

APPELLATE PROCEDURE

An appeal is the transfer of a case from a lower court to a higher court, an appellate court, for a review of the lower court decision.

An appellate court does not preside over trials. Appellate court hearings do not involve witnesses, juries, new evidence, or court reporters. Instead, an appellate court reviews the written record of the trial court to determine whether any significant legal errors occurred.

Appellate procedure requires that parties provide the court with written arguments called *briefs*. Briefs describe the facts of the case and lay out the party's legal arguments. The appellate court studies the briefs, examines the lower court record, and researches relevant law. Sometimes, as part of its review, the appellate court will hear *oral argument*.

ORAL ARGUMENT

Oral argument is an oral presentation by lawyers to the court. Oral argument is not an opportunity to raise new facts or new legal arguments. Lawyers must limit their presentation to information in the trial court record and to the legal issues raised on appeal.

- The appellant (party who filed the appeal) speaks first.
- The appellee (opposing party) speaks after the appellant.
- The appellant follows with a brief rebuttal or reply argument.
- During oral argument, the appellate court justices may ask the lawyers questions.

Oral argument is an opportunity for the lawyers to emphasize certain legal points and for the appellate court to ask questions about the case to help clarify the party's arguments. The Iowa Supreme Court holds its regular sessions in Des Moines.

Oral arguments are always open to the public. Schedules are posted on the website at http://www.iowacourts.gov/Supreme_Court/Oral_Argument_Schedule/

WHEN DOES THE COURT MAKE ITS DECISION?

Following oral arguments, the court will discuss in private the legal questions raised in the case. Later, one justice, who has the task of writing the collective decision of the court, will begin researching and writing the court's opinion. At the same time, the other members of the court are also writing opinions for other cases. Opinion drafts circulate among the members of the court. During this time, the justices comment on the circulating opinion drafts and debate legal points with each other. This process continues until a majority of justices agree on a final version of an opinion. A justice who disagrees with the majority opinion may write a *dissent* that explains why the justice disagrees.

For more information, visit the official website of the Iowa Judicial Branch at:

<http://www.iowacourts.gov>

IOWA SUPREME COURT ORAL ARGUMENTS

CONCERT HALL AT COLLEGE COMMUNITY SCHOOL DISTRICT



May 19, 2011

Prairie High School
401 76th Ave. SW
Cedar Rapids, IA
7:00 p.m.

Introduction

Stephanie Hinz, Cedar Rapids
President, Linn County Bar Association

Suzanne Summerwill, Iowa City
President, Johnson County Bar Association

Oral Arguments

In re Marshall

Representing the Appellant State of Iowa:
Assist. Attorney General Sharon Hall,
Des Moines
Representing the Appellee Marshall: Rachel
C.B. Antonuccio, Iowa City

In re Estate of Vajgrt

Representing the Appellant Ernst: Theodore R.
Hoglan, Marshalltown
Representing the Appellee Estate of Vajgrt:
Barry S. Kaplan, Marshalltown

Court Bailiff
Attorney Maria Brownell, Law Clerk for Chief
Justice Cady

Public Reception

The Court invites everyone to a public reception in the concert hall lobby immediately following the oral argument session. This reception is sponsored by the Linn County Bar Association and the Johnson County Bar Association.

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The Court is grateful to the College Community School District for allowing the court to hold this event in the district's beautiful concert hall; to Prairie High School Principal Mark Grone-meyer, Steve Doser, Director of Community Relations, and the Prairie High School staff for their assistance; and the Linn County Sheriff's Office for providing security.

In re Marshall

Does Iowa law allow the State to detain a witness to a felony—in this case an alleged murder—until the time of trial?

In October 2009, Iowa City police found a gunshot victim dead from a wound to the head. In November, the State applied for an arrest warrant of Justin Marshall on the grounds that he was a material witness to the murder and was likely to flee Iowa. Marshall says he was cooperating with the investigation and had no reason to flee.

On November 18, 2009, Marshall was arrested on the material witness warrant and held in jail on a \$100,000 cash only bond, pursuant to Iowa Code Section 804.11. This statute provides that "When a law enforcement officer has probable cause to believe that a person is a necessary and material witness to a felony and that such person might be unavailable for service of a subpoena, the officer may arrest such person as a material witness"

On February 8, 2010, Marshall filed a motion to dismiss the material witness complaint. On April 28, 2010, the trial court ordered Marshall's release, finding that because a trial date for the murder trial had been set for September 10, 2010, and because Marshall was available for service of a subpoena, Iowa Code Section 804.11 did not authorize detention for longer than necessary to serve a subpoena.

The State argues that the district court's interpretation of section 804.11 is contrary to the Iowa Supreme Court's interpretation in *State v. Hernandez-Lopez*, a case decided in 2002. The State contends that the reasoning in *Hernandez-Lopez* would have permitted detention of Marshall until he testified at the murder trial because the State had sufficiently shown that Marshall was a risk to flee before the trial date.

In re Estate of Vajgrt

Can a person injured by another who has since passed away recover punitive damages from the deceased person's estate? Punitive damages may be awarded in addition to compensatory damages to punish a person if that person's conduct constituted a willful and wanton disregard for the rights of another.

Bill Ernst and Johnny Vajgrt were neighbors. Both men owned land along Burnett Creek in Marshall County. In the fall of 2005, while Ernst was elk hunting in Colorado, Vajgrt, using heavy equipment, uprooted and burned approximately 40 trees from the Ernst property without permission. The following spring it became clear that removal of the trees worsened flooding on the Ernst property, rendering approximately eight acres of land virtually useless.

In November 2008, Vajgrt passed away. Later, Ernst filed a claim against the Vajgrt estate seeking both compensatory and punitive damages for lost value of his property, lost value of trees, and for expenses related to restoration of the land. The trial court ruled the Vajgrt estate was liable for \$57.50 per tree for a total of \$2,300 in compensatory damages. The trial court further ruled, however, that the Vajgrt estate could not be held liable for punitive damages for Vajgrt's removal of the trees without permission. The trial court relied upon an 1884 Iowa Supreme Court decision, *Sheik v. Hobson*, providing that punitive damages are not appropriate when a wrongdoer is deceased because the purpose of punitive damages is to punish the wrongdoer.

Ernst argues that the principle adopted in the *Sheik* case is outdated and should be changed to allow punitive damages against the Vajgrt estate as a matter of deterrence to others.

IOWA SUPREME COURT



Seated from left to right: Justice David Wiggins, Chief Justice Mark Cady, Justice Daryl Hecht. Standing from left to right: Justice Edward Mansfield, Justice Brent Appel, Justice Thomas Waterman, Justice Bruce Zager.

As the head of the Iowa Judicial Branch, the Iowa Supreme Court has many important functions.

- It is the highest court in the state court system. Its decisions are binding legal precedent that lower courts must follow.
- It regulates the practice of law in Iowa. It decides who can practice law, prescribes ethical rules for attorneys, and disciplines attorneys who violate ethical rules.
- It approves rules of procedure and practice used throughout the state courts.
- It is the administrative head of the Iowa court system. Among other things, the Court sets the operating budget of the state court system from funds appropriated by the legislature.