

March / April 2019 Volume 88 Issue 2

Official Publication of the Hennepin County Bar Association

HENNEPIN LAWYER

+ Focus on
**Money and
the Law**

**Founding
Fellows**
of the Bar
Foundation





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5:00 - 7:30 p.m.

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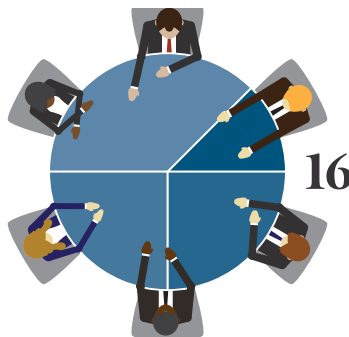
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HENNEPIN LAWYER

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HENNEPIN LAWYER

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Bad at Math?

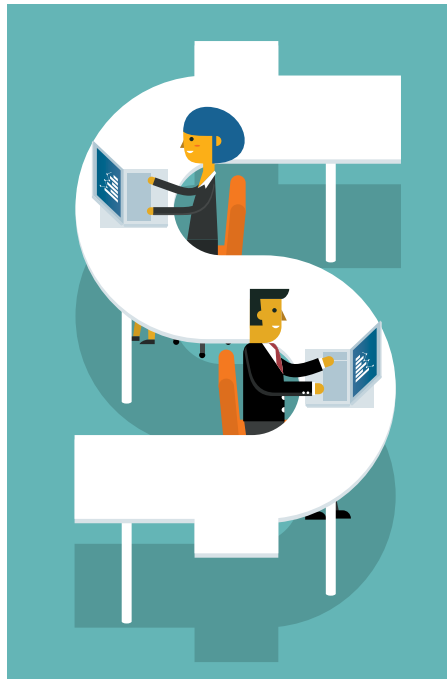
“Two and two are four. Four and four are eight.
Eight and eight are sixteen. Sixteen and sixteen are thirty-two.”

– *Inchworm*

The stanza of the beloved children’s song is often as complicated as people who are “bad at math” want to get with numbers. Lawyers—smart, quick, egotistical—often joke about their lackluster math skills. *If I were good at math, I would be a doctor. If I knew calculus, I certainly wouldn’t be a lawyer.* “You know, lawyers—bad at math, bad with money. But we all know what is underlying those quips: fear. Fear of being out of our element and looking dumb.

Math is not some gnostic prize available only to those chosen few who were born gifted with it. Yet, that is how we often treat it, and its more tactile companion, money. Thousands of articles have been written about one of the largest barriers to competency in mathematics: anxiety. Over the past few years, researchers have recognized comments like “I’m bad at math” or “Math is so hard” travel like viruses. The idea that math is a mystical skill is passed from parents to children, teachers to students, and peers to peers, and anxious person to (now) anxious person.

Thankfully, the answer to math woes is easy to prescribe, even if it is hard to implement: change your attitude. Math takes practice and repetition, just like any skill. As lawyers, we rely so heavily on our perceived expertise, we often forget it is okay to go back to being a beginner to learn something new. Briefing a case now is second-nature, but recall the first terrifying weeks of law school when picking out relevant facts and holdings from cases took patience, struggle, and multiple wrong answers. But we all got through it and improved. Math is the same way.

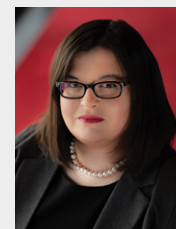


Fortunately, this issue of the *Hennepin Lawyer* features a number of professionals—lawyers and CPAs—who are not afraid of the math it takes to handle money. Real estate attorney Judy Engel writes about how to make sure property tax provisions don’t leave landmines in your leases. CPAs Carianne Geerts and Deirdre Hodgson lay out what lawyers need to know about finances when serving on a nonprofit board. Assistant County Attorneys Melissa Rossow and Amy Anderson (also a CPA) give context and tips on how to handle Minnesota’s new Parenting Expense Adjustment. HCBA Solo/Small Firm Section Chair Andrew Ayers offers some advice on what he wished he knew before starting his own firm. And recent graduate Joshua Humphrey offers a whimsical look at student loan debt and the math he wished he had done before going to law school. Finally, no issue on

money in 2019 would be complete without a snapshot of how the 2019 partial government shutdown impacted lawyers in our area.

These articles provide concrete advice and perspective. Whether we like to admit it or not, math and money are integral to the practice of law. The more we learn to crunch the numbers, present the figures, and understand the tables, the better we are able to serve our clients.

I hope you enjoy this edition of the *Hennepin Lawyer*. And I hope it encourages you to try something new with math or money. If you do, take some advice from the *Inchorm*. Go slowly, and you will probably go far.



**Alissa
Harrington**

March/April
Issue Editor

alissa.harrington@courts.state.mn.us

Ms. Harrington is a law clerk for the Hon. William H. Koch in Hennepin County Criminal Court. She graduated summa cum laude from Mitchell Hamline School of Law in May 2017 and was a recipient of the Student Award of Merit. Ms. Harrington also holds a Masters of Advocacy and Political Leadership from the University of Minnesota—Duluth, and spent the first 10 years of her career in public service. She was captain of both her high school math and science teams.

We All Do Well, When We All Do Well

The holidays have passed. For some it was a time to spend with loved ones. For others, it may have been a time to reflect on the loss of loved ones. There was food, more food, just too much food. Feelings of joy and laughter. Feelings of sorrow and dread. Thoughts of moving on and putting the year in the past. Another new year. A time for new year's resolutions, goal setting and taking the new year by storm. Or another year of more of the same, disappointment, and never measuring up. For some, the ups and the downs are manageable. But for others, either they are not, or the downs oftentimes outweigh the ups. And to add to all of this you have the stress of managing one's practice, serving one's clients, caring for one's family, or simply trying to finish law school and enter the legal profession. Are we as an association doing enough to address the well-being and wellness of our members?

As Robin Wolpert, past MSBA President, has noted, "Lawyer well-being is not just the absence of illness. And it's not feeling happy all the time." Rather, according to the National Task Force on Lawyer Well-Being, lawyer well-being "is a continuous process whereby lawyers seek to thrive across all [of] life's dimensions," physically, mentally, emotionally, occupationally, creatively, intellectually, spiritually, and socially.

The numbers do not lie. Practicing law is hard. In 2016, the Hazelden Betty Ford Foundation and the ABA Commission on Lawyer Assistance Programs published a study of nearly 13,000 currently-practicing attorneys. Of note, the study found that 28 percent of attorneys reported having experienced depression, 23 percent reported having "overwhelming stress," 18 percent reported having diagnosable anxiety, and 10 percent reported having thoughts of suicide.

"Attorney well-being and mental health are pervasive. They affect all of us, from the clients we serve, to the opposing counsel across the deal table or sitting at the table on the opposite side of the courtroom, to the judge or factfinder we appear before, to the colleagues and staff we work with, to the family we come home to, to the person we see in the mirror."

Interestingly, with the HCBA's increased focus on newer attorneys and attorneys who have been practicing 7 to 15 years, the study also found that lawyers 30 years of age or younger are "significantly more likely to engage in hazardous drinking than older attorneys." While as a whole, between 21 percent and 36 percent of attorneys are problem drinkers.

The numbers for law students fare no better. According to the 2016 Survey of Law Student Well-Being, 25 percent of law students are at risk for alcoholism, 17 percent of law students reported experiencing some level of depression, 14 percent reported having severe anxiety, 23 percent reported having mild or moderate anxiety, and 6 percent reported suicidal thoughts in the last year.

Attorney well-being and mental health are pervasive. They affect all of us, from the clients we serve, to the opposing counsel across the



Adine S. Momoh

2018-2019
HCBA President

adine.momoh@stinson.com

Ms. Momoh is a partner in the Minneapolis office of Stinson Leonard Street where she represents clients in matters involving banking litigation, estates and trusts litigation and creditors' rights and bankruptcy before state and federal courts across the country. As a trusted advisor, she helps clients navigate the entire lifecycle of a case, from case development and strategy, to discovery, to motion practice, to trial, to appeal.

deal table or sitting at the table on the opposite side of the courtroom, to the judge or factfinder we appear before, to the colleagues and staff we work with, to the family we come home to, to the person we see in the mirror. Paulette Brown, ABA Immediate Past President, has said,

[W]hile there has been some progress on expanding opportunities for lawyers of all races and ethnicities, women and members of the LGBTQ community, the same cannot be said for those with mental illness or substance use disorders. . . It must be acceptable for people to 'come out' with mental health issues just as it is becoming acceptable to do so in the LGBTQ community.

I ask again, are we as an association doing enough to address the well-being and wellness of our members? I am excited to say that the Association has already started to answer this question this year, using both an immediate and long-term approach. With respect to the

immediate approach, to start the year off right, Lawyers Concerned for Lawyers (LCL) spoke to the HCBA's Board in January to provide some tips, advice and strategies that the Board could take away as they returned to their offices, work with their clients and continue the HCBA's work in 2019 and beyond. Sections have also been encouraged to partner with LCL on CLE programming. Moreover, with the Minnesota Supreme Court's profession-wide initiative and February 28 summit to encourage all stakeholders in the legal profession to improve and promote attorney well-being, I will be meeting with the presidents of the MSBA and RCBA in hopes that our respective associations can offer some sort of state-wide program dedicated to attorney well-being and wellness this summer.

With respect to the long-term approach, I am pleased to say that the HCBA has convened a task force, led by Michael Boulette of Barnes & Thornburg, to consider what other associations have done with respect to attorney well-being and wellness, what has worked, what has not,

and what can the Association do differently to address the needs of its members. While the task force's work will begin during my presidency, it will conclude during the next bar term.

More work lies ahead, but we, as an association, are up for the task. So, what can you do in the meantime to help? Consider giving to nonprofits, like LCL, who provide confidential services to members of the legal profession who either struggle with mental illness or suspect that others in the legal profession may be. Encourage others to discuss their well-being and wellness journey openly. And, as always, if you have an idea for a CLE or other programming, please contact Micah Fenlason at mfenlason@mnbars.org. The late Senator Paul Wellstone said, "We all do better, when we all do better." I am hopeful, that with the Association's work on wellness and our other ongoing initiatives, that this statement will continue to ring true for not only our profession, but for the community at large.

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LENS VIEW

On February 6, HCBA members gathered at Stinson Leonard Street for our winter member social.

On February 7,

HCBA and the Fourth Judicial District hosted a half-day seminar, "Bending the Arc Toward Justice: A Review of the Minnesota Supreme Court's Racial Bias Task Force" at the University of St. Thomas School of Law. The program was well-attended by attorneys, judges, and members of the community.



Introducing the Bar Foundation Fellows



Pictured from top left:
Roy S. Ginsburg, Steven
M. Pincus, Hon. Regina Chu,
Brandon Vaughn, Thaddeus
R. Lightfoot, Paul Floyd.
From bottom left:
Katherine L. MacKinnon,
Brooke Anthony, Vince
Louwagie, Adine S. Momoh,
Hon. Bill Koch

58 Fellows, raising an additional \$17,400 for grant making this year. This prestigious group will enjoy opportunities to participate in social events and programming with other Fellows, a group which will grow through additional recruitment for each of the next five years.

Also, in an effort to get the program off to a strong start, HCBF President Louwagie recruited 15 people to be one-time Founding Fellows, who will contribute \$5,000 over five years and join the ranks of the foundation's major donors. We thank these supporters of access to justice (listed on the following page) for their significant commitment.

"We are really pleased that so many members of our legal community have stepped up to participate in the Fellows program. This is a great way to be involved with other like-minded attorneys who care about access to justice," said Louwagie.

The support demonstrated by the Fellows and Founding Fellows represents a new era for the HCBF. As the incidence of pro se litigation increases, and many disparities in our community are on the rise, it's a critical time for the legal community to take action. Through their giving, this new group of foundation supporters is making a real difference.

If you are interested in participating in the Fellows program, please contact Amanda Idinge at aidinge@mnbars.org.

For 50 years, members of the Hennepin County Bar Association have demonstrated their commitment to access to justice through their support of the Hennepin County Bar Foundation (HCBF). Through the annual dues check-off, year-end contributions, and participating in the Bar Benefit or the Tee it Up for Justice golf event, attorneys in Hennepin County have been generous, and the community has benefited. In 2018, the foundation distributed \$206,150 in grants to the community. HCBF donors, both long-time and first-time, were critical to this success.

For the 2018-2019 bar year, HCBF President Vince Louwagie and the foundation board of directors launched the HCBF Fellows Program to significantly increase contributions to the foundation, and ultimately to amplify the foundation's impact in the community.

Nominated by their peers on the HCBF board, Fellows commit to donating \$1,500 over five years, providing the stable, predictable resources the foundation needs to make serious progress in addressing the justice gap in Hennepin County. This year, the board welcomed



“We are really pleased that so many members of our legal community have stepped up to participate in the Fellows program. This is a great way to be involved with other like-minded attorneys who care about access to justice.”

