MINNESOTA STATE BAR ASSOCIATION

MAY/JUNE 2023

# BENCH+BAR of Minnesota

## We need to talk about ChatGPT

A lawyer's introduction to the exploding field of AI and large language models

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MINNESOTA STATE BAR ASSOCIATION

MAY/JUNE 2023

# BENCH + BAR of Minnesota

VOLUME 80, NO.4

## columns



## features



**Exchange**
A letter to the editor from the Minnesota County Attorneys Association regarding Barry Edwards and Stacy Bettison's April cover story about prosecutorial misconduct.
*Read it at Bench & Bar Online: www.mnbar.org/bench-bar*

MSBA

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# BENCH+BAR of Minnesota

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**WE'D LIKE TO HEAR FROM YOU:** To query potential articles for *Bench + Bar*, or to pass along your comments on matters related to the profession, the MSBA, or this magazine, write to editor Steve Perry at ***sperry@mnbars.org*** or at the postal address above.

# Until we meet again

**BY PAUL D. PETERSON**

*PAUL PETERSON represents families in personal injury and wrongful death cases. His office is in Woodbury and he is licensed in both Minnesota and Wisconsin. He is the proud papa of four above-average children and one outstanding dog.*

I first became active in the Ramsey County Bar Association as a new lawyer practicing in St. Paul. My career as an active member of the MSBA began in approximately 2003. It is incredible to have been selected to serve as your president this past year—and to think back and appreciate the many wonderful people I have encountered along the way. I am grateful to you for the opportunity.

This is my final President's Page, and I want to express gratitude to the many people I have worked with this year. Time and space do not allow a proper effort in this regard, but I want to take a moment to thank my fellow officers: Paul Floyd, Sam Edmunds, and Tom Pack. I look forward to your continued leadership. I also need to thank our Board of Governors. The dedication, skill, and intellect of these members serving as the board for our association is wonderful. Many thanks also to the members of our Assembly—our policymaking leaders—for their hard work. Finally, thanks to Cheryl Dalby, our CEO, and our wonderful staff. You serve with distinction, and you have my unending gratitude.

I also must thank Chief Justice Lorie S. Gildea and the members of our Supreme Court; Chief Judge Susan Segal and our Court of Appeals; and our trial judges, especially Judge Lois Conroy, the president of the District Judges Association. It has been a pleasure to work with you. Throughout all our legislative, educational, and other work together, my already considerable admiration and respect grew exponentially.

As the MSBA president, I see the incredible work being done by the leaders and members of our affinity/associated bars, our sections, our committees, and all the various task forces and commissions that move our profession, our justice system, and our society forward every day. My thanks to you for your contributions.

Over the past year I have discussed the value of belonging to and participating in in the MSBA. In response I received communication from a handful of members suggesting that the "political" bent of the MSBA was a reason we didn't have higher membership numbers. I want to thank these members for reaching out to me. I also want to thank them for their continued membership. They indicated they remained members because of the benefits they received in other areas. That is exactly one of the points I've been trying to make this past year—you may not like everything about the MSBA or agree with all its positions, but there is so much more to be gained by active membership if one explores the possibilities.

Throughout my time participating in the MSBA, I have tried not to let the politics get in the way of the good work of the MSBA. While some may find the positions of the MSBA too liberal, I am sure others would argue the MSBA is too conservative. If many members didn't check their political beliefs at the door, a lot of good work on behalf of the profession could be lost. Active membership is the basis of our ability to do good work.

But there is also a threat to our system that the MSBA likely can't avoid. In contemporary politics, anti-democratic forces are increasingly challenging the role of the rule of law in resolving disputes in our society. Whatever our partisan affiliations, no amount of desire to avoid what some may term "getting political" will suffice to let us avoid what may be on the horizon.

There is an authoritarian strain in America that is growing inside our political system. This is a challenge. I often mention the common bond reflected in the oath we took as lawyers. That oath is more important today than ever. We as a profession stand for the rule of law and the acceptance of legal outcomes. One miracle of the United States is found in its dispute-resolution system. As a society based on the rule of law, our goal is to resolve disputes without resorting to violence.

But this bedrock value is being tested like never before. What will you do if our basic system of democracy is at stake? While I hope this threat is thoroughly dealt with at the ballot box, lawyers and the courts are certainly implicated in these disputes as well. If this crisis of democracy arrives at the MSBA doorstep, I will no longer be in formal leadership ranks, but I will be fighting with every ounce of my being, as a lawyer and a citizen, any efforts to undo the rule of law; to take away the right to vote; to marginalize or render invisible whole segments of our population; or to impose an authoritarian regime in the United States. We have many problems, inside and out of the profession, but the move away from democracy and toward authoritarianism is not the answer. Please keep joining me in supporting the bar and working for a free and democratic United States and Minnesota.

