

**IN THE SUPREME COURT OF IOWA**

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**No. 18-0047**

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**ISAAC ORTIZ,**  
**Petitioner-Appellant,**

**vs.**

**LOYD ROLING CONSTRUCTION, and**  
**GRINNELL MUTUAL REINSURANCE,**

**Respondents-Appellees.**

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**APPEAL FROM THE IOWA DISTRICT COURT**  
**FOR POLK COUNTY**  
**HONORABLE JEANIE VAUDT JUDGE**  
**Polk County No. CVCV054944**

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**PETITIONER-APPELLANT'S**  
**FINAL BRIEF AND**  
**REQUEST FOR ORAL ARGUMENTS**

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**PROOF OF SERVICE AND CERTIFICATE OF FILING**

The undersigned certifies that this Appellant's Final Brief was served and filed on the 4th day of June 2018, upon the following persons and upon the Clerk of the Supreme Court by electronic filing and electronic delivery to the parties via the EDMS system, pursuant to Iowa R. App. P. 6.902(2) and Iowa Ct. R. 16.1221(2) to the following:

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

### **I. Whether Claimant substantially complied with the Statute by timely serving Defendants' Attorney of Record through EDMS.**

#### **IOWA APPELLATE CASES:**

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## **ROUTING STATEMENT**

Claimant-Appellant submits that the Iowa Supreme Court should retain this case because this case presents a substantial issue of first impression. Iowa R. App. P. 6.1101(2)(c). This case involves modern forms of service that parties of all different types of cases routinely use and would impact how district courts view service through email and the Electronic Document Management System (“EDMS”). While the Iowa Supreme Court has previously discussed what constitutes substantial compliance of the Administrative Procedure Act, the Iowa Supreme Court has not specifically addressed whether EDMS or email could constitute substantial compliance with the reasonable objectives of the Administrative Procedure Act.

Second, Claimant submits that the Iowa Supreme Court should retain this case as there appears to be a conflict between the district court’s order and this Court’s holding in *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193 (Iowa 1988). The Supreme Court in *Brown* clearly instructed district courts to use a standard of substantial compliance that “depends upon the facts of each case.” 423 N.W.2d at 194. Here, the district court created a bright line rule that allegedly sweeps across this Court’s precedent of: *Brown*; *Buchholtz v. Iowa Dep’t of Pub. Instruction*, 315 N.W.2d 789 (Iowa 1982); *Colwell v. All-American, Inc.*, 308 N.W.2d 92 (Iowa 1981); *Green v. Iowa Dep’t of Job Serv.*, 299 N.W.2d 651 (Iowa

1980). Claimant submits that this newly created rule is tantamount to a shift from a standard of substantial compliance to the standard of literal compliance.

## **STATEMENT OF THE CASE**

### **I. Nature of the Case**

This case is a review of the district court's decision to dismiss an application for judicial review. The Claimant-Appellant, Isaac Ortiz ("Claimant" or "Ortiz"), filed an Application for Judicial Review after an adverse decision by the Iowa Workers' Compensation Commissioner. Claimant's attorney of record timely served the Application for Judicial Review to Defendants' attorney of record by email and by EDMS. In addition, Defendants' attorney also received a copy by regular mail after ten days from the filing of the Application for Judicial Review. The District Court ruled that the Claimant had not substantially complied with the Administrative Procedure Act and dismissed Claimant's Application for Judicial Review.

### **II. Disposition of the Case in District Court**

On September 19, 2017, Claimant filed a Petition for Judicial Review utilizing EDMS. Claimant timely served Defendants by EDMS and email.

On September 20, 2017, Claimant's attorney emailed Defendants' attorney of record a file-stamped copy of the Petition.

On or about October 3, 2017, Defendants received another copy of the Petition by regular mail.

On October 9, 2017, Defendants filed their Motion to Dismiss through EDMS. Defendants served their Motion through EDMS.

On October 18, 2017, Claimant filed his Resistance to Defendants' Motion to Dismiss.

