

IAJ Seminar Outline: Civil Litigation and Criminal Charges

O.J., and Baldi, and Carter, Oh My: Litigating Crimes in Civil Court

I. Introduction

a. The Parade of Horribles

i. What Happens When a Criminal Case is Brought Before a Civil Damages Suit

O.J. Simpson and Dr. Baldi cases

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b. Regardless of the order, when your client faces both civil and criminal liability, unique challenges arise

II. Civil Criminal Distinction

a. Most crimes have a civil corollary that allows for an award of tort damages

Iowa Code section 611.21 provides: “The right of civil remedy is not merged in a public offense and is not restricted for other violation of law, but may in all cases be enforced independently of and in addition to the punishment of the former.”

Iowa courts interpret section 611.21 to mean that a “violation of a criminal statute gives rise to a civil cause of action only if such an action appears, by express terms or clear implication, to have been intended by the legislature.” *Davenport v. City of Corning*, 742 N.W.2d 605, 2007 WL 3085797, at *7 (Iowa Ct. App. 2007) (citing *Hall v. Montgomery Ward & Co.*, 252 N.W.2d 421, 423 (Iowa 1977)).

b. Civil tort cases seek monetary damages for acts that also qualify as crimes, which may or may not follow a criminal case

i. Criminal Restitution

Our legislature has enacted a comprehensive scheme for restitution in all criminal cases which result in a judgment of conviction, except simple misdemeanor traffic convictions. See *generally* Iowa Code ch. 910. This chapter requires the sentencing court to order offenders to make restitution for their criminal activities to the victims of the crime, and to the clerk of court. See Iowa Code § 910.2.

Restitution for criminal activities, therefore, is broadly defined by statute to not only mean “payment of pecuniary damages to a victim” but also

finer, penalties, and surcharges, the contribution of funds to a local anticrime organization which provided assistance to law enforcement in an offender's case, the payment of crime victim compensation program reimbursements, ... court costs including ... court-appointed attorney's fees, or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs including ... court-appointed attorney's fees, or the expense of a public defender.

Id. § 910.1(4).

“Pecuniary damages” is defined by our legislature to mean

all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium.

Id. § 910.1(3). Pecuniary damages also include “damages for wrongful death and expenses incurred for psychiatric or psychological services or counseling or other counseling for the victim which became necessary as a direct result of the criminal activity.” *Id.* A victim is defined by statute to mean “a person who has suffered pecuniary damages as a result of the offender's activities.” *Id.* § 910.1(5).

Our legislature recently expanded the scope of restitution to require an offender convicted of a felony resulting in death to pay at least \$150,000 in restitution to the victim's estate. *Id.* § 910.3B(1). This award is in addition to victim restitution for pecuniary damage under section 910.1(4). The statute provides:

In all criminal cases in which the offender is convicted of a felony in which the act or acts committed by the offender caused the death of another person, in addition to the amount determined to be payable and ordered to be paid to a victim for pecuniary damages, as defined under section 910.1, and determined under section 910.3, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate. The obligation to pay the additional amount shall not be dischargeable in any proceeding under the federal Bankruptcy Act. Payment of the additional amount shall have the same priority as payment of a victim's pecuniary damages under section 910.2, in the offender's plan for restitution.

Id.

The restitution award under section 910.3B does not impede or supersede the right to pursue additional damages in a civil action arising from the same facts. *Id.* § 910.3B(2). Evidence of the entry of a restitution award and the amount of the award is inadmissible in any subsequent civil action arising from the same set of facts. *Id.* On the other hand, an offender ordered to pay restitution under section 910.3B is precluded from denying the elements of the offense which resulted in the award in any subsequent civil action arising from the same facts or event. *Id.* § 910.3B(3). A restitution award under chapter 910 is also offset against any judgment in favor of a victim in any subsequent civil action arising from the same facts. *Id.* § 910.8 (1997).

State v. Izzolena, 609 N.W.2d 541, 545–46 (Iowa 2000).

Statutory Mandatory minimum restitution amounts, including those for murder, do not violate constitutional rights under the excess fines provision of the Iowa Constitution, article I, section 17 of the Iowa Constitution, even for juvenile defendants. *State v. Richardson*, 890 N.W.2d 609, 610–11 (Iowa 2017).

ii. *Punitive damages are available in civil damages case either way, and are not limited by constitutional provisions*

First, the Excessive Fines Clause does not apply to punitive damages in cases between private parties. Instead, the clause was intended to limit the steps a government may take against an individual in imposing excessive monetary sanctions. Second, the clause is implicated when government has exercised its power to extract payments as punishment for an offense, whether the underlying proceeding is civil or criminal. Thus, the term “fine” not only embraces those monetary sanctions traditionally imposed in a criminal case, but other sanctions which constitute punishment for an offense.

State v. Izzolena, 609 N.W.2d 541, 547 (Iowa 2000) (internal citations omitted).

iii. *Civil Damages Cases*

1. *If civil damages case follows a criminal conviction, a civil plaintiff has simpler case, as facts in the criminal case are established beyond a reasonable doubt and are binding on subsequent civil matter*

[The Iowa Supreme Court has] said that the amount of restitution ordered in a criminal prosecution is not limited by the parameters of the offense for

which the defendant enters a guilty plea. Additionally, [the Court] ha[s] held that a validly entered and accepted guilty plea precludes a criminal defendant from relitigating essential *elements of the criminal offense* in a later civil case. [The Court] did not say in *Winker*, however, that the criminal restitution order precludes a *victim* from relitigating, in a later civil case, the *amount of damages* sustained by the victim as a result of the defendant's criminal conduct. Therefore, it was proper for Teggatz to offer into evidence in the civil case, Ringleb's criminal case file for purposes of establishing the elements of his civil action against Ringleb for money damages, but doing so did not preclude Teggatz from relitigating the issue of damages in the civil case.

