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IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-1872
Scott County No. CVCV303092

BRIAN J. NIKULSKI,

Petitioner–Appellant,

vs.

NIKULSKI FINANCIAL, INC.,

Respondent,

IOWA INSURANCE COMMISSIONER,

Intervenor-Appellee.

Appeal from the Iowa District Court
For Scott County
The Honorable Tamra Roberts, District Judge

BRIEF FOR INTERVENOR-APPELLEE

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STATEMENT OF THE ISSUES

I. Whether the Iowa Insurance Commissioner may petition to vacate a judgment entered in his absence, when that judgment would require the Commissioner to expunge accurate information from his own records—a public database that he is statutorily required to maintain—and thus would inhibit his ability to adequately regulate Iowa's securities industry.

II. Whether the district court properly vacated the judgment based on irregularity under Rule 1.1012, where the court failed to notify or join the Iowa Insurance Commissioner and where the Commissioner was an indispensable party under section 502.511, Rule 1.234, and the facts of the case.

ROUTING STATEMENT

This case presents a substantial issue of first impression. The Legislature enacted section 502.511 in 2023. And as far as the Iowa Insurance Commissioner is aware, this case presents the first known application of section 502.511. It thus presents this Court its first opportunity to provide much-needed guidance on that statute's meaning. This case also presents a fundamental and urgent issue of broad public importance, because it affects the Commissioner's ability to adequately regulate Iowa's securities industry. The Supreme Court should retain this case. *See* Iowa R. App. P. 6.1101(2)(*c*), (*d*).

NATURE OF THE CASE

This Court is asked whether the district court correctly granted the Iowa Insurance Commissioner's petition to vacate the judgment entered in his absence. It did. That judgment purported to order the Commissioner—not a named party below—to expunge records in his possession. But the Commissioner was an indispensable party—under the expungement statute, section 502.511; under indispensable-party joinder rules, Iowa Rule of Civil Procedure 1.234; and under the facts of the case, where the underlying proceeding lacked parties with adverse interests and where the Commissioner's interest was unrepresented. This Court should affirm the district court's order vacating the judgment and send this case back to allow a fair submission of the expungement controversy to the district court.

Appellee Iowa Insurance Commissioner is charged by statute with regulating Iowa's securities industry. *See* Iowa Code ch. 502. Those duties, in part, require him to ensure that those who transact securities business in Iowa register with the Commissioner. *See, e.g.*, Iowa Code §§ 502.403–502.406. The Commissioner is then required to maintain those filings and any updates and to make many of them available to the public. *See, e.g.*, Iowa Code § 502.606. That allows the Commissioner to monitor the industry, for example, by detecting problematic trends with Iowa registrants if they are repeatedly the subject of customer disputes resulting in adverse judgments or payouts. Recently the Legislature

enacted section 502.511, which, under narrow circumstances, authorizes registrants to petition a court to expunge certain information from the Commissioner's records.

Petitioner-Appellant Brian Nikulski is an investment adviser representative who is also owner, president, chief compliance officer, treasurer, secretary, and registered agent for Nikulski Financial Inc., the sole named Respondent below. *See* D0002, Petition ¶ 4 (06/10/2024); Att. 2 to D0016, SOS Records, at 1, 3–6 (02/10/2025); Att. 3 to D0016, IARD Snapshot, at 5 (02/10/2025). Over the course of his career as a financial advisor, Nikulski has been the subject of at least six customer disputes resulting in total reported payouts of about $1 million to his complaining clients. D0016, Petition to Vacate Judgment, ¶ 42 (02/10/2025); Att. 5 to D0016, SEC Disclosures, at 1–3 (02/10/2025).

Nikulski petitioned under section 502.511 to expunge five of those disputes from the Commissioner's records. D0002. But when he did so, he named only his investment firm as respondent. D0002 ¶ 5. And he failed to disclose to the district court that he was the sole owner and officer of the respondent-firm. His firm then answered, admitting all material allegations. D0007, Answer, at 1 (07/22/2024). Three days later, the parties proposed a consent judgment, D0009, Consent Motion for Entry of Judgment (07/25/2024), which the court approved without hearing. D0014, Order of Judgment, at 1 (08/26/2024).

Six months after judgment, the Commissioner became aware of the expungement order—when his record-keeping designee asked for his approval to expunge the information from his records—and he then sought to reopen the judgment to facilitate a truly adverse presentation of the issues to the court. D0016, Petition to Vacate Judgment. The district court agreed, admitting its own error and reopening the judgment based on irregularity under Rule 1.1012. D0027, Order Vacating Judgment (10/8/2025). In particular, the court explained that the Commissioner was an indispensable party, so the court should have brought him in before entering judgment. D0027 at 8–10. Nikulski appeals that decision. But the district court got it right.

A party is indispensable when their absence prevents the court from rendering judgment or when their interest will be inequitably affected by the court's judgment in their absence. Iowa R. Civ. P. 1.234.

The Commissioner is indispensable to all expungement actions. Indeed, if a person seeks to expunge information from the Commissioner's records, then it needs an order binding the Commissioner. Without the Commissioner as a party, an expungement order is either ineffective or it inequitably affects the Commissioner's interest in maintaining the integrity of his own records. Read in context, the expungement statute's text confirms that reality.

Read otherwise, section 502.511 would lead to an odd result: A court order directing the Commissioner to expunge information from his records, but without binding the Commissioner to do so.

Ordinary joinder principles confirm that interpretation. The expungement statute does not displace the application of Iowa's Rules of Civil Procedure; it works in harmony with them. And under those Rules, a court's failure to follow a rule or duty imposed on it—like failing to join, or at least notify, an indispensable party before proceeding to judgment, despite Rule 1.234—amounts to irregularity under Rule 1.1012.

Even if the Commissioner is not indispensable in all expungement actions, he was indispensable to this case. Before entering judgment, courts ordinarily require a controversy between parties with adverse legal interests. But here, the named parties had anything but adverse legal interests. As Nikulski and his firm structured the case below, the lack of adverse interests—and thus the lack of justiciable case or controversy—between the parties rendered any decision in the case advisory. On those facts, the Commissioner's interest was unprotected and he therefore was indispensable.

For any of those reasons, the district court was right to admit its error and vacate the judgment to allow Nikulski, his firm, and the Commissioner to fairly litigate the expungement question. This Court should affirm that decision.

STATEMENT OF THE FACTS

I. State and Federal Regulation of Investment Advisers and Investment Adviser Representatives.

A. What are Investment Advisers and Investment Adviser Representatives?

An investment adviser, also referred to as an investment firm, is an entity "paid for providing advice about securities to clients. In addition, some investment advisers manage investment portfolios and offer financial planning services." Investment Adviser Public Disclosure, *Disclosures for Brian Jacob Nikulsi* [perma.cc/BAF5-4BB3]; *see* Att. 5 to D0016 (citing *Disclosures for Brian Jacob Nikulsi* [perma.cc/BAF5-4BB3]); Iowa Code §§ 502.102(6), (15) (definition of "federal covered investment adviser" and "investment adviser"). Under federal law, the Securities and Exchange Commission and state regulators share the responsibility for regulating investment advisers. *See* FINRA, *Investment Advisers* [perma.cc/UJB5-4RY7].

SEC regulates firms that manage $100 million or more in client assets, with some exceptions not relevant here. *See* 15 U.S.C. §§ 80b-3, 80b-3a(a)(2); 17 C.F.R. § 275.203A-1; SEC, *Regulation of Investment Advisers by the U.S. SEC*, at 8–9 [perma.cc/JYM6-VZGX] (explaining the regulatory environment for small, mid-sized, and SEC-regulated investment advisers). Firms managing less than $100 million in client assets are regulated by the State where the adviser has its principal place of business. *Id.* Though they are not required to register with state

regulators, SEC-regulated firms still must "notice file" in the States in which they are registered to do business and comply with the State's filing fees and service rules. *See* Iowa Code §§ 502.405, 502.410(5). In Iowa, with exceptions, unless an SEC-registered firm notice files in Iowa, it may not transact business in Iowa. *See* Iowa Code § 502.405(1).