On October 23, 2017, Defendants filed their Reply to Claimant's Resistance. Defendants served their Reply through EDMS.

Claimant believes it is worth pointing out that Defendants utilized EDMS to serve all of their pleadings before the District Court.

On October 27, 2017, Claimant filed his Supplemental Memorandum of Law and Authorities in Support of Resistance to Motion to Dismiss.

On October 31, 2017, the District Court of Polk County heard oral arguments on Defendants' Motion to Dismiss and Claimant's Resistance.

On December 30, 2017, the District Court filed its Order Granting Respondent's Motion to Dismiss Judicial Review. The District Court held that the Claimant did not substantially comply with the service requirements of Iowa Code section 17A.19(2) even though Claimant timely served Defendants a file-stamped copy of the Petition for Judicial Review and Defendants were not prejudiced by receiving another copy by regular mail on or about October 3, 2017.

Claimant now appeals the District Court's Order to dismiss the Petition for Judicial Review.



## **STATEMENT OF THE FACTS**

On September 19, 2017, Claimant filed a Petition for Judicial Review utilizing EDMS. Claimant was seeking review of an appeal decision of the Iowa Workers' Compensation Commissioner. (App. 26). Claimant's attorney, Attorney Andrew Bribriesco, for the Petition for Judicial Review was also the attorney that had represented Claimant in front of the Iowa Workers' Compensation Commissioner. App. 18.

Claimant's attorney added Attorney Stephen W. Spencer, a registered user of EDMS, to be served with the Petition for Judicial Review. App. 14. Attorney Stephen Spencer had represented Defendants in front of the Iowa Workers' Compensation Commissioner. App. 18. During litigation in front of the Commissioner, Claimant's attorney served documents on Attorney Stephen Spencer by email and he never objected to receiving electronic service by email. App. 14.

Claimant's attorney also served Attorney Stephen Spencer by emailing him a copy of the Petition for Judicial Review on September 19, 2017. App. 14.

Then, Claimant's attorney emailed Attorney Stephen Spencer a filed-stamped copy of the Petition one day later on September 20, 2017. App. 14.

On September 28, 2017 (nine days after the filing of the Petition), Attorney Christopher Spencer sent an email to Claimant's attorney. App. 18. Attorney

Christopher Spencer never was an attorney of record for Defendants during litigation in front of the Iowa Workers' Compensation Commissioner. App. 19.

Contrary to the District Court's assertion, Attorney Christopher Spencer never raised any issue with the method of service utilized by Claimant in this communication. App. 18. Rather, Attorney Christopher Spencer wrote the following in an email:

I have been given documents that were recently filed with the Polk County District Court on Isaac Millanes Ortiz. I was wondering if you were going to be sending the Petition to us via regular mail? Please let me know as soon as you can.

App. 16. In this email, Attorney Christopher Spencer never indicated that Defendants would raise subject matter jurisdiction if a copy was not mailed out within ten (10) days of September 19, 2017. App. 19.

On September 29, 2017, Claimant's attorney instructed his paralegal to send a copy of the Petition for Judicial Review by regular mail. App. 16.

On October 3, 2017, a copy of the Petition for Judicial Review was placed in the mail. App. 21; App. 23. After receiving a copy by regular mail, Defendants decided to litigate whether Claimant substantially complied with the Administrative Procedure Act. App. 27. Defendants decided to file a motion to dismiss even though Defendants have not been prejudiced. App. 27.

## ARGUMENT

The Iowa Supreme Court has instructed district courts that they should *not* literally interpret Iowa Code Section 17A.19(2). *Cowell v. All-American, Inc.*, 308 N.W.2d 92, 93 (Iowa 1981). Iowa Code Section 17A.19(2) states in relevant part:

Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. A mailing shall be addressed to the parties or their attorney of record at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.

Clearly, there is more than one service provision contained in Iowa Code Section 17A.19(2). Claimant will refer to the different service provisions in Iowa Code Section 17A.19(2) as “the Service Provisions.”