Through enactment of Iowa Code section 910.8, the legislature has stated therein that an order requiring payment of restitution by a criminal defendant does “*not limit or impair the rights of victims to sue and recover damages from the offender in a civil action.*” (Emphasis added.) Iowa Code section 910.8 further states:

The institution of a restitution plan shall toll the applicable statute of limitations for a civil action arising out of the same facts or event for the period of time that the restitution plan is effective. However, *any restitution payment by the offender to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event.*

Teggatz v. Ringleb, 610 N.W.2d 527, 529–30 (Iowa 2000) (internal citations omitted).

The rule is well established in Iowa that a validly entered and accepted guilty plea precludes a criminal defendant from relitigating essential elements of the criminal offense in a later civil case arising out of the same transaction or incident. We have allowed third parties to use a defendant's guilty plea against him in a civil action.

In *Ideal Mutual*, this court overturned precedent that held criminal guilty pleas lacked preclusive effect in subsequent civil litigation. We thoroughly analyzed the American Law Institute's Restatement (Second) of Judgments, the writings by Professor Allan Vestal, and developing caselaw in other jurisdictions. We concluded substantial support exists for the proposition that a guilty plea should be given preclusive effect against the accused. We held the executor of the deceased's estate could use the defendant's second-degree murder plea to establish tort liability in a subsequent civil action for wrongful death.

Employers Mut. Cas. Co. v. Van Haaften, 815 N.W.2d 17, 23 (Iowa 2012) (internal citations, quotations, and brackets omitted).

This preclusive rule further applies in a number of different civil matters following criminal matters.

In its complaint, the Board invoked issue preclusion pursuant to Iowa Court Rule 35.7(3). When invoked by a party, the rule bars relitigating of an issue if:

- a. The issue has been resolved in a civil proceeding that resulted in a final judgment, or in a criminal proceeding that resulted in a finding of guilt, even if the Iowa Supreme Court Attorney Disciplinary Board was not a party to the prior proceeding.
- b. The burden of proof in the prior proceeding was greater than a mere preponderance of the evidence.
- c. The party seeking preclusive effect has given written notice to the opposing party, not less than ten days prior to the hearing, of the party's intention to invoke issue preclusion.

Iowa Ct. R. 35.7(3). Wheeler pled guilty to knowingly making a false statement to a financial institution on a mortgage application, a class "B" felony. See 18 U.S.C. §§ 1014, 3559 (2006). Further, the Board gave written notice to Wheeler in its complaint that it would invoke issue preclusion under rule 35.7(3). Rule 35.7(3) prohibits Wheeler from relitigating the issue of his criminal conduct. Iowa Ct. R. 35.7(3). Accordingly, [the Iowa Supreme Court] f[ound] Wheeler knowingly misrepresented his financial status to the bank. Although Wheeler claims not to have read the mortgage applications, this claim is contrary to his guilty plea wherein he admits that he "knowingly" made a false statement or report. See 18 U.S.C. § 1014.

Iowa Supreme Court Attorney Disciplinary Bd. v. Wheeler, 824 N.W.2d 505, 510 (Iowa 2012).

2. If a civil damages case follows a criminal acquittal or dismissal, the plaintiff's case is more complex, as there is no preclusive findings taken from the criminal case (O.J. and Baldi)

"However, the acquittal does not establish [a fact at issue in the criminal trial]. Because of the different standards of proof in criminal and civil proceedings, the acquittal has no preclusive effect in the present case." *Debower v. Cty. of Bremer*, 788 N.W.2d 397, 2010 WL 2757112, at *10 n.7 (Iowa Ct. App. 2010).

Even pre-trial determinations in criminal cases are not preclusive on later civil cases when the criminal case ends in an acquittal or dismissal.

The first issue we must resolve is whether the district court's denial of Pardee's motion to suppress in the criminal case has preclusive effect in this case. We agree with the court of appeals' comprehensive discussion of

this issue, which concludes there is no preclusive effect. For present purposes we need to focus on issue preclusion—not claim preclusion. Whether evidence should be admitted or not is an *issue*, not a claim.

Issue preclusion does not apply here because Pardee was *acquitted* in the criminal case. Hence, the trial court's determination of the motion to suppress against Pardee was not necessary to the final judgment. See *George v. D.W. Zinser Co.*, 762 N.W.2d 865, 868 (Iowa 2009) (stating for issue preclusion to apply, “the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment”); Restatement (Second) of Judgments § 27 cmt. *h*, at 258 (Am. Law. Inst. 1982) (requiring that the prior determination be “essential to” the final judgment and noting that where the judgment is “not dependent” upon the determination, the determination does not have issue preclusive effect); cf. *Property v. State*, No. 06–11–00113–CV, 2012 WL 1940805, at *4 (Tex. Ct. App. May 22, 2012) (finding that the denial of a motion to suppress in a criminal case had collateral estoppel effect where “[t]he trial court's determination that the fruits of Cruson's search were not subject to suppression was necessary to the prior criminal [conviction]”).

In re Pardee, 872 N.W.2d 384, 391 (Iowa 2015).

But a criminal acquittal does not necessarily help a civil defendant who is sued for damages stemming from an alleged criminal act.

Behrles' criminal acquittals, apparently relying on the long-standing rule that the record of an acquittal in a criminal prosecution is not admissible in evidence in a civil action to establish the truth of the facts on which it was rendered. See *Book v. Datema*, 256 Iowa 1330, 131 N.W.2d 470, 471 (Iowa 1964). The defendants urged the trial court to disregard the rule under the circumstances. They argued the jury was likely to be left with unanswered questions after the plaintiff called the investigating officer to testify about the incident. The trial court was not persuaded by the defendant's argument and ruled the evidence excluded. We find no abuse of discretion in the court's decision.

Johnson v. Behrle, No. 01-0318, 2002 WL 1334727, at *1 (Iowa Ct. App. June 19, 2002).

- c. *If the civil damages case precedes the criminal case, the dangers facing your client increase exponentially, but with proper planning and strategy, your client can survive the civil and criminal cases (Carter case)*

As the burden of proof in a civil matter is only preponderance of the evidence, each fact to support a civil damages claim must only be established by a preponderance.