Until we next meet, please take care. The past year has been an experience like no other and for that I thank you. ▲

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**Welcome, new lawyers:** The Minnesota State Supreme Court and Minnesota State Bar Association welcomed 55 new lawyers to the Minnesota bar in a series of three ceremonies held at the Minnesota State Capitol on May 12. The new lawyers join the ranks of more than 25,000 active licensed attorneys in Minnesota. Justice Natalie Hudson led the proceedings in the Minnesota Supreme Court chambers in front of bar admittees and their families. She was joined on the bench by Justice Margaret Chutich and Justice Anne McKeig. After the oath was administered, Justice McKeig addressed the new lawyers, encouraging them to bring their authentic selves to the profession. MSBA President Paul Peterson spoke about the community, support, and connections available from the bar association. ▲

PRO BONO SPOTLIGHT

## *Wendy Willson Legge*

Wendy Willson Legge retired from government legal practice in 2018, but her work was just getting started. Now she focuses on pro bono work for housing cases and is a strong defender for abuse survivors. Since her retirement, Legge has spent well over 1,000 hours assisting over 550 clients with housing issues. In 2022, she outdid herself, providing over 125 diverse types of services and logging 691 hours of pro bono work, easily qualifying as an MSBA North Star Lawyer.

When we look at Legge's work, structure allows her the capacity to tackle such an intense workload. In matters of housing law, she covers two phone advice shifts per month, appears in multiple court clinic shifts each week, assists with eviction expungement, and provides representation in eviction defense and rent escrow cases. The impact of her work is life-changing. But Legge is also a holistic attorney, providing strong advocacy for low-income landlords. In another case, she assisted a blind man who was subletting a room in his home for additional income; he needed help evicting a tenant who became violent and would not let him back in the house after he returned from vacation.

Legge has made a critical impact on the lives of so many Minnesotans, and her peers are particularly appreciative. Elizabeth Kelly, a staff attorney at Volunteer Lawyers Network (VLN), says, "Wendy Willson Legge is an incredible lawyer. She comes up with creative legal arguments to help her clients and is also tenacious. When she takes a client, I am always confident that she will serve that client to the best of her ability."

This sentiment is echoed by her clients, one of whom has written, "[She] made sure I understood the entire process and at first, I was overwhelmed by this case. But once I started working with her, I was at peace. I am very satisfied with the service I received and will refer others."

Legge's impact is felt by many, and low-income Minnesotans have had life-altering experiences under her guidance. In the words of Muria Kruger, housing program manager at VLN: "Wendy's passion for justice has left an indelible mark on her clients and VLN's housing program." ▲

WHAT'S NEW?

## Get to know the MSBA Resource Hub

MSBA recently launched our newest legal industry resource—the MSBA Resource Hub. This online library contains free downloadable educational content provided by the bar association, outside experts, and vendors. The hub provides access to white papers, webinars, product guides, eBooks, industry analysis, and more. Access this curated collection of timely content on more than 20 topics, including over 170 downloadable docs and resources, with more being added regularly. There's a mix of technical, management, and professional development topics for attorneys. Check it out at ***www.mnbarhub.org.*** ▲

## IACP nominated for Nobel Peace Prize

Member Gregory Solum writes: "A unique and effective conflict resolution model has been nominated for the 2023 Nobel Peace Prize. From its humble beginnings in Minnesota, the International Association of Collaborative Professionals has expanded worldwide. It offers divorcing families an alternative to divisive family court litigation.

"The idea was conceived by Stu Webb, a Minneapolis family law attorney, in 1990. Since most marriage dissolutions ultimately settle, his inspiration was to have both parties and their attorneys sign initial participation agreements to resolve their differences without court involvement. The process is facilitated by collaboratively trained professionals. Depending upon the complexity of the matter, this could include psychologists, financial neutrals, and child specialists. Even in difficult cases, this goal-oriented focus often results in creative settlements crafted by the parties themselves.

"Stu Webb and the early collaborative law pathfinders in Minnesota can take a great deal of satisfaction from its tremendous growth over the past three decades. The International Association of Collaborative Professionals, formed in 2001 following its expansion into Canada, Europe, and Australia, now boasts over 5,000 members in 24 countries." ▲

## NEW CIVIL TRIAL SPECIALIST CERTIFIED

The MSBA is honored to announce one newly certified legal specialist in civil trial law. This attorney has demonstrated extensive knowledge and proficiency in their specialty area.

**Michael Carey**, with Dykema, is one of the country's premier defense lawyers in automotive liability and other product liability matters. Mr. Carey is co-leader of the firm's electric and autonomous vehicles (E/AV) and advanced mobility team. He is known for his ability to connect authentically with juries and maximize the effectiveness of expert witnesses.

Interested in becoming a certified specialist? For more information about 2023 exams and certification generally, visit ***www.mnbar.org/certify.*** ▲

On Thursday, May 4, the Solo Small Practice Experience Section hosted its fifth annual Solo and Small Firm Summit at the Heritage Center in Brooklyn Center. Planned with the MWL and RCBA Solo and Small Firm Sections, this event was back in person for the first time since 2019. Around 70 guests heard inspiring presentations on how to improve their law firms by marketing smarter and working more efficiently (AI tools for intake, flat fee billing, and ChatGPT) without having to hire. The day was capped off by a fun social hour in what was finally recognizable as spring.

