January / February 2021 Volume 90 Issue 1

Official Publication of the Hennepin County Bar Association

HENNEPIN LAWYER

Jessica Timmington Lindstrom

New Lawyers Section Chair

Joining the Human and Electronic Elements Together

Computer Forensic Services (CFS) and **360 Security Services** (360) are two organizations with one mission: To address your investigative and security needs.

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- Employment and backgrounding;
- Personal injury;
- Corporate espionage;
- Family (custody, marital dissolution);
- Criminal (financial, cybercrime, extortion, stalking, violent offenses);
- Investigative and security auditing.

The strategic partnership between CFS and 360 provides clients with a comprehensive and seamless team-based approach to investigations and security.

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FOCUS ON PRIVACY

Hennepin Lawyer
January/February 2021
Volume 90, Number 1
www.hcba.org

Hennepin Lawyer (USPS 23020) (ISSN 26905906) is published bi-monthly by the Hennepin County Bar Association, 600 Nicollet Mall, STE 390, Minneapolis, MN 55402. Periodicals postage paid at St Paul, MN. **Postmaster:** *Send address changes to Hennepin Lawyer, Hennepin County Bar Association, 600 Nicollet Mall, STE 390, Minneapolis, MN 55402. The mission is to educate and inform lawyers about the current issues and events relating to the law and the profession. It allows for the free expression and exchange of ideas. Articles do not necessarily represent the opinions of any person other than their writers.*

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You can be a part of the Hennepin Lawyer Committee.
If you are interested in writing or editing, email Nick Hansen, Managing Editor at nhansen@mnbars.org

Vulnerability

If you could sum up 2020 in one word, what would it be? For me, the word is "vulnerability." A superficial example that comes to mind is my "home office" setting. The assembly-required (and as-cheap-as-I-could-find-it) desk I worked at was situated about six feet from where I sleep. Through Zoom or Teams windows, clients, colleagues, and coworkers had an inside view to the limited sets of sheets I own, the frequent sight of unfolded laundry on my bed, and cameo visits from my cats. My one-year-old also occasionally assumed center-stage in meetings, negotiations, and client counseling sessions, generating a significant fan following. Our department retreat last year was markedly different when a colleague interrupted our business discussions to exclaim, "Oh my gosh, she's walking!"

But 2020 was also a year of vulnerability in lots of un-superficial ways. COVID-19 totally rearranged and deepened my perspective on the importance of health, well-being, and intentional connection with family and friends. The death of George Floyd and the soul-shaking rumble of grief, anger, and trauma that swept through our community awoke a humbling vulnerability when it comes to confronting my biases and my privilege. And as I wonder what 2021 will bring, I find myself making a hopeful commitment to being more real, more honest, and *more* vulnerable, because we cannot take any new year we're given for granted.

And you may wonder what *any* of this has to do with the *Hennepin Lawyer*. When our committee decided back in early 2020 that the theme of this issue would be, "Privacy and the Law," I jumped out of my chair to edit it. You see, privacy law compliance, data use, and data sharing issues are part of my practice, and as a result, I felt modestly equipped to contribute to this topic.

Fast-forward to September 2020 when the committee gathered (via Teams) to discuss potential articles. Topics like the California Consumer Privacy Act (CCPA) or the latest Facebook case on the docket were very far from everyone's minds, including myself.

Instead, our conversation turned toward topics that affected individuals' very real and very vulnerable 2020 lives. Such as: What rights do employees have when an employer wants to monitor for contact-tracing? What is it like for a solo practitioner trying to preserve client confidentiality from home? How does Minnesota law cope with issues like public access to data, such as body-worn-camera footage? What does the court system and access to justice look like these days, from the perspectives of those who are in it day-in and day-out? What ethical issues should attorneys keep in mind in our now very-online world?

As a result, those are the articles you'll find in this issue—opportunities for education, reflection, and connection. For example, every attorney in Minnesota should be aware of what the Minnesota Government Data Practices Act is and recognize our colleagues who are at the epicenter of its very practical and meaningful effects on how our community receives and processes information related to police misconduct. Given the fact that allegations of police misconduct inherently create vulnerability for so many, on all sides and in all stages of the process, it is important that we be informed of the frameworks that affect the resulting conversations and data (or limitations on data) available to the public.

But assuming not much has changed from the time I wrote this introduction to the time this issue is published, I'll likely be reading the final version of this issue from my assembly-required desk, with laundry laying on my bed unfolded, and cats wrestling underneath my chair. I will still be answering Teams calls with no background filter on, and generally awaiting all of the changes 2021 will hopefully bring.

Megan Bowman

Jaunuary/February Issue Editor

mbowman@fredlaw.com

Megan Bowman is an associate at Fredrikson & Byron, where she advises clients on technology and data issues. She is also a Certified Legal Project Manager and graduate of the University of St. Thomas School of Law.

Community, Equity, Democracy

2020 was a very challenging year for most people all over the world. COVID-19, the protests for racial equity due to the killing of George Floyd, and the presidential election were major news in the United States, Minnesota, and Hennepin County. I hope that 2021 will be a much better year and most of the challenges will be addressed in one way or another.

There is some very good news with the COVID-19 vaccine and the acquired deeper knowledge about the coronavirus. We have adapted to a new way of living and are more equipped to deal with the virus. The HCBA has also adapted to the virus and has offered live-streamed and on-demand CLEs and virtual networking events. We are looking forward to having in-person events again as soon as it is safe. We are hopeful that it will be sometime soon in 2021. This issue features the HCBA New Lawyers Section Chair, Jessica Timmington Lindstrom. I want to personally congratulate Jessica and the New Lawyers Section for championing the HCBA efforts to offer fun virtual events during the pandemic. I have received amazing comments about the events. I have attended a couple of them and was pleased with them. If you have not attended an NLS event yet, I encourage you to do so—they're open to all members.

Racial equity is a very complex topic that will take more than a year to address. However, there are a lot of steps that different organizations, public offices, and segments of society have taken to raise awareness about racial equity and the prevalence of the issue. We should not lose the momentum and the willingness to resolve this problem that has haunted the United States and Minnesota for so long. The HCBA Finance & Planning Committee's Racial Equity Committee has taken substantial steps to develop a plan that will be unveiled in 2021 for specific action items to address the issues that racial inequity brings to our profession and our justice system. I am very excited about these items and I hope all members become involved in these efforts because it is an issue that affects us all and our legal system.

I hope that 2021 will be a much better year and most of the challenges will be addressed in one way or another.

No matter what your political views are, we should all celebrate living in a democratic country where the rule of law and the will of the people are respected. The 2020 U.S. presidential election was very emotional and confrontational at times. This is a year to heal and to bring a message of unity to the country. Living in a democratic country is a privilege that not everyone has. I come from Ecuador, where coups happened more than once in the last 30 years, and where personal and partisan interests were put over the will of the people and the rule of law. Having a country where the will of the people and the rule of law prevails over any specific political ideology, party, or person is a privilege that should be celebrated and not taken for granted. I hope that we can leave any animosity behind and work to have a more united country for the best of everyone.

I encourage all members to do their part to have a better 2021. Please participate in our virtual programming until the in-person programming becomes available. Please become a part of the HCBA Racial Equity plan and make efforts to eliminate racial inequality. Finally, please celebrate that we live in a democratic country and help to unite the nation that we all love.

Esteban A. Rivera
2020-2021
HCBA President

esteban@riveralawllc.com

Esteban A. Rivera is an attorney licensed in Minnesota and Ecuador. He practices mainly immigration and international Law with emphasis in Latin America. He practices investment, employment and family-based immigration law as well as removal defense. He is very active in the local legal community and the local bar associations.

Introducing

Jessica Timmington Lindstrom

2020-21 New Lawyers Section Chair

Can you introduce yourself and say a little bit about your practice?

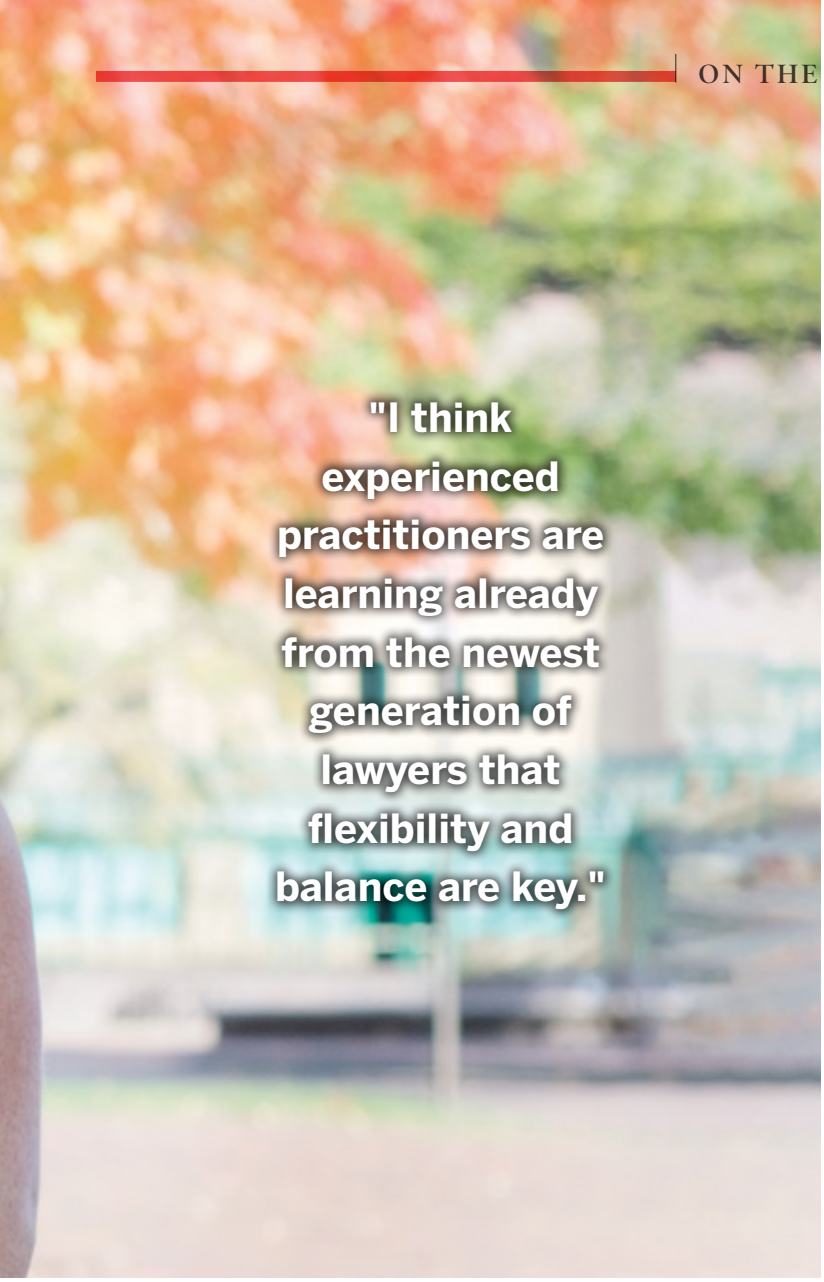
I grew up in the western Twin Cities suburbs, attended Minnetonka High School, and graduated from the University of St. Thomas. I took some time off to work and figure out what I wanted to do with my life. I thought I wanted to go to business school, but I wound up taking the LSAT instead. I graduated in December of 2013 from the Hamline Law School Weekend Program. Working full time and going to law school was the most challenging thing I have done thus far—I also got married and bought a house during that same time period. People thought we were nuts, and looking back, we definitely were! We also started fostering dogs during that time and adopted our first pit bull, Diesel.

I am an elder law and trusts and estates attorney working at Winthrop & Weinstine. I specialize in elder law, which is an umbrella term that encompasses assisting elderly and disabled individuals plan for their estates and long-term care, and assisting them with obtaining benefits from government programs such as Medical Assistance (Medicaid). I handle guardianship and conservatorship matters, along with drafting and administering special needs and supplemental needs trusts. I also maintain a regular estate planning practice, including drafting estate plans, administering estates and trusts, and handling probate matters. I love the variety of my practice, the hands-on client interactions, and being able to help those in need.

How has the New Lawyers Section adjusted programming during the pandemic?

I am really proud of the creativity everyone has brought to the table to ensure this year is a great one, no matter the pandemic. We have successfully shifted from in-person meetings, programs, and happy hours to fully virtual events with great success. I am pleased with the CLE programming we are presenting and the networking events we are offering. The section has flourished in a way where we have more people able to participate because they don't have to come downtown for meetings. Instead, they connect remotely with us. We have had many new faces join us, which is exciting. Our revamped social events have been extremely popular and we've been able to try out new ideas in a fully remote world. The section's monthly trivia league has been a hit, as was our last cocktail-making class, and panel discussion.

At the beginning of the 2020-2021 bar year, I challenged everyone to be flexible and nimble with the changing times due to the pandemic and to become leaders of change. I think we are accomplishing that through our activities, actions, and inclusivity.



Jessica's Favorites

TV Shows:
F1 Drive to Survive
Big Mouth
Parks and Rec

Book: Outlander

Movie: The Man from Snowy River
Eurovision

Local Restaurant:
Meritage or
Blue Door Pub

What's your pitch to recently admitted lawyers to attend NLS events and meetings?