The City contends a civil finding that an employee or officer's acts and omissions constitute a criminal offense will subject individuals who are not parties in the lawsuit to criminal liability without due process protections. That is untrue. The state may only impose criminal sanctions through a criminal prosecution and conviction with attendant heightened due process protections. Given the differing burden of proof, the state could not use a judgment on a jury finding in this civil action to establish guilt in a criminal prosecution. *Cf. Emp'rs Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 27 (Iowa 2012) (reviewing circumstances under which an adjudication is not given preclusive effect in subsequent proceedings, including procedural opportunities available only in the second action). . . .

Nevertheless, to avoid the immunity defense, the parents need only prove by a preponderance of the evidence that a City employee or officer committed the criminal act causing injury. This is a civil action for money damages. The civil burden of proof applies. The City cites no case from any jurisdiction holding that a criminal-act exception to civil immunity must be proven beyond a reasonable doubt. The higher standard applies in criminal cases because the stakes are higher upon a conviction—the loss of liberty through imprisonment, the numerous collateral consequences, and the stigma of a criminal record.

Iowa law allows civil and criminal remedies to be pursued independently. *See id.* § 611.21 (“The right of civil remedy is not merged in a public offense and is not restricted for other violation of law, but may in all cases be enforced independently of and in addition to the punishment of the former.”); *id.* § 701.10 (“The fact that one may be subjected to a criminal prosecution in no way limits the right which anyone may have to a civil remedy.”). Our tort law routinely allows proof of criminal offenses by a preponderance of the evidence to recover damages in civil cases. *See, e.g., Jones v. Blair*, 387 N.W.2d 349, 352 (Iowa 1986) (“A violation of statutory rules of the road constitutes negligence per se....”). The reason to require proof beyond a reasonable doubt does not apply in a civil action:

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be

stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt.

In re Winship, 397 U.S. 358, 363–64, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368, 375 (1970). We reiterate the timeless principles underlying the differing burdens of proof in civil and criminal proceedings:

“The rule of evidence requiring proof beyond a reasonable doubt is generally applicable only in strictly criminal proceedings. It is founded upon the reason that a greater degree of probability should be required as a ground of judgment in criminal cases, which affect life or liberty, than may safely be adopted in cases where civil rights only are ascertained. It often happens that civil suits involve the proof of acts which expose the party to a criminal prosecution. Such are proceedings under the statute for the maintenance of bastard children, proceedings to obtain a divorce for adultery, actions for assaults, actions for criminal conversation or for seduction, and others which might be named. And in such actions, which are brought for the determination of civil rights, the general rule applicable to civil suits prevails, that proof by a reasonable preponderance of the evidence is sufficient.”

United States v. Regan, 232 U.S. 37, 49, 34 S.Ct. 213, 217, 58 L.Ed. 494, 499 (1914) (citation omitted) (quoting *Roberge v. Burnham*, 124 Mass. 277, 278 (1878)).

Accordingly, on remand, the district court shall instruct the jury using the civil preponderance-of-the-evidence standard to determine whether the acts or omissions of a City employee or officer constitute manslaughter, a criminal offense avoiding the immunity defense in Iowa Code section 670.4(12).

Sanon v. City of Pella, 865 N.W.2d 506, 516–17 (Iowa 2015).

To support a case for damages based on an alleged criminal act, civil plaintiffs are permitted to perform discovery and request to depose the defendant, which could provide statements by the defendant, under oath, to be used to support a later criminal prosecution. It is important for counsel to assert the necessary principles to protect a client’s Fifth Amendment rights. See *Garrity v. New Jersey*, 385 U.S. 493 (1966) (exercise of privilege against self-incrimination may not be conditioned upon job forfeiture because this forces a choice “between the rock and the whirlpool”); *United States v. Kordel*, 397 U.S. 1, 11 (1970) (“the Government may not use evidence against a defendant in a criminal case which has been coerced from him under penalty of either giving the evidence or suffering forfeiture of his property.”).

However, “it is not unconstitutional to force a litigant to choose between invoking the fifth amendment in a civil case, thus risking a loss there, or answering the questions in the civil context, thus risking subsequent criminal prosecution.” *Brock v. Tolkow*, 109 F.R.D. 116, 119 (E.D.N.Y. 1985); *accord Baxter v. Palmigiano*, 425 U.S. 308, 318–19, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976); *United States v. White*, 589 F.2d 1283, 1286–87 (5th Cir.1979); *Arthurs v. Stern*, 560 F.2d 477, 478–79 (1st Cir.1977), *cert. denied*, 434 U.S. 1034, 98 S.Ct. 768, 54 L.Ed.2d 782 (1978); *United States v. Rubinson*, 543 F.2d 951, 961 (2d Cir.), *cert. denied*, 429 U.S. 850, 97 S.Ct. 139, 50 L.Ed.2d 124 (1976).

Realistically, regardless of deposition or other discovery requests, a civil client faces potential criminal prosecution based on answers to interrogatories answered under oath, whether by deposition or written responses.

III. Protecting Your Civil Client From Criminal Liability

a. Opposing counsel in civil matters does not have the constitutional duty to disclose exculpatory evidence

[C]ourts have only in rare instances found *Brady* applicable in civil proceedings, mainly in those unusual cases where the potential consequences equal or exceed those of most criminal convictions. We see no reason to expand *Brady* to this administrative adjudication. In a criminal case, the government’s duty to disclose under *Brady* arises from the obligation of the prosecutor not simply to convict, but to see that justice is done. The civil context is not analogous. There, the basic duty of an attorney to his or her client is not offset by the countervailing duty a government prosecutor has to exercise in the interest of justice his or her awesome and extraordinary powers.

Fox ex rel. Fox v. Elk Run Coal Co., 739 F.3d 131, 138–39 (4th Cir. 2014) (internal citations and quotations omitted).

“We have recently held that civil rules of discovery are not a part of our criminal procedure.” *State v. McClain*, 256 Iowa 175, 181, 125 N.W.2d 764, 767 (1964)

In *State v. District Court (Delaware County)* 253 Iowa 903, 114 N.W.2d 317, we analyze the provisions of Code section 781.10 and the Rules of Civil Procedure. We there hold section 781.10 gives a defendant a right to take the deposition of a witness who will be unavailable at trial time on notice or commission in the same manner as in civil cases but that it does not make the Rules of Civil Procedure governing discovery depositions applicable to criminal cases. We there hold discovery rules are confined to civil cases.