– HCBF President Vince Louwagie



2019 FELLOWS

MAKING A DIFFERENCE IN HENNEPIN COUNTY

FOUNDING FELLOWS

Brooke Anthony
Hon. Regina Chu
Paul Floyd
Roy S. Ginsburg
Hon. Bill Koch

Thaddeus R. Lightfoot
Vince Louwagie
Katherine L. MacKinnon
Adine S. Momoh
William Z. Pentelovitch

Steven M. Pincus
F. Matthew Ralph
Hon. Mary Vasaly
Brandon Vaughn
Hon. Sarah West

Susan A. Aase
Alecia Anderson
Landon J. Aschman
Jeff Baill
Scott Benson
Theresa M. Bevilacqua
Danielle Bird
Michael P. Boulette
Kate Bruce
John Buchholz
Jonathan Bye
Hon. Phil Carruthers
Janel Dressen
Joshua A. Dorothy
Skip Durocher
Samuel Edmunds
Douglas L. Elsass
Michael H. Fink
Terrence Fleming
Tom Fraser

Marlene S. Garvis
Michelle Grant
Aaron Hartman
Jeffrey Hedlund
Kevin Hickey
Susan M. Holden
Hon. Martha Holton Dimick
Kirstin D. Kanski
Steven C. Kerbaugh
Bruce Little
Charlie Maier
Laurie Miller
Michael Miller
Kati Mohammad-Zadeh
Andrew H. Mohring
Christopher Morris
Blake R. Nelson
Tom Nelson
Cory D. Olson
Jennifer Olson

Clark D. Opdahl
Lee M. Orwig
Hon. David Piper
Mardell D. Presler
Richard A. Primuth
Hon. Jay Quam
Roshan Rajkumar
Esteban A. Rivera
Brent Routman
Eric Ruzicka
Gregory A. Sebald
Hon. Kristin Siegesmund
Sandy Smalley-Fleming
Elizabeth Sorenson Brotten
Jon Strauss
Jayne Sykora
Craig W. Trepanier
Hon. Edward Wahl

“Equal access to our courts and equal application of the law are important principles for me. I want everyone to feel as comfortable as possible coming into my courtroom, regardless of their background. And I want to provide the fairest process I can for all parties.”



Hon. Theodora Gaïtas

New to the Bench

By Benjy Schirm

Judge Theodora Gaïtas has a strong commitment to equal justice. This led her to a career in public defense followed by work as a medical malpractice lawyer advocating on behalf of injured plaintiffs. As a district court judge, she continues to focus on equal justice. “Equal access to our courts and equal application of the law are important principles for me. I want everyone to feel as comfortable as possible coming into my courtroom, regardless of their background. And I want to provide the fairest process I can for all parties,” said Gaïtas.

Gaïtas, who was appointed to the Hennepin County bench in September 2018, is all in on the new job. “One of the greatest things about being a lawyer is that there is always more to learn, and that certainly is still the case in my work as a judge.” She is also excited about the opportunity to preside over a variety of cases. “I love the idea of being a generalist. It keeps things interesting.”

For now, Gaïtas has a criminal assignment, which she is thoroughly enjoying. After a few months on the bench, she has a sense of what is important to her work as a judge. She likes to be as prepared as possible, and finds it extremely

helpful when attorneys appearing before her are also prepared. As a former appellate lawyer, she believes that precision and accuracy in conveying the law are vital. And she expects people in her courtroom to treat each other with courtesy and respect. According to Gaïtas, one of the most gratifying parts of her new job is watching attorneys in action. “It is so fun to see lawyers at work from my position as a neutral. I really enjoy the variety of personalities and strategies.” She especially loves watching newer lawyers progress, honing their skills and finding approaches that work best for them.

The number one question Gaïtas gets as a new judge is how to pronounce her last name, “which is completely understandable because there is a funny looking letter in there.” Her last name, which is Greek, is pronounced Guy-EE-tahs. “There are more syllables than you would think.” Gaïtas was born in Minneapolis, but primarily grew up in Athens, Greece. Her mother is American (and a Midwesterner), and her father is Greek; she was raised in both cultures. Following high school at the American Community School of Athens, she moved to Minnesota to attend the University of Minnesota. She has lived in Minneapolis

“One of the greatest things about being a lawyer is that there is always more to learn, and that certainly is still the case in my work as a judge.”

almost ever since, with the exception of a few years spent in the Philadelphia area. Gaïtas believes Minnesota is the best place on earth with one caveat. “I will never ever adjust to winter here.”

Following college, Gaïtas attended the University of Minnesota Law School. There, she developed a strong interest in criminal law. She clerked in the criminal appeals division of the Hennepin County Attorney’s Office throughout law school. Following graduation, she moved to the defense side, working as a public defender in Bucks County, Pennsylvania, and then spending the majority of her career as an appellate public defender in the Office of the Minnesota Appellate Public Defender. In 2013, she decided to try something new. She joined Matonich Law in Minneapolis, where along with her good friend Julie Matonich, she represented plaintiffs in medical malpractice actions. Gaïtas enjoyed the shift into civil practice, finding the work interesting and challenging. “I’m so grateful that I had the opportunity to practice as a civil lawyer after working for many years in the area of criminal law. It really rounded out my experience as an attorney, and gave me some valuable perspective.”

Off the bench, Gaïtas enjoys working collaboratively with lawyers and other justice partners on behalf of the judicial system. She has served on several Minnesota Supreme Court committees, and is currently serving on the Advisory Committee for the Minnesota Rules of Evidence. Gaïtas was also recently appointed as co-chair of the Fourth Judicial District’s Domestic Violence Steering Committee.

Outside of her work, Gaïtas is passionate about local theater. She served as chair of the Jungle Theater board, and she remains a devoted fan of the Jungle’s work. Theater is something she shares with her daughter, an eighth grader, who also performs in theater. When she’s not sitting in a darkened theater, Gaïtas loves hanging out with her daughter, her husband Chris Sur, a business litigator at Maslon, their two cats, and their dog, Leto.

Gaïtas is thrilled to have landed her “dream job” as a judge. She is excited to serve alongside “the amazing talent that makes up the Hennepin County bench and our dedicated justice partners.” And she looks forward to continuing to grow in her new role.

CAREER TIMELINE

> 2013-2018

Attorney, Matonich Law

> 1998-2013

*Assistant Public Defender,
Office of the Minnesota Appellate
Public Defender*

> 2001-2002

*Assistant Public Defender,
Second Judicial District Public
Defender*

> 1997

*Law Clerk,
Honorable Robert H. Schumacher,
Minnesota Court of Appeals*

> 1994-1996

*Assistant Public Defender,
Bucks County Public Defender’s
Office, Bucks County, Pennsylvania*

> 1993-1994

*Law Clerk,
Hennepin County Attorney’s Office*

> 1994

*J.D., cum laude,
University of Minnesota Law School*

> 1991

*B.A., summa cum laude,
University of Minnesota*



**Benjy
Schirm**

benjyschirm@gmail.com

Mr. Schirm is a dual state accredited attorney who has focused his work in indigent criminal defense and creative communication. He currently works for the Legal News and Analysis Group at Thomson Reuters in Commercial Lending Litigation and Public Employment Law. He spends most of his free time with the HCBA New Lawyer’s Section Board, doing CrossFit, working in politics, and in theaters as an audience member and actor.



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New Lawyers Spotlight: What do you do for Pro Bono?



Justin Rose
Attorney, Maslon

A wonderful perk of practicing law in the Twin Cities is the substantial network of nonprofit legal organizations doing important work for a wide variety of clients, willing to train and work with pro bono attorneys. I've had the opportunity to work with the fantastic attorneys, staff, and volunteers at Immigrant Law Center of Minnesota, who are particularly adept at maximizing their impact and creating positive outcomes for clients by enlisting attorneys outside the organization to take on various matters pro bono. I really enjoy working with clients on immigration-related matters, but I couldn't do that work without the knowledge and support of the folks at ILCM.

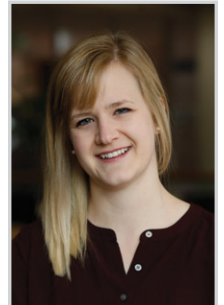
information, advice, and support they needed to seek justice for themselves. I realized that, as an attorney, I could truly effect social change. Now that I have transitioned to private practice in the Twin Cities, I am exploring new pro bono opportunities through my law firm, particularly with organizations that serve the immigrant community. I am also continuing the pro bono work I did in Los Angeles by staffing the Volunteer Lawyers Network's Legal Access Point Clinic with other attorneys from my law firm.



Joe Dubis, Ph.D.
Associate, Merchant & Gould

Merchant & Gould is committed to enriching our community by providing legal services to those who may not otherwise be able to afford legal representation. I have been involved in a number of pro bono activities. I help staff the firm's monthly shift at the Volunteer Lawyers Network Housing Court Clinic at the Hennepin County Housing Court. In 2017, I worked with a team of Merchant & Gould attorneys successfully representing a mother and her two children seeking asylum. I find pro bono work to be rewarding because it lets me see the immediate and meaningful impact of my representation that may be lost when representing corporate clients in high stakes litigation.

Kristen Hathaway
Robins Kaplan Fellow and Staff Attorney,
Mid-Minnesota Legal Aid,
Immigration Law Project



I am a Robins Kaplan Fellow working as a staff attorney with Mid-Minnesota Legal Aid in the Immigration Law Project. With the support of Robins Kaplan, I have the opportunity to work pro bono full time. I help Legal Aid provide free legal services to low-income immigrants. I'm currently focused on naturalization and helping refugees apply to become legal permanent residents. I also take cases from the legal defense program created by Hennepin County to provide removal defense for Hennepin County residents facing deportation. I have had the privilege of working with clients from all over the world, including South Sudan, Somalia, Ethiopia, Cuba, Ecuador, Honduras, El Salvador, Mexico, and Russia. Our clients are often facing great adversity and have fled difficult and often violent situations including domestic violence, gangs, and civil war. It is incredibly rewarding work and we are always happy to have volunteers.



Nicole Dailo
Associate Attorney, Nilan Johnson Lewis

Before moving to Minnesota, I clerked for a federal bankruptcy judge in Los Angeles for three years. Working for the federal judiciary required me to be more creative about pursuing pro bono opportunities, since I was conflicted out of representing clients in matters against the government. Despite this challenge, I found another way. I volunteered at monthly clinics hosted by a local legal aid organization, advising self-represented litigants about their rights and remedies in various civil actions, including landlord-tenant disputes, labor and employment matters, and small claims cases. By providing some of Los Angeles' most vulnerable residents with the

John Beutler
Resource Attorney,
Volunteer Lawyers Network




Being a new Minnesotan, pro bono work helps me connect with my community. As the criminal expungement resource attorney at the Volunteer Lawyers Network, I engage with volunteer attorneys and community members across the Twin Cities. We share a common goal: to improve our communities by creating second chances for success. The collateral consequences of a criminal record can be extremely prohibitive, preventing people from getting housing or employment, sometimes even decades after their last conviction. We work to alleviate some of those consequences for folks who need and deserve an expungement of criminal records that no longer represent who they are. Pro bono work helps give people a second chance and allows our communities to move forward. I am proud to be a community member of the Twin Cities and to work for an organization that seeks to improve it by providing pro bono services to Minnesotans in need.

What I Wish I Knew Before Hanging My Shingle

By Andrew M. Ayers





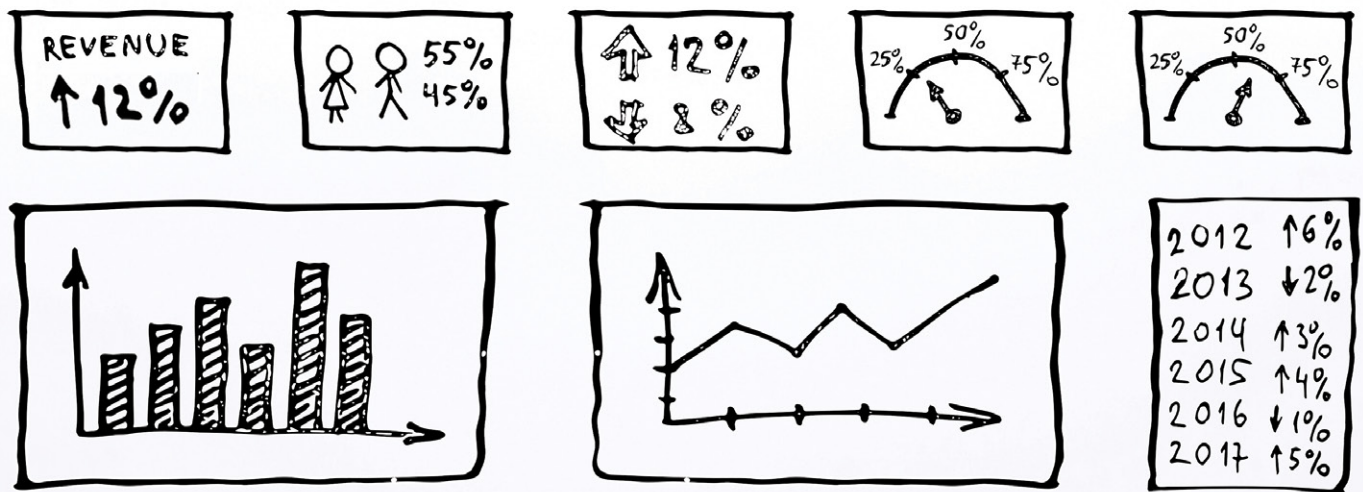
When I opened my firm in 2011, I didn't spend a ton of time planning ahead. If you read enough books or blogs, the same advice seems to boil to the surface—"Save up at least six-months' worth of expenses before you even think of starting your firm." But for many lawyers, there's not enough time for that kind of on-ramp to opening your own firm. Here are a few practical things I wish I had known about finances before I opened my doors.