The pitch is that it is easier than it has ever been to attend bar association events, meetings, and CLEs. Just hop on the Zoom call and you are a part of the group. We have really enjoyed getting to know new people who join our group and I have been trying to connect with all the new folks who jump on a Zoom meeting. Plus, we have a ton of fun and are still able to network with one another. No longer do you have to awkwardly stand on the outskirts of a room trying to decide who you are going to approach, if anyone. Being remote has fixed that so that you don't have to have those anxious feelings any longer.

What's your favorite part about being involved with the NLS?

My favorite thing about the New Lawyers Section is that it has taught me networking and communication skills I would otherwise not have. I have been able to meet a whole variety of practitioners. Not only that, but I have met so many wonderful colleagues that have encouraged and supported me throughout my emerging legal career. They have helped develop who I am and who I want to continue to be.

How did you get involved with the HCBA?

I got involved with the NLS by attending the meetings. I didn't know how much involvement I wanted to have, so I just attended the meetings for a while and then was approached by the current board to take on a leadership role. You don't have to show up and ask for a place on the board, you can just quietly attend the monthly meetings and social events.

What's some good advice you've received from more senior lawyers? And what do you think more experienced practitioners can learn from the newest generation of lawyers?

Advice from senior lawyers: don't take everything personally, which is hard to do. In the elder law practice, you really must understand where a client is coming from and meet them there. You also have to get very good at not getting emotionally involved and leaving work at work. If you don't, you run the risk of fatigue in your attempts to try and solve everyone's problems.

I think experienced practitioners are learning already from the newest generation of lawyers that flexibility and balance are key. You don't necessarily need to be in an office to learn or to be the person who is the last one to turn out their light at the end of a long day. This generation wants to work hard, to learn, to be successful, and to help clients to their best ability, but they also want a fulfilling life while doing that work. They want to be able to enjoy time with their loved ones, have a family, and take a vacation without feeling the constant pressure and stress to do more. Stress and anxiety plague the legal profession for these reasons and many more. It causes new lawyers to drop out at an alarming rate. For the new lawyers who stick with it, many end up with debilitating stress, anxiety and depression. This generation wants to fix these issues, enact real change in the field, and address needs that have previously been ignored. That should be a cause for concern, as new lawyers who are bright, smart and intelligent are likely to drop out of the industry to achieve better balance, flexibility and self-care offered through other employment.

What's your favorite thing to do outside of work?

I have owned and shown American Saddlebred horses with my uncle since I was five years old. We have continued that tradition to this day. We currently own two American Saddlebreds who are in training with DesMar Stables in Lexington, Kentucky. Riding has always been a passion of mine. It is something that gets me away from the world, lets me relax and truly be myself. I have been so blessed to have my uncle support me and join me in this passion. Recently, our four-year-old gaited colt, Lewis, was the unanimous champion for Junior Five Gaited horses out of a three-judge panel at the 2020 National Championships, which was thrilling.

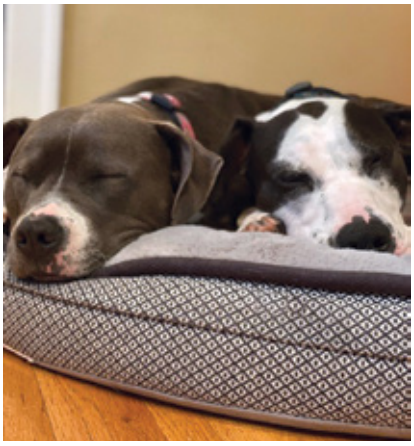
Apart from showing horses, my husband and I fell into fostering and rescuing bully breeds and rottweilers with A Rotta Love Plus, a Twin Cities nonprofit. We have had numerous fosters come through our house, all with different loving personalities. I can't speak enough about how wonderful these breeds of dogs are—we have had all shapes and sizes and fell in love with all of them. We currently have the two dogs we adopted. Frankie is a 3 year-old pit bull who is training to be a therapy dog so she can go visit hospitals and nursing homes, and we have Vinny, a two-year-old Staffordshire Terrier who has turned out to be a great sporting dog who enjoys Flyball and is now just starting in agility training and loving it. We also have three rescued cats who rule our house with an iron fist and terrify our dogs.

If we are not at home with the dogs or at the barn, then we can be found at Lake Vermilion, our little slice of heaven. We enjoy water sports, including wakeboarding, knee-boarding, water-skiing, and wake-skating.

We also love to see Broadway shows, have a nice meal out on the town, and enjoy a good bonfire in the backyard with friends.

Welcoming Lewis, a/k/a MBA's Stole the Show, to the family in July 2020

My husband Dan and I in London for a family wedding.



Frankie, left, and Vinny, right, are inseparable.

INSTITUTE FOR LEADERSHIP IN THE LEGAL PROFESSION

Built specifically for lawyers by lawyers, the **Institute for Leadership in the Legal Profession** is an innovative and transformative seven-session CLE series designed to propel you into higher levels of leadership in your organization, regardless of your practice or work setting.

Since its first cohort in 2015, the Institute has equipped participants with the skills, knowledge, and broader context needed to succeed in key leadership roles. This comprehensive and holistic training series will help shape your career now and prepare you to lead in the ever-evolving legal world of tomorrow.

As an HCBA Signature Series, the Institute is only offered every other calendar year. Space is limited to provide individual feedback and encourage connection among participants. Reserve your spot now for the 2021 Cohort which kicks off in February. Don't miss this opportunity to invest in yourself, your career, and your organization!

"The Institute is one of few programs of its kind in the country, and we are fortunate to have easy access to it with no travel expenses and the opportunity to make connections in our own legal community. We've been proud to see many past graduates promoted into higher levels of leadership, some as top leaders in their organizations."

– **Jeff Baill**, Partner, Yost & Baill, Institute Co-Founder and Former HCBA President

"So who are you and who do you want to be? Where do you want to go in your career and how do you want to show up as a leader? Whatever your answer is, the Institute for Leadership in the Legal Profession can help get you there."

– **Kendra Brodin**, Chief Attorney Development Officer, Taft Stettinius & Hollister LLP, Institute Co-Founder and Institute Planning Chair

Learn more about the extensive learning goals and history of the program at: www.mnbar.org/ILLP

THE 2021 INSTITUTE BEGINS FEBRUARY 17

Learn more at www.mnbar.org/ILLP

7 SESSION SCHEDULE

Every other Wednesday (12:00–3:00 pm)

Session 1: February 17
Kickoff: What is Leadership? Why Does It Matter?

Session 2: March 3
Personal Leadership I: Who Are You as a Leader?

Session 3: March 17
Personal Leadership II: Leading Authentically through Conflict

Session 4: March 31
Team Leadership I: Confronting Bias & Creating Inclusion

Session 5: April 14
Team Leadership II: Cultivating a Healthy Team

Session 6: April 28
Organizational Leadership I: Avoiding Leadership Landmines

Session 7: May 12
Final Session (2:00–5:00 pm) Organizational Leadership II: Leading in Uncertainty

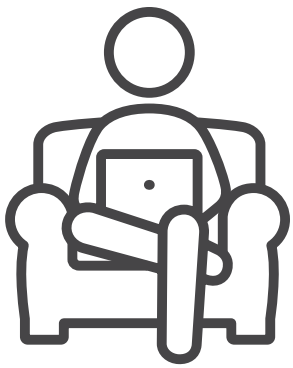
Participation
All programming will be virtual.

CLE Credits
19.25 Standard CLE Credits
will be applied for (approximate)

2.5 Elimination of Bias CLE Credits
will be applied for (approximate)

Pricing
HCBA Members: $695
Non-Members: $795

Questions?
Contact Kara Haro at 612-278-6329 or kharo@mnbars.org



New Lawyers Spotlight: Working From Home

Stephanie Chen

Lockridge Grindal Nauen

What's the best working-from-home hack you've gained this past year?

One of my challenges working from home has been maintaining motivation, which is difficult when things are mundane with staying at home and hardly going to places. I've found exercise helpful; it breaks up the day a bit, and gives me renewed energy to continue working. The problem there, funny enough, is maintaining motivation to exercise regularly. I recently discovered a fantastic virtual workout subscription program called "Obé." It offers high quality on-demand and live classes, with a large variety, from dance cardio to strength training—and the best thing is most of the classes are only 28 minutes long so I can fit them in easily. The instructors are also very upbeat and the classes are set in this color-changing background, so the classes are a fun way to brighten or change up my day. Even if Obé is not your cup of tea, I've seen an increase in different virtual fitness apps and subscription options, and highly recommend one for keeping up motivation and well-being.

What's something new or innovative you did in your job last year?

I started a leadership speaker series hosted by my firm, with the help of a friend and colleague, Arielle Wagner, as well as with the support of the firm's Diversity and Inclusion Committee and of Summra Shariff (Twin Cities Diversity in Practice). This series, known as LGN Leadership in the Law Series, explores how diversity and inclusion is experienced—not just in the law, but in the larger context through Minnesota—with conversations about individuals' personal experiences with inclusion and bias, advice on overcoming challenges and being a successful leader, strategies for allies, etc. We saw a need to bring in different perspectives to keep pushing these important conversations. Our inaugural event this past October featured Hennepin County Chief Judge Toddrick Barnette, who shared some fantastic wisdom about his personal journey and the importance of having honest conversations to cultivate meaningful relationships and maintain employee retention.

Jonathon D. Nelson

Gurstel Law Firm

What have been some unexpected, positive consequences that have come from working from home?

Remote Court appearances becoming the new normal. Prior to the pandemic, it was rare to see certain courts grant requests to appear by remote means (Zoom and/or telephone). During the pandemic, most if not all, courts have transitioned to conducting remote hearings or considering matters based on submission only. Now there are some courts that have indicated they will continue to hold remote hearings even after they have the ability to hold in-person hearings safely.

What adjustments have you made to your work-life balance as a result of working from home?

I've developed a much better work-life balance since starting to work from home in March. Initially the balance was life-heavy because my puppy would decide when I was done working for the day; it eventually returned to a sustainable position after it became normal for her to have me around all day. After returning to the office part-time I've been able to maintain that position, keeping her happy and addressing all of my clients' needs.

Have you picked up any new hobbies or habits working from home?

Yes, hiking and exploring new parks has become a larger part of my life. Once businesses started closing, we created an adventure bucket list and started crossing places off as an excuse to leave the house.

What's the most creative way you've connected with clients or colleagues while working from home?

Safety has always been of the utmost importance in the world of competitive shooting. As a result, local gun clubs quickly developed and implemented rules to minimize health risks for individuals that wanted to continue enjoying the sport. This allowed me to meet colleagues and clients to safely shoot and connect in-person.

Stephanie S. Lamphere

Messerli & Kramer

What's something new or innovative you did in your job last year?
Hired an "At-Home" Legal Assistant—a Boston Terrier puppy named Gizmo.

What's the best working-from-home hack you've gained this past year?
A Nespresso machine.

What's one piece of advice you have for newly sworn-in lawyers?
The area of practice you end up in may not be what you originally envisioned for yourself in law school. Be open to new practice areas that you may not have previously considered which might turn out to be perfect for your unique skill set.

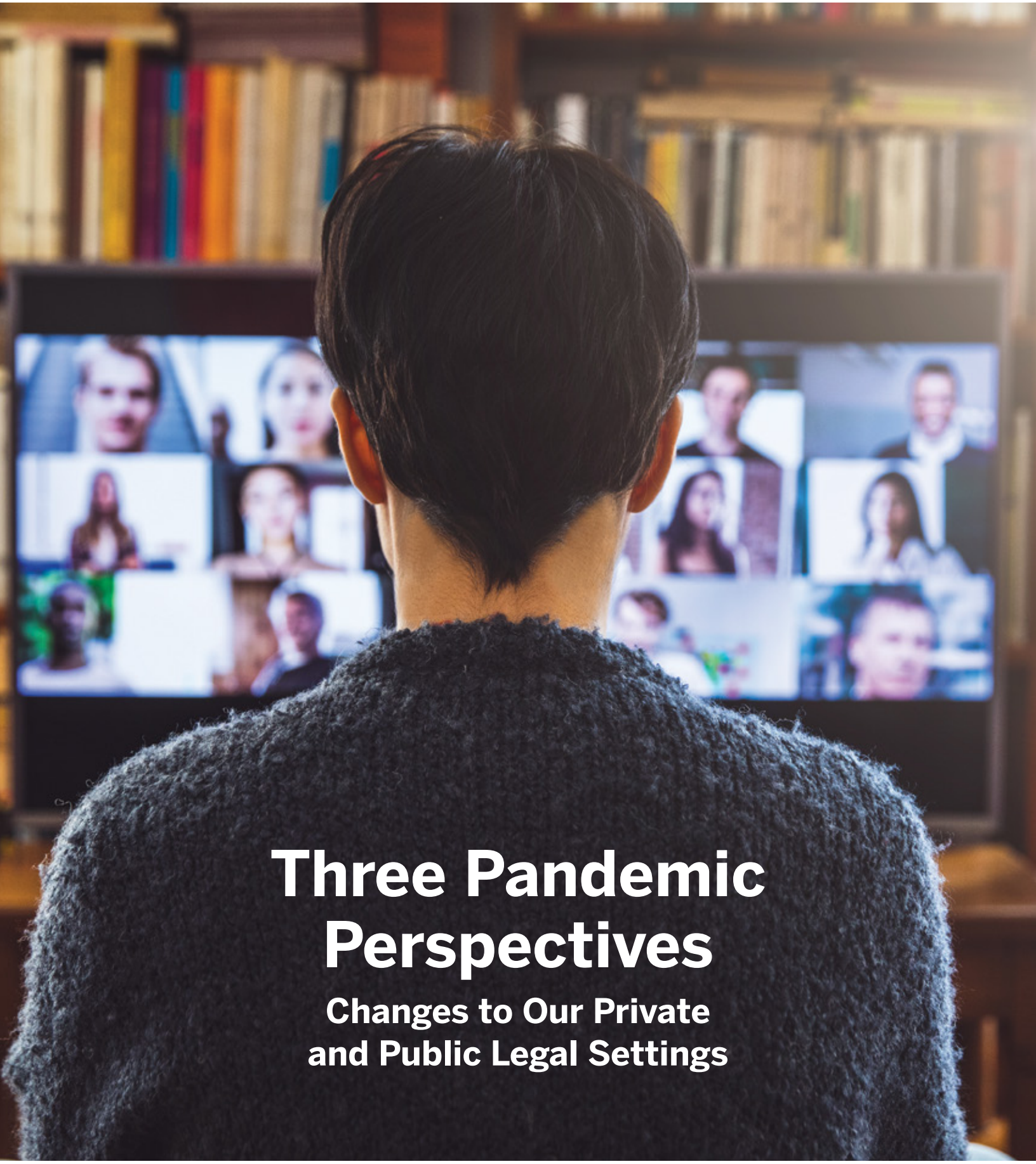
What's become your most vital piece of technology in your practice?
This probably goes without saying as it is 2020—but I would have to say Zoom. As a civil litigator with a number of hearings typically scheduled in a given week, I've greatly appreciated the court's flexibility and the willingness of court administration and staff to coordinate and hear various motions remotely via Zoom (or conference call) during a challenging year.