State v. Gates, 260 Iowa 772, 779, 150 N.W.2d 617, 621 (1967).

- b. You, as counsel for a civil defendant have an obligation to ensure your client (and potential later criminal defendant) provides discovery responses and perhaps even testimony under oath

“[i]t is not unconstitutional to force a litigant to choose between invoking the fifth amendment in a civil case, thus risking a loss there, or answering the questions in the civil context, thus risking subsequent criminal prosecution.” *Brock*, 109 F.R.D. at 11; *accord Baxter*, 425 U.S. at 318–19.

A failure to adhere to this obligation can even lead to sanctions on counsel.

The district court specifically based its order of fees on its authority under rules 1.517(2)(b)(5) and 1.602(5). A protective order is an “order to provide or permit discovery” under rule 1.517(2)(b), which authorizes sanctions for failure to obey such orders. It is also a “pretrial order” under rule 1.602(5). Both rules allow sanctions to be levied against a party or a party's attorney. A party's attorney may be sanctioned, even if the attorney's client took no steps to violate the discovery rules, when it is the attorney's conduct which violated a court order. See *Kendall/Hunt Publ'g Co. v. Rowe*, 424 N.W.2d 235, 242 (Iowa 1988)(noting rule 1.517—then rule 134—mirrors federal rule 37 and cases under rule 37 are persuasive authority); *Whitehead v. Gateway Chevrolet, Oldsmobile*, No. 03–C–5684, 2004 WL 1459478, at *1, 3 (N.D. Ill. June 29, 2004) (imposing sanction of attorneys' fees under Rule 37(b) on attorney who used confidential information from a previous case, in violation of a protective order, to file the complaint in the instant case); *Poliquin v. Garden Way, Inc.*, 154 F.R.D. 29, 31–32 (D. Me. 1994) (sanctioning attorney under rule 37(b), including the potential for reasonable attorneys' fees to be set at a later date, when attorney disclosed an affidavit protected by a protective order to co-counsel in a separate case).

The district court had authority to sanction Stowers as either a party or a party's attorney. The protective order, to which Stowers signed an undertaking to be bound, specifically lists Stowers as a party. It states, “Parties: Jan Reis and her spouse” Additionally, there was sufficient evidence supporting the district court's finding that Stowers acted as an attorney to Reis during the litigation. An attorney-client relationship exists when: “ (1) a person sought advice or assistance from attorney, (2) the advice or assistance sought pertained to matters within the attorney's professional competence, and (3) the attorney expressly or impliedly agreed to give or actually gave the desired advice or assistance’ ” *State v. Parker*, 747 N.W.2d 196, 203–04 (Iowa 2008)(quoting *Comm. on Prof'l Ethics & Conduct v. Wunschel*, 461 N.W.2d 840, 845 (Iowa 1990)). Although Reis denied during the contempt hearing that Stowers had acted as her attorney, she also admitted that she talked him about legal matters and relied on him to help her interpret things. Newkirk, Reis's attorney

during the pending litigation, testified that Fiedler & Newkirk had taken the position that Stowers was acting as an attorney for Ms. Reis. Additionally, *74 Stowers sent emails to Fiedler & Newkirk on Reis's behalf demanding return of her files and case materials and citing case law. When Armentrout, Care Initiatives' attorney, sent a letter to Reis and Stowers demanding return of its documents, Stowers responded, noting that Armentrout's letter "poses a number of legal and ethical issues."

The district court did not err in determining an award of fees was within the remedies available. *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 784 (9th Cir.1983) (finding insufficient evidence for criminal contempt but ordering reasonable attorneys fees for violation of protective order under federal rule 37); *Kehm v. Procter & Gamble Mfg. Co.*, 580 F.Supp. 913, 915–16 (N.D.Iowa 1983) (ordering reasonable attorneys fees and costs under federal rule 37 for violation of protective order where attorney sold confidential documents after entry of judgment). Although the district court did not have authority to order fees as a sanction for contempt because of the limits imposed by section 665.4, the district court was allowed to impose fees pursuant to rules 1.517(2)(b)(5) and 1.602(5) *Reis v. Iowa Dist. Court for Polk Cty.*, 787 N.W.2d 61, 73–74 (Iowa 2010).

c. *Fifth Amendment is only a shadow*

And, as discussed above, often civil defendants are stuck having to decide whether to answer deposition questions or discovery requests under oath, or have an adverse inference put against them for invoking their constitutional rights.

[t]ext of the Fifth Amendment[:] No person ... shall be compelled in any criminal case to be a witness against himself. U.S. Const. amend. V. It is well settled that in a criminal prosecution the jury may not be instructed defendant's failure to testify could be considered an inference of guilt; furthermore, a prosecutor may not comment on defendant's failure to take the stand. The Fifth Amendment's protections extend to nonparty witnesses.

State v. Heard, 934 N.W.2d 433, 439–40 (Iowa 2019) (internal citations, quotations, and footnotes omitted).

"In civil cases, [Iowa court's] allow adverse inferences to be drawn when a witness refuses to answer questions by invoking the Fifth Amendment privilege." *Id.* at 440 n.4; see also *Craig Foster Ford, Inc. v. Iowa Dep't of Transp.*, 562 N.W.2d 618, 623 (Iowa 1997) ("Such adverse inferences are not constitutionally off limits in *civil* cases.").

Therefore, when facing the decision whether to answer deposition questions or written discovery, a civil defendant must decide between having an adverse interest placed against him or her, and providing potential evidence against them in the criminal context.

d. Civil burden of proof is low, which can be used in your client's favor

However, the horizon is not always cloudy. As discussed below, a civil defense verdict can be extremely beneficial for your client in the criminal context.

Win the civil case, and likely preclude future criminal charges

We are in agreement with petitioner that the doctrine of collateral estoppel is not made inapplicable by the fact that this is a criminal case, whereas the prior proceedings were civil in character. We agree further that the nonexistence of a fact may be established by a judgment no less than its existence; that, in other words, a party may be precluded under the doctrine of collateral estoppel from attempting a second time to prove a fact that he sought unsuccessfully to prove in a prior action.