Get a Good Accountant

This is one area where you shouldn't settle for the easiest or cheapest option. The first accountant I met with was a friend of our family who likely took the meeting as a favor. Throughout the meeting, I felt he was being patronizing and treating me as the child of a friend—as opposed to a prospective client. He pushed some information on me and said I could call the office back and they would find one of the younger accountants to give me the basics. (He also said to say hello to the family.)

I left his office feeling somewhat offended. I called a friend from law school who has her own law firm. Like me, she's a solo practitioner, and she immediately connected me with her accountant. We're around the same age, we had friends in common, and we hit it off right away. We went over my plans for my law firm and almost instantly he had ideas for how to set things up from a tax perspective. Being licensed in multiple states, he understood the interplay of multiple licenses for tax purposes, and we've been happily working together ever since.

The added bonus of a good relationship with your accountant is that they often have clients who need legal help. Some of my best clients have come from my accountant over the years. When I first meet a client, having our accountant in common is a good way to break the ice.



Know Your Numbers

When you are just starting out, you have time to think about things and build your systems from the ground up. One of the most important systems that I built is my firm's dashboard. With the help of my accountant, we identified the important financial numbers for me to know. If you read enough blogs on the subject, you will call your numbers KPIs (key performance indicators), and plenty of folks out there will tell you what you should be tracking (and, of course, they will sell you software that will do the tracking for you).

Starting out, you should be able to answer these questions:

- What does it cost to keep the lights on?
- What is the cost for a matter from start to finish?
- What is the average value of a matter?
- How many clients do I need to bring in to keep the lights on?

From there, you can choose what you want to track. When I do a weekly review of my dashboard, I also look at:

- New matters opened (and which office they originate from)
- How new matters are billed (hourly, flat fee, contingency)
- Consultations vs. conversions (how many consultations turn into clients)
- Social media followers (more of a vanity KPI than a concrete number)
- Client payments vs. expenses paid
- Amounts in trust accounts

My friends have asked me what program I use to create this dashboard and the answer always surprises them: Microsoft Excel. You create a few spreadsheets in the workbook. A summary worksheet pulls in the information automatically and gives you a customizable dashboard for your practice. Your KPIs may be totally different, but when you are starting out, a simple spreadsheet can be a big asset to keep track of your finances. When your practice outgrows your spreadsheet (Congratulations on that!), there are plenty of other software programs that can take over and give you a colorful dashboard to see each morning when you log on.

Long-Term Contracts Are Not Your Friend

If you didn't know it before you opened your firm, once you do, you will be inundated with people who would like to part you and your money. I can't remember a time when I didn't receive calls from marketers, selling the next big thing in tech, billing, marketing, legal research, etc.—you can fill in the blank with each call.

When you speak to these vendors, they will almost always quote you an astronomical flat-fee price that seems to be more than you'll earn in one year. But that's what the other people pay; for you, they will discount that fee if you'll sign a contract. Since you are a new customer, they'll even give you a discounted rate on the first year, if you sign up for a long-term contract.

If you look at these contracts as a whole, you will normally see that over the life of the contract, these are really expensive and bad deals. What if you decide to go into a different practice area and no longer need the service? Chances are you'll still be paying for the contract even though you aren't using the product anymore.

I fell victim to this trap when I first opened my firm. Two large legal research companies raced to the bottom to offer me the best deal. When I finally made a choice, I regretted it almost every month for the next three years. As that automatic debit grew over the course of the contract, I grew more disillusioned with my decision to take on an expense that continued to grow. When the contract finally ended, the joy I felt was akin to what I felt when I made my last student loan payment. The moral of the story: try things out, don't get locked into long-term contracts right out of the gate. If it's something you know you will use, then a long-term contract may save you a little money. But most companies also offer a monthly contract option that allows you more flexibility when your needs change.

Don't Ignore Independent Contractors

I've mentored a few attorneys over the years and this is one of the biggest discussions we have early on. Usually, they've started their career at a law firm where they had a receptionist, legal assistant, and paralegal. As they get started on their own, they are stressed about finding good employees. The bigger stressor is how to pay the salaries of these employees.

Before you take on the significant overhead expense of an employee, you should research if there are independent contractor options to help fill the role you need. Do you need someone to answer your phone? There are plenty of virtual receptionist companies that can do that without the need to hire a full-time employee. The added bonus of virtual receptionists is that they can usually screen out all those marketers trying to sell you long-term contracts while making sure that prospective clients get through to talk to you.

Do you sometimes need legal research? Plenty of paralegal services offer project-based research. You don't need to get your own legal research subscription and pay an in-house employee. Paralegals from agencies are often far more experienced than anyone you would be able to find to hire.

Using independent contractors is usually a more cost-efficient use of your limited dollars as you are starting up your law firm.

Your Finances Don't Have to Be Scary

For many lawyers, law school did not teach us anything about finances or running our own business. If you've worked on business law matters, you may know how to read a Profit & Loss Statement and other accounting information generated by a business. But if you've been litigating family law for the past decade (or just graduated from law school and have no business background), the finances of running a business can seem daunting.

Spend some time learning about what it takes to run a business. Don't limit yourself to books on how to run a law firm. Other types of businesses tend to be more innovative and creative and there are lots of lessons to be learned from them as well. For example, when I began working with my accountant, I was amazed by his client portal, which we used to exchange documents. I realized that I needed that for me and my clients as well. At the time, none of the attorneys that I knew had a client portal (and eight years later, it's hard to find someone who doesn't have one).

When you really dig in and learn about the finances of a business, the business side of things can actually be fun. You get to try new business products. Maybe you've always wanted to put your face on a highway billboard. No matter what it is, now that you're running your own firm, you get to choose how to spend that money and what's next for the firm financially.

If you had told me eight years ago that I would actually enjoy looking at my firm's dashboard over my Monday morning coffee, I would have looked at you like you were trying to sell me a 10-year legal research contract.

"When you really dig in and learn about the finances of a business, the business side of things can actually be fun."



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Fiscal Responsibilities of Attorneys Serving on Nonprofit Boards

By Carianne Geerts and Deirdre Hodgson

Nonprofit organizations often seek out attorneys to serve on boards and subcommittees. It is a common way for legal professionals to support charitable activities through means other than cash contributions. Attorneys can be a valuable resource to an organization, but many may not realize their responsibilities as a board member and the impact they will have on the organization.

As a board member, it is important for an attorney to be informed about nonprofit financial statements and to know the right questions to ask in order to reduce fraud risks. Every board member has a fiscal responsibility to the organizations they serve, and understanding these key concepts is a great first step toward embracing that duty.

Understand how the board can reduce fraud risks

When fraud occurs in any organization, be it a nonprofit or a for-profit business, the organization loses more than just money. While it is true that most organizations that experience fraud never recover the funds lost, there is also the risk of damage to the group's reputation. Here are some critical actions that the board can take to help prevent and/or detect fraud.



Establish two key policies

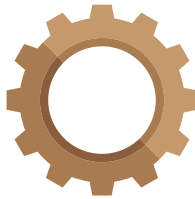
According to statistics compiled by the Association of Certified Fraud Examiners (ACFE) in its 2018 *Report to the Nations*, most fraud is detected through tips from employees, customers, or vendors. Organizations should have a whistleblower policy that includes detailed instructions on how to anonymously report information, how to respond to reports, and what actions can or cannot be taken. Nonprofits should also consider opening a whistleblower hotline (free hotline services are available to nonprofit organizations) to make it easy for informants to step forward. As a board member, you should receive regular reports of whistleblower activity to ensure timely and effective investigation of complaints.

A second action is to establish a conflict of interest policy. Some argue this is the most important organizational policy a nonprofit can have. This written policy will help guide

the organization in determining when a conflict exists and directing administrators on how to handle the situation. The policy should require board members to disclose all conflicts, direct the board on how to discuss conflicts, require the board to document proceedings in the meeting minutes, and require the conflicted member to exclude himself or herself from voting on certain issues.

Understand fraud risks

An important part of any management or board position is understanding that fraud risks affect every business, including the nonprofit industry. Boards should encourage management to complete periodic fraud risk assessments and work to identify key areas where controls need to be established. The assessment should address the potential for misappropriation of assets and the risks around fraudulent financial reporting.



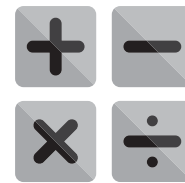
Create internal controls

In some cases, board members may think that knowing internal control processes is too “in the weeds” for their role. However, internal controls are the first line of defense to protect an organization against fraudulent activity. ACFE reports that internal control weaknesses are responsible for nearly half of all frauds.

Ensuring a proper segregation of duties, whereby no one person is responsible for initiating, authorizing, and recording a transaction, can reduce the risk that any individual can act alone to commit fraud. The board should be involved in setting the control processes with management if needed. At a minimum, processes should be reviewed annually for potential weaknesses. Ensure that management carries out control processes—any override can lead to fraud risk opportunities. At times, the board may even be a critical part of internal controls, as noted in the next item.

Review credit cards and expense reimbursements

Credit cards and employee expense reimbursements create an opportunity for employees to misappropriate the resources of a nonprofit organization. Establishing a clear policy on credit card use and reimbursable expenses is the first step toward preventing this abuse. The policy should detail acceptable use of employer-issued credit cards, travel policies and requirements, and receipt requirements. All transactions, whether by credit card or expense reimbursement, should require review and approval by a supervisory-level position, including board member review of management transactions.



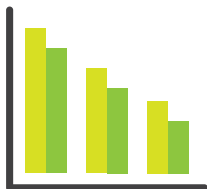
Understand nonprofit financial statements

If a board member is new to working with nonprofits, there is a good chance that he or she is not familiar with nonprofit financial statements. The statement of financial position, statements on activities and cash flow, allocation of expenses, endowment requirements, and restrictions on uses of funds are all key areas for board members to have experience with in order to assess fraud risks.

Take steps to improve your nonprofit financial literacy

Board members and management are responsible for the current and long-term financial health of a nonprofit organization. The topics that follow are just the tip of the iceberg, but they are a good starting point.

“Taking fiscal responsibility seriously will elevate you as a board member and provide valuable insights to the organization.”



Financial statements

Four statements are provided to most board members as part of their pre-meeting financial information packets.

1. Statement of financial position:

Shows the assets, liabilities, and net asset balances of the organization at a specific point in time. Analyzing this statement can help assess the reserves and debts of the organization.

2. Statement of activities: Shows the revenues and expense of the organization for a period of time. The activity within this statement can be compared against prior periods to assess trends.

3. Cash flows: Many organizations prepare this statement to show the sources and uses of cash for a period of time. The statement can also be used to assess trends over time and predict future cash requirements.

4. Statement of functional expenses:

Expenses are allocated into three main categories: program, management and general, and fundraising. This statement can be used to assess how much of each dollar raised is spent on programmatic activities, which is often scrutinized by donors. Understanding allocation methodologies and overhead is a key aspect of this statement.

Support versus earned income

Generally speaking, nonprofits can categorize income into two main sources: support revenue and earned income. Support revenue includes grants and contributions that may or may not include donor restrictions on the uses of the funds. Earned income includes program revenue, fee for services, and other sales-type revenues. Understanding the difference between these categories can also help identify opportunities for a nonprofit to expand or contract programming.

Net assets

In business terms, this is the equity of the organization. Net assets are categorized as with or without donor restrictions. Net assets without donor restrictions are available for use as determined by the board and management. Good financial management includes ensuring that net assets without donor restrictions are not negative, as this indicates the organization has greater liabilities than assets.

With or without donor restrictions

When a nonprofit receives a grant or contribution, the donor can attach restrictions to the use of the funds. The Financial Accounting Standards Board (FASB) recently issued Accounting Standards Update (ASU) 2016-14, which reduced the classes of net assets from three to two: contributions with donor restrictions and contributions without restrictions. Operating a nonprofit comes with an obligation to carry out donor intent.

Reserves

Determining the proper level of reserves for a nonprofit is an age-old question. While there is no correct answer that applies to every organization, many say that six months of operating reserves is a good amount to have on hand. Board members and management should work to determine what operating reserve goal is best for their organization. In addition, consideration should be given to other reserves, such as a working capital reserves or endowment reserves.

Increase your value as a nonprofit board member

Taking fiscal responsibility seriously will elevate you as a board member and provide valuable insights to the organization. The above items are just a few of the ways you can jump-start the learning process and get up to speed on key financial topics that will make you a more effective contributor to the board.



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FIVE THINGS

Transactional Lawyers Should Know about Property Tax Appeals

By Judy S. Engel

As a property tax lawyer, I have had to address a number of disputes that could have or would have been avoided if the lawyer handling a prior transaction involving the property had only been aware of and addressed the issue when drafting the contract, lease, purchase agreement, etc. This article will identify the five most common of those issues and make recommendations, which, if followed, are designed to result in fewer future disputes, less litigation, and, ultimately, happier clients.