Separate from investment advisers are investment adviser representatives—these are the people who work for investment advisers. *See* Iowa Code § 502.102(16). "Investment adviser representatives are registered financial professionals that provide advisory services to clients on behalf of [investment adviser firms]." FINRA, *Investment Advisers* [perma.cc/UJB5-4RY7].

Investment adviser representatives are State-regulated; SEC does not separately register them. *See* North American Securities Administrators Association, *Investment Adviser: FAQs – What is an investment adviser representative?* [perma.cc/M993-9QJ7] ("Only states register investment adviser representatives, not the SEC, but those who must be registered include individuals working for both state and SEC-registered firms." (citing SEC Rule 203A-3)).

B. Firms' and Representatives' Registration, Renewal, and Continuing Disclosure Obligations.

Iowa regulates its in-state securities industry under chapter 502, the Iowa Uniform Securities Act. The Iowa Insurance Commissioner enforces chapter 502. Iowa Code §§ 502.102(1), 502.601(1). And the

Commissioner may promulgate rules to carry out his duties. Iowa Code § 502.605.

To transact business in Iowa, state-regulated investment advisers and representatives must register and annually renew their registration. *See, e.g.*, Iowa Code §§ 502.403–502.406. They also must periodically update the information in their filings upon material changes. *See, e.g.*, Iowa Code § 502.406(2); Iowa Admin. Code r. 191—50.32(3), 50.34(3). As part of that registration, renewal, and amendment process, registrants generally must report to their regulator whenever they are the subject of customer complaints, arbitrations, lawsuits, or regulator allegations. *See* Iowa Code §§ 502.406(1)(*a*)–(*b*).

Firms use Form ADV to register with SEC and to notice file with Iowa. *See* Iowa Admin. Code r. 191—50.31(1) (Iowa-regulated firms); Iowa Admin. Code r. 191—50.34(1) (SEC-regulated firms); *see also* Iowa Admin. Code. r. 191—50.1. That uniform form requires disclosure about certain disciplinary events involving the adviser and its employees. *See* Att. 4 to D0016, Nikulski Financial's Form ADV, at 30–31 (02/10/2025). Firms are under a continuing obligation to update those disclosures within 30 days of any material change. *See* Iowa Code § 502.406(2); Iowa Admin. Code r. 191—50.31(6), 50.34(4). And for an SEC-regulated firm, it may satisfy its Iowa notice filing duty by notice filing using Form ADV. *See* Iowa Admin. Code r. 191—50.34(1).

Representatives use Form U-4 to register in Iowa. *See* Iowa Admin. Code r. 191—50.32(2); Iowa Code § 502.406(1); *see also* Iowa Admin. Code. r. 191—50.1. That uniform form requires representatives to make various disciplinary- and dispute-related disclosures, including criminal or regulatory action they have faced, adverse civil judicial orders entered against them or settlements, pending complaints or arbitration or civil litigation, arbitration or civil litigation that resulted in an adverse award or judgment or in a settlement exceeding a certain dollar amount, and customer complaints with damages exceeding certain dollar amounts. *See* Att. 1 to D0022, Blank Form U-4, at 13–15 (03/21/2025).

Form U-4 thus does not require disclosure of any complaint that happens to be filed against the representative, but only those with payouts exceeding a certain dollar amount or those filed within the past 24 months. *See* Att. 1 to D0022 at 15. But Form U-4 does not require permanent disclosure of customer complaints or civil judicial or arbitration actions that resulted in a decision in favor of the representative. For example, if a representative faced a consumer complaint but won judgment or arbitration in the representative's favor, and thus no money was paid to the customer relating to the complaint, then that customer-dispute occurrence would not need to be disclosed on Form U-4.

Representatives are under a continuing obligation to update information provided on Form U-4 within 30 days of any material change. *See* Iowa Code § 502.406(2); Iowa Admin. Code r. 191—50.32(5)(*a*).

Though it is a representative's duty to register and timely update their disclosures, representatives do not file their own Form U-4s; the firm for whom the representative works files the representative's Form U-4 registration and any subsequent amendments with the state regulator, on behalf of the representative and with the representative's signed acknowledgment. *See* Att. 1 to D0022 at 16–18.

C. The Commissioner Designates FINRA to Manage and Store Iowa's Securities Filings and Publicly Available Database.

Under authority granted to him by the Legislature, the Commissioner designated FINRA to help him manage all registration and notice filings that firms and representatives must file to transact business in Iowa. *See* Iowa Code § 502.608(3)(*a*). FINRA, the Financial Industry Regulatory Authority, is a private not-for-profit, self-regulatory organization (meaning it is registered with and supervised by SEC) that aids SEC and state regulators in carrying out their securities regulatory duties. *See* FINRA, *About FINRA* [perma.cc/4AJV-DX9E]. The Commissioner designated as Iowa's "central depository" the central registration depository ("CRD") and the Investment Adviser Registration Depository ("IARD") that FINRA operates. Iowa Admin. Code r. 191—50.1, 50.30, 50.31(1), 50.32(1), 50.34(1).

Though representatives fulfill their Iowa-law registration and disclosure duties by filing their forms with FINRA, those records remain the Commissioner's records. Once filed with and accepted by FINRA "on behalf of the state," the filing is considered filed with the Commissioner. Iowa Admin. Code r. 191—50.30(2)(*b*), 50.32(4). Indeed, as FINRA explains, "[t]he information on Uniform Forms filed with the CRD or IARD is deemed to have been filed with each regulator with which the applicant seeks to be registered or licensed and shall be the joint property of the applicant and such regulators." Att. 3 to D0016 at 1. Iowa law confirms the understanding that such filings made with FINRA remain the Commissioner's own records. *See* Iowa Code § 502.607(2)(*f*) (referring to records stored and managed by the Commissioner's designee as the Commissioner's "own records"); Iowa Code § 502.607(1) (codifying presumption that records filed under chapter 502 "including a record contained in or filed with a registration statement, application, notice filing, or report, are public records"). In other words, when a representative files a Form U-4 with FINRA to register in Iowa, those records are "the joint property" of that representative and the Commissioner. FINRA is merely the Commissioner's designee managing the Commissioner's central depository.

In addition to managing securities registration filings, the Commissioner must maintain a publicly available register of all such filings. Iowa Code § 502.606. As the Commissioner's designee, FINRA

manages that duty too. When advisers and representatives make filings with FINRA, they are reported to FINRA's behind-the-scenes, regulator-facing databases—the CRD and the Investment Adviser Registration Depository. The publicly reportable information is then shared with FINRA's Investment Adviser Public Disclosure ("IAPD") website, which "is a publicly-accessible version of the [Investment Adviser Registration Depository] that publishes reports for SEC- and state-registered investment advisor ('RIA') firms and registered investment advisor representative ('IAR') individuals." D0002 ¶ 9.

In short, representatives transacting business in Iowa make their filings with the Commissioner via FINRA. The CRD and the Investment Adviser Registration Depository collect and maintain those filings. And most disclosures made in those filings are then made publicly available on the Investment Adviser Public Disclosure website, as required by law. *See* Iowa Code § 502.606.

D. Iowa Enacts a Narrow Path for Registrants to Expunge Certain Reported Information from the Commissioner's Records.

Balancing on the one hand the public and regulators' need for notice of investment advisers and representatives who are the subject of repeated customer-dispute occurrences and payouts with, on the other hand, an adviser or representative's right to protect his reputation by ensuring the accuracy of his public record, Iowa enacted section 502.511 in 2023.

Section 502.511 granted Iowa-registered advisers and representatives the ability to petition the district court "in equity to expunge information in a record in the investment adviser registration depository." Iowa Code § 502.511(1). "The commissioner of insurance, or the investment adviser that reported the information in the record in the investment adviser registration depository, may be named as a respondent or as respondents." Iowa Code § 502.511(2). If each of the statutory requirements are met, the court "may grant relief by ordering the expungement of the information in the record, and all references to such information in other records, in the investment adviser registration depository." Iowa Code § 502.511(3).

To be eligible for expungement, the information must include an allegation about the adviser or representative, arising out of a dispute involving the adviser or representative's client, as to an adviser or representative who was doing business in Iowa at the time the information was first reported to the record or at the time expungement is sought. Iowa Code §§ 502.511(3)(*a*)–(*c*). And if those threshold requirements are met, then one of five statutory grounds for expungement must apply before a court may, in its discretion, order expungement:

(1) The petitioner was not involved in the event that resulted in the creation of the record.