What's the best book you read in 2020?
The Bible, cover-to-cover in 30 days while recovering from surgery in April. Definitely worth the read!

Tescia Jackson

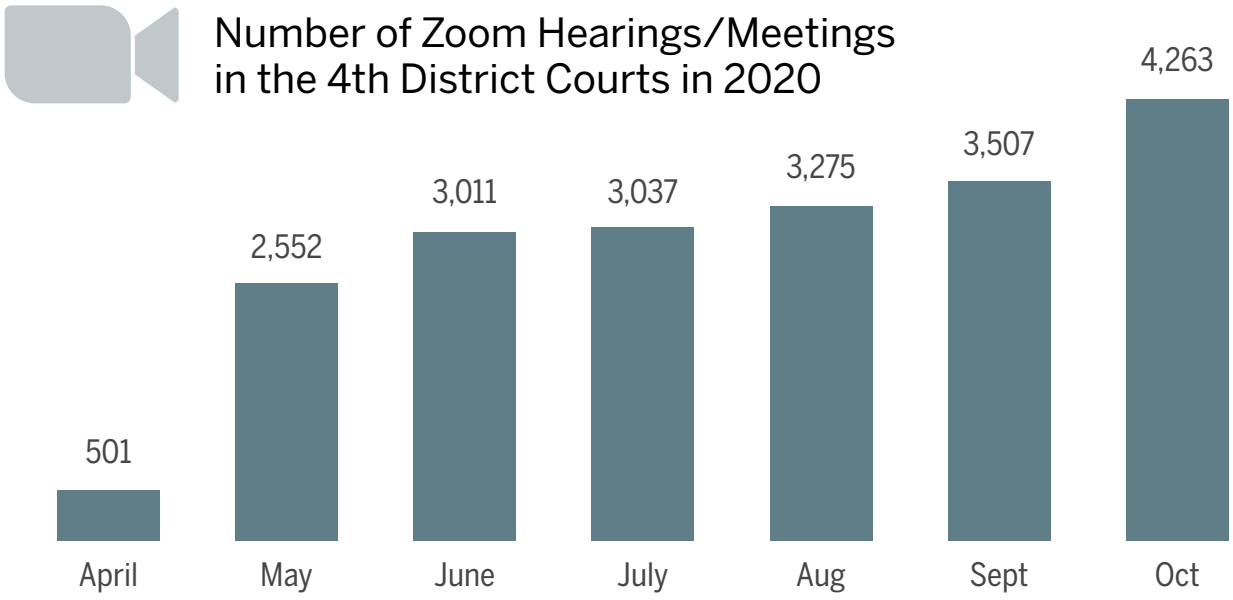
UnitedHealth Group — Optum

What's one piece of advice you have for newly sworn-in lawyers?
Be a good person. All the advice I've ever received from my mentors boils down to that simple phrase. I define a "good person" as one that is hardworking, ethical, respectful, trustworthy, humble, motivated, reliable, helpful to those with less, and enjoyable to work with. These traits, along with a few others, will set you up for success. The legal community is small and people remember how you made them feel. And a special bonus piece of advice: it is never too early or too late to start networking!



Three Pandemic Perspectives

Changes to Our Private and Public Legal Settings



1. Courts *by Hon. Bill Koch*

Bob Dylan's song "The Times, They Are A-Changin'" was written as a commentary on the civil rights movement and the changes rocking the world at the time of my birth in 1963. Dylan's song was about a different time and a different place. But, the "sense" of the song resonates right now, in more ways than one.

I wrote this discussion about how COVID-19 has changed life in the courts, and then had to rewrite it following the announcement by the Chief Justice and the Judicial Council of a series of new mandates for our courts: beginning November 30, no trials would be held until February 1 and all matters would be handled remotely, except for rare exceptions. Even before this most recent move, Hennepin County—through the great work of the Hennepin County Sheriff's Office and all criminal justice partners—had largely avoided or suppressed the scourge of COVID-19 in the jail through careful planning and reduction of the pretrial jail populations.

To say we are in a state of constant flux would be an understatement. Thankfully, we are a creative and resilient court. Our IT and court staff are nimble and proactive. And our justice partners are matching that ingenuity. Starting last March, when the coronavirus was truly novel, we implemented changes in our practices. One of the most notable is the use of Zoom for a vast variety of hearings. It is beyond the scope of this short piece to cover all the changes. But this chart (above) helps illustrate where we have been. And, given the most recent spike in the number of coronavirus cases, an indication of where we will be going.

Today, most judges have implemented a "permanent" Zoom link for their virtual courtrooms. All chambers have been trained on best practices for remote hearings. Except for limited situations requiring in-person appearances, parties have been strongly encouraged to appear remotely via Zoom. It is easy. It is certainly easier than traveling to the courthouse, oftentimes having to take off work, or find child care, or both. It is quicker, since the parties need only be "present" for their hearing. And it is safer since it greatly reduces the number of people coming to the courthouse, lowering the chance of transmission of the virus. Most people thoroughly appreciate the opportunity to participate in this manner.

But there are inherent challenges. If a defendant does not have a smartphone, tablet, laptop, or computer, Zoom cannot be used for visual participation. The introduction of documents for hearings can be a bit challenging and requires advance coordination. Our Court Reporting Unit, which can normally cover four courtrooms from a single remote computer, cannot cover as many simultaneous court proceedings. On a more pedestrian level, the lack of in-person hearings may put extra pressure on an already overworked public defender system to connect with clients away from the courtroom. Because the Sheriff's Department has limited staff available to move defendants into limited conference spaces at the jail for remote hearings, precious time can only accommodate limited break-out-room conversations for attorneys to have private conversations with their clients.

Some of the changes brought on by COVID-19 will result in evolutionary change to the way we deliver justice in Hennepin County. Some will fade with the virus. Our court will want to work with all stakeholders to identify the aspects of our current approach that we should keep and those we should put back on the shelf for the next, inevitable, statewide challenge. To that end, please keep track of what works and what does not. And, when we ask for input, please be ready to share . . . remotely, most likely.

Hon. Bill Koch

Bill Koch is a Hennepin County Judge. He was appointed in 2007. He has been fortunate to have had wonderful law clerks throughout the years, including several who have served on the *Hennepin Lawyer* Committee. Along with his colleagues in the Fourth District and across the state, Judge Koch is working to ensure the fair administration of the law in these unsettled times.

2. Criminal Defense Law *by Anthony Bushnell*

My practice is almost entirely criminal defense and juvenile delinquency law, so confidentiality is a particularly high priority. I have generally been working from a home office where I can be on a different level of the house and have a door closed for privacy. Many of us have children home all day now because of distance learning, and it's easy to forget how easily they can overhear things. I have to remind myself I'm not in a business office and need to set some new boundaries with my kids during the workday. Besides privacy, having a dedicated space with a closed door also allows me to have client files spread out for work.

Remote hearings are more convenient for lawyers, but not for all clients. In criminal law, we find that some clients feel very uncomfortable and unprepared to connect to a hearing by video. The remote hearing also makes them feel alone and nervous, since normally in court the lawyer would be right next to them and handle everything. I have a new set of instructions I send to clients a week or two before a remote hearing to prepare them for what to expect, such as not being able to talk to me privately during the hearing. I encourage them to text me with questions during the hearing or while we're in the waiting room. This preparation helps me assess how comfortable they are doing a remote hearing from a separate location.

"Remote hearings are more convenient for lawyers, but not for all clients."

I still need to meet some clients in person to collect payments or go over documents together at our firm's conference room. This means more planning ahead with clients, since I have to make sure the shared conference room is available. Clients can't just call on the way and ask to drop in. I also go over a COVID-19 exposure-and-symptoms checklist with clients before they come to our office. I need to remember to notify clients that I am generally not in the office and they should not show up without calling me first. Some office buildings no longer routinely unlock their outside doors, so it's wise to check with building management to make sure the building will be open. Otherwise a client may show up just to drop something off and find the outer doors locked.

Legal trouble is intimidating enough for clients already, and every unexpected complication can intensify the anxiety and stress. Having a plan and procedures and walking them through everything is another way attorneys help bring them peace of mind.

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3. Family Law *by Kristy A. Mara*

The COVID-19 pandemic has created stress and anxiety for many Minnesotans. I practice at a boutique family law firm, and I have seen firsthand the impact of the pandemic. For many people, the pandemic has caused marital issues that result in divorce. Since April 2020, our firm has been busier than ever before. The last data statistics show a 30 percent increase in divorce filings. Post-divorce issues such as child custody, parenting time, and visitation have also increased dramatically.

Due to COVID-19 we've refined our office practices as follows:

1) Documents, e-mail, and billing are cloud-based and secure.
2) Stricter confidentiality safeguards have been instituted with our lawyers and staff while working remotely. Our office online security protocol has been modified to include multifactor authentication and encrypted Wi-Fi connections.
3) Client consultations/meetings, mediations, and court hearings are all being done via Zoom.
4) Our firm invested in advanced technology to meet the virtual needs of our family law practice.
5) We use online notaries.
6) We've all become Zoom experts.

The court system is doing its best to adapt to the pandemic by using Zoom technology to handle conferences, hearings, and even trials. With the dramatic increase in case volume, clients should expect to wait longer than usual for hearings and trials. In-person emergency hearings are available, but limited to specific issues, including domestic abuse.

We are seeing more financial issues in our cases due to reductions in income, layoffs, and reduced working hours. We are encountering more business valuation issues due to the volatility of the stock market and clients' worries about the short- and long-term impact of the pandemic on their businesses.

Our biggest change is that everyone in our office must use Zoom and have the equipment to appear by video. We've modified our office online security protocol. During video conferences, we ask clients if anyone else is present or recording the session. During Zoom trials, we ask more questions of witnesses regarding their location, anything they are looking at that we cannot see on the screen, and if anyone else in their location may hear or see the video conference or otherwise coach or assist the witness. We protect against text-message coaching during depositions/testimony by asking witnesses if their cell phone is within reach and instruct them not to text during their testimony or during breaks. We prepare our clients differently when using Zoom versus in-person testimony. We discuss nonverbal cues, facial expressions, camera lighting, the use of breakout rooms, and how to mute their audio during a Zoom session. We've learned how to overcome many different technical issues over the past eight months.

We can't predict what the future holds once our communities, law offices, and the courts return to "normal" or what we may come to know as the "new normal." Some of the virtual transformations may not be temporary and video conferencing may be the new normal. The main take away is to be patient with everyone as we learn to navigate these new ways.

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Can We Do That?

Answering Questions about Protecting Employee Privacy During a Pandemic

By Erin Edgerton, Melissa Hodge, and Penny Oleson

As the COVID-19 pandemic rages on, employers are forced to cope with established employee privacy laws in novel contexts. Below are some of the difficult employee privacy questions law firms and other legal employers may be facing.

Question 1: Should my law firm or organization use a device or app to help enforce social distancing?

Answer: It depends on the features of the device or app, including what data is collected and how. Additionally, employers should balance any workplace safety benefits with employee perception.

Under the Occupational Safety and Health Act (OSHA), all employers are required to provide their employees with a hazard-free workplace.[1] To lessen the spread of COVID-19, tech companies have released devices and apps designed to prevent, track, and respond to close contact between users. Ranging from least invasive to most, here are several options.

Wearable devices: Perhaps the most basic option is the use of employer-provided wearable devices. These devices use Bluetooth technology to alert employees through a noise or vibration if they are within six feet of another device.

Bluetooth-based apps: Bluetooth-based apps allow users' phones to sense the presence of other users' phones. If a user reports a positive COVID-19 test result on the app, notifications are sent to any users whose phones were recently near the COVID-19-positive user, usually subject to length-of-contact requirements.

Satellite-based GPS signal apps: GPS-based apps learn when users have been near others by tracking users' geographic data. These apps provide more detailed contact-tracing information to users, like a social distance "score" based on how many crowded areas they've visited and if they've been within six feet of another user for several minutes. They can also be used for alerts when another user has tested positive for COVID-19.