1 Leases should address which party has the right to appeal the property taxes.

Most commercial leases already address the issue of property taxes, especially if the lease is what is commonly referred to as a triple-net lease, where the tenant is responsible for paying all of the expenses associated with the property being leased, including the property taxes. Sometimes, especially when the property being leased is its own separate tax parcel, the lease provides that the tenant must pay the property taxes directly. In other cases, more commonly when the tenant leases only a portion of the tax parcel, the lease provides that the tenant must reimburse the landlord for its proportionate share of taxes. However, in Minnesota, any person or entity having any interest in real property has standing to file a property tax appeal—this includes both the ownership interest of the landlord and the possessory interest of the tenant. Thus, both the landlord and the tenant have the right under Minnesota law to file a tax appeal, regardless of who is responsible for paying the taxes under the lease.

Properly addressing the right to file a tax appeal in the lease therefore becomes important. The lease should clearly identify which party—landlord or tenant—has the right to file a tax appeal. If it does not, the situation can, and often does, arise that both landlord and tenant have filed what is commonly referred to as duplicate appeals. Because tax appeals are *in rem* proceedings, only one of the duplicate appeals may proceed. This can pit landlord against tenant, if either party does not wish to relinquish control over the tax appeal. If the lease clearly sets out which party has the right to appeal, this dispute can be wholly avoided.

2 Leases should address how savings realized as a result of a tax appeal should be allocated.

A related issue is raised when the lease does not address how the savings that may be realized under a tax appeal should be allocated. This is because in Minnesota, tax savings realized as a result of a tax appeal are often realized in the form of a tax refund, sometimes several years later, which refund is issued to the person or entity who originally filed the tax appeal. If the tenant is leasing the entire tax parcel, paying the taxes directly, and files the appeal, this does not usually result in a dispute. However, if the tenant is leasing only a portion of the tax parcel and paying a pro rata share of the taxes, but the landlord files the tax appeal, the landlord could receive a windfall when the tax refund is sent to the landlord, if the lease is silent on this issue. The better course of action is to expressly state within the lease that any tax refunds received must be allocated based on the same percentage as the original tax obligation itself. It would also be well advised to be clear that any obligation to allocate tax savings between landlord and tenant be allocated on a net basis, after the costs of the appeal—which typically include filing fees, expert fees, and attorney's fees—are deducted.

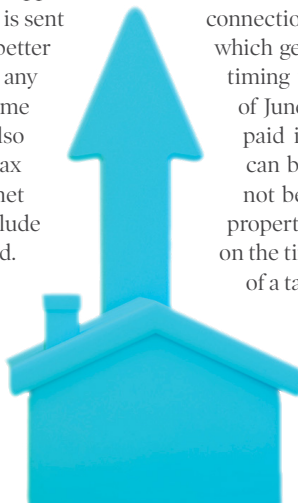
3 Leases should clearly describe the landlord's obligation to cooperate with a tenant's tax appeal.

Additionally, if the lease expressly authorizes the tenant to file a tax appeal, it should be clear whether, or to what extent, the landlord must cooperate in that action. This issue most typically comes up in the context of civil discovery. Because a tax appeal is a legal proceeding, the taxing authority, most typically the county, has the right to conduct civil discovery. If the lease gives the tenant the right to appeal the taxes, it would be prudent not only to identify whether the landlord has any obligation to assist or cooperate with the tenant in that action but also to be clear about what sort of assistance or cooperation may be required. If the lease simply includes vague language that the landlord will “reasonably cooperate” in the appeal, for example, the taxing authority could take the position that the landlord's business records and financial materials must be produced in discovery. If the landlord wishes to avoid this situation, it would be well advised to include language in the lease specifying that any cooperation the landlord might offer expressly does not include the obligation to produce any financial materials or other business records in discovery or otherwise.

4 Purchase agreements should address which party maintains control over the decision making for any outstanding property tax appeals after the sale; clearly spell out any fiduciary duties that party may have to the other; and provide express direction regarding the proper allocation of any property tax refunds received after closing.

Issues similar to those raised in connection with leases are also raised in connection with purchase and sale agreements. While most purchase agreements include a provision discussing the allocation of responsibility for the property taxes due and payable during the year in which the sale transaction occurs, they are often silent regarding the treatment of any outstanding property tax appeals. This can be problematic if a property tax appeal has been filed addressing the property taxes that either already have been or will be paid during the year of or the year after the sale.

This situation can occur because a property tax appeal can be filed in connection with any assessment as soon as the assessment is finalized, which generally happens after the county board of appeals closes. This timing varies from county to county but typically occurs by the end of June in any given year. However, property taxes in Minnesota are paid in the year following the assessment. Accordingly, an appeal can be filed, for example, in July relating to property taxes that will not become due and payable until the following year. Additionally, a property tax appeal may take several years to finally resolve. Depending on the timing of a sale, a prior owner could receive a windfall in the form of a tax refund of taxes that the new owner actually paid after the sale.



Conversely, a buyer could receive the benefit of a tax appeal settlement in the form of a reduced tax bill in the future that was negotiated and, more importantly, paid for by the seller.

Such unanticipated and arguably unfair circumstances can and should be addressed in the purchase agreement by including provisions addressing the various possible outcomes of any pending tax appeals at the time of the sale and the proper allocation of any refunds or tax savings (again net of costs) realized as a result of the appeal. Additionally, because one party could be responsible for litigation from which the other party may derive a benefit, the purchase agreement should also clearly identify the decision maker, as well as any fiduciary duties the decision maker may have, and provide for a means to resolve any disputes that may arise.

5 Business owners should consider seeking to stay property tax appeals pending a bankruptcy, especially in liquidation.

What may be surprising to many is that a bankruptcy proceeding will not automatically stay a Minnesota property tax appeal that has already been filed at the time of the bankruptcy filing. However, any property owner or tenant with a pending tax appeal at the time it files for bankruptcy may wish to consider seeking leave to place the tax appeal under a stay pending the outcome of the bankruptcy nonetheless. While the Minnesota Tax Court does not have to grant the request for a stay, it may be well advised, especially in the event the bankruptcy action proceeds to a liquidation as opposed to a reorganization. In either event, however, the first course of business is to assure that the lawyers engaged in the tax appeal are authorized by the bankruptcy court to continue to represent the bankruptcy estate in the litigation through an appointment that is commonly referred to as an ordinary course professional. If that does not happen, and if the case is not stayed, the taxpayer may end up proceeding effectively without counsel.

Aside from assuring that counsel remains in place, the primary issues raised by a bankruptcy reorganization relate to the typical employee and management disruptions caused by the bankruptcy itself. For example, the employee or perhaps even the entire department responsible for the decisions associated with a pending tax appeal may be let go or assigned new responsibilities as part of the reorganization. Such changes to employees and responsibilities can disrupt any ongoing litigation in terms of discovery, trial preparations, or settlement discussions. While such events often will lead to delays in litigation, they typically can be addressed with the case proceeding on a new timeline.

Liquidations, on the other hand, can create even more significant problems in addition to the problems raised by a reorganization. Real estate that is owned when a company is liquidated is typically sold, but possession of real estate that is leased is typically returned to the landlord through a lease rejection. These events all raise issues and

potential conflicts of interest similar to those raised in the lease and sale situations described above—the main difference being that the entity going through bankruptcy most often has significantly less control over events and ability, financial or otherwise, to adequately address them.

For example, a lease rejection in bankruptcy will typically terminate the tenant's obligation to pay or reimburse the landlord for the future property taxes associated with a property, but typically will not automatically extinguish or transfer to the landlord the tenant's rights in any outstanding property tax appeal. Accordingly, if an appeal has been filed in connection with taxes that have not yet been paid, the former tenant will remain the party to the action, while the landlord has become the real party in interest. As one can imagine, such a situation can create a host of potential disputes and conflicts of interest. Unfortunately, the practical ability of an entity going through bankruptcy to address such disputes is often significantly compromised. Accordingly, unless the circumstances are expressly addressed by the lease (which would be good practice), the better option may simply be to seek a stay of the tax appeals until the liquidation is completed and such matters can be addressed by the bankruptcy court.

Conclusion

Ultimately, as lawyers, we all not only want to but also have an ethical obligation to try to do work for our clients that will limit future disputes. With regard to property taxes, this often consists of simply asking the right questions, thinking ahead to identify possible future circumstances, and addressing those possibilities through creative negotiations and drafting. If transactional lawyers are aware of these possible future circumstances, they can address them on the front end of a transaction and avoid costly, time-consuming, and potentially relationship-destroying disputes and conflicts of interest in the future.



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Funny Money: Summing Up Law School Debt

By Joshua Mark Humphrey

I graduated in 2017, amid a crop of students encumbered by undergraduate and law school debt. As a part-time student working full time during my law school career, I feel profoundly lucky that my employer believed a law school education was worthwhile enough to provide me with employment, time for studies, and some financial aid. While I feel better off than many of my fellows, the law school experience didn't leave me unscathed, and I want to help provide more experienced attorneys out there a glimpse into the minds of recent law graduates and those that have passed the bar.

Fortune.com recently reported that one in five millennials expects to die in debt. When I think of my own finances, and what I spent to gain the education I have now, the debt and expenses are a lodestone that weigh on the mind. Before I made the plunge into the legal ocean, it's difficult to imagine myself on the lawyer side of the zone separating part-time student and lawyer. That zone is populated by nights fueled exclusively with caffeine, excessive anxiety, and completing the next assignment. Debt specters were worries for tomorrow; a problem for a different Josh.

"One in five millennials expects to die in debt"

Now on the other side of the zone, I can only wistfully think about the easy, carefree times of a person burdened only with undergraduate debt.

I started my law school career in 2013, and now I wonder why I didn't think more about what I was buying and at what cost. According to *U.S. News and World Report*, the average cost for law school tuition and fees for 2017–2018 varies on what type of school a student attends. For private law school, tuition and other fees average \$47,112/year. For public in-state and outstate, that's \$26,864 and \$40,308 a year respectively. Assuming a three-year cost with no outside help, we're looking at expenses of \$141,336, \$80,592, and \$120,924 each. Assuming an average cost of \$114,284 for law school, it is little wonder that millennials think, in addition to their undergrad and other personal debt and everyday living expenses, that the debt will be difficult to pay off during their lifetimes.

I wish now I had done more of an accounting of costs and expenses at the beginning of this journey, because now I think of stuff that I could have bought instead and exactly what the expense of law school has bought me. To remedy the foolishness of 2013 me, I present to you a non-exhaustive list of how the expenses of law school have shaped my life and the lives of some of my compatriots.

Select Items of Cost I Could Have Bought Instead of My Law School Education

- Down payments on one or several homes or multifamily dwellings for my property empire, which will inevitably end in violations of landlord-tenant law that get me dragged on social media. Would I possibly be facing fines? Sure, but at least there'd be some savings to cover them.

- All the prudent investments I could have made. Past me is a perfect investor, of course, but let's face it: I would have invested in something like pumpkin futures in October before they crashed in November. That's right, I stole this joke from *The Simpsons* because writing my own jokes is expensive and time-consuming.

- Legitimate Entrepreneurial Endeavors™ including but not limited to: video rental stores with only box sets of seasons 3 and 7 of *Friends*; a storefront selling only kombucha and "wellness" drinks; and producing the next Frye Festival.

- Paying a lawyer to patent my out-there concepts, because even though I'm a lawyer now, I am not a patent attorney and still have to pay for them. Did you know? A bachelor of arts in theatre is not a "bachelor's degree in a recognized technical subject." I can get extremely technical about theatre, but I guess that's not good enough to prosecute a patent. At least I can attempt to get a friend to do this pro bono.

Costs Friends, Family, and the Community Must Endure as a Result of My Law School Education

- Inappropriate applications of legal concepts to make jokes only I will understand or appreciate. Ex: "What you're asking me to do for this workout warm-up is outside the four corners of the workout I agreed to—I think it's clear that this agreement is completely integrated. I will not accept any *parol* evidence."

- My messages, no matter the medium, are either one-word responses or dissertations. And, when in doubt, I don't answer anything.

- "Why yes, I actually would love to appeal your evidence that I parked in your private lot without paying. Here are receipts detailing proof of payment, confirmation from the third-party vendor, and testimony from my interaction with the lot attendant, who assured me that the address was the correct one and that my documentation was acceptable. Further, when the Founding Fathers first parked their carts at the Philadelphia convention . . ."

- Relying on other lawyers' friends to understand student loan payment options (including interpreting how the Department of Education has decided it wants to structure the public service loan repayment option this week).

- The constant complaints at how nonlawyers (and lawyers who should know better) use legal terminology in print, television, and social media.

New Emotional Costs That Only Law School Expenses Elicit

- That Feeling When (TFW) friends, family, or that one person I went to high school with and friended casually messages me with: "Hi Josh, purely hypothetical question for you . . ."

- The obsessive need to add the full spelling of an initialism or acronym so everyone will get what I'm writing about.

- That emotion where you want to leave your current employer but you feel a sense of loyalty because 1) your employer helped you through law school and 2) you're terrified since the job market is 25 percent smaller¹ than it was 10 years ago.

- TFW you're sitting in the Minnesota CLE course for new lawyers (a great program with lots of fantastic advice) when suddenly a lot of your emotional capital becomes invested in winning the prize drawing for one payment of student loans. After losing, you content yourself with the freebies.

- The existential dread that comes from the feeling that you still have that undergrad debt to pay, in addition to the cost of law school, and you feel like you might be that one in five millennial who will die in debt.

The tonic to this illness, my fellow recent graduates and bar passers, is perspective from experts such as financial planners or your Aunt Who Is Good at Math. They are the truth talkers who remind you that they told you NOT to go to law school and whose advice you wish might be helpful now. And as for those more experienced lawyers reading this, or those who are not plagued with worrying about these particular financial troubles: spare a thought for us, and perhaps a drink. The beer we're drinking now is the cheapest on the happy hour menu.