# THE 2023 MSBA CONVENTION

## FEATURED SPEAKERS

### KEYNOTE SPEAKER KHADEVIS ROBINSON

- Two-time Olympian, seven-time USA National Champion and NCAA Champion
- Director of Track and Field, Texas Christian University, Fort Worth, Texas
- Author, mentor and performance coach

### CHIEF JUSTICE LORIE SKJERVEN GILDEA

Chief Justice Gildea has served as the Chief Justice of the Minnesota Supreme Court since 2010. Prior to that she served as an associate justice from 2006 to 2010 and as a district judge in the Fourth Judicial District from 2005 to 2006.

### MINNESOTA SECRETARY OF STATE STEVE SIMON

Steve Simon is Minnesota's 22nd Secretary of State. As Secretary of State, he partners with township, city, and county officials to organize elections on behalf of Minnesota's nearly four million eligible voters, and to ensure that the election system is fair.

MSBA Minnesota State Bar Association

## WEDNESDAY, JUNE 21

8:00 – 8:30 a.m.
CHECK-IN & CONTINENTAL BREAKFAST

8:30 – 8:45 a.m.
ANNOUNCEMENTS

8:45 – 9:00 a.m.

**President's Welcome**

– *Paul D. Peterson, MSBA President*
*Harper & Peterson, P.L.L.C.*
*Woodbury*

9:00 – 9:30 a.m.

**Keynote: Achieving Peak Performance in Work and Life**

– *Khadevis Robinson*

9:30 – 9:40 a.m. BREAK

9:40 – 10:25 a.m.

**Reflections on Participating in High-Profile Trials**

– *Judge Peter A. Cahill*
*Fourth Judicial District*
*Minneapolis*
– *Shannon R. Elkins*
*Office of the Federal Defender*
*District of Minnesota*
*Minneapolis*
– *Eric Nelson*
*Halberg Criminal Defense*
*Minneapolis*
– *Steven L. Schleicher*
*Maslon LLP*
*Minneapolis*
– *Manny Atwal (moderator)*
*Office of the Federal Defender*
*District of Minnesota*
*Minneapolis*

10:25 – 10:30 a.m. BREAK

10:30 – 11:15 a.m.

**2023 U.S. Supreme Court Update and Insights**

– *Jeffrey P. Justman*
*Faegre Drinker Biddle & Reath LLP*
*Minneapolis*
– *Aaron D. Van Oort*
*Faegre Drinker Biddle & Reath LLP*
*Minneapolis*

11:15 – 11:45 a.m.

**2 ED TALKS**

- **¡Bienvenidos a Abogados Café!**
  – *Inti Martinez-Alemàn*
  *Ceiba Forte Law Firm*
  *Saint Paul*
  – *Ofelia Ponce*
  *Abogados Café LLC*
  *Saint Paul*
- **Show Me the Money?! The U of M's New NIL Clinic**
  – *Christopher D. Pham*
  *Fredrikson & Byron, P.A.*
  *Minneapolis*

11:45 a.m. – 12:45 p.m.

**LUNCH PRESENTATION**

Lunch provided to all attendees.

12:05 – 12:35 p.m.

**State of the Judiciary Address**

– *Chief Justice Lorie Skjerven Gildea*
*Minnesota Supreme Court*
*Saint Paul*

12:45 – 1:45 p.m.

**3 ED TALKS**

- **From Court to Court: Lessons from Pro Sports and the Law**
  – *Jessie Stomski Seim*
  *Prairie Island Indian Community*
  *Welch*
- **Minnesota's New Electronic Wills Law**
  – *Brian A. Dillon*
  *Lathrop GPM LLP*
  *Minneapolis*
  – *Marya P. Robben*
  *Lathrop GPM LLP*
  *Minneapolis*
- **Creating Something Out of Nothing: Why Painting and the Law Are My Passions**
  – *Casey L. Matthiesen*
  *Robins Kaplan LLP*
  *Minneapolis*

1:45 – 1:50 p.m. BREAK

# WELCOME BACK TO THE BAR!

1:50 – 2:35 p.m.

### Democracy and Trust in Elections: The Role of Bars and Lawyers

- *Judge Eric L. Lipman*
  *Minnesota Office of Administrative Hearings*
  *Saint Paul*
- *Thomas R. Pack*
  *Greenberg Traurig, LLP*
  *Minneapolis*
- *Paul D. Peterson*
  *Harper & Peterson, P.L.L.C.*
  *Woodbury*
- *Steve Simon*
  *Minnesota Secretary of State*
  *Saint Paul*
- *Robin Wolpert (moderator)*
  *Sapientia Law Group*
  *Minneapolis*

2:35 – 2:40 p.m. BREAK

2:40 – 3:10 p.m.

### Update on Marijuana Legalization in Minnesota

- *Rachel S. Kurth*
  *Eckland & Blando*
  *Minneapolis*
- *Jared M. Reams*
  *Eckland & Blando*
  *Minneapolis*

3:10 – 3:15 p.m. BREAK

3:15 – 4:00 p.m.