Yates v. United States, 354 U.S. 298, 335–36, 77 S. Ct. 1064, 1085–86, 1 L. Ed. 2d 1356 (1957), *overruled on other grounds by Burks v. United States*, 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978) (internal citation omitted).

More simplistically, where a civil defendant successfully defends against a civil damages suit where the facts at issue would also constitute elements of a criminal charge, the civil defense verdict has a preclusive effect on a subsequent criminal prosecution. See *United States v. Egan Marine Corp.*, 843 F.3d 674 (7th Cir. 2016).

IV. Helping Your Criminal Client With Civil Litigation

a. Developing meaningful interrogatories and discovery requests

If the civil case comes before criminal prosecution, depositions and well-crafted discovery requests can uncover helpful evidence and preserve information for later use in a defense. These requests can be broader than the disclosure requirements placed on prosecutors in criminal cases.

Our rules of discovery exist to avoid the type of surprise See *White v. Citizens Nat'l Bank of Boone*, 262 N.W.2d 812, 816 (Iowa 1978). A trial should be a search for the truth, and our rules of discovery are an avenue to achieving that goal. The discovery process seeks to make a trial into “ ‘a fair contest with the basic issues and facts disclosed to the fullest practicable extent.’ ” *Comes v. Microsoft Corp.*, 775 N.W.2d 302, 311 (Iowa 2009) (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682–83, 78 S.Ct. 983, 986–87, 2 L.Ed.2d 1077, 1082 (1958)).

Generally, discovery following the filing of a lawsuit involves any information that is “relevant” and “not privileged.” Iowa R. Civ. P. 1.503(1). A variety of discovery methods exist under our rules for a party to gather such

information from another party, including the use of written interrogatories. See *id.* r. 1.509(1) (permitting a party to serve written interrogatories to be answered by the other party). The rules governing interrogatories require a party who has been served with interrogatories to answer each written question unless an objection to the interrogatory is lodged. *Id.* An objection suspends the obligation to answer until the objection is resolved. See *id.* (requiring either an answer or objection in response to an interrogatory); see also *Schaap v. Chicago & Nw. Ry.*, 261 Iowa 646, 649, 155 N.W.2d 531, 533 (1968) (holding a party who withholds an objection to interrogatories waives the objection and is required to make a full answer). Additionally, the rules require a party who has responded to an interrogatory to later supplement or amend the response to include information acquired after the initial response was made when, among other circumstances, the question addressed a matter that bore “materially upon a claim or defense asserted by any party to the action.” *Id.* r. 1.503(4). Consistent with the discovery rules in general, the duty to supplement seeks to clarify issues prior to trial, avoid surprise to parties, and allow a complete opportunity to prepare for trial. *White*, 262 N.W.2d at 816. Thus, a party has a clear duty to supplement answers to interrogatories.

Rule 1.509 provides that “[e]ach interrogatory shall be answered separately and fully in writing under oath, *unless it is objected to*, in which event the reasons for the objection shall be stated *in lieu of an answer*.” Iowa R. Civ. P. 1.509(1) (emphasis added). Thus, the rule provides that a party should either answer or object to an interrogatory but does not specify what happens if a party does both.

Whitley v. C.R. Pharmacy Serv., Inc., 816 N.W.2d 378, 386 (Iowa 2012).

However, it is unlikely that a civil litigant will be allowed to uncover portions of the DCI or other criminal investigation files if that investigation is ongoing, due to their privileged nature. *State ex rel. Shanahan v. Iowa Dist. Court for Iowa Cty.*, 356 N.W.2d 523, 530 (Iowa 1984).

b. Expand the sandbox, FOIA requests and broadening requests

i. Very difficult to get State’s investigation file if criminal charges not filed / open investigation

The *Shanahan* case provides that discovery requests and subpoenas for criminal investigation files in an open investigation are protected and highly unlikely to be disclosed. However, the same does not hold to true for discovery requests made for information in closed investigations or requests made through a freedom of information act request.

The public records act is generally distinct from our discovery rules. See Iowa R. Civ. P. 1.500–.517. In *Mediacom Iowa, L.L.C. v. Incorporated City of Spencer*, we explained that our open records law “ordinarily has no application to discovery of [government documents] in litigation.” 682 N.W.2d 62, 69 (Iowa 2004). A governmental party engaged in litigation cannot refuse to produce a document requested in discovery on the basis that the document would be exempt from production pursuant to an open records request. See *id.*

Our view in this regard is similar to federal law. Under federal law, the Freedom of Information Act (FOIA) “was not intended to supplement or displace rules of discovery.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153, 110 S.Ct. 471, 475, 107 L.Ed.2d 462 (1989). Many federal decisions hold that a document exempt from production through an open records law may still be produced in discovery. See, e.g., *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1185 (9th Cir. 2006) (“[E]xempt documents [under FOIA] are not automatically privileged in civil discovery.”); *Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1344 (D.C. Cir. 1984) (“If information in government documents is exempt from disclosure to the general public under FOIA, it does not automatically follow the information is privileged ... and thus not discoverable in civil litigation.”); *Kerr v. U.S. Dist. Ct.*, 511 F.2d 192, 197 (9th Cir. 1975) (stating that FOIA exemptions were not intended to create evidentiary privileges in civil discovery), *aff’d*, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976); *Pleasant Hill Bank v. United States*, 58 F.R.D. 97, 99 (W.D. Mo. 1973) (“Even if we posit *arguendo* that the [government] documents are exempt from disclosure, it does not necessarily follow that they are privileged for purposes of civil discovery.”).