(2) The information in the record is erroneous or impossible to be true.

(3) The information in the record is false.

(4) A decision in an administrative, judicial, or arbitration proceeding found that the petitioner did not act in a manner described by the record.

(5) The court determines that equitable principles require that such relief be granted.

Iowa Code § 502.511(3)(*d*).

Expungement actions do not allow an adviser or representative to collaterally attack the merits of the underlying customer dispute. Challenging the merits is not one of the narrow grounds for expungement.

The expungement statute allows advisers and representatives to expunge "the information in the record." Iowa Code § 502.511(3). But the underlying merit of the allegations giving rise to the customer dispute is not what is required to be disclosed under Form U-4 or Form ADV and thus is not part of "the information in the record." Rather, the information in the record, for example, is the mere fact of a formal customer dispute either pending, recent, or resulting in a payout or an adverse judicial or arbitration award.

So if the dispute is reported to the wrong representative's record, or the resolution is reported incorrectly or was favorable, then section 502.511 could allow the representative to expunge that "information in the record" because it is either erroneous, impossible to be true, false, did not involve the petitioner, or resulted in a favorable administrative,

judicial, or arbitration resolution. Iowa Code §§ 502.511(3)(*d*)(1)–(4). Or if it fits within the catchall category, which allows expungement if the court determines equitable principles require such relief. Iowa Code § 502.511(3)(*d*)(5). But section 502.511's text does not grant an adviser or representative a path to challenge the underlying merits of a customer's allegations that gave rise to the reported customer dispute via an equity action in which the complaining customer is not even present to defend her own allegations.

II. Nikulski Faces Six Customer Disputes, Resulting in About $1 Million in Reported Customer Payouts.

Petitioner Brian Nikulski is an Iowa-registered investment adviser representative. *See* Att. 5 to D0016 at 3; D0002 ¶ 4. Nikulski has an active registration with Respondent Nikulski Financial, Inc., which is an SEC-registered investment adviser firm that manages more than $100 million in client assets. *See* Att. 5 to D0016 at 3–4; Att. 3 to D0016 at 6; D0002 ¶ 4. Nikulski is sole owner, president, chief compliance officer, treasurer, secretary, and registered agent for Nikulski Financial. *See* Att. 2 to D0016 at 1, 3–6; Att. 3 to D0016 at 5.

Before opening his own firm, Nikulski was registered with other investment advisers. *See* Att. 5 to D0016 at 4; D0002 ¶ 21, 26. In 2009, Nikulski created his investment adviser firm, Nikulski Financial. *See* Att. 5 to D0016 at 3–4; D0002 ¶ 27. He has been registered there ever since.

Over the course of his career as an investment adviser representative, Nikulski has been the subject of at least six customer disputes resulting in total payout (whether by civil judgment, arbitration decision, settlement, or some other formal resolution) of about $1 million to Nikulski's complaining clients. D0016 ¶ 42; Att. 5 to D0016 at 1–3.

Those six customer-dispute occurrences were reported to regulators, thus resulting in six occurrences on Nikulski's Investment Adviser Registration Depository record. Of those, five are publicly reportable and thus included on Nikulski's public record, the Investment Adviser Public Disclosure website. The Commissioner submitted the publicly available summary of Nikulski's Investment Adviser Public Disclosure. *See* Att. 5 to D0016 (citing *Disclosures for Brian Jacob Nikulsi* [perma.cc/BAF5-4BB3]). The detailed version of that public report is available at that same website, by selecting the "detailed report" link. IAPD Report, *Brian Jacob Nikulski* [perma.cc/E52C-UKEC] ("Detailed IAPD Report").

These are the five customer-dispute occurrences Nikulski tried to expunge, as reported in the Nikulski's petition and the Commissioner's public-facing records (the Investment Adviser Public Disclosure):

1. The first occurrence (No. 2292121) resulted in a $110,000 settlement in 2023. *See* Att. 5 to D0016 at 1–2; D0002 at 1. That settlement resulted from a 2022 action brought in Iowa state court by Nikulski's clients, the Lewises. D0002 ¶¶ 38–39. The Lewises "allege[d]

unsuitable recommendations into venture capital investments and other causes of action." Att. 5 to D0016 at 1–2. In 2023, Nikulski Financial submitted Nikulski's U-4 amendment reporting that matter as settled for $110,000. Detailed IAPD Report at 6–7.

2. The second occurrence (No. 2131465) resulted in a $200,000 settlement in 2023. *See* Att. 5 to D0016 at 2; D0002 at 1. That settlement resulted from a 2021 action brought in Iowa state court by Nikulski's clients, the Willises. D0002 ¶¶ 82–84. The Willises "allege[d] unsuitable recommendations into venture capital investments from 2007 to 2014 and other causes of action." Att. 5 to D0016 at 2. They claimed $410,000 in damages and ultimately settled with Nikulski for $200,000 in 2023. Detailed IAPD Report at 7.

3. The third occurrence (No. 2083094) resulted in a $526,596 arbitration award for a customer against Nikulski in 2020. *See* Att. 5 to D0016 at 2; D0002 at 1. That award resulted from a 2019 arbitration complaint brought by Nikulski's client Laurie Waugh. D0002 ¶¶ 104–109. Waugh alleged that Nikulski "invested claimant in various unsuitable products between September 2006 and April 2013. Allegations include: Breach of Fiduciary Duty; Negligence / Continuing Negligent Advice; Breach of Contract; Misrepresentation; Failure to Supervise." Att. 5 to D0016 at 2. She claimed $669,067 in damages and, after final arbitration hearing, the arbitrator found for Waugh on some

of her claims and awarded her $526,596 in damages. D0002 ¶¶ 107–109; Detailed IAPD Report at 8.

4. The fourth occurrence (No. 2083093) resulted in a $300,000 settlement in 2020. *See* Att. 5 to D0016 at 2–3; D0002 at 1. That settlement resulted from a 2018 action brought in Iowa state court by Nikulski's clients, the Schuetts. D0002 ¶ 60. The Schuetts' allegations stemmed from events that "happened a few years after 2005 and were discovered in 2018. Allegations include: Breach of Fiduciary Duty; Negligence and Negligent Supervision; Negligent Misrepresentation and Omissions of Material Facts." Att. 5 to D0016 at 2–3. The Schuetts agreed to dismiss their state court case and bring their dispute instead through arbitration. D0002 ¶¶ 64–65. Nikulski then settled the matter with the Schuetts for $300,000 in 2020. Detailed IAPD Report at 9–10; D0002 ¶ 66.

5. The fifth occurrence (No. 2141624) Nikulski seeks to expunge is not part of his public record, so the details are not in this record other than as Nikulski pleaded them. D0002 at 1. That customer complaint resulted in an arbitration decision in Nikulski's favor, with no payout to the customer. D0020, Nikulski's Mot. to Dismiss Pet. to Vacate, at 19 (03/12/2025); D0002 ¶¶ 40–41. Because of that favorable resolution, and because there was no award or judgment against Nikulski, this occurrence is not publicly reportable and therefore would be reported

only on Nikulski's Investment Adviser Registration Depository record, not the publicly available Investment Adviser Public Disclosure record.

6. Nikulski's sixth occurrence is publicly reported on Nikulski's record. Att. 5 to D0016 at 3. In 2002, Nikulski was working for a nonparty investment adviser firm when a client alleged Nikulski advised the client that they would receive a guaranteed death benefit rather than the current value of the contract. Att. 5 to D0016 at 3. That client sought the difference, alleging $9,600 in compensatory damages. Att. 5 to D0016 at 3. Because the allegations fell within a class action lawsuit, the matter was closed in early 2003 with no payout reported to Nikulski's record. Att. 5 to D0016 at 3.

That sixth occurrence, though publicly reportable, is not at issue here. That is likely because it predates Nikulski creating his own investment firm, therefore Nikulski cannot seek expungement of that occurrence via an action brought against his investment firm because his firm did not report that occurrence to regulators. *See* Iowa Code § 502.511(2) ("[T]he investment adviser that reported the information in the record in the investment adviser registration depository, may be named as a respondent.").