### 2023 Minnesota Appellate Case Law Update

- *Justice G. Barry Anderson*
  *Minnesota Supreme Court*
  *Saint Paul*
- *Justice Margaret H. Chutich*
  *Minnesota Supreme Court*
  *Saint Paul*
- *Judge Jennifer L. Frisch*
  *Minnesota Court of Appeals*
  *Saint Paul*
- *Chief Judge Susan Segal*
  *Minnesota Court of Appeals*
  *Saint Paul*

4:00 – 5:30 p.m.

### President's Reception and Passing of the Gavel Ceremony at Fogo de Chão

- *Paul D. Peterson, MSBA President*
- *Paul M. Floyd, Incoming MSBA President*

**REGISTER FOR A CHANCE TO WIN AN AVENTON PACE 500 ELECTRIC BIKE!**

The prize drawing will take place at the reception on Wednesday, June 21 and you must be present at the reception during the prize drawing to win. Any person may receive and submit an entry form on Wednesday, June 21 at the Convention registration desk until the reception begins at 4:00 p.m. Registration for the 2023 MSBA Convention is not required. The following individuals are not eligible to win: employees of Minnesota CLE and the Minnesota State Bar Association, as well as family members of those employees.

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## THURSDAY, JUNE 22

8:30 – 9:00 a.m.
CONTINENTAL BREAKFAST

9:00 – 9:30 a.m.

### 7 Essential Tech Tools for Lawyers in 2023

- *Todd C. Scott*
  *Minnesota Lawyers Mutual Insurance Company*
  *Minneapolis*

9:30 – 10:00 a.m.

### Why We Write: An Authors' Roundtable

- *Toni L. Halleen*
  *Schaefer Halleen, LLC*
  *Minneapolis*
- *Terrance C. Newby*
  *Maslon LLP*
  *Minneapolis*
- *Stephen E. Yoch*
  *Felhaber Larson*
  *Minneapolis*
- *Toni D. Newborn (moderator)*
  *City of Saint Paul*
  *Saint Paul*

10:00 – 10:05 a.m. BREAK

10:05 – 11:05 a.m.

### A New Generation of Ethical Issues: The Impact of ChatGPT and AI Generative Technologies

*1.0 ethics credit applied for*

- *Jess L. Birken*
  *Birken Law Office*
  *Minneapolis*
- *Eric T. Cooperstein*
  *Law Office of Eric T. Cooperstein*
  *Minneapolis*

11:05 – 11:10 a.m. BREAK

11:10 a.m. – 12:10 p.m.

### Elimination of Bias: Just Deeds

*1.0 elimination of bias credit applied for*

- *Jared D. Shepherd*
  *Campbell Knutson, P.A.*
  *Eagan*
- *McKaia Ryberg-Dykema*
  *Student, Mitchell Hamline School of Law*
  *Saint Paul*

12:10 p.m. **TWINS GAME!**

### STAY FOR THE TWINS GAME!

**Minnesota Twins v. Boston Red Sox**
**Target Field – Corona Right Field Patio**
**Thursday, June 22 | 12:10 p.m.**

Individual tickets are free and will be made available on a first-come, first-served basis to those who attend the MSBA Convention on June 21 & 22. Ticket includes $10 in food and beverage credit.

**Don't miss it! Register online today at www.msbaconvention.org**

# Communication, diligence, and client expectations

BY SUSAN M. HUMISTON ✉ susan.humiston@courts.state.mn.us

*SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Security Board. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.*

Email and cell phones are amazing tools—but if you practiced before they became prevalent, you know the tremendous impact, both positive and negative, they have had on the practice of law. A recently leaked presentation slide from an internal associate training at the law firm of Paul Hastings has again sparked conversation on this topic.

The slide describes some "non-negotiables" for junior associates at an AmLaw 20 firm: "You are online 24/7. No exceptions, no excuses." "Clients expect everything to be done perfectly and delivered yesterday." Reactions to the "non-negotiables" have been all over the map, with the firm saying the slide did not represent the views of the firm or its partners, some decrying the expectations as "horrible," and most others—including, I wager, a large percentage of lawyers—merely shrugging.

While it might not surprise anyone that expectations are high at a large firm where hourly rates (and annual salaries) are significant, less attention is given to how prevalent these same notions are for solo and small firm lawyers or government lawyers. My brother is a solo practitioner (plaintiff's personal injury) who works all the time and has clients who text at all hours and every day, week or weekend. I know many government lawyers who have demanding clients and large caseloads. Many in-house counsel have more work than they can handle and client representatives in multiple time zones. The "non-negotiables" are a reality for more lawyers than just associates in Big Law.

> DO THE ETHICS RULES REQUIRE YOU TO BE ACCESSIBLE TO YOUR CLIENTS 24/7? OF COURSE NOT. THE LEVEL OF CUSTOMER SERVICE EXPECTED BY YOUR EMPLOYER OR YOUR CLIENT IS ONE THING. YOUR ETHICAL DUTY OF COMMUNICATION, MEASURED IN TERMS OF PROMPTNESS AND REASONABLENESS, IS ANOTHER.

I have no solutions, unfortunately. But I thought it might be helpful to look at how the ethical requirements of communication and diligence fit into this conversation.