Other states, too, view their state open records law as separate from rules of discovery, and therefore, an exemption in the former does not preclude production pursuant to the latter. See, e.g., *Martinelli v. Dist. Ct.*, 199 Colo. 163, 612 P.2d 1083, 1093–94 (1980) (en banc) (“We ... hold that the Colorado open records laws ... do not, ipso facto, exempt the [government documents] from discovery in civil litigation.”); *Fla. House of Representatives v. Romo*, 113 So.3d 117, 127–28 (Fla. Dist. Ct. App. 2013) (stating that a government document exempt from production under the state open records law must be produced in discovery unless otherwise privileged or a balancing of the parties’ interests weighs in favor of keeping the document confidential), *quashed on other grounds by League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So.3d 135, 138 (Fla. 2013); *Tighe v. City of Honolulu*, 55 Haw. 420, 520 P.2d 1345, 1348 (1974) (“The very broad discovery specifically granted to litigants ... cannot be said to be limited by the terms of a charter provision directed toward regulation of the entirely different situation of the general exploration of public records by any citizen during general business hours.”); *In re*

Subpoena Duces Tecum, 445 Mass. 685, 840 N.E.2d 470, 475 (2006) (“Discovery, by its nature, is quite broad. The public records law does not restrict this breadth.” (Citations omitted.)); *Truel v. City of Dearborn*, 291 Mich.App. 125, 804 N.W.2d 744, 748 (2010) (“[T]he discovery rules and the [state open records law] represent ‘two independent schemes for obtaining information.’ Therefore, discovery in a civil action and the [state open records law] are subject to different procedures and enforcement mechanisms.” (quoting *Cent. Mich. Univ. Supervisory-Tech. Ass’n, MEA/NEA v. Bd. of Trs.*, 223 Mich.App. 727, 567 N.W.2d 696, 698 (1997) (Holbrook, J., concurring))). For instance, in *Boston Police Superior Officers Federation v. City of Boston*, 414 Mass. 458, 608 N.E.2d 1023, 1027 (1993), the Massachusetts Supreme Judicial Court held that a trial judge properly required the City of Boston to produce, in discovery, logs of the internal affairs division that may be exempt from production through the state open records law. The court explained that “the public record law and its exceptions do not restrict the ... power to subpoena documents.” *Id.*

The rationales for those decisions are based on “the essential differences between the discovery process and the FOIA request.” Janice Toran, *Information Disclosure in Civil Actions: The Freedom of Information Act and the Federal Discovery Rules*, 49 Geo. Wash. L. Rev. 843, 851 (1981) [hereinafter Toran]. While a litigant can obtain discovery of things “relate[d] to the claim or defense of the party seeking discovery or to the claim or defense of any other party” so long as the things are “reasonably calculated to lead to the discovery of admissible evidence,” Iowa R. Civ. P. 1.503(1); see Toran, 49 Geo. Wash. L. Rev. at 851, the relevance of materials to litigation or other matters is irrelevant to disclosure under open records laws, see Toran, 49 Geo. Wash. L. Rev. at 852. That difference requires the court to look beyond the mere presence of an open records exemption in determining whether to allow discovery. *Id.*; see, e.g., *Jupiter Painting Contracting Co. v. United States*, 87 F.R.D. 593, 597 (E.D. Pa. 1980) (“[A] FOIA exemption cannot even indirectly delimit claims of privilege since it does not take into account the degree of need for the information exhibited by the claimant.”). Further, open records law exemptions do not limit civil discovery because of “the distinction between open disclosure to the public at large under FOIA and the much more restricted disclosure which occurs under the discovery rules.” Mark S. Wallace, *Discovery of Government Documents and the Official Information Privilege*, 76 Colum. L. Rev. 142, 153–54 (1976).

The latter point bears further consideration because it is arguably germane to the issue in the case before us. Some courts have allowed discovery of documents exempt from open records requests because open records laws apply to disclosure to the public generally as opposed to private litigants. See, e.g., *Denny v. Carey*, 78 F.R.D. 370, 373 (E.D. Pa. 1978) (“Exemption from the Freedom of Information Act ... does not create

independently any evidentiary privilege; the effect of such exclusion, rather, is only to permit the withholding of these categories of information from the public generally.”); *Douglas v. Windham Super. Ct.*, 157 Vt. 34, 597 A.2d 774, 776 n.2 (1991) (“Petitioner has noted that the Vermont Access to Public Records Act, 1 V.S.A. § 317(b)(5), has an exception from public disclosure for ‘disciplinary investigation’ records of a ‘professional licensing agency.’ This exception deals with disclosure to the public generally, not disclosure in response to discovery in litigation. It does not create a privilege.”); *Maclay v. Jones*, 208 W.Va. 569, 542 S.E.2d 83, 89 (2000) (“[W]e hold that the provisions of this state’s FOIA, which address confidentiality as to the public generally, were not intended to shield law enforcement investigatory materials from a legitimate discovery request when such information is otherwise subject to discovery in the course of civil proceedings.”).

The open records law may inform a district court’s decision on a protective order, but it “does not trump our discovery rules.” *Mediacom*, 682 N.W.2d at 69. This is because

there is nothing in [Iowa Code] section 22.7 that suggests the legislature intended to limit the discovery rights of litigants in cases involving governmental entities. To the contrary, section 22.7 indicates the opposite because it allows disclosure upon a court order.

Id.; see also *Laxalt v. McClatchy*, 809 F.2d 885, 889 (D.C. Cir. 1987) (refusing to infer qualified discovery privilege from congressional silence, especially where Congress expressly permitted court-ordered disclosure). Moreover, “[i]f a [] FOIA exemption is the prime determinant in the balancing process, the needs of one party—the non-governmental party—are effectively disregarded,” Toran, 49 Geo. Wash. L. Rev. at 853, even though our discovery rules permit consideration of the requesting party’s need for discovery in decisions allowing or limiting discovery, see Iowa R. Civ. P. 1.504(1) (stating that a protective order should be granted only where “justice requires” and “for good cause shown”); see also Iowa R. Civ. P. 1.503(1) (providing for discovery so long as “the information sought appears reasonably calculated to *239 lead to the discovery of admissible evidence”); *Mediacom*, 682 N.W.2d at 66 (“[T]he philosophy underlying our discovery rules is that ‘litigants are entitled to every person’s evidence, and the law favors full access to relevant information.’” (quoting *State ex rel. Miller v. Nat’l Dietary Research, Inc.*, 454 N.W.2d 820, 822–23 (Iowa 1990))). Therefore, giving conclusive weight to an open records exemption in deciding on a protective order would thwart legislative intent.