III. Nikulski Seeks Expungement under Section 502.511.

In June 2024, Nikulski brought an equity action under section 502.511 seeking expungement of five customer-dispute occurrences from his record in the Commissioner's central depository. D0002. He named

Nikulski Financial as the sole respondent, referring to it as a "nominal party only." D0002 ¶ 5. Of the six occurrences in Nikulski's record, he sought expungement of the five that closed or settled after he created his investment firm, including some with allegations predating his time working as Nikulski Financial. The only one of the six above-described occurrences for which Nikulski did not seek expungement was a publicly reported customer dispute that closed in 2003. Att. 5 to D0016 at 3.

In July 2024, Nikulski Financial filed a one-page answer, in which it admitted nearly every one of the Petition's 130 allegations, disputed none, and noted that it did not have knowledge or information as to some part of four allegations. D0007 at 1.

Three days later, without further evidence, Nikulski and Nikulski Financial moved for entry of consent judgment, noting that Nikulski Financial had "admitted all material allegations averred by Mr. Nikulski." D0009 ¶4.

One month later, without hearing any evidence as to why any reported record was false, erroneous, or within any of the other statutory expungement grounds under section 502.511(3)(*d*), the district court entered the consent judgment, thus ordering the five pleaded occurrences expunged from the nonparty Commissioner's records. D0014 at 1.

At no point before that entry of consent judgment did the Commissioner receive notice of Nikulski's action. Sometime in the six months after judgment, the Commissioner became aware of the

expungement order. The Commissioner then timely petitioned to vacate the judgment in February 2026. D0016.

The Commissioner argued extrinsic fraud based on Petitioner Nikulski intentionally withholding the nature of his relationship with Respondent Nikulski Financial—that he was Nikulski Financial's sole owner, president, chief compliance officer, treasurer, secretary, and registered agent. When describing the Parties to the action, Nikulski's petition meekly reported only that he was "with Nikulski Financial," which was "the investment adviser that reported the information." D0002 ¶ 4–5. And deep in the Petition, at paragraph 103 when Nikulski described the Waugh Occurrence, Nikulski mentioned in passing that in "April 17, 2017, Mr. Nikulski, as President of NFI, sent a letter." D0002 ¶ 103.

But Nikulski controlled both parties in the case and "[i]n effect, Mr. Nikulski sued himself, and he agreed with himself to submit a consent motion seeking an order of expungement." D0016 ¶¶ 5–7, 27–35. That lack of disclosure and lack of adversity meant there "was *no* meaningful adjudication on the merits" and that Nikulski's self-suit thus prevented a fair submission of the controversy to the court. D0016 ¶¶ 34. The Commissioner further argued that he "was an indispensable party." D0016 ¶ 20.

Nikulski moved to dismiss the Commissioner's petition to vacate, arguing that the Commissioner "failed to satisfy the high burden of

proving, by clear and convincing evidence, the allegation of 'fraud.'" D0020 at 13; D0023, Nikulski's Reply ISO Mot. to Dismiss, at 5–7 (03/28/2025). Nikulski also argued that the Commissioner "lack[ed] standing to file a petition to vacate" because he is not an indispensable party and "has not otherwise established standing." D0020 at 6.

After an unreported hearing on the petition, D0025 Order setting hearing (04/16/2025), the district court granted the Commissioner's petition, vacated the consent judgment, and reopened the case to allow the Commissioner to participate in the adjudication of the merits of the section 502.511 expungement action. D0027. The district court first concluded that the Commissioner had a "direct, protectable interest" in "maintaining the integrity" of his records and thus could petition to vacate. D0027 at 7–9. Then it found irregularity. The Commissioner was an indispensable party, yet the court had failed to ensure that the Commissioner received notice of the suit. D0027 at 9 ("On this record, the Court finds an irregularity in obtaining the judgment within Rule 1.1012(2)."); D0027 at 10 ("The judgment cannot stand with this type of extrinsic irregularity."). That "irregularity is compounded" by the lack of adversity in the case when one party "controlled both sides of the expungement action." D0027 at 9.

The court did not assess the six fraud factors, nor did it find fraud. And it did not consider the merits of the expungement action, instead

reopening the case to allow the Commissioner, Nikulski, and Nikulski Financial to litigate those merits.

The Commissioner then filed his answer. D0031, Answer (10/27/2025). And Nikulski appealed. D0032, Notice of Appeal (11/6/2025).

ARGUMENT

The issue before this Court is whether the district court erred in granting the petition to vacate the judgment. The underlying merits of Petitioner's expungement request are not part of this appeal. *See* Iowa R. Civ. P. 1.1013(4) ("The court may try and determine the validity of the grounds to vacate or modify a judgment or order before trying the validity of the claim or defense."). If the Court affirms vacatur of the judgment, then the expungement merits under section 502.511 would be litigated in the first instance on remand.

I. The Commissioner May Participate In This Case.

It is unclear what role the standing requirements have in a case like this, where a nonparty petitioned to vacate a judgment in a case in which the nonparty believes it was an indispensable party and should have been named as a respondent. After all, standing ordinarily does not govern a respondent's right to participate in a case. Instead, the proper inquiry here is captured by the standards under Rules 1.1012 and 1.234, which assess the nonparty Commissioner's interest and how the judgment affected that interest.

But because Nikulski challenges the Commissioner's standing to petition to vacate, the Commissioner responds to that theory. And for similar reasons that the Commissioner is an indispensable party he also satisfies this Court's standing requirements.

The Commissioner has a legally cognizable interest that will be affected by the judgment entered in his absence. That gives the Commissioner standing, just as it makes him an indispensable party. And when it comes to standing, it does not matter whether the Commissioner is correct that he is an indispensable party, that Nikulski's interest lacks adversity with his firm's interest, or that the information Nikulski seeks to expunge is factual and accurate. *See Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 452 (Iowa 2013) (Standing "is separate from, and precedes, the merits of a case."). What matters instead is whether the consent judgment causes the Commissioner a legally cognizable injury. And it did.

A. Error preservation and standard of review.

The Commissioner agrees that Nikulski preserved error on standing. Nikulski challenged the Commissioner's standing in the motion to dismiss. D0019, Nikulski Br. ISO Mot. to Dismiss, at 2 (03/12/2025); D0020 at 6–13. And the district court concluded that the Commissioner had a "direct, protectable interest" in "maintaining the integrity" of his records and thus could petition to vacate. D0027 at 7–9.

But Nikulski gets the standard of review wrong. This Court "review[s] questions of standing for correction of errors at law." *In re Matter of Est. of Stille*, 2026 WL 1189125, at *4 (Iowa May 1, 2026) (quoting *Homan v. Branstad*, 864 N.W.2d 321, 327 (Iowa 2015)). And that is true even when the question arises in an equity case where review otherwise would be de novo. *Id.*

B. The Commissioner has standing because expungement will affect his records and his ability to adequately regulate Iowa's securities industry.

This Court's standing inquiry considers two requirements. *See LULAC v. Pate*, 20 N.W.3d 822, 830 (Iowa 2025). First, the wrong alleged must produce a legally cognizable injury. *Id.* Second, the party must be among those who have sustained that injury. *Id.* "Standing really just boils down to the question whether the party has a cause of action—whether the party's legal rights have been infringed and whether the positive law authorizes him to sue for that infringement." *Id.* at 831–832 (cleaned up). The Commissioner satisfies both questions.

1. The consent expungement order affects the Commissioner's right—and statutory duty—to maintain an accurate internal and public database of securities disclosures. If factual information is removed from those databases, the Commissioner as regulator is harmed. Removing information harms the Commissioner's interest in regulating the industry and in aiding the public in protecting themselves and their investments. Nikulski may counter that the information he seeks to

expunge is neither factual nor accurate, but that is a merits argument and thus irrelevant as to standing. *See Horsfield Materials*, 834 N.W.2d at 452.

The Commissioner regulates Iowa's securities industry under chapter 502. *See* Iowa Code § 502.608(3)(*a*). Under those laws, he is required to maintain records of registration documents and updates, including disclosures, in a public-facing database. Iowa Code § 502.606. Though he designated FINRA to do that "on behalf of the state," Iowa Admin. Code r. 191—50.30(2)(*b*), 50.32(4), the duty remains the Commissioner's own. More, any records filed under chapter 502—even if filed with FINRA—are the Commissioner's "own records." Iowa Code § 502.607(2)(*f*). FINRA agrees that information filed with FINRA to register with a state regulator is the property of that state regulator, not FINRA. *See* Att. 3 to D0016 at 1.

