamental problem with the district court's orders is that they are predicated on the supposed violation and subsequent application of a rule of *civil* procedure. *See* D0061 at 14–28 (noting at the start that "Defendant seeks sanctions for violations of Rule of Civil Procedure 1.413 and Iowa Code section 619.19, which are identical in substance" before ultimately concluding that the prosecutor "shall be sanctioned pursuant to Iowa Code section 619.19 and Rule of [Civil] Procedure 1.413"); D0074 at 1 ("While the

sanctions matter arose in the context of a criminal case, the merits of the sanctions are not criminal in nature or scope. . . . [T]he sanctions issue is civil in nature and the court's November 29 order addressed only the first prong of the matter."); D0083 at 8 (again noting that the defendant's "motion for sanctions was grounded on Rule of Civil Procedure 1.413(1)").

It is true the Rules of Civil Procedure have "the force and effect of law." *City of Sioux City v. Freese*, 611 N.W.2d 777, 779 (Iowa 2000). But they are, as their name suggests, separate and distinct from the Rules of Criminal Procedure and "have no application to criminal cases unless a statute makes them applicable." *State v. Addison*, 95 N.W.2d 744, 747 (Iowa 1959); *see also State v. Sallis*, 981 N.W.2d 336, 349 (Iowa 2022) ("The civil rules, however, do not apply to criminal proceedings."); *State v. Wise*, 697 N.W.2d 489, 492 (Iowa Ct. App. 2005) ("The Rules of Civil Procedure have no applicability in criminal cases, unless made applicable by statute.").

Iowa Rule of Civil Procedure 1.413(1)—formerly numbered Rule 80(a)—is similar to, and based on, Federal Rule of Civil Procedure 11. *Hearity v. Iowa Dist. Ct. for Fayette Cty.*, 440 N.W.2d 860, 864 (Iowa 1989) ("We amended rule 80(a) to its present form, effective April 1, 1986, by borrowing the language relative to sanctions from Federal Rule of Civil Procedure 11."); *Weigel v. Weigel*, 467 N.W.2d 277, 279 (Iowa 1991)

("Although this rule is quite new to Iowa procedures, Federal Rule of Civil Procedure 11 is similar, and we look to federal cases interpreting rule 11 to aid us in our interpretation of rule 80(a)."). Thus, when deciding what a district court should consider in determining an appropriate monetary sanction for a violation of Iowa's Rule 1.413, the Iowa Supreme Court adopted a set of factors articulated by the Fourth Circuit Court of Appeals in a Rule 11 case and encouraged district courts to also consider additional criteria set forth by the ABA as guidance in Rule 11 cases. *Barnhill v. Iowa Dist. Ct. for Polk Cty.*, 765 N.W.2d 267, 277 (Iowa 2009) (citing *In re Kunstler*, 914 F.2d 505, 523 (4th Cir. 1990)); *see also Rowedder v. Anderson*, 814 N.W.2d 585, 590 (Iowa 2012). None of the relevant Iowa Supreme Court precedent related to Rule 1.413 are criminal cases. Nor do criminal cases feature in the list of cases the American Bar Association cited in support of the list of mitigating and aggravating Rule 11 factors the Iowa Supreme Court adopted in *Barnhill*. *See* ABA Section of Litigation, *Standards and Guidelines for Practice Under Rule 11 of the Federal Rules of Civil Procedure* (1988), *reprinted in* 121 F.R.D. 101, 125–26 (1988).

Here, the district court ordered Assistant County Attorney Christensen to personally pay attorney's fees believing Rule of Civil Procedure 1.413

granted it the authority to do so. But Rule 1.413 did not.[1] Iowa's Rule 1.413, like the Federal Rule 11 it was based on, applies only to civil cases. *See, e.g.*, Yuri R. Linetsky, *A Rule 11 for Prosecutors*, 87.1 Tenn. L. Rev. 57–70 (2019) ("Federal Rule of Civil Procedure 11 and its state counterparts are the minimum standard to which we hold civil litigators . . . . But among the sixty-one rules in the Federal Rules of Criminal Procedure, there is no corollary rule."). The term "sanction" appears only twice in the Iowa Rules of Criminal Procedure: once in the context of explaining that a criminal defendant's failure to comply with the rule for issuing subpoenas may result

[1] In its ruling sustaining the motion for sanctions, the district court explicitly noted that it had jurisdiction over the parties and the subject matter. D0061 at 18. That confuses the issues of jurisdiction and authority. While the district associate judge in question had jurisdiction to hear the serious misdemeanor OWI case before it, *see* Iowa Code § 602.6306, it lacked the authority to impose a sanction in a criminal case based on a Rule of Civil Procedure. *See, e.g.*, *State v. Rutherford*, 997 N.W.2d 142, 145 (Iowa 2023) (comparing the rule limiting the jurisdiction of Iowa's appellate courts over cases arising from guilty pleas with the rule limiting the authority of those same appellate courts to resolve ineffective-assistance claims on direct appeal).