¹ <https://abovethelaw.com/2018/04/bad-news-if-you-are-actually-trying-to-start-a-legal-career/>



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Mr. Humphrey received his J.D. from Mitchell Hamline School of Law in 2017. While attending law school, he externed at Hennepin County's 4th District Court, participated in student politics, and worked at the Mitchell Hamline Law Review and *Cybaris*®, an Intellectual Property Law Review.

Attorneys Weigh in on the Government Shutdown



Editor's note: These stories were submitted while the government was still shut down.

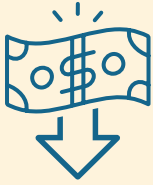
The 35-day federal government shutdown from December 2018 to January 2019 left many federal agencies—including the federal courts, immigration courts, and countless other agencies—without funding. It was clear a federal government shutdown would affect attorneys employed by the federal government, but the 2019 shutdown pervaded into our legal community's private practice in less obvious ways. Here are examples of how Minnesota private practice attorneys have felt the shutdown.



**Edited by
Rachel
O'Connor**

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Ms. O'Connor is an attorney with the law firm Hellmuth & Johnson. She helps clients find practical solutions to their complex business and real estate needs.



SBA LENDING TRANSACTIONS

A large part of my commercial lending practice focuses on government guaranteed lending. During a lapse in appropriations, the Small Business Administration (SBA) is unable to make loans, and small businesses are unable to close transactions dependent on SBA financing. The SBA's shutdown directly impacted small business borrowers, lenders, vendors, and transactional parties and is disrupting small business operations across the country.

– James T. Keig,
Anastasi Jellum



PRODUCT LIABILITY / FDA ENFORCEMENT

I help victims of foodborne illnesses (like Salmonella and E. coli) bring claims against food companies. During the shutdown, the FDA—which performs routine inspections of about 80% of US-based food production facilities—had to furlough food safety inspectors. FDA food safety inspections can play a critical role in preventing or minimizing the scale of foodborne illness outbreaks because inspections can trigger product recalls, potentially before consumers get sick. For more than a month, the FDA completed no routine domestic inspections. While some high-risk inspections resumed, many foods considered “low risk” have caused major outbreaks in the last few years—and these facilities will remain unchecked.

– Lindsay Lien Rinholen,
Pritzker Hageman



GOVERNMENT ENFORCEMENT / CORPORATE INVESTIGATIONS

In my government enforcement and corporate investigations practice, I have touchpoints with many government agencies and have certainly felt the effect of the shutdown. Much of the civil division of the U.S. Attorney's Office for the District of Minnesota has been furloughed, and civil cases involving the federal government have stalled as a result. A FOIA case I'm working on against the United States Postal Office, for example, has been stayed pending restoration of appropriations. In addition, many federal agencies with investigative functions have furloughed most of their staff and thus have limited resources available to investigate and develop new and pending cases. The Securities and Exchange Commission, for example, has limited its staff to those involved in responding to “emergency situations involving the safety of human life or protection of property.”

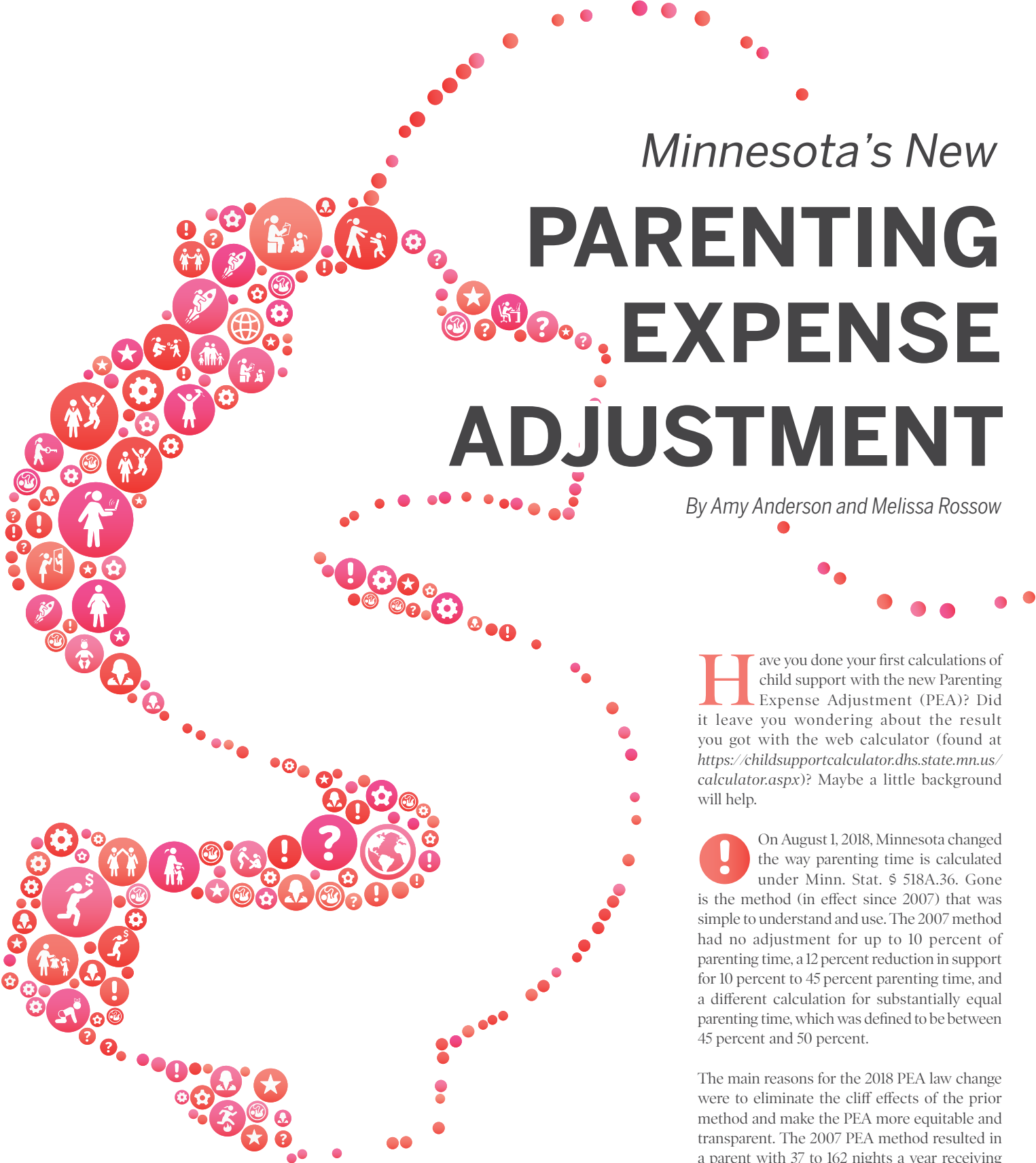
– Caitlin L.D. Hull,
Dorsey & Whitney



IMMIGRATION

My client and I had to wait until the morning of a hearing date to determine whether or not a client needed to attend, as we didn't know if the government would reopen in time. Because it didn't, his case will now be rescheduled to another, uncertain date. An additional continuance prolongs his already stressful and uncertain case, which has been pending for about eight years. He is married to a U.S. citizen with whom he wants to be able to travel, adopt, buy a house, and start their life together. That all has been put on hold due to delays in immigration processing.

– Lindsey Greising,
Steven C. Thal, P.A.



Minnesota's New PARENTING EXPENSE ADJUSTMENT

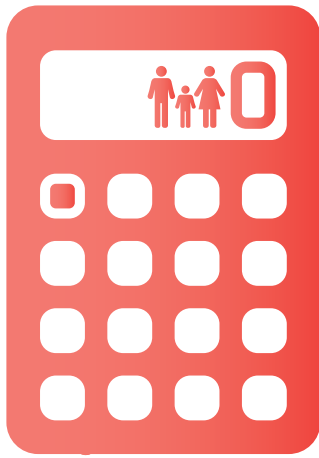
By Amy Anderson and Melissa Rossow

Have you done your first calculations of child support with the new Parenting Expense Adjustment (PEA)? Did it leave you wondering about the result you got with the web calculator (found at <https://childsupportcalculator.dhs.state.mn.us/calculator.aspx>)? Maybe a little background will help.




On August 1, 2018, Minnesota changed the way parenting time is calculated under Minn. Stat. § 518A.36. Gone is the method (in effect since 2007) that was simple to understand and use. The 2007 method had no adjustment for up to 10 percent of parenting time, a 12 percent reduction in support for 10 percent to 45 percent parenting time, and a different calculation for substantially equal parenting time, which was defined to be between 45 percent and 50 percent.

The main reasons for the 2018 PEA law change were to eliminate the cliff effects of the prior method and make the PEA more equitable and transparent. The 2007 PEA method resulted in a parent with 37 to 162 nights a year receiving a 12 percent PEA. The current PEA uses a complex algebraic formula to provide a different adjustment for each overnight or overnight equivalent the parent has with the child, to smooth out the cliffs into a curve.



The PEA algebraic formula is a balance of the parties' overnights and incomes. It creates a gradual reduction in the basic support obligation as the overnights increase. Each parent's overnights and each parent's basic support obligation go into the PEA formula. Did you attend law school to avoid math like so many lawyers? Do not fear—you will not need to work out the algebraic formula yourself; it is built into the calculator. However, you will need to determine the number of court-ordered overnights to put into the calculator and this may require some simple arithmetic.

We must emphasize that the court-ordered piece of the PEA law—something that has not changed in the law from the 2007 method to the 2018 method—is the requirement that the number of overnights must be addressed in the court order. There is no PEA without court-ordered parenting time. Remember, gone are the days of no PEA, 12 percent or a different substantially equal parenting-time calculation. Unfortunately, the old, three-tiered system allowed attorneys, the parties, and the courts to avoid calculating exact amounts of parenting time, despite the 2007 PEA law clearly requiring court-ordered parenting time in the form of the number of days or a percentage of days. Our own county (and others) may or may not have participated in that avoidance when it made sense because of the simplicity of the old law.

 The question of the day is, How does someone calculate the “overnights” of parenting time for each parent to plug into the formula? The statute says this is a number averaged over two years and can include overnights or overnight equivalents. Minn. Stat. § 518A.36 subd. 1(a). “Overnights” seems obvious and probably does not need an explanation. But do not get lulled into generalizing the number of overnights in the court order. Put the specific number in the court order to avoid future issues. “Overnight equivalents” is not so obvious. The statute defines “overnight equivalents” as significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The age of the child may be considered in this determination. If you want time periods without overnight stays to count, the court order should clearly define those time periods as overnight equivalents.

Our advice is to be overly clear for both overnights and overnight equivalents. We believe the legislature was purposefully vague in defining overnight equivalents to allow for the families and the court to define what makes sense for each individual case. We anticipate litigation to put some definition into the issue of how to calculate overnight equivalents. As our friend Sandra Torgerson, Child Support Division Head, Dakota County Attorney's Office, once said as she was training on the 2007 guidelines, “We are going to have litigation over these new guidelines. Remember, as I speak, there is litigation pending about the 1984 guidelines!”

With the 2018 PEA in place, court orders must be more specific about parenting time ordered or agreed upon by the parties. If possible, the actual number of overnights or overnight equivalents for each party should be included in the court order. If it is not possible or not advisable for the family to be specific with an exact schedule of overnights, the percentage of parenting time to be applied must be ordered. For example, if Parent A will have 25 percent parenting, you will have to do the math on the back end to determine how many overnights the ordered percentage represents and input that into the guidelines worksheet. In our example, if 25 percent parenting time is agreed upon, but there is no schedule, it is the equivalent of 91 overnights for the worksheet. If a specific schedule of overnights or overnight equivalents will impede a positive family relationship, please be specific as to the percentage granted so that child support does not create negativity in the family.

It is a best practice to clearly state a number of overnights or overnight equivalents in the court order. Blame it on the math. Explain to parties who are reluctant to specifically define a number or percentage that the math requiring a specific number is more transparent and equitable, and that it is required. Trust us, we are with you—the 2007 version of the PEA was much easier for us to work with; but we also understand how important it was to smooth out the cliff effect and allow for a transparent and equitable way to account for the time both parents spend with their children. For clarity, if the weekend is described as Friday through Sunday, it should be specified whether that parenting time counts as two overnights because it's Friday evening through Sunday evening or three overnights because the parties understood the child would be delivered to school on Monday morning. We cannot emphasize enough, as a best practice, that the court orders must clearly define either the number of overnights or overnight equivalents or a percentage of parenting time to be translated to overnights for use in the guidelines calculator.

What else does the algebraic formula accomplish? While it smooths out the cliffs present in the 2007 method, keep in mind that it is not a simple day-by-day and dollar-to-dollar approach. It does not mean that if a parent has a court order for 25 percent parenting time, the parent receives a 25 percent reduction in basic support. By adopting this algebraic formula, the legislature was trying to balance what accountants refer to as fixed and variable expenses.



In the calculations using the 2018 PEA, Parent A is the parent with the least number of overnights or overnight equivalents. If Parent A has very few overnights or overnight equivalents, there is not much of a reduction in basic support in the formula. With additional overnights or overnight equivalents that Parent A has with the child, Parent A may have an increase and Parent B may have a reduction in variable expenses like food, clothing, or activities; so, the basic support is reduced to consider the shift in variable expenses.