Nikulski explains that the consent expungement order "merely required [the Commissioner] to update certain records." Appellant Br. 25. That concedes the point: The expungement order affects the Commissioner's interest in maintaining his records of securities disclosures, both for his use and the public's. Following that concession, the foundation of Nikulski's argument is that the Commissioner lacks "specific, actual injuries" if the record is expunged. Appellant Br. 16. But that is wrong.

Iowa's securities regulatory scheme serves dual consumer-protection purposes. *First*, it serves a consumer-facing purpose. The public website allows Iowa's investors to research the employment and disciplinary histories of their prospective or current financial advisers, thus helping them make informed choices about who they hire. *See* North American Securities Administrators Association, *CRD & IARD – IARD at a Glance* [perma.cc/2ZAB-GLYF]. And it allows the customer to question their current financial adviser about the nature of past reported events.

Second, that regulatory scheme helps the Commissioner closely monitor Iowa's securities industry, including by flagging registrants with repeated customer-dispute occurrences. It allows the Commissioner to identify and scrutinize concerning trends and to consider whether those trends call for examination, investigation, audit, registration suspension or revocation, criminal referral, or some other disciplinary measure. *See, e.g.*, Iowa Code §§ 502.409, 502.412, 502.508, 502.509, 502.602, 502.603, 502.604. A single customer complaint in isolation may not cause the Commissioner to initiate action, but a pattern of deficient practices—identified through repeated customer complaints, or other reported occurrences, against a single representative or multiple representatives at the same firm—could signal serious issues warranting extra scrutiny by the Commissioner.

So although neither FINRA nor state regulators must independently investigate the disclosures before they are reported on the public website, D0002 ¶ 15 & n.4, the information serves a public purpose by putting the public and regulators on notice when certain representatives have recurring customer-dispute occurrences and payouts. Indeed, those public disclosures serve as a "'first line of defense' for investors and regulators in their efforts to prevent dishonest/unethical business practices and fraud." North American Securities Administrators Association, *Informal Guidelines for Securities Industry Registration*, at 2 [perma.cc/PV8Q-MG88].

The Commissioner's records, and those consumer-protection purposes, are at issue in Nikulski's expungement action. The Commissioner has an interest in the continued veracity of those records. To the extent that Nikulski's expungement action purports to adjudicate the veracity of those records to then expunge information from the records, the Commissioner has "a direct, protectable interest in the integrity of those records." D0027 at 9. The district court got that right.

Nikulski next objects to the Commissioner's standing to petition to vacate by arguing that the Commissioner's interest is merely "derivative and supervisory" as a public official, and thus does not amount to an injury. Appellant Br. 23. But as the district court recognized, this Court's recent precedent instructs otherwise. D0027 at 7–8 (discussing *Miller v. Iowa Voter Registration Comm'n*, 13 N.W.3d 1 (Iowa 2024). Worse,

Nikulski's argument assumes that the affected records are not the Commissioner's.

In *Miller*, the county official directly responsible for conducting county elections brought an administrative complaint alleging that the Secretary of State failed to comply with federal law and thus risked security and integrity of the Secretary's statewide voter registration database. 13 N.W.3d at 4. That county auditor argued his office gave him a special interest, and thus standing, to sue over threats to the voter database's security. *Id.* at 10–11.

This Court agreed. Because the county official was responsible for conducting his county's election, he "ha[d] standing to assert his claims that the Secretary of State's administration of the statewide I-Voters database may not comply with [federal law]. The County Auditor has a significant interest—peculiar to his office—in the integrity of that database." *Id.* at 11. After all, "[h]acking or the erroneous removal of eligible voters from I-Voters could easily impair the County Auditor's ability to perform the foregoing tasks." *Id.*

Miller supports the Commissioner's standing here to challenge threats to the integrity of the Commissioner's own database, which would impair the Commissioner's ability to carry out his duties. True, "[s]erving as a public official does not automatically confer special status for standing purposes." *Miller*, 13 N.W.3d at 10. Nor is that the basis of the Commissioner's right to participate here.

Rather, "[p]ublic entities and public officers may have standing to protect their own institutional interests." *Id.* And here, like in *Miller*, the Commissioner suffers such an institutional injury when a court order affects the Commissioner's own records and thus impairs his ability to carry out his duties. If Auditor Miller had standing based on an institutional interest—"peculiar to his office," *Miller*, 13 N.W.3d at 11—in the integrity of someone else's public database, then the Commissioner has standing here based on his institutional interest in the accuracy of his *own* records, held and managed by his designee.

2. The positive law allows the Commissioner to petition to vacate and to participate in section 502.511 expungement actions. *LULAC*, 20 N.W.3d at 831–832.

Nonparties may petition to vacate. *See also Streeter v. The Dunn Trust*, --- N.W.3d ---, 2026 WL 1354011, at *3 (Iowa May 15, 2026) (granting nonparty's petition to vacate). Indeed, Rule 1.1012 is not limited to parties, unlike Federal Rule of Civil Procedure 60(b) which textually limits relief to "a party or its legal representative." *Cf. In re Marriage of Hutchinson*, 974 N.W.2d 466, 474 (Iowa 2022) (comparing Iowa's Rule 1.1012 with its federal relative, Rule 60(b), and finding meaning in textual differences between the two rules). The "positive law" thus authorizes the Commissioner "to sue for that infringement" via petition to vacate a judgment he alleges causes him harm. *LULAC*, 20 N.W.3d at 832.

The positive law authorizes the Commissioner to participate in section 502.511 expungement action either by joinder or intervention, had he been afforded sufficient notice and opportunity as he alleges he was owed.

First, he has standing as an indispensable party, as detailed below. And at the standing-inquiry threshold, the question is not whether the Commissioner is correct that he is an indispensable party, and thus that there was irregularity; that is a merits question. *See Horsfield Materials*, 834 N.W.2d at 452. The question is, assuming the Commissioner is correct that he is an indispensable party, does the Commissioner have an interest sufficient to allow him to participate in this case? The district court was right that the Commissioner as an indispensable party has a direct, protectable interest in maintaining the integrity of his records and thus in maintaining his compliance with the law. As an indispensable party, the positive law authorized the Commissioner to participate in the expungement action before judgment.

Second, even if not an indispensable party, it should be beyond debate that the Commissioner could have intervened as of right had he received notice of the action. *See* Iowa R. Civ. P. 1.407(1)(*b*). Intervention of right is allowed when an "applicant [1] claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the [2] disposition of the action may as a practical matter impair or impede the applicant's ability to protect that

interest, [3] unless the applicant's interest is adequately represented by existing parties." *Id.*

And here neither Nikulski nor his firm can adequately represent the Commissioner's institutional interest in maintaining the integrity of the Commissioner's own records. Yet Nikulski's expungement action would harm that interest, including by inhibiting the Commissioner's ability to monitor Nikulski's records and detect problematic trends. Thus, intervention is another way the positive law authorizes the Commissioner to petition to vacate.

Nikulski notes in passing that the Commissioner did not move to intervene and thus is not yet an intervenor here. Appellant Br. 11 n.1. But the Commissioner already answered as an intervenor. D0031. In any event, this Court could remand with instructions to allow intervention by a nonparty with a "special interest" in the issue—and thus standing—who was not given a chance to appear in the district court, even when their participation was not required by statute or rule. *Cf. In re Ezra L. Totton Scholarship*, No. 25-0462, 2026 WL 1614078 (Iowa June 5, 2026).

II. The District Court Properly Granted the Petition to Vacate Based on Irregularity Because the Court Failed to Join or Notify the Commissioner, an Indispensable Party.

The expungement statute does not displace Iowa's Rules of Civil Procedure. And under those Rules, a court's failure to follow a rule or duty imposed on it—like failing to join, or at least notify, an indispensable party before proceeding to judgment, despite Rule 1.234—

amounts to irregularity under Rule 1.1012. The district court correctly concluded that "[p]roceeding to judgment without notice to a necessary party is a paradigmatic procedural irregularity that 'prevents a fair submission of the controversy' because it removes from the courtroom the party best positioned to contest expungement and to present the countervailing public-interest perspective." D0027 at 9.