Before implementing one of these devices or apps, employers should consider the following:

Voluntary vs. mandatory use: No contact-tracing device or app will be effective unless there is widespread adoption. A voluntary program may cause contention among employees deciding whether to participate, and it risks being ineffective if adoption is low. Mandatory adoption may be perceived as overly intrusive or paternal. Although mandatory adoption is currently permissible, legislation in this area is fluid[2] and employers should consult up-to-date local, state, and federal guidance before implementation.

Employer-provided devices vs. personal devices: Generally, all information collected through these devices and apps is protected and not subject to employer review. Employer-provided devices are generally the better option because they do not infringe on employee privacy, and they can be limited more easily to the workplace and on-duty hours. The use of apps on personal devices is likely better suited to workplace realities, but employers may need to reimburse employees for any charges incurred as a result of the additional technology, and they should also be on guard against data over-collection, like off-duty contacts.

Bluetooth vs. GPS location data: The more information that a device or app collects and retains, the more problematic it may be from a privacy standpoint. The leap from Bluetooth technology to satellite-based GPS technology is a large one. While Bluetooth technology reveals where an employee is relative to other employees, GPS technology reveals where an employee is, period. This raises a host of concerns about how geographic location data is used. Many apps on the market say they will not store data in centralized databases and will conceal individual identities and connections. Despite these promises, an employer may be opening itself up to liability if the technology use might support an inference that an adverse employment action was the result of targeting an employee or making assumptions about the employee based on location data.

Practical and privacy constraints may lead to ineffective devices and apps: After accounting for privacy concerns and practical limitations, employers must determine the value of the remaining technology. On the practical side, consider employees who persistently forget their phone or have poor reception. Contact-tracing technology will be ineffective under these conditions. And, because employees may be bolstered by a false sense of security, the devices and apps may even do more harm than good. On the privacy side, mandatory device use should be limited to in-office hours, but if workplace contacts are not a major source of COVID-19 spread among employees, the devices and apps will do little to enhance workplace safety.

Employee perception: Employee perception of a privacy violation is as important—and perhaps more important—than whether the law would find an invasion of privacy. As all employers have learned during the pandemic, some employees feel that any inquiry into their personal lives is a gross infringement, while others expect their employer to track and share detailed information in the name of safety. The divide between these two groups must be navigated. Because all contract-tracing methods rely on widespread use to be successful, employers may face a choice between allowing employees to opt-out or being perceived as heavy-handed.

Overall, contact-tracing devices and apps may be an effective way to improve workplace safety, but the decision to implement them should not be made lightly. An employer seeking to implement one of these devices or apps should carefully analyze the options and weigh the privacy risks against the likely safety benefits. Employers should also discuss the potential of using a device or app with their employees before deciding to take the leap.

Question 2: If I'm returning to the office, what information can my firm or organization collect from me, and what does it have to do to protect my information?

Answer: Under the Americans with Disabilities Act (ADA), employers may conduct inquiries and medical examinations in connection with a business necessity, including those related to COVID-19, so long as it remains an ongoing medical emergency in the United States.

Self-reported data: Your employer may ask if you have symptoms associated with COVID-19 or have been tested for COVID-19; whether you have been in contact with, or live with, anyone with COVID-19 or COVID-19 symptoms; and where you have traveled. You may not be singled out for questioning unless your employer has a reasonable belief based on objective evidence that you have COVID-19. While an employer may ask generally about whether anyone you live with has COVID-19 or COVID-19 symptoms, the employer should not specifically ask whether your family members have COVID-19 or COVID-19 symptoms.[3]

Testing: Employers may take your body temperature and can administer or require a COVID-19 test. If you have disability-related or religious objections to testing, you should discuss accommodations with your employer. Your employer may not administer or require antibody testing because such testing does not meet the business necessity standard.[4]

Documents containing medical information: Employers can require a doctor's note certifying fitness for duty if you have been out sick with COVID-19. If you seek leave under the Family and Medical Leave Act (FMLA), your employer is allowed to seek medical certification of the underlying serious health condition.[5] And if you request a disability accommodation, your employer can request information to determine if the condition is a disability and why the accommodation is needed.

Your employer must keep all medical information confidential and separate from other personnel records.[6] The use of data is restricted to the business necessity for which it was gathered, so COVID-19-related medical information cannot be used for tracking worker productivity or gathering information for a disciplinary investigation, for instance.

Question 3: What can my employer disclose when there is a positive case of COVID-19 in our firm or organization? And to whom?

Answer: When an employee tests positive, information about that employee falls into one of three categories: information the employer must disclose; information the employer may disclose; and information the employer may not disclose.

Must disclose: Close contact with employees. If the COVID-19-positive employee has been in "close contact"—defined by the Centers for Disease Control (CDC) as 15 minutes within six feet of each other—with any other employees, the employer must educate these employees on how to prevent the continued spread of COVID-19.[7] Because the employer may require these employees to stay home, the employer may need to disclose that the employees were close contacts of an infected person, although there is no guidance or law that specifically requires this disclosure.[8]

May disclose: Close contact with visitors. If the COVID-19-positive employee has been in close contact with any non-employee visitors, the employer may disclose the close contact to those visitors. However, if the employer has a policy stating it will inform visitors with close contact of a positive COVID-19 test result in the workplace, this changes from "may disclose" to "must disclose."

All employees: Similarly, the employer may disclose the positive test result to its entire workforce. Doing so fosters confidence in transparency and provides an opportunity to reiterate the firm's safety precautions. Again, if there is a policy that the employer will inform all employees of a positive COVID-19 test result in the workplace, this changes from "may disclose" to "must disclose."

Certain details of the diagnosis: The employer may also disclose to either employees or non-employees the date on which the employee was diagnosed with COVID-19, the last date on which the employee was in the office, and whether the employee's symptoms are "mild," "moderate," or "severe." Before deciding to do so, the employer should be mindful that while *this* employee's symptoms may be mild, another employee's may be severe. Disclosing that an employee has severe symptoms may cause panic, while excluding the information intermittently may undermine the firm's desire to be transparent, fostering confusion rather than trust.

May not disclose: Name of employee and additional details of the diagnosis. The employer may not disclose the COVID-19-positive employee's name and other details of the diagnosis, including any treatment the employee is undergoing. Doing so would be a violation of the ADA's requirement that all employee medical information, including results of a COVID-19 test, gathered by an employer must be kept confidential.

Question 4: I work from home and my children are distance learning which requires me to attend weekly meetings with them and their teachers. What do I need to tell my employer so I can have this time off?

Answer: Because employees must accurately report time working and not record time spent performing personal tasks, you likely need to share something with your employer about missing work for these activities. Granting of personal leave is at the complete discretion of the employer, must be on a non-discriminatory basis, and subject to certain laws.[9] Therefore, employers may ask for a reason for the request. Here, you may have a statutory right for unpaid leave to attend the weekly meetings with your children's teachers under Minnesota's School Conference and Activities Leave law.[10] When requesting time off for this reason, you should make clear the time is needed to attend a school conference.

This law grants eligible employees—those who work at least half of their employer's criteria for full-time hours—up to 16 hours of unpaid leave each year, per child, to attend school conferences and activities. If the leave is foreseeable, employees must provide their employer with reasonable prior notice of the leave and make a reasonable effort to schedule the leave during a time less disruptive to work. Employers cannot require eligible employees to use paid time off (PTO) or vacation time; however, the employee may substitute any accrued paid vacation leave or other appropriate paid leave for any part of the leave, subject to their company's PTO or vacation policy.

Alternatively, you may be eligible for paid leave under the Families First Coronavirus Response Act (FFCRA). Under the FFCRA, covered employers are required to provide eligible employees up to 12 weeks of paid leave, with a daily monetary cap, if the employees are unable to work or telework due to their child's school or place of care being closed.[11] The U.S. Department of Labor has stated that when school days are designated for distance learning, the school is effectively "closed" to students for the purpose of the FFCRA.[12] Here, too, your employer is permitted to gather some information about the need for FFCRA leave in order to confirm your eligibility. Your employer may ask you for a certification stating that your children's school is closed and that you must care for them during the needed leave time.

If none of these leaves applies, your employer is permitted to ask for the information required under its policy for personal leave for appointments, childcare, education, or other non-work responsibilities.

Notes

[1] 29 U.S.C. § 654(a)(1).

[2] *See, e.g.*, Exposure Notification Privacy Act, S. 3861, 116th Cong. (2d Sess. 2020).

[3] 29 C.F.R. § 1635.8(a); U.S. Equal Emp. Opportunity Comm'n, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, available at *https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.*

[4] *See* U.S. Equal Emp. Opportunity Comm'n, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, available at *https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.*

[5] 29 C.F.R. § 825.306.

[6] 42 U.S.C. § 12112(d)(3)(B) and 12112(d)(4); 29 C.F.R. § 825.500(g); 29 C.F.R. § 1635.9(a)(1) and (2). HIPAA, which restricts disclosure of sensitive medical information, does not generally apply to attorneys and law firms because they are not covered entities or the business associates of covered entities. 45 C.F.R. § 164.104.

[7] *See* What to Do If an Employee Has COVID-19, Minnesota Dep't. of Health, *https://www.health.state.mn.us/diseases/coronavirus/sickemployee.pdf*

[8] The Centers for Disease Control recommend sharing this information with employees. *https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html.*

[9] *https://www.leg.mn.gov/docs/2014/other/140368.pdf*, "An Employer's Guide to Employment Law Issues in Minnesota."

[10] *https://www.revisor.mn.gov/statutes/cite/181.9412*, Minn. Stat. § 181.9412 School Conference and Activities Leave.

[11] *See* Question of the Day: School-Related FFCRA Leave Requests, *https://www.fredlaw.com/news__media/question-of-the-day-school-related-ffcra-leave-requests/*; Question of the Day: FFCRA Child Care-Related Leave Rights in the Summer, *https://www.fredlaw.com/news__media/question-of-the-day-ffcra-leave-rights/*.

[12] *See* U.S. Dep't of Labor, COVID-19 and the American Workplace, *https://www.dol.gov/agencies/whd/pandemic.*

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The term "government data" is defined under the Act as "all data collected, created, received, maintained, or disseminated by any government entity regardless of its physical form, storage media, or condition of use."

The Minnesota Government Data Practices Act at 46

Feeling Its Age and Weight

(A Perfect Time to Review the Basics)

By Ayah Helmy and Bennett C. Rosene

The Minnesota Government Data Practices Act (MGDPA or the "Act") was enacted in 1974, partly in response to revelations about the secret Army surveillance of citizens project and partly as a result of the recommendations of the Department of Health, Education, and Welfare report *Computers and the Rights of Citizens*.[1] The MGDPA is premised on the proposition that all government data collected, created, received, maintained, or disseminated by a government entity shall be public unless classified by statute, temporary classification, or federal law as nonpublic or protected nonpublic, private, or confidential. [2]

Between the MGDPA, other state and federal statutes, rules and regulations, and Advisory Opinions of the Commissioner there is much to contemplate when considering a request to a Minnesota government entity to release data, or contesting an adverse response to that request. Despite–and perhaps because of–its complexity, private practitioners representing clients that require access to Minnesota government data, whether public data or private data on individuals, must understand some of the basic concepts within the Act and the Rules in order to adequately represent their clients. This article will attempt to cut through some of the "noise" of the scheme's depth, breadth, and complexity to help the general practitioner understand the Act's basic tenets.

History

What began in 1974 as a six-page statute[3] has "blossomed" over time into 171 pages in Minnesota Statutes Chapter 13 and 20 pages in Minnesota Rules Chapter 1205 (the "Rules") as currently set forth on the Revisor of Statutes website.[4] The complexity of the scheme has been driven by the increasing amount and types of data maintained by government entities, the need to classify that data, and the legislative balancing act of making government actions transparent while also protecting the privacy rights of individuals served by state government entities.

What began in 1974 as a six-page statute has "blossomed" over time into 171 pages in Minnesota Statutes Chapter 13 and 20 pages in Minnesota Rules Chapter 1205 as currently set forth on the Revisor of Statutes website.

Application of the scheme has become more complex over time not only with the growth of the Act and the Rules to their current proportions but also with the enactment of other Minnesota and federal statutes, rules, and regulations classifying data—HIPAA among them—all of which must be read and interpreted together to determine data classification and accessibility.

There is no obvious way to refer to all federal laws that might impact the classification of data maintained by a Minnesota government entity. The Legislature has used federal law to define certain terms and authorize dissemination in certain circumstances, such as educational data[5] and welfare data,[6] while also citing the relevant federal statutes and regulations.[7]

What has been an equally complex endeavor is the classification of data as "nonpublic." The first appearance of a "skyway" to identifying "not public" data was the enactment of Minnesota Statute Section 13.99 in 1991,[8] which provided a bulleted summary of each state statute—over 220 statutes as of 1996—that classify government data outside of the MGDPA.[9] That "skyway" was subsequently modified through the repeal and relocation of various classifications into the topical areas of the current Act as described as "data coded elsewhere." There are currently 47 instances of Minnesota government data that, by state law, fall outside of the Act. The good news, if one can call it such, is that "47" is much less than the 220 instances identified in 1996.