Once Parent A has the child a significant number of overnights, not only does Parent A have variable expenses for parenting time but also there can be a duplication of fixed expenses as both parents are providing living space for the child in their homes. The PEA calculation tries to balance the two types of expenses—fixed and variable.

The PEA formula uses both the overnights or overnight equivalents along with each parent's income to reach the child support obligation. Since the parents' income is a factor in the equation, if Parent B (the parent with the most number of overnights or overnight equivalents) has the larger income, the result can be that Parent B will have a support obligation. However, the legislature specifically eliminated the obligation for Parent B to pay if Parent B has more than 55 percent of the parenting time. Minn. Stat. § 518A. 26, subd. 14.



With the 2018 PEA calculation, each day of parenting time can make an incremental difference in the basic support obligation, even though it's a small difference between 10 percent and 25 percent parenting time. Every case is different because of all the variables, incomes, and other adjustments, but typically the prior 12 percent PEA will not occur until about 25 percent parenting time. But on that note, please remember that the 25 percent presumption of parenting time that is provided for in Minn. Stat. § 518.175, subd. 1(g) is meant as a starting place for determination of custody and parenting time; it is not a substitute for a parenting time order in the support order or calculation. We will say it again—the court order must articulate the number of overnights or overnight equivalents. It is fine to state in the order that the parties agree that Parent A is granted 25 percent parenting time and use that in the calculation. But the presumption does not apply on its own in a basic support calculation absent the parenting time also being in the court order. And remember, it is a best practice to convert the percentage of parenting time into the number of overnights or overnight equivalents to prevent problems in the future.

Some parenting time schedules are complicated. Counting the overnights or overnight equivalents on a calendar for two years, as the statute contemplates, is the most accurate way to arrive at the correct number of overnights. The simpler a parenting time schedule is, the less need for counting on a calendar. A simple schedule that provides for every other weekend, Friday night through Monday morning, means the three days out of every two weeks repeats 26 times a year, so equals 78 overnights [$3 \times (52/2) = 78$]. A more complicated schedule might cause unintended pitfalls. Watch out for overlapping time. Spell out whether holidays are overnights or overnight equivalents. Do not add a full two weeks for vacation time when you have already counted some of those days in the weekly schedule. It is not always easy to calculate parenting time, so as a check, we recommend doing the calculation

for each parent to make sure you are not double-counting days. Remember, there are 365 days a year to assign to one parent or the other.

Sometimes the difference in support for two different ways of counting overnights will be minimal under the new formula, so it might be a perfect opportunity for compromise. If the parents intend to create a 50/50 schedule, say so. The guidelines calculator does allow you to enter 182.5 for each parent's time. But a true 50/50 is the only time a half day can be entered.

The two-year average of overnights or overnight equivalents in the statute is to accommodate schedules that change from year to year or just the idiosyncrasies of our normal calendar system. It may also be a way to comply with IRS rules for claiming the child for taxes. Even though the dependency exemption is gone, there will still be other tax benefits and so a reason to alternate claiming the child. The child must live more than six months with one parent for that parent to get all of the tax benefits, so the court order may say 183 days for even years when the party claims the child and 182 for the odd years when that party is not claiming the child. But for the guidelines worksheet, 182.5 is entered. Under the new PEA statute, custody labels no longer matter. It can be described as physical custody, visitation, or parenting time, so long as the time (overnights or overnight equivalents) with the child is laid out in the order. If there are parenting time arrangements not specified in a court order and the parties do not want to go back to court to specify those arrangements, but are willing to change the support, consider having the parties agree to a deviation.

With the new PEA statute, some people whose support was determined under the prior statute may be entitled to a reduction in support. While we have not seen a rush to the courthouse on this, parents who came in just under the 45 percent parenting time under the old method may be entitled to a modification of support. Another new law, also effective on August 1, 2018, allows the modification of child support just because of the change in the guidelines law (relating to parenting expense adjustment) so long as the 20 percent and \$75 threshold for a substantial change in circumstances is also met. See Minn. Stat. § 518A. 39, subd. 2(j). However, that modification can be limited if the full change would create a hardship for either party. Minn. Stat. § 518A. 39, subd. 2(k).

There will also be circumstances where a PEA was given in a prior court order under the old law, but the order did not include a percentage

of time or a specific number of overnights. In those cases, the previous statutory parenting expense adjustment will continue unless there is a new order addressing parenting time. Minn. Stat. § 518A. 39, subd. 2(b)(6). This situation is accounted for in the new guidelines worksheet on a separate line. Also, if the prior court order did state the overnights or percentage of time, they will not automatically be modified; a motion or stipulation will need to be filed. And remember, depending on the incomes, it will take a significant amount of parenting time to get a better reduction than the 12 percent from the prior order.



The new parenting expense adjustment is a more transparent and equitable approach to allocate the expenses each party has when the parties have the children in their care. As attorneys and professionals that work with families, we all can help by ensuring that court orders clearly address parenting time and the number of overnights or overnight equivalents.



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Ms. Anderson is an attorney in the Ramsey County Attorney's Office and has worked in child support enforcement there since 1995. She is also a certified public accountant and has worked as a tax accountant for decades, maintaining a small CPA tax practice in addition to her work at Ramsey County.



**Melissa
Rossow**

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Ms. Rossow is a graduate of William Mitchell College of Law. She is the director of Human Services Legal, covering child support, child protection, and commitments for the Ramsey County Attorney's Office. Prior to this assignment, she was an Assistant Ramsey County Attorney in the area of child support.

Hennepin County Launches Restorative Court Program

By Lisa Buck



“We have limited resources and they must be allocated appropriately, so we try to find innovative ways to handle the caseload.”

– Chief Judge Ivy Bernhardson, Fourth Judicial District

A new Hennepin County program aims to break the pattern of people cycling in and out of jail by connecting them to community resources and reducing court involvement. The new court calendar, called Restorative Court, was launched February 1.

“In an urban court setting, we see many troubled people,” said Chief Judge Ivy Bernhardson. Bernhardson oversees the Fourth Judicial District, the largest trial court in Minnesota, which processes about 40 percent of all cases filed in the state. “We have limited resources and they must be allocated appropriately, so we try to find innovative ways to handle the caseload,” said Bernhardson.

Restorative Court reduces judicial involvement through a collaboration of “justice partners”: judges, prosecutors, public defenders, and social workers. Attorneys can refer defendants who are charged with low-level offenses such as public urination or loitering to Restorative Court. There are some exclusions to eligibility. Charges including domestic assault, firearm offenses, DWI, indecent exposure, and prostitution are not eligible for Restorative Court.

Once the individual is referred to Restorative Court, he or she meets with one of three social

workers from the Hennepin County Department of Human Services and Public Health (HSPH). “Social workers are an integral part of the team,” said Leah Kaiser, area manager of adult behavioral health at HSPH. “A key piece of eligibility is that the individual being referred must agree to work with the social worker.”

Instead of facing multiple court appearances, the individual works with a social worker to develop and achieve agreed-upon goals. “That could be scheduling appointments at a mental health clinic, completing applications for health care, finding a primary doctor, completing applications for disability benefits, exploring housing options, or getting referrals for substance use treatment,” Kaiser explained.

If the person participates in Restorative Court, their next court date will be a few months later. In the meantime, the participant engages in the community—not the courtroom—with the social worker and other providers to address social service needs. “Social workers will provide feedback to the city attorney and public defender on the individual’s progress,” said Kaiser. If the participant cooperates with these services before returning to court, the case may be resolved favorably.

According to Bernhardson, results of the Restorative Court will be assessed through the rate of recidivism of participants. She is hopeful that Restorative Court will improve the quality of lives throughout Hennepin County.

“This doesn’t mean we’ve solved all their issues,” Bernhardson said of Restorative Court participants. “It means we connected them with the resources to help them solve their issues.”



**Lisa
Buck**

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Ms. Buck practiced corporate law in Minneapolis and was an adjunct professor at William Mitchell College of Law. She contributes to the *Hennepin Lawyer* and serves on the board of the Hennepin County Law Library. She is also a coach of a local high school speech team.

Hey, Lawyer – Can You Spare a Dime?

By Eric T. Cooperstein

Allie Avocat is representing Carl Clint in his claims arising out of a car accident in which he was seriously injured. Clint has been out of work for nine months. Liability has been conceded and all that remains is litigation over his damages. There is a defense offer of \$150,000 but Avocat believes the case is worth well in excess of \$750,000. Clint's savings have been exhausted and he is two months behind on his rent. He is concerned that he and his two children will be evicted from his apartment. He asks Avocat if she can advance him \$4,500 against his settlement to cover his rent for the next three months.

Sorry, Mr. Clint. Despite the fact that it is clear that you will get a substantial recovery on your case, your lawyer can not lend you a comparatively small amount to help you avoid eviction. In fact, she could not even give you \$50 to fill your gas tank. The Minnesota Rules of Professional Conduct, specifically Rule 1.8(e), say that would be a conflict of interest. Huh?

Rule 1.8(e) prohibits lawyers from providing “financial assistance” to a client in “pending or contemplated litigation” except in three situations. If a client is indigent, the lawyer may pay court costs and expenses on behalf of the client. There is no limit to the amount which can be paid. A lawyer may also advance, on behalf of any client, court costs and expenses, and can opt that repayment of those expenses will be contingent on the outcome. Again, there is no dollar limit in the rule. The lawyer can advance thousands of dollars in expert fees, accident-reconstruction fees, deposition costs, jury consultant fees, etc. The lawyer can require that her attorneys fees and those expenses are paid before the client gets any money out of the case.

The third exception provides that a lawyer may guarantee a loan that is “reasonably needed” to help a client like Clint “withstand delay in litigation” so that the client’s financial situation does not pressure him to settle prematurely.

Repayment of the loan cannot be contingent on the outcome of the case. So, the lawyer cannot lend the client money herself but she can sign a guarantee that essentially allocates the same risk to the lawyer as making a loan.

The philosophy behind the restriction on financial assistance is neither immediately obvious nor is it clarified by the comment to Rule 1.8. Comment 10 states that “Lawyers may not subsidize lawsuits brought on behalf of their clients,” because doing so “would encourage clients to pursue lawsuits that might not otherwise be brought” and because the assistance would give the lawyer “too great a financial stake in the litigation.” Paying or advancing litigation expenses “are virtually indistinguishable from contingent fees” (although the rule does not limit the practice to contingent fees) and “help[s] ensure access to the courts.” So, advancing thousands of dollars in litigation expenses is okay, but \$50 for gas or a couple of months of rent is forbidden.

Yeah, it doesn’t make any sense to me either.

Also, if it’s a transactional matter, no worries. A lawyer may lend a client money for any purpose as long as it’s not related to litigation. Rule 1.8(a) governs such transactions, which include that the terms must be fair and reasonable, that the client have the opportunity to consult with independent counsel about the transaction, and that the required disclosures be confirmed in writing.

It is not clear from Rule 1.8(e) or the comment why reasonableness, the opportunity to consult with independent counsel, and written disclosure are sufficient for other loans to clients, even multi-million dollar transactions, but not when litigation is involved. And why would guaranteeing a loan that must be repaid not cause a lawyer to have “too great a financial stake” in the case when the expenses advanced by the lawyer could easily be more substantial than a loan to the client for living expenses?

Where does this leave Mr. Clint? Well, if Avocat has a wealthy friend with a big heart, she can arrange for the friend to make a loan to Mr. Clint and guarantee it. That’s right—the rule doesn’t say the loan has to come from a bank or other financial institution.

If Avocat has no wealthy friends or connections, Mr. Clint can get a loan from a “litigation funding” company. These companies have spread like Creeping Charlie over the past 10 years. They offer loans, contingent on the client recovering funds, at interest rates of 20 percent, 25 percent, or higher, with a few fees thrown in for good measure. Most lawyers discourage clients from taking these abusive loans but the decision ultimately belongs to the client. Who, as we know, may be facing eviction or other desperate circumstances.

The conflict of interest rules are usually designed to protect clients from overreaching by lawyers. With Rule 1.8(e), the rule may hurt clients more than it helps them.



Eric T. Cooperstein

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Eric T. Cooperstein, the “Ethics Maven,” defends lawyers and judges against ethics complaints, provides lawyers with advice and expert opinions, and represents lawyers in fee disputes and law firm break-ups.



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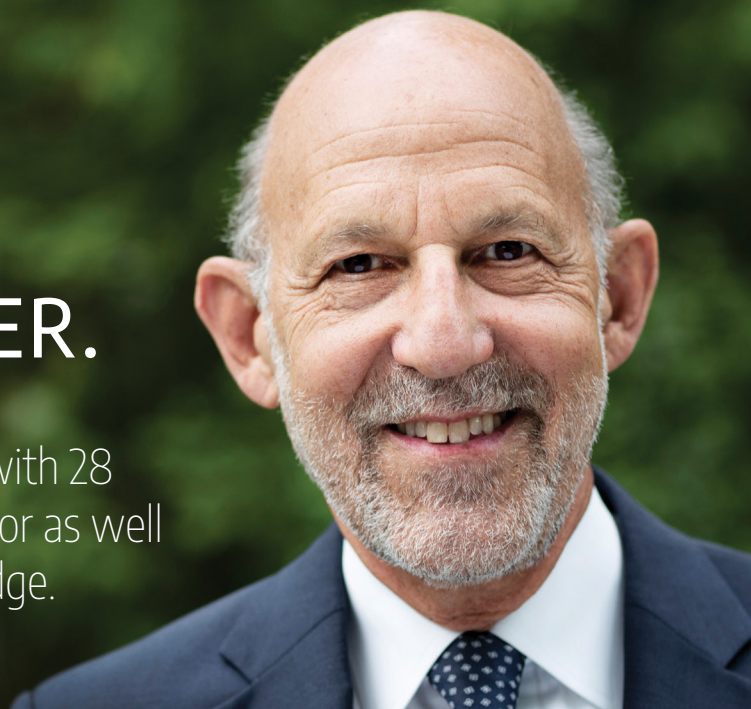


ARBITRATOR.