Later, in its ruling denying Christensen's motion to reopen the record and reconsider, the district court noted that Christensen had acknowledged the sanctions issue was civil in nature because he had filed a motion based on a rule of civil procedure. D0074 at 1–3. But Christensen's response to the unauthorized imposition of sanctions did not grant the court authority not bestowed by law. *Cf. State v. Ryan*, 351 N.W.2d 186, 188 (Iowa 1984) ("The district court did not have any statutory or other power to make this kind of decision. Despite personal beliefs or good intentions, the district court is bound to act only under its statutory authority.").

in sanctions such as contempt or a finding that evidence obtained is inadmissible at trial, and then in the title "Sanctions for refusing to appear or testify" to explain that disobedience to a subpoena or refusal to testify may be punished as contempt. Iowa R. Crim. P. 2.15(3)(*a*)(7), (5).

The nature of the sanction at issue compounded the problem caused by the district court's lack of authority. In the context of a civil proceeding, the Iowa Supreme Court has explained:

> The district court has inherent power to exercise its jurisdiction, to maintain and regulate cases proceeding to final disposition within its jurisdiction, and, when necessary, to punish contempt. The court's inherent power alone, however, does not authorize the court to assess attorney fees as a sanction against a litigant or counsel. . . . Neither may a district court order payment of attorney fees in the exercise of its contempt power.[2]

[2] While at least one other state has authorized sanctions of attorney's fees against prosecutors in a criminal case, it did so only after taking a more expansive view of a trial court's inherent power than is found in Iowa jurisprudence. *See State v. Blenden*, 748 So. 2d 77, 86–89 (Miss. 1999) (recognizing both that awards of attorney's fees are prohibited unless specifically authorized by law and that civil rules are not applicable in the context of a criminal case, but then finding that "in the case at bar, the trial court did not impose sanctions under any of the Rules of Civil or Criminal Procedure, but rather found that it had the authority to impose the sanctions on the basis of its inherent power to control matters which are prosecuted before it. . . . Here the State committed various discovery violations which resulted in the declaration of a mistrial. As a result, the trial court exercised its inherent authority to control matters proceeding before it to impose monetary sanctions on the State.").

Hearity, 440 N.W.2d at 863 ("Absent inherent power, the district court's only source of authority to assess attorney fees in the present context is Iowa Rule of Civil Procedure 80(a)."); *see also Davis v. Iowa Dist. Ct. for Scott Cty.*, 943 N.W.2d 58, 64 (Iowa 2020) (explaining that "district courts must have a specific grant of authority to assess costs, including attorney's fees, as sanctions against parties" before finding authority was provided in that case by Iowa Rule of Civil Procedure 1.602(5)); *Thorn v. Kelly*, 134 N.W.2d 545, 548 (Iowa 1965) ("The right to recover attorney fees as part of the costs does not exist at common law. They cannot be so allowed in the absence of a statute or agreement expressly authorizing it.").

Neither the Iowa Rules of Criminal Procedure nor the Federal Rules of Criminal Procedure contain the terms "attorney fees" or "attorney's fees." *See generally* Iowa R. Crim. P. 2.01–2.86, Fed. R. Crim. P. 1–61. So, while Federal Rule 11 and Iowa's Rule 1.413 explicitly authorize assessing attorney's fees as a sanction in civil cases, the Rules of Criminal Procedure contain no such permission. *See* Linetsky, *A Rule 11 for Prosecutors*, 87.1 Tenn. L. Rev. at 57–70 (proposing enactment of a federal rule of criminal procedure analogous to Rule 11 that would allow, among other things, monetary sanctions of attorney's fees against prosecutors in criminal cases).