Further weight and complexity to understanding and applying the Act has been driven by the advent of advisory opinions issued by the Minnesota Commissioner of Administration. Prior to 1993, if the requestor and the government entity maintaining the requested information could not agree on the classification of the data or the requestor's right of access, the only remedy provided under the MGDPA was judicial review and decision. In 1993, the Legislature gave the Minnesota Department of Administration the right to issue written opinions about any question relating to public access to government data, the rights of subjects of data, and the classification of data under Chapter 13 or any other Minnesota statutes governing government data practices.[10] That change was good news: lawsuits—expensive, time consuming, unpredictable by their nature—were no longer the only course available to resolve data disputes. The number of these more "informal" challenges to the classification and release of government data and the resulting volume of opinions from the commissioner have consequently expanded the advisory literature over time. The Minnesota Department of Administration, Data Practices Office website now contains 41 pages of Advisory Opinions stretching over 26 years.

Applying the Act—How It Works

The need to acquire Minnesota government data may occur in a variety of circumstances. For example, an attorney representing a client in a divorce, child custody, or order for protection proceeding may need access to child protection records,[11] corrections/probation records,[12] or law enforcement data[13] to fully represent the client's interests. A lawyer representing a client bidding to contract for government services may want to see other, similar contracts held by the government entity, programmatic data related to the contracted service let for bid, or responses from other bidders when challenging a contract award.[14] Counsel representing public employees in employment grievances, arbitration, or related litigation will need access to their client's personnel records and related investigation data.[15] Data breaches resulting from a variety of incidents, from government employee inadvertence, mistake, or misconduct to cyber-attacks and malware launched against government entities by malicious third parties—including such things as phishing emails, ransomware, and other forms of malware—are unfortunately becoming more commonplace. These incidents may give rise to notification rights to individuals, access to investigative reports under the Act,[16] or a claim for civil remedies under Section 13.08 of the Act or other state or federal law.

Regardless of an attorney's reason for needing access to government-held data, it is important to understand how the Act functions.

1. How the MGDPA fits with the Official Records Act and the Records Management Statute

It is important to note that the MGDPA only provides information on how certain data are defined and classified and who may have access. However, what government data are required to be maintained and how long they are kept are codified elsewhere in the law. The Official Records Act requires government entities to "make and preserve all records necessary to a full and accurate knowledge of their official activities";[17] meanwhile, the Records Management Statute requires that the head of each government body create a retention schedule for its various records.[18]

This is relevant because government entities may not have the data that you are looking for when you make your MGDPA request, as they are only required to maintain records of their official acts and they are only required to retain the data according to the record retention and disposal schedules they set in place.

2. "Government data" and its classifications

The term "government data" is defined under the Act as "all data collected, created, received, maintained, or disseminated by any government entity regardless of its physical form, storage media, or condition of use."[19] Under the statutory scheme, data are initially categorized in broad categories: "data on individuals" and "data not on individuals." Data on individuals is comprised of all government data in which any individual is or can be identified as the subject of the data unless the identifying information is only incidental to the data and the data are not accessed by name or other identifying data of any individual.[20] "Data not on individuals" are defined simply as "government data that are not data on individuals."[21] Data not on individuals typically relate to entities such as corporations, partnerships, and LLCs.

The two broad categories of data further break down into three subcategories for each type of data.

- Data on individuals may be public, private, or confidential.[22]
- Data not on individuals may be public, nonpublic, or protected nonpublic.[23]
- Data that are public, whether on individuals or not on individuals, are available to anyone for any reason.

Data that are private (individuals) or nonpublic (entities) are available to the data subject, individuals within the government entity whose work assignments require access to the data, other entities as authorized by law, and other individuals as authorized by data subjects. Data that are confidential (individuals) or protected nonpublic (entities) are available to individuals within the government entity whose work assignments required access and to other entities as authorized by law, but are not available to the subjects of the data.[24]

3. To whom a request for data should be made and why it matters

Requests for data under the MGDPA should be made to the proper person--the government entity's "responsible authority" (RA), or its RA "designee." The responsible authority "in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law."[25] A designee is "any person designated by the responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data."[26]

The responsible authority is also defined generally, and more specifically for state agencies, political subdivisions, and statewide systems, in the Rules at Part 1205.0200, Subparts 12-15. Each government entity must identify, designate, or appoint the individual who is ultimately responsible for the collection, use, and dissemination of data and the entity's data practices decisions. The RA must also make sure that the entity complies with the requirement of the Act and the Rules.[27]

The duties of the RA are primarily set forth in Section 13.05 of the Act, but there are 100 references to the RA throughout the Act, and 132 references to the RA throughout the Rules, imposing a wide variety of duties and obligations. Included within these hundreds of other references to RAs, for example, is one that defines the RA for each of the six separate components of Minnesota's "welfare system."[28] If this all sounds complicated, it is. To simplify, a general practitioner need only understand that the Rules require responsible authorities and designees to be appointed by *name* in a public document.[29] The Act also requires RAs to prepare written data access policies, updated no later than August 1 of each year or at other times as necessary to "reflect changes in personnel, procedures, or other circumstances that impact the public's ability to access data."[30] The entity's RA must also make copies of these required policies easily available to the public by distributing free copies or by posting on the government entity's website.[31]

Why does it matter that individuals make their data request to the correct RA or RA designee? Because a government entity is not liable under the Act for alleged violations of sections 13.03, subdivision 3 (Access to Government Data—Request for access to data) and 13.04, subdivision 3 (Rights of Subjects of Data—Access by individual) if the requestor did not satisfy the requirement of making his or her request to the government entity's specified (named) responsible authority or designee.[32] Thus, for example, if one makes a data request to a social worker, probation officer, police officer or case manager, etc., rather than to the appropriate RA or RA designee, and the request is ignored, untimely, denied, or incomplete, there is no enforcement available to the requestor under the MGDPA.

A practitioner should also understand that under the MGDPA and the Rules, a singular legal entity such as a county may have multiple RAs or RA designees because of the complexity of the underlying scheme: each elected county official (each County Board member, County Attorney, County Sheriff) is his or her own RA and may have a designee, the welfare and veteran's services functions of the county each have their own RA or designee, and the remainder of county departments/functions have one other RA or designee.

Court Orders, Subpoenas, and the MGDPA

1. Many sections of the MGDPA authorize access to not public data with a court order. A court order is necessary to access private data not otherwise available to the requesting party. A verbal court order is sufficient. A court order does not change the classification of the data.

2. A subpoena is not equivalent to a court order and cannot be used on its own to access private data.

3. Federal laws typically allow for the disclosure of private data pursuant to a subpoena in many circumstances, and their requirements merely provide a "floor," with the MGDPA being more restrictive.

4. Pursuant to the Supremacy Clause of the U.S. Constitution, Minnesota government entities should release requested data when subject to a federal administrative or judicial subpoena, regardless of whether it is accompanied by a court order.

Timelines and Costs

- Entities should respond to requests in a prompt and appropriate manner, within a "reasonable" time.
- The "reasonable time" is commensurate with the amount of data requested.
- Entities are allowed to charge for copies of government data. If they do charge, the allowable amount depends on whether the requester is the data subject.
- Non-data-subjects can pay up to 25 cents per page of black-and-white print. For more than 100 pages or digital data, the entity may charge the actual cost for an employee to search for the data, retrieve the data, and make paper or print copies of electronically stored data.
- When a data subject requests data about herself or himself, the responsible authority must comply immediately or, at most, within 10 days of the request.
- Data subjects can be required to pay the actual costs of retrieving and providing the data.
- Actual costs can include costs of media, mailing, and employee time, but they do not include employee time to separate public from nonpublic data, operating expense of a copier, accounting functions, or costs related to inspection.
- Individuals can "be shown" or "inspect" data without charge and "upon request" be informed of the data's meaning.
- Inspection of public data should be available remotely on the requester's own computer equipment, though an entity may charge a reasonable fee for any enhanced access.
- Public data maintained in a computer storage medium must be provided to any individual requesting a copy, if the government can reasonably make the copy. This does not require the entity to provide the data in an alternate format or program from how it is originally maintained, and the entity may require the requesting person to pay the actual cost of providing the copy.

The best available resources for your money (they are free!) are the website and/or staff of the Minnesota Department of Administration's Data Practices Office (DPO). The DPO's website is replete with helpful information, including topical explanations, Advisory Opinions of the Commissioner, and access to laws, rules, reports, and training materials.

Thus, it pays dividends to go to the entity's web page to review its MGDPA policies and verify the correct RA or designee before making a data request to that named individual.

4. Informed consent

Informed consent is written permission from an individual allowing the release of the individual's private data to another person or entity. Valid informed consent is required before a government entity may release private data to an individual's attorney.[33] Informed consent is also required when a government entity wants to use the individual's private data in a way that is different than explained to the individual at the time the data were collected.[34] The Rules govern the mechanics of what constitutes informed consent by a data subject: informed consent means that the data subject "possesses and exercises sufficient mental capacity to make a decision which reflects an appreciation of the consequences of allowing the entity to initiate a new purpose or use of the data in question.[35]

Informed consent must be in writing and the document must inform the data subject in writing prior to his or her signature being affixed of the consequences of giving informed consent.[36] A lawyer making a request for a client's private data must present the government entity's responsible authority or its designee with a valid, written informed consent signed by the client in conjunction with the request—a letter or certificate of representation is not sufficient to allow the release of private data under the MGDPA.

Limitations on Receipt of Data

1. Limitations on requesting private data under the MGDPA

After an individual has been shown his or her private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action concerning access to the data is pending or additional data on the individual has been collected or created.[37]

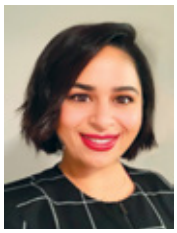
2. Action in response to a denial of access to data

Individuals requesting government data who believe they have been wrongfully denied access to data in violation of the Act may file a complaint with the Office of Administrative Hearings alleging the violation and seeking compelled compliance. The procedure for this administrative remedy is set forth in Section 13.085 of the Act.

Final Thoughts and Resources

The Act and its Rules have become a complicated and somewhat cumbersome set of requirements. There are government lawyers who must spend a significant portion of their time parsing out how the MGDPA applies to contract provisions, regulatory compliance, employment disputes, media requests for records, and more. While it can be cumbersome and complex for the specialist, it is worthwhile for the non-specialist needing routine or even occasional access to Minnesota government data to have a basic understanding of how the Act and Rules function. One other important key to success when working on issues governed by the MGDPA is *communication and cooperation* on both ends of the equation to facilitate data requests and responses. Talk to each other, acknowledge receipt of the data request, explain why it may be taking more time than anticipated to respond to the request, work to clarify any questions or ambiguities concerning the request, and do not be afraid of working cooperatively and creatively toward a quicker, better resolution if possible.

The best available resources for your money (*they are free!)* are the website and/or staff of the Minnesota Department of Administration's Data Practices Office (DPO). The DPO's website[38] is replete with helpful information, including topical explanations, Advisory Opinions of the Commissioner, and access to laws, rules, reports, and training materials. DPO staff (most, if not all, of whom are attorneys) are also available by email and telephone to help you understand the Act and Rules in application to particular circumstances. Although DPO staff does not provide "legal advice"—that's up to you—they have many years of combined experience and can help direct you to specific Advisory Opinions that can provide you with a "leg up" in obtaining Minnesota government data and providing advice to your clients.[39]



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Notes

[1] Data Practices at the Cusp of the Millennium, 22 Wm. Mitchell L. Review 767, 771 (1996).
[2] Minn. Stat. Sect. 13.03, subd. 1.
[3] Act of April 11, 1974, ch. 479, 1974 Laws 1199 (initially codified at Minn. Stat. Sections 15.162-43 (1974).
[4] *https://www.revisor.mn.gov/statutes/cite/13; https://www.revisor.mn.gov/rules/pdf/1205/2014-01-18%20 00:44:22+00:00.*
[5] Minn. Stat. Sect. 13.32.
[6] Minn. Stat. Sect. 13.46.
[7] Data Practices at the Cusp of the Millennium, 22 Wm. Mitchell L. Review 767, 783–784 (1996).
[8] 1991 Minn. Laws 106, Sect. 6.
[9] Data Practices at the Cusp of the Millennium, 22 Wm. Mitchell L. Review 767, 784, 785 (1996).
[10] Minn. Stat. Sect. 13.072, subd. 1(a) (Supp. 1995).
[11] Classified as confidential or private data under Minn. Stat. Sect. 13.46.
[12] Classified as public, private, or confidential Court Services data under Minn. Stat. Sect. 13.841, 13.841 and/or public, private, or confidential Corrections and Detention data classified under Minn. Stat. Sect. 13.85, 13.851.
[13] Classified as public, private, or confidential data under Minn. Stat. Sect. 13.82.
[14] Attorneys working in these circumstances should become familiar with the classification of Business Data under Minn. Stat. Sect. 13.591, and with the definition and classification of Trade Secret Data under Minn. Stat. Sect. 13.37.
[15] Classified as public, private, and confidential Personnel Data under Minn. Stat. Sect. 13.43.
[16] *See* Minn. Stat. Sect. 13.055, Disclosure of Breach in Security; Notification and Investigation Report.
[17] Minn. Stat. Sect. 15.17.
[18] Minn. Stat. Sect. 138.17.
[19] Minn. Stat. Sect. 13.02, subd. 7.
[20] Minn. Stat. Sect. 13.02, subd. 5.
[21] Minn. Stat. Sect. 13.02, subd. 4.
[22] *See* Minn. Stat. Sect. 13.02, subds. 15, 12, and 3.
[23] *See* Minn. Stat. Sect. 13.02, subds. 14, 9, and 13.
[24] *See* Minn. Stat. Sect. 13.02, subds. 3 and 13; Minn. Admin. R. 1204.1400, subp. 2.
[25] Minn. Stat. Sect. 13.02, subd. 16(b).
[26] *Id.*, subd. 6.
[27] *https://mn.gov/admin/data-practices/data/contacts/responsible/.*
[28] Minn. Stat. Sect. 13.46, subd. 10(a).
[29] *Scheffler v. City of Anoka*, 890 NW. 2nd 437, 445 (Minn. App 2017) *citing* Minn. Admin. R. 1205.0200, subp. 14.B (requiring cities to appoint an employee as the responsible authority); Minn. Admin. R. 1205.1200, subp. 2 (requiring public document to identity the responsible authority or the designee who is responsible for answering questions about the MGDPA;*id.*, subp. 3 (requiring public document to identity the name, title, and address of designees appointed by the responsible authority).
[30] Minn. Stat. Sect. 13.025, subs 2 and 3.
[31] *Id.*, subd.4.
[32] *Scheffler*, 890 NW. 2d 437, 447, holding that "Under Minnesota Statutes sections 13.03, subdivision 3, and 13.04, subdivision 3, a person seeking data from a government entity must make his request to the government entity's specified responsible authority or designee before claiming an MGDP failure to provide data or failure to provide a reason for denial."
[33] Minn. Stat. Sect. 13.04, subd. 4(d).
[34] Minn. Stat. Sect. 13.04.
[35] Minn. Admin. R. 1205.1400, subp. 3.
[36] *Id.*, subp. 4. B.4(b).
[37] Minn. Stat. Sect. 13.03, subd. 3.
[38] *https://mn.gov/admin/data-practices/*
[39] Opinions of the commissioner are not binding but must be given deference by a court or other tribunal in a proceeding involving data. An entity or person that acts in conformity with a written opinion of the commissioner is not liable for compensatory or exemplary damages or awards of attorney's fees in actions for violations under section 13.08 or 13.085, or for a penalty under section13.09. *See* Minn. Stat. Sect. 13.072, subd. 2.