Mitchell v. City of Cedar Rapids, 926 N.W.2d 222, 236–39 (Iowa 2019).

c. Remedies if Failure to Disclose for New Evidence / Fraudulent Behavior

i. Civil

If a party fails to fully answer discovery requests, the court has the authority to fashion a proper sanction, which could be to exclude evidence, even if the excluded evidence is determinative of a final issue in the case.

This power includes the authority to exclude evidence for failure to supplement discovery. Noncompliance with discovery requirements is often not tolerated. We will not reverse the imposition of a sanction unless there has been an abuse of discretion. An abuse of discretion consists of a ruling which rests upon clearly untenable or unreasonable grounds.

As noted previously, Kurtzhals attempted to determine the amount of damages claimed through both interrogatories and in a deposition of Lawson. Both attempts were unsuccessful. Lawson also failed to respond to a settlement demand. The discovery deadline passed with no supplementation of Lawson's prior answers. It was not until just days prior to trial and after receiving a motion in limine that Lawson finally provided the amount of damages claimed.

Confronted with this late supplementation, the court had a range of choices beyond the one ordered. It could have allowed the supplementation and the claim to be made for those damages at trial. It could have offered the defendant the option of a continuance of the trial. Dismissal of the claim may also be available in some circumstances.

In determining whether the court has abused its discretion, we must determine whether the trial court appropriately considered the options available. In determining whether ... a sanction is appropriate, the trial court should consider several factors, including: (1) the party's reasons for not providing the challenged evidence during discovery; (2) the importance of the evidence; (3) the time needed for the other side to prepare to meet the evidence; and (4) the propriety of granting a continuance. We believe that these factors provide an appropriate framework for determining whether the trial court abused its discretion in prohibiting Lawson from presenting any evidence of damages not previously provided in his interrogatory responses. In reviewing these factors, we find that the district court did not abuse its discretion in limiting Lawson's claim to only those damages previously disclosed.

Lawson v. Kurtzhals, 792 N.W.2d 251, 258–59 (Iowa 2010) (internal citations and quotations omitted).

1. Rules 1.1002 – 1.1007 Request for New Trial

Request for new trial or judgment notwithstanding the verdict under Rules 1.1002 through 1.1007 must be filed within 30 days after verdict.

A motion for judgment notwithstanding the verdict must stand on grounds raised in the directed verdict motion. *Dutcher v. Lewis*, 221 N.W.2d 755, 760 (Iowa 1974). On appeal from such judgment, review by an appellate court is limited to those grounds raised in the directed verdict motion. *Meeker v. City of Clinton*, 259 N.W.2d 822, 828 (Iowa 1977).

Neither these commonly recited rules, our rules of civil procedure, nor previous cases provide any definitive guidance on when a motion for a directed verdict must be made. Nothing in the rules requires a motion for directed verdict occur at the close of plaintiff's case. Iowa Rule of Civil Procedure 1.945 provides that "[a]fter a party has rested, the adverse party may move for dismissal because no right to relief has been shown, under the law or facts, without waiving the right to offer evidence thereafter." This rule is permissive rather than mandatory. *Christensen v. Sheldon*, 245 Iowa 674, 687–89, 63 N.W.2d 892, 900–01 (1954). Iowa Rule of Civil Procedure 1.1003(2), on the other hand, provides:

If the movant was entitled to a directed verdict *at the close of all the evidence*, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant.

(Emphasis added.) This rule contemplates that the motion for a directed verdict is to be made at the close of all evidence.

In *Christensen*, we approved the procedure of not granting motions for directed verdict until the completion of all evidence except in the most obvious cases. *Christensen*, 245 Iowa at 688–89, 63 N.W.2d at 901. We continue to believe this to be the best course of action. Even the weakest cases may gain strength during the defendant's presentation of the case. *Id.* at 688, 63 N.W.2d at 900 (" 'There is ... a failure of justice, where the evidence for the defense discloses a case against a defendant already prematurely acquitted, that such acquittal ought never to take place until there is the strongest reason to believe that such a consequence cannot follow.' ") (quoting *Castle v. Bullard*, 23 How. 172, 64 U.S. 172, 185, 16 L.Ed. 424, 428 (1859)).

Because in most cases it will be prudent not to consider a motion for directed verdict until all evidence has been presented, it would be exalting form over substance to require such motions to be made at the close of plaintiff's case and again at the close of all evidence. We therefore hold that

a motion for directed verdict need not be made at the close of plaintiff's case in order to preserve error.

Royal Indem. Co. v. Factory Mut. Ins. Co., 786 N.W.2d 839, 845 (Iowa 2010).

Regarding motions for a new trial under Rule 1.1004:

On motion, the aggrieved party may have an adverse verdict, decision, or report or some portion thereof vacated and a new trial granted if any of the following causes materially affected movant's substantial rights:

1.1004(1) Irregularity in the proceedings of the court, jury, master, or prevailing party; or any order of the court or master or abuse of discretion which prevented the movant from having a fair trial.

1.1004(2) Misconduct of the jury or prevailing party.

1.1004(3) Accident or surprise which ordinary prudence could not have guarded against.

1.1004(4) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

1.1004(5) Error in fixing the amount of the recovery, whether too large or too small, in an action upon contract or for injury to or detention of property.

1.1004(6) That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law.

1.1004(7) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial.

1.1004(8) Errors of law occurring in the proceedings, or mistakes of fact by the court.

1.1004(9) On any ground stated in rule 1.1003, the motion specifying the defect or cause giving rise thereto.

Iowa R. Civ. P. 1.1004.

Under rule 1.1004, a district court should only grant a new trial if one of the grounds listed in the rule applies and the movant's substantial rights were materially affected. See Iowa R. Civ. P. 1.1004. When the asserted ground for a new trial is that the district court abused its discretion, the movant must show the error "prevented the movant from having a fair trial." *Id.* r. 1.1004(1). Thus, in order to reverse the district court and grant Bluefield's motion for a new trial, we must not only be convinced that the district court abused its discretion by admitting the photographs, we must also be convinced that the error materially affected Bluefield's substantial rights.