Though Nikulski failed to preserve error on this issue, if the Court were to reach the merits it should affirm the district court's finding of irregularity under Rule 1.1012.

A. Standard of review.

Nikulski is wrong that the standard of review here is de novo. Appellant Br. 26. A petition to vacate under Rule 1.1012 is an action at law, not equity. *See In re Marriage of Hutchinson*, 974 N.W.2d at 474–475. That is true "even though the judgment vacated was rendered in an equity case." *In re Adoption of B.J.H.*, 564 N.W.2d 387, 391 (Iowa 1997); *see Hopper v. City of Waterloo*, No. 21-0047, 2022 WL 610321, at * 1 (Iowa Ct. App. March 2, 2022) (similar). So this Court "review[s] a district court's ruling on a motion to vacate for correction of errors at law." *Toney v. Parker*, 958 N.W.2d 202, 208 (Iowa 2021); *see In re Marriage of Cutler*, 588 N.W.2d 425, 429–430 (Iowa 1999).

This Court is "more reluctant" to reverse a district court's ruling granting a petition to vacate than one denying it. *Mishler v. Stouwie*, 301 N.W.2d 744, 747 (Iowa 1981).

B. Error is not preserved.

Under Rule 1.1012, a court may vacate a "final judgment or order, or grant a new trial" if there was "[i]rregularity or fraud practiced in obtaining it." Irregularity and fraud are thus distinct grounds for granting a Rule 1.012 petition to vacate. *See In re Marriage of Cutler*, 588 N.W.2d at 429–430. Nikulski failed to preserve error on either ground.

1. Irregularity was decided by but not raised or resisted in the district court. And fraud was raised in but not decided by the district court. Thus, neither ground is preserved for this Court's review. *See Meier v. Senecau*t, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court" to be preserved for appeal.).

The Commissioner argued that extrinsic fraud warranted vacating the judgment. D0016 at 6–7; D0022, Commissioner's Resistance to Mot. to Dismiss Pet. to Vacate, at 9–12 (03/21/2025). The Commissioner did not argue any irregularity. And Nikulski resisted, arguing there was no extrinsic fraud. D0019 at 2; D0020 at 13–17; D0023 at 5–7. Beyond using the word "irregularity" in a heading, Nikulski never argued there was no irregularity, instead limiting his argument to opposing a finding of extrinsic fraud. D0020 at 13.

The district court concluded there was irregularity under Rule 1.1012, because the Commissioner was an indispensable party and the court failed to ensure that party received notice of the suit. D0027 at 9

("Proceeding to judgment without notice to a necessary party is a paradigmatic procedural irregularity."); D0027 at 9 ("On this record, the Court finds an irregularity in obtaining the judgment within Rule 1.1012(2)."); D0027 at 10 ("The judgment cannot stand with this type of extrinsic irregularity."). That "irregularity is compounded" by the lack of adversity in the case when one party "controlled both sides of the expungement action." D0027 at 9.

But the district court did not decide the fraud issue. As Nikulski explains, fraud has six elements. Appellant Br. 14. Nikulski then reports that the district court "failed to address any of these elements of fraud in its finding." Appellant Br. 32. But that is not because of a deficient fraud finding; it is because the district court based its decision to vacate the judgment on irregularity, not fraud. At times, Nikulski even agrees that the court did not find fraud. Appellant Br. 29, 32. Yet Nikulski did not ask the court to decide the fraud issue via reconsideration or enlargement under Rule 1.904.

2. Not only is irregularity not preserved, but it is forfeit. Nikulski on appeal does not develop any argument against irregularity, nor does he cite relevant authority about irregularity under Rule 1.1012, instead arguing only the unpreserved fraud issue. *See* Appellant Br. 26–32; Iowa R. App. P. 6.903(2)(*g*)(3) (requiring appellants to raise and develop issues in the opening brief). Indeed, a "passing reference" does not suffice. *Goode v. State*, 920 N.W.2d 520, 524 (Iowa 2018); *see State v. Short*, 851 N.W.2d

474, 479 (Iowa 2014) (holding State waived issue by failing to advance it on appeal); *Short*, 851 N.W.2d at 480 ("It is important that our waiver rules be consistently applied in all cases and that we not apply special rules for certain parties without a principled basis for doing so.").

Because it is forfeit, Nikulski should not be allowed to address irregularity for the first time in his reply brief on appeal. *See Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996) ("Parties cannot assert an issue for the first time in a reply brief."); *see also Shri Lambodara, Inc. v. Parco, Ltd.*, 995 N.W.2d 505, 510 (Iowa Ct. App. 2023) ("[S]aving development of an argument for the reply brief is improper and deprives the appellee of any opportunity to respond on the merits.").

3. If the Court forgives Nikulski's double failure to preserve error, proceeds to the merits of the district court's irregularity decision, and disagrees with that decision, then it should remand for the district court to decide the fraud issue under Rule 1.1012. This Court should not decide the fraud issue in the first instance on appeal.

Fraud is a fact-intensive issue that must be proven by clear and convincing evidence. *See In re Marriage of Cutler*, 588 N.W.2d at 430 ("Proving fraud is a difficult task. A plaintiff must prove several factors by clear and convincing evidence."). And this Court is a court of review, not first view. But, as Nikulski emphasizes, the district court did not analyze the six elements of fraud and make findings on each. Thus, there are no findings for this Court to review.

Deference to the district court's fact findings is even more important given the corrections-of-errors-at-law standard of review here. Under that standard, this Court will reverse the district court's fact findings only if they are not supported by substantial evidence. *See Mishler v. Stouwie*, 301 N.W.2d at 747 ("We accord the trial court considerable discretion in determining whether to grant relief when vacation of a judgment is sought. . . . The trial court's findings of fact have the effect of a jury verdict, and those findings are binding on us if there is substantial evidence to support them."). So if this Court reaches and disagrees with the merits of the district court's irregularity finding, then it should remand to allow the district court the first opportunity to decide the fact-intensive fraud issue.

C. A district court's failure to abide Rule 1.234's mandate to join indispensable parties amounts to irregularity under Rule 1.1012.

Iowa Rule of Civil Procedure 1.1012 allows a court to "correct, vacate or modify a final judgment or order, or grant a new trial" if there was "[i]rregularity or fraud practiced in obtaining it," upon a timely petition. That petition "must be filed and served in the original action within one year after the entry of the judgment or order involved." Iowa R. Civ. P. 1.1013(1). There is no dispute that the Commissioner's petition was timely filed. The question here is whether the district court correctly found irregularity. And it did.

1. Irregularity under Rule 1.1012.

An "irregularity" under Rule 1.1012 occurs when there is a "violation or nonobservance of established rules and practices" by the trial court. *Streeter*, 2026 WL 1354011, at *3 (cleaned up). That includes "[t]he want of adherence to some prescribed rule or mode of proceeding" by "omitting to do something that is necessary for the due and orderly conducting of a suit." *Forsmark v. State*, 349 N.W.2d 763, 767 (Iowa 1984) (en banc) (quoting Black's Law Dictionary 744 (rev. 5th ed. 1979)). The irregularity cannot have been caused by the party petitioning to vacate the judgment. *See Costello v. McFadden*, 553 N.W.2d 607, 612 (Iowa 1996) ("[T]he party complaining must not have caused, been a party to, or had prior knowledge of the breach of the rule, the mode of procedure, or the practice of the court."). This Court's cases confirm the irregularity here.