## Communication

Do the ethics rules require you to be accessible to your clients 24/7? Of course not. The level of customer service expected by your employer or your client is one thing. Your ethical duty of communication, measured in terms of promptness and reasonableness, is another. Rule 1.4, Minnesota Rules of Professional Conduct (MRPC), sets out the ethical standards for communication. You must:

- promptly inform the client of any decision or circumstance where their informed consent is needed;
- reasonably consult with the client about the means to accomplish the client's objectives;
- keep the client reasonably informed of the matter's status;
- promptly comply with reasonable requests for information;
- consult with the client regarding any ethical limitations impacting the representation; and
- explain the matter to the extent reasonably necessary for the client to make informed decisions.

When used in the rules, "reasonable" means the "conduct of a reasonably prudent and competent lawyer." (Rule 1.0(i), MRPC.) *Prompt* is not defined in the rules, but dictionary definitions frequently use the synonym "quick." The comments to the rule provide some additional context, noting that if a prompt response is not feasible, someone should acknowledge the request and advise when a response will be provided. (Comment [4].) The comment also advises that regular communication with a client will help to minimize client requests.

Nowhere in the rule will you find the word *immediate,* even though it might feel that way with so many instantaneous forms of communication available. Good customer service and the ethics rules align when you approach client communications thoughtfully. Clients like regular updates—including the news that nothing is new—and no one likes surprises or last-minute fire drills, so anticipating the timing of known events, and planning accordingly, goes a long way toward ensuring good communications.

Clients also like to know what they can expect from you, so you may have more power to set and manage expectations than you think. Explain typical response times or communication timelines at the onset of the engagement, particularly if you represent individuals. Acknowledge communications even if you cannot respond, and provide an estimate of when you can respond. If you cannot get to it and you have staff, delegate the outreach. Bill regularly. Bills generally communicate a lot of information. You know all of this, but it is easier said than done with so much coming at you.

Time and again, we see lawyers who have the best of intentions but fail to meet these requirements because so much is on their plate. Remember, you are probably a lawyer because you are good at problem-solving. Embrace this challenge. When you keep the ethical requirements in mind, it helps to clarify when you are at risk of failing in your ethical duty of communication. While you may not always be able to provide the level of customer service you would like, make sure that you keep in mind the ethical requirements regarding communication.

## Diligence

Clients often find legal timelines mysterious. And frustrating. It's not only big firm clients who expect results yesterday. So much of our culture revolves around immediacy. Your duty under Rule 1.3, MRPC, regarding timeliness is to "act with reasonable diligence and promptness in representing a client." Importantly, as the comment states, "A lawyer's workload must be controlled so that each matter can be handled competently."

This is perhaps one of the biggest challenges the profession faces. No one wants to turn away work; you don't always know when more work will come your way. Or sometimes you are unable to say no because you are not in private practice. Sometimes you have managed your workload well but the unpredictable nature of life and legal matters still throws a wrench in your plans. Probably nothing keeps more lawyers up at night than the number of things they have to do and the equally frustrating feeling that there is never enough time to complete what needs to be done.

Again, you know this—but even knowing that you have an ethical duty to act with diligence may not be sufficient to compel you to make changes or take action, particularly if you are one of many in the profession who suffer from depression or substance use disorders that interfere with the ability to get work done. (Remember our friends at Minnesota Lawyers Concerned for Lawyers—*www.mnlcl.org*—are there to talk and to help you find additional help if you need it.) It is sometimes hard to speak out and ask for help, or maybe you do not know who to turn to for help. The diligence rule is there, and enforced, to ensure that we do not let these other circumstances, although understandable, trump the interests of our clients.

## A cautionary tale

In March 2023, the Minnesota Supreme Court suspended former city attorney Elizabeth Bloomquist from the practice of law for 30 days. As city attorney, Bloomquist failed to act diligently to make several misdemeanor charging decisions, allowing the statute of limitations to run on alleged criminal conduct in many cases, and failed to comply with victim notification statutes relating to those lapsed claims.

Bloomquist was arguably in an untenable position due to no-longer-sufficient levels of support personnel to allow her to get her work done on a timely basis. Although Bloomquist raised the issue of lack of support with the city, she also agreed that she likely could have done more. Ultimately, while recognizing the challenges faced by attorneys employed by government entities, the Court was unpersuaded that her lack of control over her own caseload warranted substantial mitigation under the facts presented. In representing a client, whether private or public, the duty to act with reasonable diligence and promptness should be foremost on your mind. When you cannot do so, keep raising the issue or take the steps necessary to withdraw ethically.