Fry v. Blauvelt, 818 N.W.2d 123, 130 (Iowa 2012).

2. Rules 1012 – 1.1013 Petition to Vacate or Modify Judgment

Iowa Rules of Civil Procedure allow for petitions to vacate or modify a judgment when evidence is discovered to support the motion more than 30 days, but less than a year, after a verdict or judgment.

Upon timely petition and notice under rule 1.1013 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:

- 1.1012(1) Mistake, neglect or omission of the clerk.
- 1.1012(2) Irregularity or fraud practiced in obtaining it.
- 1.1012(3) Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record.
- 1.1012(4) Death of a party before entry of the judgment or order, and its entry without substitution of a proper representative.
- 1.1012(5) Unavoidable casualty or misfortune preventing the party from prosecuting or defending.
- 1.1012(6) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 1.1004.

Iowa R. Civ. P. 1.1012.

A petition for relief under rule 1.1012 requires payment of the filing fee set forth in Iowa Code section 602.8105(1)(a), or if made in small claims, the filing fee set forth in section 631.6(1)(a), and must be filed and served in the original action within one year after the entry of the judgment or order involved. It shall state the grounds for relief, and, if it seeks a new trial, show that they were not and could not have been discovered in time to proceed under rule 1.977 or 1.1004. If the pleadings in the original action did not allege a meritorious action or defense the petition shall do so. It shall be supported by affidavit as provided in rule 1.413(3).

Iowa R. Civ. P. 1.1013(1).

Importantly, this one-year deadline may be equitably tolled with proper showing, regardless of whether original action was at law or equity. See *Shaw v. Addison*, 18 N.W.2d 796 (Iowa 1945); *Johnson v. Mitchell*, 489 N.W.2d 411 (Iowa Ct. App. 1992); *In re Marriage of Rhinehart*, 780 N.W.2d 248 (Table), 2010 WL 446560 (Iowa Ct. App. 2010).

ii. Criminal

1. Rule 2.24: Following Verdict and Prior to Sentencing and Judgment

Iowa Rule of Criminal Procedure 2.24(1) states: "Permissible motions after trial include motions for new trial, motions in arrest of judgment, and motions to correct a sentence." Iowa R.Crim. P. 2.24(1). Only subpart (5) of rule 2.24 addresses motions to correct a sentence, and it simply provides that "[t]he court may correct an illegal sentence at any time." Iowa R.Crim. P. 2.24(5).

State v. Lathrop, 781 N.W.2d 288, 292 (Iowa 2010) (internal footnote omitted).

The court may grant a new trial for any or all of the following causes:

- (1) When the trial has been held in the absence of the defendant, in cases where such presence is required by law, except as provided in rule 2.27.
- (2) When the jury has received any evidence, paper or document out of court not authorized by the court.
- (3) When the jury have separated without leave of court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and just consideration of the case.
- (4) When the verdict has been decided by lot, or by means other than a fair expression of opinion on the part of all jurors.
- (5) When the court has misdirected the jury in a material matter of law, or has erred in the decision of any question of law during the course of the trial, or when the prosecuting attorney has been guilty of prejudicial misconduct during the trial thereof before a jury.
- (6) When the verdict is contrary to law or evidence.
- (7) When the court has refused properly to instruct the jury.
- (8) When the defendant has discovered important and material evidence in the defendant's favor since the verdict, which the defendant could not with reasonable diligence have discovered and produced at the trial. A motion based upon this ground shall be made without unreasonable delay and, in any event, within two years after final judgment, but such motion may be considered thereafter upon a showing of good cause. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits or testimony of the witnesses by whom

such evidence is expected to be given, and if time is required by the defendant to procure such affidavits or testimony, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may be reasonable.

(9) When from any other cause the defendant has not received a fair and impartial trial.

Iowa R. Civ. P. 2.24(2)(b).

Regarding motions in arrest of judgment,

- a. *Motion in arrest of judgment; definition and grounds.* A motion in arrest of judgment is an application by the defendant that no judgment be rendered on a finding, plea, or verdict of guilty. Such motion shall be granted when upon the whole record no legal judgment can be pronounced. A defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal.
- b. *Time of making motion by party.* The motion must be made not later than 45 days after plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction may be rendered, but in any case not later than five days before the date set for pronouncing judgment.

Iowa R. Civ. P. 2.24(3).

2. Postconviction Proceedings under Iowa Code Chapter 822

Additionally, a person convicted of a crime has three years from the date of sentencing, or from the date procedendo issues on their direct appeal, in which to petition for postconviction relief.

1. Any person who has been convicted of, or sentenced for, a public offense and who claims any of the following may institute, without paying a filing fee, a proceeding under this chapter to secure relief:
 - a. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.
 - b. The court was without jurisdiction to impose sentence.
 - c. The sentence exceeds the maximum authorized by law.
 - d. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.

e. The person's sentence has expired, or probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held in custody or other restraint.

f. The person's reduction of sentence pursuant to sections 903A.1 through 903A.7 has been unlawfully forfeited and the person has exhausted the appeal procedure of section 903A.3, subsection 2.

g. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error formerly available under any common law, statutory or other writ, motion, petition, proceeding, or remedy, except alleged error relating to restitution, court costs, or fees under section 904.702 or chapter 815 or 910.

h. The results of DNA profiling ordered pursuant to an application filed under section 81.10 would have changed the outcome of the trial or voided the factual basis of a guilty plea had the profiling been conducted prior to the conviction.

2. This remedy is not a substitute for nor does it affect any remedy, incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies formerly available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

Iowa Code § 822.2.

Typically, these petitions allege ineffective assistance of trial or direct appellate counsel, prosecutorial conduct for failing to disclose exculpatory evidence, or newly discovered evidence that could not, with reasonable diligence, have been discovered previously.

Postconviction cases are considered collateral civil matters, therefore the rules of civil procedure apply and the cases are tried to the bench, not to a jury.