In *Forsmark*, a medical malpractice case, this Court found an irregularity where the district judge failed to disclose to the parties that his deceased brother's estate was suing the plaintiffs' expert witness. 349 N.W.2d at 767–768. Though that information may not have mandated the judge recuse himself, under the judicial canons the judge was required to disclose it to the parties to allow them an opportunity to request recusal. *Id.* The judge's failure to follow that canon amounted to irregularity warranting vacatur under Rule 1.1012. *Id.*

And recently in *Streeter*, this Court reversed a district court's dismissal of nonparty's petition to vacate a judgment quieting title based on irregularity where the petitioner and district court had violated the Iowa Rules of Civil Procedure's requirement to notify certain interested parties. 2026 WL 1354011, at *3. That case began when petitioners sought to quiet title under section 649.2, which requires such a petitioner to "provide notice to any party that 'may make' a claim adverse to the petitioner." *Id.* at *5. Petitioners did not name the nonparty landowners, nor did they name the Department of Natural Resources, nor did they personally serve any party. *Id.* at *2. Petitioners instead "provided notice solely by publication in a local newspaper." *Id.*

But the Iowa Rules of Civil Procedure allow for service by publication only in limited circumstances, none of which applied. *Id.* at *3 (citing Iowa R. Civ. P. 1.310(10)). And even then, a petitioner must still mail notice to the potential adverse party's last-known address. *Id.* (citing Iowa R. Civ. P. 1.311(1)). Yet still, when service by publication is allowed, the district court must make special findings that no known address is known after "diligent inquiry." *Id.* (citing Iowa R. Civ. P. 1.311(3)).

This Court's review in *Streeter* was "guided by a longstanding policy in our state favoring the resolution of legal disputes on the merits." *Id.* *3 (quotation marks omitted). And this Court held that the district court "ignore[d] the 'due and orderly conducting of litigation'" because it failed

to follow the Rules and that constituted irregularity warranting vacating the judgment under Rule 1.1012. *Id.* at *4 (quoting *Forsmark*, 349 N.W.2d at 767). Despite the statutory requirement, the district court failed to ensure that petitioners provided notice to identifiable potential adverse parties, and it failed to make the required diligent-inquiry finding. *Id.* One potential adverse party was the Department of Natural Resources, which could have had an interest in the property at issue, yet petitioners failed to notify the Department of the quiet-title action and thus deprived the Department the opportunity to decide whether to get involved in the action. *Id.*

Streeter also shows that, when reviewing a district court's ruling on a petition to vacate, this Court is not beholden to the words that the parties, or even the district court, use to describe why the judgment should or should not be vacated. The Court instead reviews the substance of the alleged violations. Thus, in *Streeter* the district court initially granted the petition to vacate based on fraud. *Id.* at *2. The court then reconsidered that finding and dismissed the petition to vacate. *Id.* But this Court on appeal did not vacate the judgment based on fraud, despite the parties' arguing about fraud; it instead determined the violation of the Rules constituted an irregularity under Rule 1.1012. *Id.* at *3–4.

2. A court's failure to join or notify an indispensable party constitutes irregularity under Rule 1.1012.

Like the rules not followed in *Forsmark* and *Streeter*, the rule governing joinder of indispensable parties imposes a mandatory duty on the court: "If an indispensable party is not before the court, it shall order the party brought in." Iowa R. Civ. P. 1.234(3). "It is not a matter of discretion, but of absolute judicial duty." *Matter of Est. of Janssen*, 7 N.W.3d 516, 523 (Iowa 2024) (quoting *Tod v. Crisman*, 99 N.W. 686, 689 (Iowa 1904)).

That mandate is "necessary for the due and orderly conducting of a suit." *Forsmark*, 349 N.W.2d at 767. After all, an indispensable party is one who, in part, has a distinct interest in the case that will be affected by a judgment rendered between the named parties, or the indispensable party's absence "will prevent the court from rendering any judgment between the parties before it." Iowa R. Civ. P. 1.234; *see Wright v. Standard Oil Co.*, 15 N.W.2d 275, 277 (Iowa 1944) ("[A]n indispensable party is one having an interest in the controversy of such a nature that a final decree cannot be made without affecting that interest."). That definition makes clear that failure to notify an indispensable party of a suit deprives either that party of its ability to protect its own interest or the named parties of their ability to achieve relief. And that thus affects the "due and orderly conduct[] of a suit." *Forsmark*, 349 N.W.2d at 767.

This Court understands the importance of joining indispensable parties before rendering judgment. That is why it allows the issue of an indispensable party to be raised for the first time on appeal, and has held the remedy even then is to remand for the indispensable party to be added to the litigation. *See Ditch v. Hess*, 212 N.W.2d 442, 450 (Iowa 1973): *City of Tiffin v. City of Coralville*, No. 22-1312, 2023 WL 3860110, at *5–6 & n.12 (Iowa Ct. App. June 7, 2023).

Here, section 502.511 instructs petitioners who they may name as respondent in their expungement action. But that does not displace the ordinary application of the Iowa Rules of Civil Procedure; that statute and Rule 1.234 work in harmony. *Cf. Myers v. City of Cedar Falls*, 8 N.W.3d 171, 180 (Iowa 2024) ("[C]anons of statutory interpretation counsel [this Court] to avoid interpretations that create conflict and instead adopt interpretations that are harmonious."); Iowa Code § 4.7 (same).

Similarly in *Streeter*, this Court understood that the quiet-title statute's requirement that any known potential adverse party receive notice did not displace the Iowa Rules of Civil Procedure's pecking order for proper notice. *Streeter*, 2026 WL 1354011, at *2–3. So too here, the expungement action statute does not displace the necessary-party-joinder Rule.

Like *Streeter*, a court's failure to follow a Rule of civil procedure constitutes irregularity under Rule 1.1012.

D. The Commissioner is an indispensable party.

A party is indispensable when "the party's interest is not severable, and the party's absence will prevent the court from rendering any judgment between the parties before it." Iowa R. Civ. P. 1.234. Or "if notwithstanding the party's absence the party's interest would necessarily be inequitably affected by a judgment rendered between those before the court." Iowa R. Civ. P. 1.234. The Commissioner was indispensable in both senses.

Because judgments are binding only on parties to a suit, a court cannot order the Commissioner to expunge information from the Commissioner's records unless the Commissioner is named a party. Thus, the Commissioner is indispensable in all section 502.511 actions because a court cannot grant a petitioner relief without first joining the Commissioner. And even if the Commissioner is not indispensable in all section 502.511 actions, on the facts of this case the Commissioner's interest will be inequitably affected by a judgment rendered in his absence.

The district court correctly found that the Commissioner was an indispensable party and therefore that there was irregularity warranting vacatur of the judgment. D0027 at 8–10; D0027 at 9 ("On this record, the Court finds an irregularity in obtaining the judgment within Rule 1.1012(2)."). Nikulski makes little to no argument as to why the district court got that wrong, focusing his argument instead on why there was no

extrinsic fraud in obtaining the judgment. The Commissioner will address Nikulski's arguments to the extent that they map onto the irregularity analysis.

1. Section 502.511 requires a petitioner to name the Commissioner in any expungement action.

"It is a fundamental principle that a party cannot be . . . affected by judgments in actions and proceedings to which he is not a party, and in which he has not had his day in court." *Matter of Est. of Janssen*, 7 N.W.3d at 525 (quoting *Tod*, 99 N.W. at 690); *see id.* ("When a person has rights to a disputed res, their 'rights cannot be adjudicated unless [they are] made a party to the action' where adjudication of those rights is sought." (quoting *Francksen v. Miller*, 297 N.W.2d 375, 378 (Iowa 1980)). But that is exactly what happened here.

The Commissioner is an indispensable party in section 502.511 expungement actions because the statute requires he be named as a respondent and because his absence deprives the district court of its ability to grant complete relief. Iowa R. Civ. P. 1.234 (a party is indispensable if its absence "will prevent the court from rendering any judgment between the parties before it"). The statute's text is confirmed by this Court's understanding of the effect—or lack thereof—that a judgment can have on nonparties. Indeed, because the records are the Commissioner's own records, any order granting Nikulski expungement

relief as to Nikulski Financial has no effect so long as the Commissioner is not party to the action.

Even though the Commissioner did not present this interpretive theory in the district court, this Court may affirm the judgment on this theory because it offers another argument for the preserved issue that the Commissioner was an indispensable party. And in any event, the issue of an indispensable party can be raised and decided for the first time on appeal. *See Ditch*, 212 N.W.2d at 450; *City of Tiffin*, WL 3860110, at *5–6 & n.12.

1. Section 502.511's text and context show that the ordinary disjunctive meaning of "or" is not how section 502.511(2) should be read. Rather, the Court should apply the distributive-phrasing canon, which shows that section 502.511 actions require that the Commissioner be named, but a petitioner may also name the reporting investment adviser. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 214–216 (2012) (distributive phrasing applies each expression to its appropriate referent).