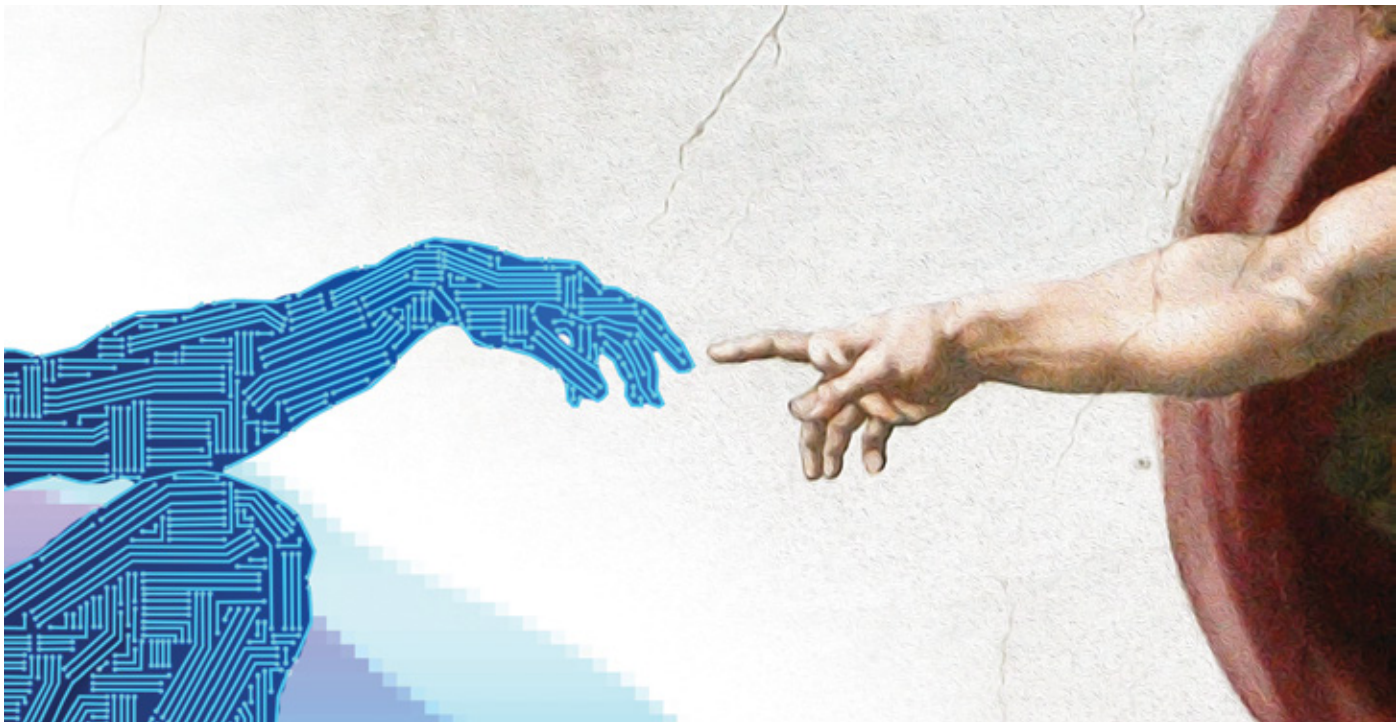
## Conclusion

For as long as discipline has been imposed on lawyers, communication and diligence have been chief among the most violated rules. Objectively, they are easy enough to comply with. On the other hand, they can be challenging to satisfy for so many reasons. Because the obligations are so closely tied to the trust and confidence with which our clients and the public regard us, prioritizing your ethical duties of communication and diligence—notwithstanding the challenges that come your way, but also without succumbing to the pressure to act immediately—will serve you and the profession well. ▲

## THIS ARTICLE IS HUMAN-WRITTEN

# ChatGPT and navigating AI

**BY MARK LANTERMAN** ✉ *mlanterman@compforensics.com*



*MARK LANTERMAN is CTO of Computer Forensic Services. A former member of the U.S. Secret Service Electronic Crimes Taskforce, Mark has 28 years of security/forensic experience and has testified in over 2,000 matters. He is a member of the MN Lawyers Professional Responsibility Board.*

Since its release in November 2022, ChatGPT has been met with a wide variety of responses. It's been praised for passing the bar exam.[1] It's been feared for its potential to replace certain jobs. It's been banned in Italy (at least temporarily). Its inherent security and privacy risks have been acknowledged, along with its potential for improving cybersecurity postures. AI has been a much-discussed topic in recent months, and with good reason.

In an open letter titled "Pause Giant AI Experiments" from the Future of Life Institute, signed by the likes of Elon Musk and Steve Wozniak, the question is posed: "*Should* we develop nonhuman minds that might eventually outnumber, outsmart, obsolete and replace us?... Powerful AI systems should be developed only once we are confident that their effects will be positive and their risks will be manageable."[2] The letter asks for a six-month pause on training for "AI systems more powerful than GPT-4," and calls for increased governance, safety protocols, and improvements in accuracy and transparency. The letter was recently referenced by a group of European Union members requesting a global summit on AI to establish governance for its "development, control, and deployment." In an open letter from these EU lawmakers, responsibility and internal cooperation are highlighted as necessary components in ensuring that progress in AI remains "human-centric, safe, and trustworthy."[3]

The utilization of new technology always comes with a caveat—namely, that gains in convenience result in losses to security. AI, and the ubiquity of ChatGPT more specifically, have presented an especially complex and multifaceted conundrum for individuals, organizations, firms, governments, and security professionals, to name a few. The potential benefits seem overwhelming—reduced time spent on simple tasks, improved efficiency in problem-solving, and limited costs to clients being prime examples. In the words of a recent ABA Journal column, "Despite its current shortcomings, ChatGPT has the potential to significantly enhance efficiency in the delivery of legal services... It can be a tremendous time-saver and is a great place to start your research on just about any topic. But whether you use ChatGPT for personal or professional reasons, you'll need to have a full understanding of the issue at hand and should thoroughly review, edit and supplement any results or draft language it provides you."[4]

First drafts, letters, and correspondence with clients could all be supported with the use of AI.