The Impact of the Minnesota Government Data Practices Act on Civilian Oversight of Police

By Imani Jaafar and Ryan Patrick

Body worn camera (BWC) video has become a prominent feature of our work in both civilian oversight and law enforcement auditing. Just five years ago, we couldn't see police interactions and had to piece together events using police reports, GPS logs, occasional squad car or cell phone recordings, witness statements, and whatever else we could find. Undoubtedly, video offers a clearer picture of what happens when law enforcement interacts with the public on the streets of Minneapolis.

Seeing officers interact with people from start to finish provides a completely different perspective from what we could previously only read or hear about. It is difficult to repeatedly watch people suffer some of the worst moments of their lives while officers navigate on the spot decision-making to various degrees of success. However, studying BWC footage allows for an informed discussion about how to improve policing and how we approach public safety not only as municipalities but also as a nation trying to chart a course for a more equitable approach to public safety.

When reviewing police conduct, we often watch videos several times, slowed down, looking for every relevant detail to understand what actually happened during an interaction. We are often required to do this work behind closed doors, with significant limitations on what we can share and how it truly shapes our work.

In this time when the public is crying out for transparency in policing, Minnesota law shields most body camera recordings from public release. Further, the Minnesota Government Data Practices Act (MGDPA), specifically section 13.43 Personnel Data, prevents the release of the vast majority of police compliant data. Even if the effects were unintentional, the MGDPA significantly limits what can be shared publicly about police interactions, making conversations about reform more difficult. In this article, we will discuss some of the key areas that are impacted by the Data Practices Act and the challenges it poses to civilian oversight of police.

Body Worn Camera

The proliferation of body worn cameras triggered a significant change to the MGDPA. Prior to 2016, the MGDPA was relatively permissive when it came to the release of videos created by law enforcement agencies which, at that point, primarily consisted of squad camera recordings. It became immediately apparent to larger law enforcement agencies that when body cameras turn on, the staggering amount of data they create could cause cascading issues when paired with retention schedules, storage costs, and public record requests.

At the same time, privacy advocates recognized that body camera recordings created a massive repository of sensitive government data on individuals unlike squad recordings, as body cameras reach far beyond the hood or backseat of the car. Those interests aligned and advocates and law enforcement agencies pushed to change the MGDPA to limit the release of data created by body cameras or "portable recording systems." Advocates for police accountability argued against this, noting that body cameras were supposed to increase transparency for the public, but the proponents of section 13.825 succeeded and it became law.

Body worn camera recordings are now considered private data on individuals or nonpublic data with several notable exceptions. For example, private data on an individual is releasable to the person recorded, as that individual is the subject of the data. Additionally (and perhaps of more interest to the general public), when the video captures the discharge of a firearm or force that results in substantial bodily harm, the video may be considered public.

While these exceptions may appear straightforward, the nature of the recordings presents no shortage of challenges. Recordings often capture multiple people, and each has a privacy interest in the data. Those not requesting the video must be redacted out of it unless they consent to the full release of the recording. Videos containing significant uses of force leading to bodily harm or firearm discharges, while presumptively public, may be classified as nonpublic for other reasons, primarily when they are part of active criminal or personnel investigations. While these exemptions to the general categorization of videos as non-public were meant to provide some measure of transparency, in reality, they do not give the public general access to a significant number of recordings.

Police Misconduct Investigations

BWC recordings are one part of a police misconduct investigation. Investigators spend hours poring over BWC recordings and any other video they can locate, police reports, GPS logs, electronic communications, and other information provided by the complainant. Investigators also interview everyone involved; civilians are voluntary participants, but officers are compelled to appear. The resulting investigative summary is contained in a file with all of the evidence that was used by the investigator to write the report. The report contains no recommendations and is a neutral, fact-based document analyzing alleged violations.

The entire file is then handed to a panel made up of civilians appointed by the City Council and Mayor as well as sworn leadership from the Minneapolis Police Department to discuss the merits. Despite this multistep process with many pieces of evidence and documentation produced along the way, most of the cases and the findings that accompany them will always be considered nonpublic data with the accused officer the subject of the data under the MGDPA.[1] The privacy surrounding this work has bred significant doubt regarding the Minneapolis police oversight system despite the fact that it is layered with civilians who have both civil rights backgrounds as well as experience in a broad variety of areas including social work and legal services for the most vulnerable residents in the community.

Under MGDPA 13.43, complainants are not entitled to any significant details of a case other than its status (open or closed) unless final discipline has been imposed. Complainants and the general public can only get details on a case if there was discipline and that discipline is final; grievance and arbitration procedures for officers need to be fully completed before files can be released. When body camera recordings are a part of the case file, they remain nonpublic throughout.

Discipline cases take a significant amount of time to resolve. It can take years to conduct a full investigation on a case, have the case go through a merit determination with a panel of civilians and sworn leadership, then hold required due process hearings for the officer, and allow the chief of police to make a final disciplinary determination. Not to mention, the case will likely be followed by a grievance and arbitration process, and the Office of Police Conduct Review sometimes completes cases only to see an arbitrator give officers their jobs back with backpay after a yearlong absence.[2] But so long as discipline remains at the end of the process, any member of the public can request and receive the evidence supporting that discipline, the only time in Minnesota that such level of personnel data is accessible.

Officer Complaint History

The MGDPA also dictates what an officer's complaint history looks like, which is an important piece of information for lawyers working in the criminal justice system. In order to provide the public with the information that is legally permitted under the MGDPA on Minneapolis police complaints, we launched a public data portal where a person can search for an officer and see an instant, current complaint history.[3]

Since its launch, people from all over the country have used the data portal, and it experiences particularly significant traffic after every critical incident in Minneapolis. The MGDPA allows

the portal to display the number of complaints filed against an officer, the date of the complaint, and each complaint's status (open, closed, closed with discipline). If final discipline was imposed, the allegations are noted. The portal also has statistical information about police misconduct cases handled each year, including what types of complaints come to the office and how they are resolved. The MGDPA's limitations encouraged us to create this tool because the lack of accessible information generally leads to loss of public trust and speculation about police misconduct cases.

During a time with such heightened tensions, the lack of transparency causes significant frustration and the Minneapolis Civil Rights Department is regularly contacted by individuals who just want more information than the MGDPA allows practitioners to provide. Some believe that hundreds of police misconduct complaints contain uses of force with bodily injuries that would require an officer to be fired. In reality, civilian oversight practitioners handle far more complaints about officers driving poorly or having attitude issues than use of force incidents.

Many of the complaints the Office of Police Conduct Review receives can be remediated by requiring the officer to sit with a supervisor to discuss the incident while watching footage or by going back to training. Cases may be unsupported by any evidence or allegations directly contradicted by evidence after a full investigation, but that information is nonpublic. The contents of all of these files cannot be shared with the public because the officer has not been disciplined. This leads to dozens of closed cases per year with noteworthy outcomes but no publicly available information, not even to the person who filed the original complaint.

Complainant's Personal Information

Conversely, although complaint investigation data enjoys strong protections under the MGDPA, complainants' information does not. Once an individual files a complaint, his or her address, phone number, and any contact information on the form becomes public information. All data not specifically described in the MGDPA is considered public and nothing in the act shields information about those who file police complaints.

Investigators must rely on this information to get statements from complainants and send documents to them, especially items they are not comfortable receiving over email. Some complainants do not have regular access to a computer, internet, or phone so receiving documents in the mail is the only way to communicate. However, it can be difficult to explain that the MGDPA makes an individual's personal information public while prohibiting that same person from accessing any information on the complaint he or she filed other than whether the complaint is open or closed.

Civilian oversight practitioners often struggle with frustration over not being able to share the progress of a case or outcomes that may occur during the life of a case, such as a positive policing policy change or process improvement specifically resulting from the complainant's case. Dissatisfaction occurs on all sides by complainants, the public, sworn personnel, and civilian oversight practitioners at the inability to have open and meaningful conversation about police misconduct cases to help move important work on improving community policing.

Summary

Police accountability is on the minds of many Minnesotans as discussions about the future of public safety continue. Many calls for change demand transparency, but that is not up to municipalities to decide as state law is in control. In Minnesota, any change to existing oversight models will likely lead to the same issues with the MGDPA, which applies to all government employees, not just police officers, making it harder to change. Negotiating any changes will be a difficult dance between privacy advocates, government employees, and community activists. The future of transparency of police accountability rests with the MGDPA, and, with Minneapolis on a national stage, many will be watching to see whether this critical law will stand in its current form against the weight of demands for policing reform through access to more information on police misconduct.

Notes

[1] Minn. Stat. Section 13.43.

[2] *https://www.mprnews.org/story/2016/10/18/minneapolis-police-officer-reinstated-after-firing; https://www.startribune.com/minneapolis-police-officer-fired-for-decorating-offensive-christmas-tree-gets-job-back/572098402/; https://www.mprnews.org/story/2020/07/09/half-of-fired-minnesota-police-officers-get-their-jobs-back-through-arbitration*

[3] *https://www.minneapolismn.gov/government/government-data/datasource/office-of-police-conduct-review-dashboard/; https://www.minneapolismn.gov/resident-services/public-safety/complaints-and-compliments/police-officer-complaint-process/officer-complaint-history-search/*

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Sweat the Small Stuff

by Eric T. Cooperstein

A friend once told me that he was not comfortable using computers because he could not really understand how they worked. Compare it to a car engine, he said. A person does not need to be a mechanic to understand that gasoline gets sprayed into a cylinder, then it explodes, then a piston moves, etc. But all those electrons flying through chips, motherboards, cables, servers—who really understands how any of that stuff works?

One could say the same about client files and information. When a lawyer has a paper file with the pages neatly clipped in place and she puts that file in alphabetical order in a drawer of a big, sturdy, metal file cabinet, she knows exactly where it is and who has access to it (some lawyers claim to know exactly where their files are amongst multiple vertical stacks of paper in their offices, much as squirrels know where their nuts are buried. But I digress). The paperless lawyer knows their files are . . . where exactly? In a cloud someplace? Would that be a cumulus or a nimbostratus cloud?

None of us should be surprised that when lawyers combine our human tendency to be cautious or fearful of what we do not understand with our sacred obligation to safeguard confidential client information, it produces an abundance of anxiety. This is what most ethics discussions about confidentiality seem to focus on lately. Big fears about hackers, data breaches, HIPAA, e-mail security, metadata, the dark web, temporal anomalies, wormholes! One slip and Mrs. Lipschitz's confidential divorce settlement will go viral and your law license will be shredded in a very public way.

Not so much. Don't get me wrong. Lawyers certainly have an obligation to protect their client's confidential electronic information.

There can be big consequences for failing to do so: IT costs to fix breaches, pure embarrassment, hours lost to implementing new protections, worry over distressed clients and the unknown impact of unauthorized disclosures, and time lost to restoring data or recreating files. Breaches can turn your world upside down for days or weeks afterwards.

From an ethics perspective, however, hacks and attacks are not the types of confidentiality failures that typically get lawyers in trouble. Your duty under the Rules of Professional Conduct, as interpreted through ethics opinions in numerous U.S. jurisdictions, is to take *reasonable* measures to prevent hacks. Perfection is not required. Yes, lawyers should definitely have security systems in place that are reviewed and upgraded when necessary. They should use two-factor authentication to access critical systems, use a VPN if they intend to use WiFi outside the office, and educate their employees to recognize and avoid phishing, spear-phishing, whaling, and other maritime-themed social-engineering email scams. You cannot likely make your practice bulletproof from cybercrime, but by taking reasonable precautions your law license should not be at risk. In fact, although lawyers are often the targets of hackers, there are very few discipline cases that arise from breaches, outside of "Nigerian Prince" and other certified check scams, which are less about confidentiality than they are about pure con artistry.