"Where a sentence contains several antecedents and several consequents," courts should "read them distributively and apply the words to the subjects which, by context, they seem most properly to relate." *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 87 (2018); *see id.* at 87 ("[T]he distributive canon has the most force when the statute allows for one-to-one matching").

Consider section 502.511(2)'s text: "The commissioner of insurance, or the investment adviser that reported the information in the record in the investment adviser registration depository, may be named as a respondent or as respondents." It sets out two antecedents (the commissioner or the reporting adviser) followed by two consequents (may be named as respondent singular or respondents plural). The distributive-phrasing canon applies to that syntactic construction. *See Encino Motorcars*, 584 U.S. at 87 ("[T]he distributive canon has the most force when the statute allows for one-to-one matching"). Like the examples used in *Reading Law*, where a statute that said "(A) men and (B) women are eligible to become members of (Y) fraternities and (Z) sororities," applying the distributive-phrasing canon, "impl[ied] an A–Y correlation and a B–Z correlation," so too does section 502.511.

Chapter 502's context confirms that a disjunctive interpretation would cause an odd result. The Commissioner oversees enforcement of Iowa's securities regulations, and the Legislature gave him the duty to manage and store all securities filings in a public depository, even while allowing him to employ a designee to aid him in that duty. *See* Iowa Code § 502.608(3)(*a*). Records filed under chapter 502—even if filed with FINRA—are the Commissioner's "own records." Iowa Code § 502.607(2)(*f*). FINRA agrees, noting on the Investment Adviser Registration Depository records that the information filed with FINRA to register with a state regulator is the property of that state regulator,

not FINRA. Att. 3 to D0016 at 1. It thus would be odd—and ineffective—to allow a registrant to go behind the Commissioner's back and alter the Commissioner's records without first requiring the Commissioner to be named in the expungement action.

And those records are presumptively public records. *See* Iowa Code § 502.607(1) (codifying presumption that records filed under chapter 502 "including a record contained in or filed with a registration statement, application, notice filing, or report, are public records"). But FINRA is a private entity, so its own records would not be understood to fall within chapter 22's definition of public records unless it maintained records on behalf of and as the designee of the Commissioner. And it does: FINRA acts "on behalf of the state" in accepting securities filings. Iowa Admin. Code r. 191—50.30(2)(*b*), 50.32(4).

Chapter 502's context thus confirms that the ordinary disjunctive meaning of "or" is not how section 502.511(2) should be read. Applying the distributive-phrasing canon, if an expungement petitioner seeks to name only one respondent, it must name the Commissioner. The reporting investment adviser may be named, but only in addition to the Commissioner.

2. Nikulski assumes that section 502.511(2) is read disjunctively, giving an expungement petitioner the option to name either the commissioner, the reporting adviser, or both. Appellant Br. 18–20. That is wrong.

Consider the consequence of Nikulski's interpretation. Iowa Code § 4.6(5) (courts should consider "[t]he consequences of a particular construction"). "Generally, a judgment or decree is binding only upon the parties to the suit." *LULAC*, 20 N.W.3d at 833; *see Hawkeye Life Ins. v. Valley-Des Moines Co.*, 260 N.W. 669, 672 (Iowa 1935) ("It is also settled that in this jurisdiction, as well as all others, the general rule is that where a person is not made a party to an action the decree entered therein is not binding on him."). A judgment has "no legal effect on nonparties to the litigation." *LULAC*, 20 N.W.3d at 834.

Nikulski's consent expungement order thus should have no legal effect on the Commissioner or his designee (FINRA) because they were not parties to that action. If Nikulski wants a court to order the Commissioner to expunge information from the Commissioner's records, then Nikulski needs to get a court order that can bind the Commissioner. That means Nikulski first needs to name the Commissioner as a respondent. Interpreting section 502.511 to allow for meaningless expungement orders would be an absurd result.

In short, a court cannot order a nonparty to do something. The court can order the Commissioner to expunge the five customer-dispute occurrences only if the Commissioner is ordered to do so. The Commissioner's absence here thus "prevent[ed] the court from rendering any judgment between the parties before it." Iowa R. Civ. P. 1.234. Under the expungement statute and Rule 1.234, if the district court wanted to

issue effective relief, then the Commissioner should have been joined as an indispensable party.

2. The Commissioner is an indispensable party under these facts.

When the district court entered the consent judgment, the Commissioner's interest was not represented in the case; indeed, there was a total lack of adverse interest between the only parties in the case. As the district court admitted, its failure to join the Commissioner as an indispensable party "remove[d] from the courtroom the party best positioned to contest expungement and to present the countervailing public-interest perspective." D0027 at 9. This Court should affirm the district court's admission of its own error.

1. Recall that a party is indispensable "if notwithstanding the party's absence the party's interest would necessarily be inequitably affected by a judgment rendered between those before the court." Iowa R. Civ. P. 1.234. That describes this case, because entering judgment in the Commissioner's absence impaired his unrepresented interests.

As is clear by now, the Commissioner's interest here is in maintaining accurate internal and public databases of securities disclosures. If factual customer-dispute disclosures are removed from those databases, the Commissioner's ability to carry out his regulatory duties is impaired.

When a firm and its employee-investment adviser representative have sufficiently distinct interests even if aligned in the desired outcome, the Commissioner's interest might be adequately represented by a firm that actively litigates the expungement action. But when the representative and firm are one and the same, the process falls apart and the absent-party interest is unrepresented. Rule 1.234's joinder requirement is meant to protect against that result.

Before the consent judgment, the only parties in the case were one and the same: Nikulski and what Nikulski refers to as a "nominal party only," D0002 ¶ 5, Nikulski Financial. Nikulski's petition failed to disclose the nature of his relationship with Nikulski Financial. When describing the named parties, Nikulski pleaded only that he was "with Nikulski Financial," which was "the investment adviser that reported the information." D0002 ¶ 4–5. But had the district court inquired into the parties' relationship at all, it would have discovered the true nature: Nikulski sued and sought consent judgment against the firm at which he was owner, president, chief compliance officer, treasurer, secretary, and registered agent.

The district court should have recognized that the Commissioner's interest was not protected in this case given the parties' makeup, thus requiring the Commissioner's joinder. The Commissioner's institutional interest is obvious, and obviously distinct from Nikulski and his own firm: Neither Nikulski nor his firm have a regulatory obligation or vested

interest in maintaining accurate records of formal complaints made against Nikulski, the firm's owner, president, chief compliance officer, treasurer, secretary, and registered agent. Their interest is only in clearing those complaints off the record.

Proceeding to judgment without adequate representation of the Commissioner's interest meant his "interest would necessarily be inequitably affected" yet unrepresented. Iowa R. Civ. P. 1.234.

2. The district court ultimately, and correctly, recognized the irregularity present in the consent judgment and understood that the "irregularity is compounded by the case's posture." D0027 at 9. That is correct.

Before a court can enter judgment, there must be "a substantial controversy between parties having adverse legal interests." *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 474 (Iowa 2004) (quoting *Katz Inv. Co. v. Lynch*, 47 N.W.2d 800, 805 (Iowa 1951)); *cf. Farm & City Ins. Co. v. Coover*, 225 N.W.2d 335, 336 (Iowa 1975) ("A declaratory judgment may not be sought against a party who does not hold a concrete adverse legal interest.").

The lack of adverse interests between the parties—and thus the lack of a justiciable case or controversy—rendered any decision in the case advisory. Had the Commissioner's interest been represented in the case, that result might not follow.

But because neither Nikulski nor his firm adequately represented the Commissioner's institutional interest in maintaining the integrity of the Commissioner's own records, the Commissioner was an indispensable party to the expungement action. The district court was right to admit its error and vacate the consent judgment.

CONCLUSION

For these reasons, this Court should affirm the district court's order vacating the consent judgment.

REQUEST FOR ORAL SUBMISSION

Because oral argument would likely be of assistance to the Court's disposition of this appeal, the Commissioner requests oral submission.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*e*), 6.903(1)(*g*)(1), 6.903(1)(*h*), and 6.903(1)(*i*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 11,627 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

/s/ Patrick C. Valencia
PATRICK C. VALENCIA

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 5th day of June, 2026, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/ Patrick C. Valencia
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