District courts have never been instructed to apply a “literal compliance” standard to any particular Service Provision. *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193 (Iowa 1988). Rather, district courts should use a “substantial compliance” standard. *Id.*

In other words, the *Brown* Court did not create any bright line rules as to what Service Provision must be literally complied with versus what Service Provision the district courts can be more lenient with; rather, the *Brown* Court held that whether a party substantially complied with the Service Provisions must be determined upon the particular circumstances of the case while keeping the purposes of the Administrative Procedure Act in mind. *See Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988) (“What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case[.]”).

Here, the District Court erred in dismissing the Petition for Judicial Review because the facts of this particular case constitute substantial compliance with the Service Provisions when the purposes of the Act are kept in mind.

**I. The District Court erred in dismissing the Petition for Judicial Review because Claimant substantially complied with Iowa Code § 17A.19(2) when Defendants timely received a file-stamped copy of the Petition for Judicial Review and Defendants were not prejudiced.**

Claimant’s Attorney substantially complied with the Service Provisions when he timely served Defendants’ Attorney of Record through EDMS. The Iowa Supreme Court has instructed courts to use a “substantial compliance” standard to determine if a party has complied with Iowa Code Section 17A.19(2). *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193 (Iowa 1988).

In *Brown*, the petitioner mailed a copy of the petition for judicial review to the respondent's attorney of record on a Saturday. *Id.* at 193. The petition, however, was not actually filed with the court until two days later on a Monday. *Id.* The respondent moved to dismiss the petition because the mailing did not occur *within* 10 days *after* the petition was filed; rather, the mailing had occurred two *before* the petition was filed.<sup>1</sup> *Id.* The district court agreed with respondent and dismissed the petitioner's petition because petitioner had not literally complied with the language of Iowa Code Section 17A.19(2). *Id.*

The Iowa Supreme Court overturned the district court by ruling that the Court has "consistently held that substantial – not literal – compliance with section 17A.19(2) is all that is necessary to invoke the jurisdiction of the district court." *Brown*, 423 N.W.2d at 194.

The Court went on to define "substantial compliance" as:

'substantial compliance' with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case.

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<sup>1</sup> "Within ten days after the filing of a petition for judicial review the petitioner shall serve..." Iowa Code § 17A.19(2).

*Id.* at 194 (citations omitted); *see also Superior/Ideal, Inc. v. Board of Review*, 419 N.W.2d 405, 407 (Iowa 1988) (adopting the definition of substantial compliance as stated above).

The *Brown* Court ultimately held that the petitioner had substantially complied with the statute. 423 N.W.2d at 194. In reaching this conclusion, the Court found that it must construe the Administrative Procedure Act broadly to effectuate its purpose, which is “to simplify the process of judicial review of agency action as well as increase its ease and availability...” *Id.* at 194-95 (citing to *Frost v. S.S. Kresge Co.*, 299 N.W.2d 646 (Iowa 1980); Iowa Code § 17A.19(2); Arthur Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 758-59 (1975)).

The *Brown* Court also found that there was a difference between an original action and judicial review of an administrative decision, as the parties involved in a judicial review action “have already been engaged in adversary proceedings within the agency and know what the case is all about.” *Id.* at 195.

Lastly, the *Brown* Court found that respondent was not prejudiced by the actions of the petitioner. *Id.* “In summary, we hold that in the absence of any showing of prejudice, a two-day premature mailing of the petition substantially complies with the service requirements of section 17A.19(2).” *Id.* at 196.

This leads us to the issue before us: in the absence of any prejudice, does a petitioner substantially comply with Iowa Code Section 17A.19(2) when the respondent's attorney of record has been timely served a file-stamped copy of the petition for judicial review by EDMS and email, but did not receive a copy by mail within ten days?

Here, the district court ruled "no" because it reasoned that Plaintiff did not attempt to comply with the Service Provisions of section 17A.19(2) within the ten-day period. (*See App. 9-10*). First, this is factually incorrect. Second, the District Court created a new bright line rule in its ruling that is in conflict with the holding of *Brown*.