Courts in other jurisdictions generally agree that monetary sanctions against prosecutors must be tied to some explicit statutory authority. *See, e.g.*, *United States v. Woodley*, 9 F.3d 774, 781 (9th Cir. 1993) ("We have affirmed money penalties against the government under Federal Rules of Civil Procedure 11 and 37(b). But Civil Rules 11 and 37(b) expressly provide for monetary sanctions. Because Criminal Rule 16(d)(2) provides no independent authority for a monetary sanction, we decline to recognize a waiver of sovereign immunity in the criminal context."); *People v. Muhammad*, 133 Cal. Rptr. 2d 308, 316–18 (2003) ("As we stated at the outset, it is a fundamental rule in this state that aside from a contempt proceeding, a monetary sanction can only be imposed against an attorney when authorized by a statute. . . . The trial court justified the monetary sanction in this case under section 177.5. That statute authorizes a sanction of up to $1,500, payable to the county, 'for any violation of a lawful court order by a person, done without good cause or substantial justification.' The statute applies to criminal as well as civil cases."); *People v. Dist. Ct., City and Cty. of Denver*, 808 P.2d 831, 836 (Colo. 1991) ("Giving consideration to the language of Crim. P. 16(III)(g) and the tradition of disallowance of attorney's fees payable from public funds absent specific authorization, we hold that a court is not authorized under that rule to award attorney's fees to

a defendant in a criminal action as a remedy for a discovery violation."); *In re State*, 605 S.W.3d 721, 726–28 (Tex. App. 2020) ("[We previously] concluded that civil suits cannot be brought in connection with [Texas's law codifying and supplementing prosecutors' constitutional obligations under *Brady v. Maryland*]. We believe respondent's imposition of monetary sanctions for violations of article 39.14, is, similarly, not authorized by the statute.").

Of course, this is not to say that a court cannot sanction the prosecution in a criminal case. A district court can grant a mistrial if prosecutorial misconduct denies a defendant of a fair trial. *See, e.g.*, Rule 2.19(5)(*a*)(4) ("The court may declare a mistrial and discharge a jury for the following reasons: Because of an error resulting in the denial of a fair trial."); *State v. Plain*, 898 N.W.2d 801, 818 (Iowa 2017) ("We consider a claim that the defendant was deprived of a fair trial under our doctrines of prosecutorial error and prosecutorial misconduct. . . .").

And dismissal may provide a sanction of last resort, although it is disfavored. *State v. Swartz*, 541 N.W.2d 533, 540–41 (Iowa Ct. App. 1995) ("Trial courts have discretion to determine the appropriate sanction in response to prosecutorial misconduct. Dismissal of the charges is recognized to be a drastic step, and is a disfavored remedy. . . . Moreover, dismissal is

ordinarily inappropriate, even when the misconduct involved was deliberate, 'where there is no continuing prejudice that cannot be remedied by suppression of the evidence or a new trial.'") (internal citations omitted).

But monetary sanctions against prosecutors—particularly for attorney's fees—are neither envisioned nor authorized by Iowa's Rules of Criminal Procedure.

B. Awarding attorney's fees as a sanction against an individual prosecutor in a criminal case disregards and contradicts longstanding public policy.

The district court's orders are also problematic because they circumvent longstanding public policy considerations that militate in favor of protecting prosecutors from criminal defendants who seek monetary damages for prosecutorial misconduct.

"Prosecutors have a special role in our criminal justice system." *State v. Plain*, 898 N.W.2d 801, 818 (Iowa 2017). "Although a prosecutor should zealously and lawfully advocate on behalf of the state, 'the prosecutor's primary interest should be to see that justice is done, not to obtain a conviction.'" *Id.* (quoting *State v. Graves*, 668 N.W.2d 860, 870 (Iowa 2003)). Because society's expectation of fair and just outcomes in criminal cases depends on prosecutors themselves striving for fairness and justice, courts have imposed "special duties on prosecutors to ensure they act in

accordance with the special role with which they are entrusted." *Id.* But with those unique responsibilities and expectations comes a corresponding immunity from personal liability.

The United States Supreme Court has long afforded prosecutors immunity from suits for money damages arising out of their official acts, explaining that "[i]n cases involving prosecutors, legislators, and judges we have repeatedly explained that the immunity serves the public interest in enabling such officials to perform their designated functions effectively without fear that a particular decision may give rise to personal liability." *Clinton v. Jones*, 520 U.S. 681, 692–93 (1997). "The common-law immunity of a prosecutor is based upon the same considerations that underlie the common-law immunities of judges and grand jurors acting within the scope of their duties. These include concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust." *Imbler v. Pachtman*, 424 U.S. 409, 422–23 (1976).