Instead, when it comes to confidentiality, it's the small stuff that leads to discipline. It's the slip of the tongue, the boastful indiscretion, or confused loyalty that is all about being human but not at all about the hazards of technology. In one case, a lawyer's client in a personal-

injury case backed out of a settlement and then fired the lawyer. The lawyer e-mailed the claims adjuster to convey what had happened. Reading between the lines, one suspects that the lawyer was concerned about what the adjuster would think of the lawyer and whether it might affect the lawyer's future relationship with that adjuster. Part of the e-mail stated "I advised [client] that he already accepted [the settlement] and there's no rescinding his acceptance."[1] That one sentence, devoid of any earth-shattering revelations, disclosed attorney-client privileged information and violated Rule 1.6, MRPC. The Minnesota Supreme Court affirmed the private admonition that had been issued to the lawyer.

This is typical of the level of violations in other cases. Saying just a little too much to a reporter without the client's authorization. Responding to a client's attempt to convince a credit-card processor to reverse a fee payment and offering gratuitous information about the client's attitude or personal issues (fee disputes with clients are fertile ground for inappropriate disclosures of confidential information). Replying to a client's one-star online review of your services by "setting the record straight" regarding what happened in the case. Recognizing the need to withdraw because of a conflict but disclosing the name of one client to the other.[2] Sending to the person who referred a client to you a copy of your e-mail defending your position in a fee dispute. Each of these scenarios resulted in a private admonition.

These situations have a common theme: emotion. Anger, resentment, embarrassment, frustration, hubris, and guilt lead lawyers to make mistakes. Perhaps they do bear some relationship to phishing schemes, which take advantage of lawyers being rushed or busy or gullible enough to click a link too quickly. It's not the hackers who are going to get you; you're more likely to get yourself.

Notes

[1] *In re* Panel File No. 41310, 899 NW.2d 821, 824 (Minn. 2017).

[2] E. Cleary, "Summary of Admonitions" *Bench & Bar of Minnesota* (March 2000).

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Atomic Habits

Summary by Lisa Buck

Many of us rang in the New Year by making a resolution for 2021. Whether it's to exercise more, avoid junk food, save money, or limit social media, a bad habit is hard to break and a good habit is hard to create. According to author James Clear, making a small behavior change can, over time, produce remarkable and lasting results. Clear offers a plan for behavior change in his book *Atomic Habits.*

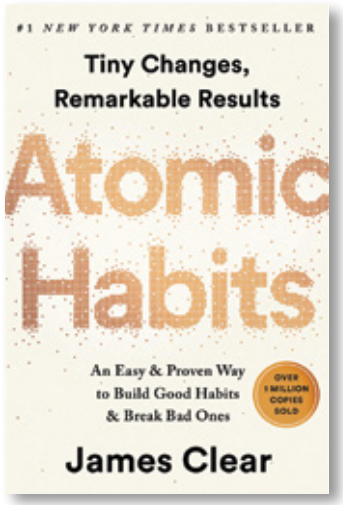
Researchers estimate 40-50 percent of our actions on any given day are done out of habit. A 'habit' is a behavior performed regularly (perhaps even automatically) in response to a specific situation. Your phone beeps and you grab it to check your text messages. You get home from work and instantly reach for the remote control to browse Netflix.

Habits are not always bad. Repeating a behavior encodes it in the brain, which frees up mental capacity so we can concentrate on other things. Habits even create physical changes in the brain. For example, the cerebellum, the part of the brain responsible for motor coordination such as plucking a guitar string, is bigger in musicians than in non-musicians. Habits can literally change your mind.

The Habit Loop

Every habit consists of a four-step sequence: cue, craving, response, and reward. A *cue* triggers a *craving* which motivates our *response* which provides the *reward*. This is known as the "habit loop".

A note about craving: it isn't usually physical; rather, we crave a change in our internal state that the reward provides. For example, when a co-worker brings in a box of donuts (cue), I will want the Boston cream (craving), so I will grab it (response) and experience a satisfying sugar rush (reward).



The 4 Laws of Behavior Change

Once you have identified a habit that you'd like to start or stop, Clear suggests following the "four laws of behavior change."

To create a new habit:
1. Make it obvious
2. Make it attractive
3. Make it easy
4. Make it satisfying

To break a bad habit:
1. Make it invisible
2. Make it unattractive
3. Make it difficult
4. Make it unsatisfying

Make It Obvious/Invisible

Visual cues are a strong catalyst for habits. A small change in what you can *see* can shift what you do. Make cues for good habits obvious and make cues for bad habits less visible. Place your gym bag by the front door so you'll grab it when you leave for work. Put your phone in another room when you want to have family time. Clear calls this "being the architect of your environment".

Make it Attractive/Unattractive

Our physical and social environments affect our habits. Clear says it helps to join a culture where your desired behavior is the *normal* behavior. If your goal is to run a marathon (even a virtual one), join a running group.

Another way to make a good habit more enjoyable or attractive is to shift your thinking from "I have to" to "I get to". Instead of "I have to get up early for work", think "I get to get up early for work because I have a job, and I have skills that help people." Reframing a burden as an opportunity can help make the good habit less painful.

Make It Easy/Difficult

The brain is wired to conserve energy. When deciding between two similar options, we naturally gravitate toward the option that requires the least amount of effort. So, make your good habit convenient (choose a gym near your home or office). Make a bad habit more difficult (put your phone away during family time).

Clear suggests that when starting a new habit, limit the behavior to two minutes at first. If your goal is to run a marathon, begin with the habit of putting on your running shoes immediately upon waking. Don't worry about the running part until the shoe part is a habit. Limiting the behavior to two minutes initially will increase the likelihood that you will repeat the behavior.

Every habit consists of a four-step sequence: cue, craving, response, and reward. A *cue* triggers a *craving* which motivates our *response* which provides the *reward*. This is known as the "habit loop".

Habit stacking is another way to make a new habit easier: pair a current habit with a new habit. For example, if you want to start meditating, decide: "After I pour my cup of coffee in the morning, I will meditate for two minutes at the kitchen table."

Once a good habit has been formed, continue looking for ways to challenge yourself to avoid getting bored and abandoning the habit. Clear points to the "Goldilocks Rule" which states that humans achieve peak motivation when working on tasks that are right on the perimeter of their current abilities: tasks that are not too hard, not too easy, but just right. In other words, the habit has manageable difficulty. Once you have a solid habit of running, for example, you will need to challenge yourself to go farther or faster to avoid boredom.

Make it Satisfying/Unsatisfying

As any parent knows, what is rewarded is repeated. To create (and repeat) a new habit, it is important to feel satisfaction, otherwise known as the reward.

Humans are wired to prefer immediate reward. It is hard to ignore an immediate reward (donut) in favor of the delayed reward (better health). Clear suggests training yourself to delay gratification by attaching an immediate reward to a good habit, such as making myself a cup of tea when I decline a sugary treat. Another example would be taking a bubble bath after working out.

Reward can come in other forms, such as tracking your progress in a journal, or by putting an X on the calendar for each day you do the good habit or avoid the bad habit. Even crossing an item off your to-do list is satisfying. Visually seeing our progress motivates us to keep going. This is why restaurants use loyalty punch cards and why the software downloading on our computer shows a progress bar.

Identity

Eventually, an immediate reward won't be needed because the habit will become part of your identity. According to Clear, incentives start a habit, but *identity* sustains the habit.

In starting a new habit, focus on your identity—that is, what you wish to become, rather than on what you want to achieve. For example, when declining a cigarette, think "I'm not a smoker" rather than "I'm trying to quit smoking." This shift in identify can help drive your habits.

Exactly how long does it take for a new habit to form? Clear says there is no magic number. Habits form based on *frequency*, not on time. The number of times an act is performed matters more than the amount of time it is performed. Repetition is key.

In conclusion, meaningful change does not require radical change. By adopting small behavior shifts and applying them consistently, we can create lasting habits to enrich our lives.

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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.

Judge Laura Thomas

New to the Bench

By Dorothy Summers

Judge Laura Thomas's journey to the bench began long before she ever set foot in law school. It was in her eighth-grade civics class where she fell in love with American government and the principles upon which this nation was founded. In high school, her participation in mock trial ignited her quest to embark on a career in law. For Thomas, the advocacy, finding of the facts, and developing a story around the evidence, all pushed her to pursue litigation. "The courtroom is one of the best ways to get as close to the truth as possible."

Thomas studied political science at the University of St. Thomas before attending law school at Loyola University Chicago School of Law. It was important for Thomas to learn how to practice law in an environment that would not only teach her how to be a technical, excellent lawyer, but a lawyer with a good heart. Describing herself as a person with a "boundless interest" in people, she recalled Loyola was a place where she felt at home. Thomas also discussed the importance of ethics and professionalism as an integral part of the culture of the law school. "As a lawyer, one is responsible for making swift ethical decisions each and every day."

Upon graduation from law school in 1996, Thomas served as a law clerk for Otter Tail County Judges Thomas Stringer and Harlan Nelson. After her clerkships she worked for Minneapolis product liability firm Hanson, Marek, Bolkcom, and Greene, Ltd. Thomas later practiced general civil litigation, insurance defense, and family law at Rider Bennett. In 2002, Thomas founded a solo family law practice which she maintained until 2014. She also served as a conciliation court referee for six years.

In 2007, Thomas became a clinical professor at the University of Minnesota Law School. Over the next 13 years, Thomas helped develop the Law in Practice course at the Law School. As a professor, she had the opportunity to nurture, mentor, and supervise student attorneys. Thomas and her colleague Professor Prentiss Cox realized there was a need for a basic textbook to provide students with practical legal tools useful for litigation, client and witness interviews, depositions, and many other skills. To address this need, they co-authored a nationally recognized textbook, "Law in Practice" in 2014. In 2015, Thomas became the Law Clinic Director at the Law School – overseeing the clinical program while continuing to teach her Family Law Clinic and co-direct Law in Practice.

Thomas emphasized the importance of ensuring every individual who comes into her courtroom has an understanding of what is happening regarding their case and why it is happening. "As a judge, I have the ability to affect hundreds of lives." Thomas is committed to making sure she is a judge who is fair and takes the time to explain to each individual before her why she decided the way she did.

Her experience representing individuals on both sides of civil disputes gives Thomas a deeper understanding about how quickly cases change and managing client expectations, which will help her empathize with the attorneys who appear before her.

With experiences ranging from associate attorney, solo practitioner, clinical law professor, and conciliation court referee, Thomas brings many skills which will guide her in this new role as a judge. Thomas has a strong grasp of what is required to manage her chambers, the courtroom, and new responsibilities.

Career Timeline

- Clinical Professor of Law (2007 – 2020) and Director of Law Clinics, University of Minnesota Law School (2015-2020)
- Solo Practitioner, 2002 – 2014
- Rider Bennett, Associate, 1999 – 2001
- Hanson Marek Bolkcom & Greene, Associate, 1997 - 1999
- Law clerk, Otter Tail County Judge Harlan Nelson and Otter Tail County Judge Thomas Stringer, 1996 - 1997

Dorothy Summers

Ms. Summers has joined Cousineau, Waldhauser, and Kieselbach as an associate attorney. She previously served as a law clerk to the Hon. William H. Koch in Hennepin County District Court. Summers graduated from the University of St. Thomas School of Law in 2018. After graduation she worked at the Legal Rights Center where she facilitated restorative justice Family Group Conferences for youth referred for school discipline, truancy, juvenile diversion, family engagement, and academic support.

Grantee Spotlight:

The Hennepin County Bar Foundation is the charitable giving arm of the HCBA. The HCBF fulfills its mission of "promoting access to justice for the people of Hennepin County" by giving more than $200,000 in grants each year to dozens of local nonprofits. For more information visit **mnbar.org/hcbf.**

Minnesota Assistance Council for Veterans (MACV) has been working to end the homelessness crisis among veterans since they first opened their doors in 1990. They do so by providing multiple unique programs serving veterans statewide. The Hennepin County Bar Foundation (HCBF) has granted funds to MACV since 2011, specifically for the Vetlaw Program.

The current iteration of Vetlaw began in 2009. At the time, Sara Sommarstrom, current Vetlaw Director at MACV, was working for the Minnesota Justice Foundation. At a family law clinic event, Sommarstrom connected with a veteran whose family was getting evicted. Sommarstrom realized that many legal issues facing veterans are complex, and a unique approach was needed to address access to justice for veterans.

In November of 2009, MACV organized a family law clinic at a VA hospital. They saw approximately 35 people at this clinic and realized that one of the primary barriers to housing stability was child support. Soon after, a pilot program was created between the VA, the Federal Office of Child Support Enforcement, and the American Bar Association. Vetlaw came of age as these issues were being addressed at a national level.

The VA surveys homeless and formerly homeless veterans to pinpoint and address the biggest unmet needs. In 2008, child support was the highest ranking unmet legal issue for veterans experiencing homelessness. The VA learned that while there are a multitude of housing programs to assist veterans, many of these vouchers are based on gross income, and veterans are not credited with the fact that $600 of their allotted $1,000 is going to child support. Vetlaw was one of ten pilot sites for the Child Support Initiative and its model and findings were shared through a national report.