But actually using the information generated by AI tools requires a great deal of discretion and careful review. As of right now, inaccuracies, false information, and misleading statements abound. The time required to fact check, and the efforts required to mitigate any problems resulting from an error slipping through the cracks, may diminish or even negate the convenience factor. Furthermore, many observers are acknowledging the possible negative impact on new lawyers, with AI taking away opportunities for valuable experience. This reality is of great concern outside the legal community as well, as AI may begin to replace the skillsets of human beings. Additionally, ethical questions have arisen as to what can be legally used from a chatbot conversation, since it may contain trademarked, copyrighted, or simply false information.[5]

The double-edged nature of AI is similarly challenging from a cybersecurity perspective. The benefits may include an improved ability to automate security measures, including those needed for monitoring and detection.[6] But it can also be utilized by cybercriminals to assist in the creation of malware or more convincing phishing attacks. Notably, ChatGPT suffered its own data breach in March, which resulted in the leak of users' personal information and conversation content.[7]

The all-too-critical human element of security especially comes into play when analyzing the risks and benefits of this tool. When any new technology is incorporated into an organization, it is important to fully map out how that technology will be used, and then communicate that information clearly to employees. While ChatGPT urges users to avoid entering sensitive information into conversations,[8] confidential data and personal identifiable information are being entered nonetheless; in some instances, employees themselves are entering confidential company information, constituting a data breach. The tool itself is trained on vast amounts of data gathered from the internet, further blurring an important question—is it ethical to use ChatGPT, given the way it was, and continues to be, trained? If yes, what parameters should be created to regulate its use? If no, how will future AI projects be regulated?

At the time of this writing, Italy has banned ChatGPT, citing violations against the European General Data Protection Regulation (GDPR): "OpenAI doesn't have age controls to stop people under the age of 13 from using the text generation system; it can provide information about people that isn't accurate; and people haven't been told their data was collected. Perhaps most importantly, its fourth argument claims there is 'no legal basis' for collecting people's personal information in the massive swells of data used to train ChatGPT."[9] In spite of this list, it may be reinstated by the time you read this should OpenAI comply with a set of hard and fast rules required by the Italian Data Protection Authority. Regardless of the outcome, overarching concerns surely remain.

For a lot of us, the recent conversations surrounding chatbots and AI may feel like a sci-fi movie, with robots overpowering humans and taking over the world. What happens when technology gets *too* smart, if the conveniences afforded by technology become *too* convenient, literally replacing the very human beings who created it and allowed it to flourish? It's certainly an interesting (if scary!) thought, and while not everyone concurs with such an alarming viewpoint, the rapid development of AI certainly requires political attention, careful planning in its applications, and a complete-as-possible assessment of its extensive societal impact.

For the legal community, the question of how to best implement AI will likely be complicated as these issues unfold. While it seems safe to say that many, if not most, organizations will soon be using AI at least in some capacity, law firms are always held to a higher standard in managing client data and ensuring a strong security posture. Though the immediate benefits of a quickly written draft or assistance in correspondence may be tempting, be sure to bide your time in approaching AI and establishing how it will be incorporated into your firm. Specify what data can be entered into conversations, train employees in appropriate use, and establish guidelines for how your firm will use the tool in the most productive and secure way possible. ▲

**NOTES**

[1] *https://www.abajournal.com/web/article/latest-version-of-chatgpt-aces-the-bar-exam-with-score-in-90th-percentile*

[2] *https://futureoflife.org/open-letter/pause-giant-ai-experiments/*

[3] *https://www.cnbc.com/2023/04/17/eu-lawmakers-call-for-rules-for-general-purpose-ai-tools-like-chatgpt.html*

[4] *https://www.abajournal.com/columns/article/the-case-for-chatgpt-why-lawyers-should-embrace-ai*

[5] *https://news.bloomberglaw.com/us-law-week/employers-should-consider-these-risks-when-employees-use-chatgpt*

[6] *https://www.forbes.com/sites/forbestechcouncil/2023/03/15/how-ai-is-disrupting-and-transforming-the-cybersecurity-landscape/?sh=2c41fff34683*

[7] *https://openai.com/blog/march-20-chatgpt-outage*

[8] *https://help.openai.com/en/articles/6783457-what-is-chatgpt*

[9] *https://www.wired.com/story/italy-ban-chatgpt-privacy-gdpr/*

# A hidden gem worth finding

**BY JUDITH M. RUSH** ✉ *jrush@mnlcl.org*

*JUDITH RUSH is the outreach manager at Lawyers Concerned for Lawyers (www.mnlcl.org), which offers programming, resources, help, and hope to support the legal profession in taking proactive steps toward well-being and to offer assistance when more is needed because of mental health and other challenges. She is also a former chair of the MSBA Life and the Law (now Well-Being) Committee.*

With all we have been through these past few years, it's no wonder that many of us feel burned out, disconnected, uncertain about how to get back to normal or find a new normal. Which makes this the perfect time to explore how we can transform our practices and our lives in the law. And I know just the source: *Transforming Practices: Finding Joy and Satisfaction in Legal Life,* a 1999 book written by former ABA Assistant Managing Editor Steven Keeva.