In other words, public policy countenances absolute immunity from civil liability for prosecutors because "[t]he public trust of the prosecutor's office would suffer if he were constrained in making every decision by the

consequences in terms of his own potential liability in a suit for damages." *Id.* at 424–25. "Such suits could be expected with some frequency, for a defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to the State's advocate." *Id.* at 425.

The Iowa Supreme Court, in turn, has long adopted the same public policy preference. *See, e.g.*, *Beck v. Phillips*, 685 N.W.2d 637, 642 (Iowa 2004) ("We have repeatedly held prosecutors are entitled to absolute immunity for quasi-judicial activities, i.e., activities 'intimately associated with the judicial phase of the criminal process.' . . . Because we apply a functional analysis, immunity attaches even when the prosecutor is alleged to have acted for improper reasons."); *Blanton v. Barrick*, 258 N.W.2d 306, 308–12 (Iowa 1977) (quoting the general rule from 63 Am.Jur.2d, Prosecuting Attorneys, section 34 at page 361: "The prosecuting attorney is, as a matter of public policy, immune from civil liability for acts done in his official capacity, and this is true even though he has acted willfully or maliciously, where he has acted in the proper performance and course of his duties."). "Immunity, after all, is not for the protection of the prosecutor personally, but for the benefit of the public." *Beck*, 685 N.W.2d at 643. "Thus, [a]lthough genuinely wronged plaintiffs are left without recourse in a

civil suit for damages, the alternative would disserve the broader public interest" because "[i]t would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system." *Id.* (quoting *Imbler*, 424 U.S. at 427–28).

Here, the district court's decision to impose a monetary sanction against an individual prosecutor amounted to an end-run around these longstanding immunities. The sanctions frustrated the central tenet of prosecutorial immunity—that prosecutors must be allowed to serve the public's interests fearlessly, knowing they have absolute immunity from personal financial liability to the very criminal defendants they seek to bring to justice—and in so doing subverted the rule of criminal law in this State. Affirming the district court's orders here will eviscerate the protections afforded by absolute prosecutorial immunity by subjecting prosecutors to the spectre of personal liability attaching to every filing. The distinction that monetary liability was imposed as a sanction for attorney's fees in the criminal case rather than damages in a separate, civil lawsuit, would offer little solace to a prosecutor ordered to write a check from his own bank account to be paid to defense counsel.

Defense counsel seems to have recognized this problem in his resistance to Assistant County Attorney Christensen's petition for writ of

certiorari. Defense counsel cited *Venckus v. City of Iowa City*, 930 N.W.2d 792, 803–05 (Iowa 2019), in recognition of the immunity prosecutors enjoy for actions "intimately related to the judicial phase of the criminal process." *See* Resistance to Writ of Certiorari at 9. But he argues Christensen "stepped outside his role as a prosecutor by attempting to circumvent any plausible defense without any legally or factually justifiable basis when he filed his motion in limine." *See id.* at 10. There are two problems with counsel's anticipatory counterargument.

First, the proposition that Assistant County Attorney Christensen stepped outside his role as a prosecutor, either by filing a motion in limine or by moving to dismiss a criminal charge, stands in direct contravention of the Iowa Supreme Court's holding in *Venckus* regarding the scope of prosecutorial immunity:

> The district court also erred in concluding the claims against the prosecutor defendants were not sufficiently clear to resolve the prosecutor defendants' assertion of absolute immunity. [The defendant]'s primary complaint is the prosecutor defendants continued a "reckless crusade" to convict [him] in the face of "overwhelming evidence" of [his] innocence. [The defendant] argues the prosecutors refused to drop the charges because they did not want to admit they had charged an innocent man. However, the decisions to initiate a case and continue prosecution are at the core of the judicial process immunity. This is true without regard to motive or intent. The "immunity applies even when the

> [official] is accused of acting maliciously and corruptly because as a matter of policy it is in the public best interest that [officials] should exercise their function without fear of consequences and with independence."
>
> Much of the remainder of [the defendant]'s claims relate to the prosecutor defendants' strategic and discretionary decisions regarding the prosecution of the case. [The defendant] challenges the prosecutors' decision to enter into a lenient plea agreement with [another individual] in exchange for [his] testimony. [The defendant] challenges the prosecutors' subsequent decision to not call [the other individual] as a witness despite the favorable plea agreement. [The defendant] challenges the prosecutors' decision to "shop" around for an expert witness to rebut [his] DNA expert. And [the defendant] challenges the prosecutors' evaluation of the alibi evidence presented.
>
> None of this challenged conduct is actionable. [The defendant] admits all of the prosecutor defendants' challenged conduct occurred after the development of probable cause to arrest and charge [him]. The decision to offer a plea bargain is necessarily a vital part of the judicial phase of the criminal process. Similarly, "[t]he decision whether to call or not to call a given witness clearly falls within the scope of the immunity." Likewise, the prosecutors' evaluation of the evidence is immune from legal challenge.