First, Claimant's attorney attempted to comply with the service requirements and was successful in the sense that Defendants received actual notice of the Petition for Judicial Review and Defendants were not prejudiced in any way by the manner of service. Further, Claimant's attorney instructed his paralegal to send a copy of the Petition for Judicial Review by regular mail within the ten day period. App. 18; App. 16. Clearly, Claimant's attorney made an attempt to comply with the Service Provisions.

Second, the District Court created a new rule of law that a party must attempt to mail out the Petition of Judicial Review within ten days. The District Court's ruling elevates one of the Service Requirements to an absolute, bright-line

rule. The District Court can only reach this conclusion by literally interpreting one of the Service Requirements at the expense of this Court's precedent. *See Brown*, 423 N.W.2d. at 194 with the following quote:

*See, e.g., Richards v. Iowa Dep't of Revenue*, 362 N.W.2d 486, 488-89 (Iowa 1985) (service by party, notwithstanding prohibition of such service by Iowa Rule of Civil Procedure 52, is not a jurisdictional defect under the statute); *Buchholtz v. Iowa Dep't of Pub. Instruction*, 315 N.W.2d 789, 792-93 (Iowa 1982) (service on only one of three closely related agencies substantially complied with section 17A.19(4) requirement to name as a respondent the agency whose action is challenged, even though agency served did not render decision); *Cowell v. All-American, Inc.*, 308 N.W.2d 92, 94-95 (Iowa 1981) (mailing notice to address of party's attorney substantially complied with section 17A.19(2) requirement that mailing "be addressed to the parties at their last known mailing address"); *Green v. Iowa Dep't of Job Serv.*, 299 N.W.2d 651, 654 (Iowa 1980) (petition naming employer in exhibits attached to petition rather than in caption substantially complied with Iowa Code section 96.6(8) requirement that "party to the proceeding before the appeal board shall be named in the petition"); *Frost v. S.S. Kresge Co.*, 299 N.W.2d 646, 647-48 (Iowa 1980) (petition misnaming "Industrial Commissioner" as "Industrial Commission" substantially complied with section 17A.19(4) requirement to name as a respondent the agency whose action is challenged).

It is undisputed that Claimant's attorney sent a file-stamped copy of the Petition for Judicial Review by regular mail. It is important to note that Defendants' Attorney received this file-stamped copy by regular mail before Defendants filed their Motion to Dismiss. Consequently, the facts of this case are such that Defendants received a file-stamped copy of the Petition for Judicial Review and there was no prejudice.



Thus, the question is whether given the facts of this case: did Claimant substantially comply with the Service Provisions? Claimant submits that the answer is “yes.”

**A. Error Preservation**

Claimant preserved error when he alerted the District Court regarding this issue with his: Resistance to Defendants’ Motion to Dismiss; Supplemental Memorandum of Law and Authorities in Support of Resistance to Motion to Dismiss; and during oral arguments. Moreover, the District Court decided this issue in its Order Granting Respondent’s Motion to Dismiss Judicial Review.

**B. Standard of Review**

Claimant submits that the standard of review is for errors of law because this issue involves the District Court’s construction of a statute. *See Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193 (Iowa 1988) (Iowa Supreme Court wrote “for several reasons we disagree with the district court’s construction of the statute.”).

**C. Claimant substantially complied with Iowa Code § 17A.19(2) when Claimant’s attorney timely served Defendants’ Attorney of Record through EDMS.**

Claimant substantially complied with Iowa Code Section 17A.19(2) because Claimant timely (*i.e.*, within 10 days) served a copy of the file-stamped Petition by

EDMS and by email to Defendant's Attorney of Record and Defendants were not prejudiced by receiving an additional copy by regular mail after the ten-day period.