Vetlaw is unique in that it is an in-house legal program housed within a service agency specific to veterans and veterans experiencing homelessness. They held six clinics in 2010. In the fall of 2011, Sommarstrom joined MACV as a full time employee and began building the Vetlaw program. Today the Vetlaw staff is a team of four—two attorneys and two administrators. MACV has 60 staff members in total. Vetlaw has its own intake line and has its own eligibility standards separate from MACV as an organization.

At the larger Vetlaw clinics, approximately 100 veterans are seen in five hours by paralegals, law students, and attorneys alike. Anyone who served in the military can show up for any issue at these legal clinics. Many clinics are held in the Twin Cities, but a few are in outstate Minnesota as well. Over 1,500 veterans were served via legal clinics in one year. Vetlaw and MACV use clinics to provide direct services and for name recognition.

Because of the COVID-19 pandemic, events have not been held at VA hospitals since March. "Clinics were a huge outlet for referrals and now they've severely decreased," says Sommarstrom. Vetlaw has also transitioned from using a clinic-based model to shifting work to their staff attorneys, mostly via phone.

The work being done at clinics, and with staff via phone, ranges from advice to legal representation in the areas of family law, criminal expungement, and housing. "I liken us to a navigator system," says Sommarstrom, "We will talk to anyone that served in the military about anything." Many times, Vetlaw staff must explain that there is no legal recourse. Oftentimes, non-lawyers do not know about contingency fees and fee-shifting arrangements that make representation affordable even for those with little to no income. Vetlaw tries to identify if there are affordable options, or if Legal Aid would take the case, etc.

Legal representation is provided when the issue is directly connected to a veteran's housing stability, which in many instances is a child support case. MACV rarely handles nonpayment eviction cases because they can pay for a veteran's rent. Vetlaw has contracts with legal aid offices around the state, paying legal aid partners a flat fee for their services. They raise a lot of unrestricted dollars and receive many grants to cover these expenses.

Vetlaw receives no traditional legal funding, by design, but has been fortunate to have many pro bono partners, many of whom are veterans themselves, and corporate and in-house counsel partners, along with a plethora of volunteer attorneys and paralegals. Vetlaw served their 10,000th unique veteran this year. Since they started using a database 5 years ago, they have handled 15,000 cases.

Vetlaw continues to work with volunteers during this time. "Volunteers are basically like phone-a-friend for Vetlaw," says Sommarstrom. Instead of handing clients off to volunteer attorneys, volunteers are asked to speak briefly with a staff attorney to address their questions. To save potentially hours of research for the two Vetlaw staff attorneys, volunteers can provide their expert knowledge. If you are interested in volunteering or have questions for staff, please contact Sara Sommarstrom, Vetlaw Director, at ssommarstrom@mac-v.org or 651-224-0292.

We Know Lawyers

When current clients or new callers to your office have legal needs outside of your practice area, know that your bar association colleagues are here to help.

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EXCELLENCE AWARDS 2021

Nominate HCBA Members for this Year's Awards

The Hennepin County Bar Association's annual Excellence Awards honor individual members for contributions to the profession and the community.

The HCBA Awards committee (appointed each year and chaired by the HCBA's immediate past president) reviews submitted nominations beginning in February and makes its selections of members to recognize with this honor. Award recipients will be notified in March and the awards will be presented in the spring. Honorees will be profiled in an issue of the Hennepin Lawyer and recognized on the HCBA website.

Up to twelve HCBA Excellence Awards may be awarded in a given bar year, selected from any of the six categories:

Advancing Diversity and Inclusion
Improving Access to Justice
Providing Pro Bono Service
Mentoring in the Profession
Advancing Innovation in the Profession
Serving the Association / Foundation

Although nominators are encouraged to identify the ways in which nominees excel in one or more categories, the Awards Committee will determine the individual category for which each award recipient will be recognized. Awards may not be given in every category each year, and there is no minimum number of award recipients in each year. The Award Committee's final recommendations regarding award recipients shall be approved by the HCBA Executive Committee. An additional award called Career Contributions to the Profession may be given periodically by the Executive Committee and will recognize a member's outstanding career contributions. To recommend an individual for this honor, please contact Ariana Guerra at 612-278-6313 or *aguerra@mnbars.org*.

Past Honorees include:

2020 Honorees

Evan Berquist, for Providing Pro Bono Service
Kathryn Johnson & Kirsten Schubert, for Providing Pro Bono Service
Rachel Hughey, for Mentoring in the Profession
Satveer Chaudhary, for Mentoring in the Profession
Luke Grundman, for Improving Access to Justice
Cheri Templeman, for Improving Access to Justice
Allison Plunkett, for Serving the Association/Foundation

2019 Honorees

Pamela Hoopes, for Career Contributions to the Profession
Blaine Balow, for Providing Pro Bono Service
Jess Birken, for Advancing Innovation in the Profession
Michael Boulette, for Providing Pro Bono Service
Kendra Brodin, for Serving the Association / Foundation
Sybil L. Dunlop, for Advancing Diversity & Inclusion
Loan T. Huynh, for Advancing Diversity & Inclusion
Cynthia Y. Lee, for Advancing Diversity & Inclusion
Lisa Lodin Peralta, for Advancing Diversity & Inclusion
Gloria Stamps-Smith, for Mentoring in the Profession

2018 Honorees

Sue Pontinen, for Career Contributions to the Profession
Landon Ascheman, for Mentoring in the Profession
Michael Cockson, for Providing Pro Bono Service
Yaima Couso, for Improving Access to Justice
Phil Duran, for Advancing Diversity & Inclusion
Ami ElShareif, for Serving the Association / Foundation
Hon. JaPaul Harris, for Improving Access to Justice
Susan Link, for Advancing Innovation in the Profession
RJ Zayed, for Providing Pro Bono Service

Submit Your Excellence Award Nominations by January 31, 2021 via our online form at www.hcba.org

Member News

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

Minnesota Construction Law Services announces **Courtney Ernston's** promotion to partner.

Ogletree Deakins' Minneapolis office welcomes its newest associate, **Colin Hargreaves.** Hargreaves's practice will focus on employment law.

Merchant & Gould is pleased to welcome attorneys **Joseph Bauer** and **Sheila Niaz** to its legal team.

Sieben Edmunds Miller announces its newest attorney, **Dea Cortney.**

George H. Singer, a partner in the Minneapolis office of Ballard Spahr, has been named a Fellow of the American College of Bankruptcy.

Ceiba Fôrte Law Firm was awarded the 2020 Reisman Award for Excellence in Client Service.

Julie Allyn, **Maximillia Utley,** and **Terri Yellowhammer** were appointed to the Fourth Judicial District bench in October of 2020.

Atticus Family Law announces that attorney **Cassandra Suchomel** has become licensed to practice family law in the state of Wisconsin.

Tuft, Lach, Jerabek & O'Connell announces that **Alexandra Michelson Connell** and **Lindsey O'Connell** have become a shareholders at the firm.

RESCHEDULED

Bar Memorial

The Hennepin County Bar Memorial is a time-honored tradition, over 100 years, and on January 29, 2021, we will again honor and celebrate the lawyers and judges who passed away in 2019.

Chief Judge Toddrick S. Barnette will call to order this special session of the Hennepin County District Court. Judge Barnette will welcome family members, colleagues, and friends of the members of our profession whose good deeds and service we recall that day, and he will recognize 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 will forever be the key to a meaningful Bar Memorial. We are grateful for this commitment and good will.

Volunteers on the Bar Memorial Committee work hard each year to help ensure that we remember the professional and personal achievements of our colleagues to be memorialized. Their uniquely positive contributions to the law and greater community make us a better profession. Every year family and friends leave the Bar Memorial feeling moved by these tributes.

The HCBA Bar Memorial Committee requests your assistance as we plan for the 2021 Bar Memorial. Please let us know of Hennepin County lawyers and judges who passed away in 2020. Also, if you are interested in serving on the Bar Memorial Committee, 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 apply the lessons learned.

Kathleen M. Murphy
Chair, Bar Memorial Committee

Friday, January 29, 2021
9 – 10 a.m. | Virtual Memorial Session

Invocation: Judge Kerry W. Meyer
Main Address: Tom Nelson, Partner, Stinson LLP

To Be Memorialized

Glenn Robert Ayres
Milton H. Bix
John Philip Borger
Melvin 'Mel' Burstein
John R. 'Bud' Carroll
Mary K. Ellingen
Charles Bart Faegre
Thomas D. Feinberg
Paul Fogelberg
Hon. Charles Jacob Frisch
John Michael Giblin
Raymond Alfred Haik
Joan Lawrence Heim
Patricia E. Heinzerling
Ronald Birger Hemstad
Daniel W. Homstad
David Benjamin Ketroser
John A. Kocur
D. Kenneth Lindgren
David Alan Lingbeck
Richard S. 'Rick' Little
Thomas G. Lockhart
Richard H. Magnuson
Ronald Eugene Martell
Bert J. McKasy
Laura Haverstock Miles
Noel P. Muller
Byron Donn 'Barney' Olsen
Thomas Patrick O'Meara
Stewart R. Perry
Hon. Steven E. Rau
Earl D. Reiland
LeRoy Mitchell Rice
Richard B. Riley
Sherri L. Rohlf
Robert 'Bob' Smith
Wheeler Smith
James 'Jim' Steilen
Linda Ann (Sparks) Taylor
Arthur Edward Weisberg
Burton G. Weisberg
Nickolas Even Westman
John Anton Yngve
Charles 'Bucky' Selcer Zimmerman

The 2021 Bar Memorial will take place virtually on April 30, 2021 from 9:00–10:00 a.m.

The HCBA's Bar Memorial Committee requests your assistance in its efforts to memorialize Hennepin County lawyers and judges. Please inform us of any colleagues who have passed away in 2020 who should be memorialized at the 2021 Bar Memorial. Contact Sheila Johnson at sjohnson@mnbars.org with names of those to be memorialized. If you are interested in serving on the Bar Memorial Committee, we welcome your participation.

Events and Meetings

All events are being held virtually. Visit **www.hcba.org** for more information.

JAN 5
Business & Securities Law
Securities 2021

JAN 7
Civil Litigation
Made You Look! The Ethics of Using Clickbait-style Headings and 3 Insights That Could Change Your Legal Writing Forever

JAN 20
Criminal Law
Sentencing Guidelines

JAN 21
Corporate Counsel
What In-House Lawyers Should Know About the Gig Economy

JAN 27
Eminent Domain
A Reckoning with Race — The Mapping Prejudice Project

JAN 29
Rescheduled Bar Memorial
Honoring HCBA members who passed away in 2019

FEB 4
Civil Litigation
Ethics in the Time of COVID-19

APRIL 30
Bar Memorial
Honoring HCBA members who passed away in 2020

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COURSE DATES
February 17
March 3
March 17
March 31
April 14
April 28
May 12

10 QUESTIONS with Sam Hellfeld

Chief Legal and Risk Officer at Sleep Number

1 Briefly describe a typical day for you at the office.
It starts with a much shorter commute as I'm primarily working from home given COVID-19. Typical day includes meetings with my teams and cross-functional partners, collaborative and individual work time to advance our initiatives, and dealing with new matters that always come up, which make this job dynamic and engaging.

2 What is the best part of your job?
Two things: being a part of a purpose-driven company with a mission to improve lives by individualizing sleep experiences; and working with a talented, high-integrity team to creatively solve problems and manage risk throughout all aspects of the business.

3 Has COVID-19 changed the way you work? If so, how?
Yes. Simply put, I do a lot more video conferences with cameras on. Working remotely wasn't new for Sleep Number; we had invested in the ability for many team members to work remotely before COVID-19. Our "work for your day" philosophy was an advantage that enabled us to pivot quickly and continue to operate efficiently during all the twists and turns of this pandemic.

4 Why did you decide to go to law school?
It was a natural next step being a political science and history major. Plus, I was told law school would be a good fit because I liked to argue (which I dispute).

5 If you weren't a lawyer, what would you be?
A psychologist. I enjoyed studying psychology in college and think it would be nice to work with people and help them navigate their challenges. Sounds like being a good lawyer come to think of it.

6 You attended college and law school in California. Did you experience culture shock when you moved to Minnesota?
I was born in New York and raised in Southern California. I moved to Minnesota after my wife, who is from Minnesota, got into medical school at the U of M. I experienced some culture differences, but not culture shock. I had visited Minnesota many times before to see my wife's family and I found the "Minnesota Nice" culture to be similar to the laid-back vibe of Southern California. My first winter in Minnesota, on the other hand, was a shock.

7 How do you spend your free time?
Mostly with my family. We have three kids. Our oldest is 11 and we have twins that are 8. We like to get outdoors—hike, bike, skate, ski, golf, and anything on the water.

8 What book is on your nightstand?
I recently got into audio books and started with literary classics I never got around to before. I'm currently listening to *Don Quixote*. The narrator, George Guidall, is great and brings the characters to life with different voices. I never knew, the book is hilarious, and I've been laughing out loud each time I listen to it.

9 What is the best advice you've received?
The best professional advice I received is to be concise. Our CEO likes to say "if you're explaining, you're losing" which really lands the point. One of the judges I clerked for early in my career was known for spotting the winning brief in a stack by pointing out the thinnest one—"thin to win" as the saying goes. I've internalized that advice over the years as "listen long and speak short."

10 Do you have a New Year's resolution or personal goal for 2021?
My goal is to deliberately start and end each day being grateful and not taking the simple things, like my health, for granted.

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Rule 1.1 says:
"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

Comments 2 and 8:

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.