SPECIAL MASTER.

Experienced and well prepared with 28
years as a trial lawyer and litigator as well
as 16 years as a District Court Judge.



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Events and Meetings

Visit www.hcba.org/events for more information

FRIDAY, MARCH 8

Professionalism & Ethics

CLE: The End, the Beginning of the End, and the End of the Beginning: Current Developments Regarding the Legal Malpractice Statute of Limitations

WEDNESDAY, MARCH 13

Professionalism & Ethics and LegalCORPS CLE:

Addressing the Cycle of Poverty: Ethical and Diversity Aspects of Providing Pro Bono Patent Prosecution Services to the Under-Resourced and Under-Served

THURSDAY, MARCH 14

Real Property CLE: 6 Key Issues at the Intersection of Real Estate and Bankruptcy

TUESDAY, MARCH 19

News Lawyers Section Meeting

THURSDAY, MARCH 28

Solo & Small Firm Happy Hour

WEDNESDAY, APRIL 10

Family Law CLE: Ethics Pitfalls from Beginning to End of a Family Law Case

THURSDAY, APRIL 11

Real Property CLE: The Lifecycle of a Complex Real Estate Development Project

FRIDAY, APRIL 12

Professionalism & Ethics

CLE: Ethical issues in Assisted Reproduction

TUESDAY, APRIL 16

New Lawyers Section Meeting

THURSDAY, APRIL 18

Corporate Counsel CLE: Financial Statements for Lawyers



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THURSDAY, MARCH 7

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WEDNESDAY, MAY 1

HCBA Bar Memorial 2019



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What Happens when Someone Googles your Law Firm?

by Jess Birken
@JessBirken

When you're a solo or small firm attorney, you understand that you're not just an attorney. You're also the CEO, the CFO, the project manager, the marketing manager... the list goes on. And while some of these things might come naturally to you, there's a lot of learning that has to happen if you're going to run a successful firm.

And I mean *a lot* of learning.

As a solo, I feel like I'm learning new things ALL THE TIME. And honestly? It's kind of refreshing to learn things that exist outside of lawbooks too. You might find you really enjoy some aspects about running the business of the law firm, even though it's not exactly what you went to school for.

Like marketing, I love it. But even if marketing *isn't* a favorite part of your firm, I can tell you that it's really important. If you aren't giving marketing any time out of your day, I can guess that your practice isn't growing and thriving as much as it could be.

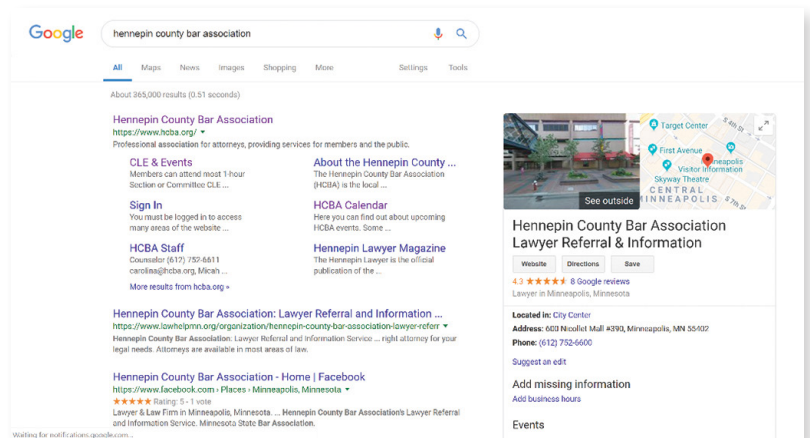
Here's one thing you can do today that will make a big difference: claim your Google My Business listing. This is a simple, quick way to improve your SEO and help your future clients find you.

Let's do it!

First, what is Google My Business?

Think of your Google My Business (GMB) listing like a phone book listing, but for the 21st century. When people are trying to find you, no one pulls out a phone book anymore. They do a Google search.

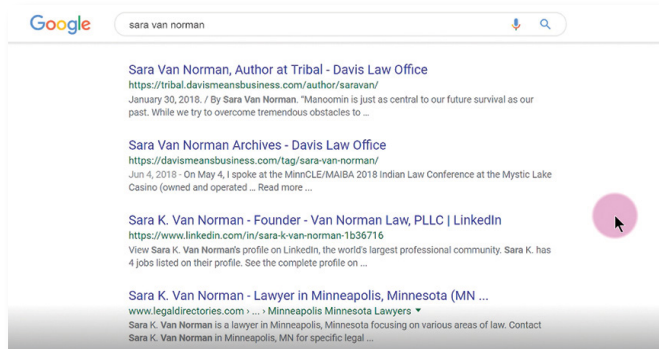
I'm guessing you know this because this is how *you* find people and companies too. You search, and this handy-dandy map with a ton of info comes up on the side. Here's the one for Hennepin County Bar Association:



This is where people can easily see your hours, find your website, get directions, see reviews, etc. Does this come up when you google your own firm? If not, you'll need to claim your GMB listing.

Okay, but does it really matter?

YES. You want potential clients to be able to find your firm without much of a struggle, right? And part of that is making it easy to find on Google. This is what it looks like when you search for a solo attorney that *hasn't* claimed their GMB listing:



Looks a bit empty on the side there, doesn't it?

I searched for a friend (hi Sara!) who just recently started her solo firm, Van Norman Law. As you can see, it does come up in the search, and so does the firm she worked at in the past. But her new firm, Van Norman Law doesn't stand out. Not like that whole side bar for HCBA did in my previous search, right?

Someone who's searching for her might not be able to figure out which firm she's at right now or how to reach her – and you don't want that.

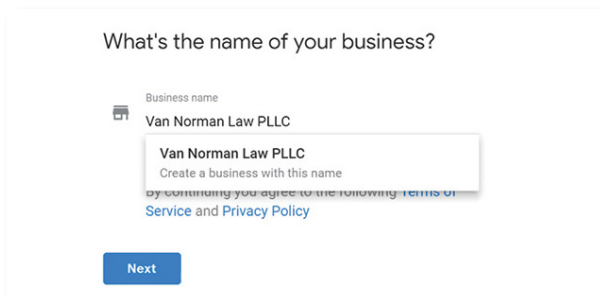
So, Sara gave me permission to claim her GMB listing for her so that I can walk you through the process too. So, fire up your laptops and let's get to work!

1 Sign in

Go to www.google.com/business to get started.

Pro tip: I'd recommend you create a free Gmail account for your firm (i.e.: firmname@gmail.com). That way you can manage the GMB listing separate from your personal email. You'll want to do that before you get started with GMB.

Click "Sign In" and follow the prompts – you'll add the name of the business, the address, type of business, phone number, etc.

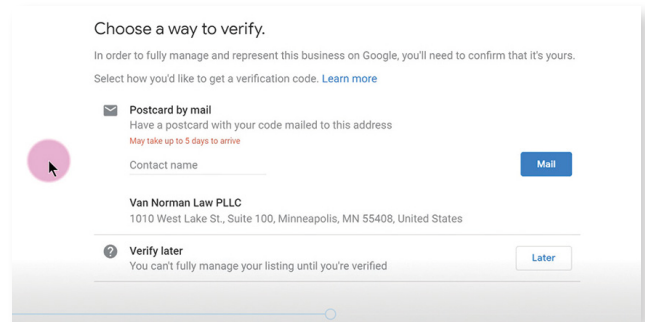


When you're all done with that, click "Finish."

2 Verify your location

Here's one bummer about the process – you can't get it *all* done in one shot. Google wants to verify that you actually have a business where you're claiming you have a business, so they're going to send you a postcard. And once that postcard arrives in 5 days, you can verify.

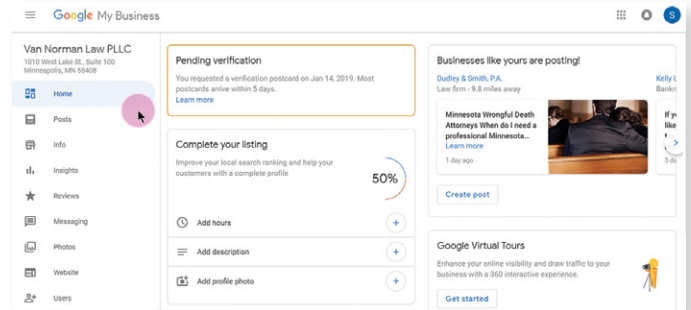
So in this step, you'll want to click "Mail" so you can get that postcard ASAP.



But, you don't have to stop here! Most people think this is all they can do since they have to wait for that verification postcard. But you can get the rest of your listing set up now too! So click "Continue" and we'll get started.

3 Fill out the listing

When you get in to the listing, you'll see this dashboard that shows you that you're not done filling it out.



While just claiming the listing is great, actually filling out everything you can will give you a huge SEO boost. Plus, it'll help you communicate directly with potential clients about your firm. Why give up an opportunity to do that?

So now you can just go down the list on that side bar, adding in the firm's hours, holiday hours, a description of the business, the kind attorney you are, photos etc. Plus, if you use online scheduling, you can put your link to schedule directly into listing! (If you're not using online scheduling yet, check out Acuity tour www.tinyurl.com/jessbirkenacuity to learn everything you need to know to get started.)

A couple notes on this – don't just stuff your listing with keywords. Use a compelling description because real people will read this stuff. This is your chance to talk directly to potential clients, so choose your words wisely.

And that's it—you've got your listing filled out!

In the future...

Once you get that postcard and you can verify your location, a few more features become available to you. Here's a few to whet your interest:

- **Insights:** learn about how people can find you and who those people are through analytics
- **Reviews:** let satisfied clients speak for you, and you can reply back to them. This is huge.
- **Messaging:** people can chat directly with you through text (without giving out your number)
- **Users:** allow your colleagues or staff update your listing without giving them total access

Utilizing Google My Business can be a super simple yet effective way to improve your firm's communications. Don't delay – take a few minutes *today* and get this done, if you haven't yet. Or if you've already claimed your listing, log in and be sure things are up to date.

I also filmed a Tech Practice Brief on this topic, so if you want to follow a step by step walk through, check out that video at <https://tinyurl.com/claimGMB>

"If you aren't giving marketing any time out of your day, I can guess that your practice isn't growing and thriving as much as it could be."



Jess Birken

jess@birkenlaw.com

When she's not helping lawyers use tech tools, Jess Birken is the owner of Birken Law Office—a firm that helps nonprofits solve problems so they can get back to their mission.

Neutrals Like
No Others

JAMS welcomes Daniel H. Mabley



Served more than 26 years on the Hennepin County (Minnesota) District Court, including a term as chief judge; handled civil and family matters on the bench, gaining a reputation as a quick study on legal challenges and opportunities for settlement; spent 15 years in prosecuting attorney roles in Dakota, Hennepin and Ramsey counties

Appointed in 2002 as a United Nations International Judge and adjudicated disputes connected to the Kosovo War

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Case Manager
Deb Lewis
612.332.8225
or [dlewis@
jamsadr.com](mailto:dlewis@jamsadr.com)



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Suite 2550 | Minneapolis, MN 55402

Bar Memorial 2019

Continuing our century-old annual tradition, on May 1, the Hennepin County legal community will honor and celebrate the lawyers and judges who passed away during the prior year or so. Chief Judge Ivy S. Bernhardson will call to order this special session of the Hennepin County District Court. Judge Bernhardson will welcome family members, colleagues, and friends of the members of our profession whose good deeds and service we recall that day, and she will introduce justices and judges from Minnesota's state and federal courts who are in attendance. Collaboration between the Hennepin County Bar Association and the Hennepin County District Court has always been and will always be the key to a successful Bar Memorial year after year. We are grateful for this good will.

Volunteers on the Bar Memorial planning committee have served for many years because of the satisfaction we derive from recognizing the professional and personal achievements of those whom we will remember. Our profession is much better for their good deeds and work, and for their unique contributions to the law and the greater community. Every year, family and friends leave the Bar Memorial feeling quite moved by our tribute to the person who was special to them.

The HCBA's Bar Memorial Committee requests your assistance in its plans for the 2020 Bar Memorial. Let us know of Hennepin County lawyers and judges who pass away during 2019. Also, if you are interested in serving on the committee to help plan the 2020 Bar Memorial, we welcome your participation. For more information, contact HCBA Events Director Sheila Johnson at sjohnson@mnbars.org or 612.752.6615.

"The past informs the present. The present informs the future. Today, we remember our colleagues who have gone before us. Tomorrow, we will apply the lessons learned."