Claimant filed a Petition for Judicial Review on September 19, 2017 using EDMS, which is required as the Iowa district courts have moved to electronic filing. Claimant added Defendants' Attorney of Record, who was a registered user of EDMS. Defendants' Attorney of Record, Attorney Stephen W. Spencer, received a copy of the Petition for Judicial Review by EDMS on or about September 19, 2017. There is no dispute that Attorney Stephen W. Spencer received the Petition by EDMS within the ten (10) day time frame.

In the absence of prejudice, Petitioner carried out the intent of Iowa Code Section 17A.19(2) by serving a copy of the Petition within ten days by a legally recognized means of service. Utilizing EMDS certainly simplified "the process of judicial review of agency action as well as increase its ease and availability..." *See Brown*, at 194-95.

The Rules of Civil Procedure state that: "Completing the registration process, *see* Iowa R. Civ. Elec. P. 16.304(1), constitutes a request for, and consent to, electronic service of court-generated documents and documents other parties file electronically." Iowa R. Civ. Elec. P. 16.315(1)(a). Thus, Attorney Stephen W. Spencer consented to receiving electronic service of the Petition for Judicial Review and received service through EDMS within ten (10) days of filing.

The Court should not find that EDMS is an “inadequate” or “unreasonable” means of service for a registered EDMS user – especially one who is an attorney and officer of the court – when EDMS is the very method in which the Courts utilize for serving notices, orders, and other rulings.

In addition, other jurisdictions have recognized electronic filing and the concomitant service via electronic service to be sufficient. *See Rohrer v. County of Adams*, No. 10-cv-01453, 2011 WL 805770 (D. Colo. Mar. 1, 2011) (finding substantial compliance with statutory notice requirements of Colorado Governmental Immunity Act where plaintiff provided electronic service via the County website).

Despite actually receiving a copy of the file-stamped Petition within then days, Respondents in this Case argue that the Petition must be dismissed because it was not served by regular mail to Respondent’s Attorney of Record within ten days. Essentially, Defendants are requesting this Court to take a literal interpretation of Iowa Code Section 17A.19(2) with regard to the manner in which a petition for judicial review is served upon an attorney.

The *Brown* Court did not create any bright line rules as to what part(s) of Iowa Code Section 17A.19(2) must be literally complied with versus what part(s) of the statute can have leniency; rather, the *Brown* Court held that each case must be determined upon the particular circumstances of the case while keeping with the

purposes of the Act in mind. *Brown*, at 194-95. The Court has found substantial compliance, rather than literal compliance, in numerous situations that invoke various parts of Iowa Code Section 17A.19(2).<sup>2</sup> Thus, the Court should find that Claimant substantially complied with the Administrative Procedure Act.

**D. Claimant substantially complied with Iowa Code § 17A.19(2) when Claimant's attorney timely served Defendants' Attorney of Record by email.**

The Court should also find that Claimant substantially complied with the Administrative Procedure Act by serving the Petition for Judicial Review by email within the ten day period.

It is important to note that the Iowa Workers' Compensation Agency serves orders, rulings, and decisions by email and the parties accept notice of those orders, rulings, and decisions by email *only*. In this Case, for example, the final agency action was emailed to both Petitioner's Counsel and Respondents' Counsel. It is undisputed that Respondent's Attorney of Record received a file-stamped petition by email and Respondents experienced no prejudice from same. Thus, the Court should find that Claimant substantially complied with the Administrative Procedure Act.

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<sup>2</sup> See page 12 of this Brief for string cite.

## **CONCLUSION**

For the reasons stated above, the Court should reverse the District Court's ruling because Claimant substantially complied with the Administrative Procedure Act, Iowa Code Section 17A.19(2), and then, remand the case back to the District Court so the Petition for Judicial Review may be heard on the merits.

## **REQUEST FOR ORAL ARGUMENTS**

Claimant requests that the case be submitted with oral arguments.

Respectfully submitted,

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**ATTORNEY'S COST CERTIFICATE**

We hereby certify that the costs paid for printing Claimant-Appellant's Brief  
was the sum of \$\_\_\_\_\_.

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## **CERTIFICATE OF COMPLIANCE**

### **Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

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Date