Venckus, 930 N.W.2d at 803–05 (internal citations omitted). *See also* Restatement (Third) of the Law Governing Lawyers § 57(e) (2000) ("A public prosecutor acting in that capacity is absolutely privileged against civil liability for initiating, instituting, or continuing criminal proceedings (*see* Restatement Second, Torts § 656). Thus, regardless of any improper motive

or lack of probable cause, a lawyer acting as a public prosecutor . . . is not liable for malicious prosecution or false arrest. The privilege is limited to acts in the prosecutor's official capacity."). Because the conduct that formed the basis of the sanction orders in this case—the filing of a motion in limine and a motion to dismiss—consisted of activities "intimately associated with the judicial phase of the criminal process," *see Beck*, 685 N.W.2d at 642, Assistant County Attorney Christensen was at all relevant times squarely within the ambit of prosecutorial immunity.

Second, defense counsel has it precisely backwards when he posits that the sanctions imposed in this case are desirable because they represent a means to deter prosecutors in spite the general immunity they enjoy. It assumes that there *must* be some way for him to exact monetary punishment against the prosecutor. But prosecutorial immunity precedents stress the dangers of allowing criminal defendants to seek retribution against those who prosecuted cases against them. When Iowa prosecutors act unethically, they violate the public's trust. Any debt resulting from that breach of trust should therefore be repaid to the public whose interest and faith in the criminal justice system the prosecutor's lapse harmed.

Chapter 35 of Iowa's Court Rules offers the appropriate mechanism for disciplining prosecutors for unethical conduct committed during official

acts. *See* Iowa Ct. R. 35.1 ("Complaints alleging that an attorney has committed a disciplinary infraction must be accepted from any person, firm, or other entity."). The United States Supreme Court suggested as much in *Imbler*:

> We emphasize that the immunity of prosecutors from liability in [civil suits] does not leave the public powerless to deter misconduct or to punish that which occurs. This Court has never suggested that the policy considerations which compel civil immunity for certain governmental officials also place them beyond the reach of the criminal law. Even judges, cloaked with absolute civil immunity for centuries, could be punished criminally for willful deprivations of constitutional rights . . . . The prosecutor would fare no better for his willful acts. Moreover, a prosecutor stands perhaps unique, among officials whose acts could deprive persons of constitutional rights, in his amenability to professional discipline by an association of his peers. These checks undermine the argument that the imposition of civil liability is the only way to insure that prosecutors are mindful of the constitutional rights of persons accused of crime.

424 U.S. at 428–29. *See also Woodley*, 9 F.3d at 782 ("We realize that courts need to be vigilant in ensuring that all lawyers, including government attorneys, maintain ethical standards and fulfill their roles as officers of the court. But alternatives to monetary sanctions, such as holding the attorney in contempt or reporting the misconduct to the state bar for disciplinary proceedings, are more proper remedies. Also, an Office of Professional

Responsibility exists to serve the United States Department of Justice. That office has the power to take appropriate measures for reported *Brady* violations."). And the Restatement (Third) of the Law Governing Lawyers § 57(*f*) provides the same: "Even if not civilly liable for . . . malicious prosecution, a lawyer nevertheless may be subject to professional discipline . . . ." (contrasted with the fact a lawyer who brings a factually unsupported *civil* action "might be subject to litigation sanctions imposed by the tribunal").

The official processes of the Attorney Disciplinary Board also serve the important purpose of ensuring that any appropriate sanctions against prosecutors issue in a uniform, evenhanded fashion by a single, centralized disciplinary body. For their part, Iowa's Attorney Disciplinary Board and the Iowa Supreme Court have not hesitated to impose discipline against prosecutors who commit misconduct. *See, e.g.*, *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Barry*, 762 N.W.2d 129, 141 (Iowa 2009) ("Justice requires that all persons who appear before our courts be treated fairly under the law. That means a prosecutor should enforce the law as enacted by the legislature, rather than pervert the law for expediency or his or her own purposes. One of our goals in determining the appropriate sanction is to protect our system of justice."); *Iowa Supreme Ct. Att'y Disciplinary Bd. v.*

Borth, 728 N.W.2d 205, 211 (Iowa 2007); *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Zenor*, 707 N.W.2d 176, 187 (Iowa 2005); *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Howe*, 706 N.W.2d 360, 381 (Iowa 2005).