Kathleen Murphy
Chair, Bar Memorial Committee

Wednesday, May 1, 2019
9:00 a.m. to 10:00 a.m.
Thrivent Financial Auditorium
625 Fourth Avenue South, Minneapolis

Invocation: Judge
Luis A. Bartolomei

Main Address: Retired Minnesota
Supreme Court Justice Christopher Dietzen

To Be Memorialized*

Richard B. Abrams

Robert Vollmar Atmore

David M. Beadie

John W. Carey

Norman Roblee Carpenter

Hon. John J. Connelly

Hon. Diana (Standahl) Eagon

Stanley Efron

Michael Perry Gallagher

Harry Gustafson

David K. Hackley

William J. Hanley

Victor C. Johnson

Vincent E. Johnson

Robert W. Kettering, Jr.

Paul Klaverkamp

Barbara 'BJ' Kuhn

C.D. 'Jerry' Mahoney, Jr.

James Phillip Martineau

Ronald Meshbesh

Robert G. Mitchell, Jr.

William Edward Mullin

Hon. Diana Murphy

Scott M. Nelson

Harding A. 'Bud' Orren

Roger A. Peterson

Hon. William Scott Posten

Curtis Lloyd Roy

Connor Schmid

William S. Seeley

Donald Wright 'Tad' Selzer, Jr.

Ronald L. Simon

Jerry Wayne Snider

Ralph Strangis

Peter F. Walstad

Michael Kent Walz

Clifford Lane Whitehill

Rolfe Allan Worden

Barbara A. Zurek

* Additional individuals may be added. Please see the May issue for a complete list of memorials.

Member News

Submit your HCBA member news to
thl@hcba.org for consideration.



Chestnut Cambronne announces that **Bryan L. Bleichner** has

been named a shareholder and elected to the firm's board of directors. **Christopher Vatsaas** has also been named a partner in the firm.

The law firm Spencer Fane announces its expansion into two new markets with three attorneys joining in Minneapolis office: **Jon Farnsworth, Laurie Quinn, and Leslie Witterschein.**

Cozen O'Connor welcomes **Kari Berman** to its Minneapolis office.

Foley & Mansfield announces that **Elizabeth "Liz" Sorenson Brotten** has been elected to the firm's executive committee.



Kristine Kubes, principal of Kubes Law Office, has been elected as chair-elect of the American Bar Association Forum on Construction Law.

Ballard Spahr has named **Peter V. Michaud** to the position of chair of the Business and Finance Department.

Cousineau, Van Bergen, McNee & Malone announces that **Rachel B. Beauchamp** has become a shareholder with the firm.

JAMS announces the addition of **Retired Judge Daniel H. Mabley** to its Minneapolis panel.

Nichols Kaster announces that **Carl Engstrom** has been named partner in 2019. The firm also announces the addition of associates in its Wage & Hour and ERISA Litigation practice groups. **Caroline Bressman** and **Jay Eidsness** join the firm's Wage and Hour team. **Chloe O'Neill** joins the firm's ERISA group.

Aaron Frederickson of MSP Compliance Solutions, was published in the November 2018 issue of the Wisconsin Lawyer. The article, Medicaid Third-party Recovery: A Moving Target, addresses concerns attorneys practicing in the area of personal injury and workers' compensation face when the claim involves a Medicaid recipient.

Lommen Abdo announces the addition of three shareholders:

Jesse Beier, Cameron Kelly, and Lauren Nuffort.



Josh Feneis has joined Lommen Abdo.



Ciresi Conlin announces that **Barry M. Landy** was named a partner at the firm.

Larkin Hoffman welcomes **Wayne Schertler** as its new chief operating officer.

Brandt Criminal Defense announces the addition of **Danielle Peden** as their newest associate attorney.

Larkin Hoffman shareholder **Phyllis Karasov** was elected to the law firm's board of directors.

Fredrikson & Byron attorney **Mercedes McFarland Jackson** has been elected to a three-year term as a member of the Minnesota Chamber of Commerce Board of Directors.

Barnes & Thornburg has added **Bradley J. Walz** as a partner in the Corporate Department in Minneapolis.

Halunen Law announces that attorney **Amanda R. Crain** has joined its Employment Practice Group.



Christian V. Hokans has joined Fredrikson & Byron as an associate in the firm's litigation group.



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HCBA Notice of Election

HCBA Notice of Election

To: Members of the HCBA
From: Brandon Vaughn, Secretary

Application/Deadline

For an application, position descriptions, and the Nominating Committee process, please visit hcba.org. Completed applications, including a resume, should be submitted to:

HCBA Nominating Committee
Attention: Sarah Mayer
Hennepin County Bar Association
600 Nicollet Mall, Suite 390
Minneapolis, MN 55402

Or email: smayer@mnbars.org

Applications are due by Friday, April 5, 2019.
Applicant interviews will be scheduled in late April.

Nominating Committee

The Nominating Committee shall nominate at least one nominee per officer or other election. No applicant shall communicate with the committee or any member of the committee about a matter relating to the committee's HCBA Notice of Election business, except through the chief executive director. HCBA bylaws are available at www.hcba.org.

The Nominating Committee is chaired by Thaddeus R. Lightfoot, immediate past president of the HCBA. Other committee members are: Esther Agbaje, Jeff Baill, Traci Bransford, Eric Cooperstein, Celeste DeMars, Paul Dieseth, Aaron Frederickson, Dan Gilchrist, Hon. Ann O'Reilly, Esteban Rivera, and Stephanie Willing.

Additional Opportunities

Besides the HCBA's formal elections, additional opportunities for service through committees and sections during the 2019-20 bar year are available by presidential appointment or section elections. If you would like to be considered for a leadership position, contact President-Elect Jeff Baill at jbaill@yostbaill.com or HCBA CEO Cheryl Dalby at cdalby@mnbars.org.

HCBA OFFICES FOR 2019-2020

Elections

Positions Open

Term

Officers and Directors

HCBA Secretary
Track position, serves as president 2022-23
At-Large Director
At-Large Finance & Planning
At-Large Finance & Planning

One

Three

Two

One

One-year

Three-years

Two-years

Finish the remainder of a term ending June 2020

Other Representatives

MSBA Assembly Delegates
MSBA Assembly Alternates
ABA Delegate
HCBA Representative
to MSBA council

Eighteen

Eighteen

One

One

One-year

One-year

Two-years

Finish the remainder of a term ending June 2020

Other Boards

Central Minnesota Legal Services

One

Two-years

Other Leadership Opportunities

Those interested in service and leadership opportunities should also be aware of nominations / elections through the MSBA to positions on the Client Security Board (one position), State Board of Continuing Legal Education (two positions), Central Minnesota Legal Services (one position), MSBA/ABA delegates (three positions).

Interested members must submit a Qualifications & Interest Statement to the MSBA office by Friday, March 29, 2019. This form is available on the MSBA website or through Joni Fenner 612-278-6307.



HCBF Notice of Election

HCBF Notice of Election

To: Members of the HCBA
From: Alecia Anderson, Secretary

The Hennepin County Bar Foundation (HCBF) is seeking applications for open seats on its Board of Directors and for the position of treasurer.

The mission of the HCBF is to "promote access to justice for the people of Hennepin County." The HCBF fulfills this mission through supporting partner organizations and awarding grants to organizations that provide legal services to individuals of limited resources, educate the public about the legal system, and contribute to the improvement of the legal system and administration of justice.

The HCBF Nominating Committee looks for board members from the local legal community who are enthusiastic about increasing access to justice initiatives through the foundation's fundraising, grantmaking, and community engagement.

Application/Deadline

To be eligible to serve on the HCBF Board of Directors, individuals must be members in good standing of the Hennepin County Bar Association. Members of the HCBF board are elected to three-year terms and are eligible to serve two consecutive terms.

The position of treasurer of the HCBF, while a one-year term that is not technically "tracked", tends to be held by an individual who is interested in moving up to the leadership

positions of secretary, vice president, and president.

For an application and position description, please visit hcba.org. Completed applications, including a resume, should be submitted by email to Amanda Idinge at aidinge@mnbars.org. Applications are due by Friday, April 26, 2019. Applicant interviews will be scheduled in May.

Applications are available at hcba.org or by calling 612-752-6600.

Election

The HCBF Nominating Committee reports its nominations for each position to the HCBF board. Class A members (the HCBA officers) appoint board members, while the full board elects officers at their annual meeting.



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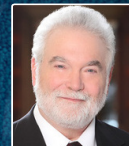
Patrick R. Burns
(612) 877-6400



Just. James Gilbert
(952) 767-0167



Hon. Sam Hanson
(612) 977-8525



Steve Kirsch
(612) 312-6519



Roger Kramer
(651) 789-2923



B. Jon Lilleberg
(612) 255-1134



Paul F. McEllistrem
(952) 544-5501



Linda Mealey-Lohmann
(612) 791-2218



Philip Pfaffly
(612) 349-5224



Mark Pilney
(651) 702-1414



Paul J. Rocheford
(612) 375-5937



James G. Ryan
(612) 338-3872



Doug Shrewsbury
(952) 428-9840



John Vukelich
(218) 786-0565

Check Available Dates Calendars at www.MinnesotaMediators.org

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10 THINGS

I Like About Being General Counsel for Bankers

by Tess Rice, General Counsel and Director of Government Relations, Minnesota Bankers Association

1 Working with bankers. The Minnesota Bankers Association (MBA) has over 300 member banks of all sizes, from Wells Fargo and US Bank to small community banks with four employees. The banker-volunteers I work with are mainly from community banks. They are highly invested in their communities and are really terrific people. It is a real pleasure to work with people who are so professional, intelligent, and devoted to their communities.

2 Answering banking questions. The MBA legal department answers around 2,000 questions from bankers every year. I don't do as much of it anymore, but I really enjoy researching these questions and providing thorough answers with citations and links so they can see the law behind the answer. Bankers are grateful for the help, and it gives me an idea of what the current issues are in banks.

3 Lobbying. The MBA's tagline is "the champion for Minnesota bankers." Government relations work is one of the most, if not the most, important thing we do. Along with our federal work, we stay on top of issues at the state capitol that could impact the banking industry. It is exciting to be part of the legislative process, whether it's talking with legislators, working with other lobbyists, or writing legislation with other stakeholders. More importantly, this is an area where we can make a significant contribution to the banking industry.

4 Testifying at the state capitol. I really like testifying at the state capitol. I usually spend a lot of time prepping so I am completely ready. You have to think quickly when legislators pepper you with questions and you have to answer in a certain way. It's as close as I'm going to get to being on a game show like Jeopardy. I don't answer in the form of a question, but I do have to answer, "Madame Chair, Representative So and So, this is why banks are awesome..."

5 Writing amicus briefs. When our members have a case at the appellate level that may impact the entire industry, we will write amicus briefs to explain the impact on the industry. We are very careful to provide a practical perspective and to say something different than the parties in the case. It's enjoyable to occasionally dip back into the legal world and write briefs.

6 Working for a small organization. We have a staff of about 25 people and our organization is very nimble. If we get an idea, we'll try it out. We don't have to go through a lot of red tape first. For example, our education department does a lot of training and if we have an idea for a class, we just do it. If it works out, great! If not, we try something else.

7 Working for an association. An association is generally a low-stress work environment. We don't have the excitement of a litigation practice and that's fine with me. Things can get a little tense at the capitol sometimes, but it's so infrequent that when it does happen, it's kind of fun. At the MBA, we work regular hours, which is great for work-life balance.

8 Working with a skilled staff. The staff at the MBA is wonderful. Our president is one of the smartest, best people I know. We have a very stable and experienced staff, many of whom I've worked with for 19 years, so it is a real pleasure to come in to work every day.

9 Collaborating toward a common goal. Before joining the MBA, I was a bank examiner. In that capacity I didn't always feel like we were working toward a common goal. We worked toward being collaborative, but sometimes it was more like we were trying to catch bankers doing something wrong. The bankers actually knew much more than I did, so even if I found a mistake, I sometimes didn't know enough to help them correct it. At the MBA, our staff and the banker-volunteers are all working together toward a healthy banking system.

10 No billable hours. Enough said.



The Fund for Legal Aid and the Hennepin County Bar Association
cordially invite you to the

38th annual Law Day Testimonial Dinner

Benefiting Mid-Minnesota Legal Aid

TUESDAY, MAY 14, 2019

HONOREES

Iris Freeman

Minnesota Elder Justice Center

Warren Woessner

Schwegman Lundberg Woessner

Photo by
Wendy Zins Photography



KEYNOTE

Equal Justice Lives

Hon. Ann Claire Williams

(Ret.), U.S. Court of Appeals
for the Seventh Circuit

Jones Day

4:30 p.m. Reception (Cash Bar)

"Lunch with a General Counsel" Silent Auction

6:00 p.m. Dinner and Program

Hilton Minneapolis

1001 Marquette Avenue, Minneapolis Ballroom

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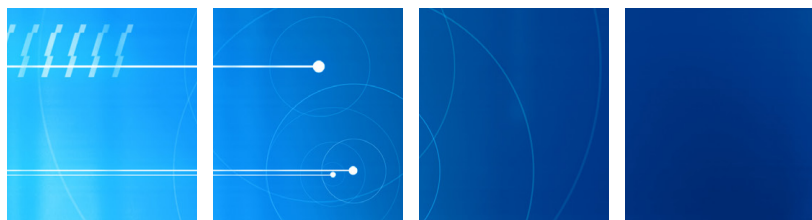
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