The State's concern about the chilling effect that is likely to result from the district court's orders here are not merely hypothetical. Any prosecutor handling OWI cases in Story County (or other counties within the same judicial district) may now face the risk of monetary sanctions if a judge disagrees with a particular strategic or tactical decision. Given that a judge has now demonstrated a willingness to award monetary sanctions requested by defense counsel, a prosecutor might reasonably fear he will be forced to pay monetary sanctions for attorney's fees not only for obvious ethical lapses and misconduct, but also for making good-faith arguments in line with existing precedent that a particular judge disagrees with.

The State of Iowa cannot abide the chilling effect the district court's orders here are likely to have on the administration of justice. At the very least, the public will suffer an inconsistent application of the State's criminal laws depending on the degree to which prosecutors in each county and judicial district perceive a risk of monetary sanctions. Citizens residing in Story County may see a relative prosecutorial hesitation to prosecute OWI cases as compared to their counterparts in other parts of the state. But the

district court's orders could reach beyond Story County. Aggressive defense counsel across the State will not limit their requests for sanctions to obvious prosecutorial errors and misconduct—they will use the ever-present threat of sanctions to try to bully prosecutors and chill many valid exercises of the State's prosecutorial powers. Chaos will ensue.[3]

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[3] The defense attorney who convinced the district court to impose the monetary sanction against the prosecutor in this case has openly suggested that the sanction is important for reasons beyond achieving an equitable outcome in his client's case by promoting the result of monetary sanctions and encouraging that approach in future cases.

First, defense counsel posted a blog post on his firm's website applauding the result. Matthew Lindholm, *Story County Prosecutor Sanctioned for Misconduct*, Feb. 16, 2024, https://www.grllaw.com/blog/story-county-prosecutor-sanctioned-for-misconduct/ ("Hopefully this ruling sends a message to prosecutors throughout the State that they are not above the law. Abracadabra!").

Second, the same defense counsel co-hosted a thirty-six minute, thirty-six second podcast, advertised on the firm's website, focused on the proceedings in the underlying criminal matter and the sanctions levied against Assistant County Attorney Christensen. GRL Raw Podcast Network, *Victory Vault: Prosecutorial Misconduct and Sanctions*, April 23, 2024, https://www.grllaw.com/podcast/victory-vault-prosecutorial-misconduct-and-sanctions-owi-case/.

In that podcast, defense counsel specifically noted the monetary sanction award:

> I know that not only the ruling finding sanctions itself has had a profound impact, but I also know that the sanctions that were imposed has had a profound impact, and both of those rulings have made their way onto the desks and emails of lots and lots of people.

CONCLUSION

For these reasons, the Court should find the district court exceeded its authority and acted illegally when it imposed a sanctions award for attorney's fees against an individual assistant county attorney in a criminal case, both because it lacked the authority to do so and because the sanctions contravened longstanding public policy. The Court should sustain the writ of certiorari and reverse the district court's orders. *See Hearity*, 440 N.W.2d at 865.

Id. at 33:17–33:38. Defense counsel then went on to differentiate between the "micro" and "macro" benefits of the sanctions imposed by the district court, stating that he hoped it would "embolden" other defense attorneys:

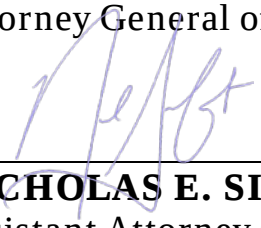
> You know, there's a micro and a macro level here on the positive impact, right? The micro level is that the two thousand dollars, when and if it ever gets paid, will help my client offset some of the costs that he had to endure because of this conduct. The more macro level is that this thing has created a stone-in-the-water ripple effect and has reverberated out in the legal community that, at least if you come to our firm and try to do these types of things, it is not something that we are going to stand by and let happen.

Id. at 34:25–35:57.

In other words, defense counsel notes the chilling effect that will likely extend outward from this case, and openly advocates for other defense counsel to seek similar monetary sanctions against prosecutors.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa



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CERTIFICATE OF COMPLIANCE

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