Since my days as a law student at William Mitchell gathering cast-away binders from Minnesota CLE, I have always gathered books I thought might be helpful. *Transforming Practices* has had a greater impact on my professional life than any other book on my shelves. I purchased it from the author at an ABA CoLAP conference when it was one of Amazon.com's 10 best legal books of 2000—long before "lawyer wellness" became a sorely needed cottage industry—and although it's currently out of print, the ABA still offers for sale a 10th anniversary edition e-book.* (You can also find used paper copies through Amazon.) Keeva, who died too young in 2012, was a national speaker on issues pertaining to law practice and quality of life, a magazine writer, and a teacher of legal affairs reporting at Northwestern. His articles for the ABA Journal were used as instructional materials by law schools and bar associations throughout the country.

Keeva wasn't a lawyer, yet he had much to teach us. In his work at the ABA, he interviewed top lawyers around the country about big cases, big deals, and other legal accomplishments. When Keeva would explain that he was not a lawyer, the lawyers said "good for you" often enough that he began to wonder what it was about the practice of law that made these successful attorneys denigrate their profession.

Keeva, whose insights are a gift to the profession that remains relevant today, identified a central problem deeply rooted in our legal training and offered solutions. He recognized that much of the malaise that grips a significant and expanding segment of the legal profession results from a lack of meaning. Keeva pointed to the work of Victor Frankl, a psychiatrist and Holocaust survivor who concluded that the victims of Nazi concentration camps best able to survive the horrors of the camps were the ones who found meaning in their agony.

According to Keeva, failing to find meaning in our roles in the profession (a failure he called "disintegration") can be devastating. He believed the seeds of disintegration are sown in law school, where the process of studying law redraws life's map in a way that is at odds with life as students lived it before law school. While law school is "unexcelled in its ability to train the mind to produce airtight, unassailable legal arguments," he wrote, it marginalizes most of human experience.

What's missing from our training is the connection between law and human relationships: "caring, compassion, a sense of something greater than the case at hand, a transcendent purpose that gives meaning to your work." This disintegration may cause lawyers to feel separated from themselves, their clients, their firms, or their families, or even from their lives, the law, and the profession.

Keeva believed that the key to a meaningful life in the profession lies in reclaiming our internal sense of direction and "reintegrating" by recognizing that we exist in a web of relationships—and that we can take steps to feel more whole and heal the splits that separate us from our deepest wellsprings of meaning.

Keeva detailed seven approaches to legal practice that lawyers have used to forge meaning in their work.

- **The service practice:** Strive to use your skills and the law to serve others.
- **The listening practice:** Learn to be an active, caring listener.
- **The healing practice:** Return to law's roots as a profession that healed social rifts, by preventing our roles as zealous advocates from overshadowing other roles we can play—advisor, problem solver, peacemaker.
- **The balanced practice:** Live a more balanced life in which every day is planned to include rewarding activities.
- **The contemplative practice:** Spend time just "being" to counteract the seemingly constant need to "do."
- **The time-out practice:** Take some time out of each day for yourself.
- **The mindful practice:** Live moment to moment without judgment, allowing things to unfold in their own way, and exercising power over how you respond to what comes your way.

These practice paradigms share an integrative or holistic approach to law practice "that shuns the rancor and bloodletting of litigation whenever possible; seeks to identify the roots of conflict without assigning blame; encourages clients to accept responsibility for their problems and recognize their opponents' humanity; and sees in every conflict an opportunity for both client and lawyer to let go of judgment, anger, and bias and to grow as human beings."

Ultimately, Keeva's message was that we have the ability to transform ourselves, our clients, and our practices. We can take a broad view, try not to hurt people, and acknowledge our connections to others and the connection between our inner and outer lives.

Keeva urged us to choose clients carefully, treat people in ways that improve interaction, seek joy in the craft of lawyering, open ourselves to options beyond coping or quitting, find a mentor, and strive to express who we are in what we do. And, if we realize that our own sense of what really matters in life is relevant to our practices, we can begin to make choices that will bring satisfaction, and perhaps even joy. ▲

* The price is $23.95 for ABA members, $29.95 for nonmembers. Visit *https://www.americanbar.org/products/ecd/ebk/217166/*.

# Q:

# What's the first thing you remember wanting to be when you grew up?

## AMANDA HARRINGTON

*Amanda Harrington is an attorney and social worker who manages the Hennepin County Attorneys' Office Be@School program.*

When I was young, I *knew* I was going to be an author. It was a fact that I shared with anyone who would listen and worked hard to make a reality. I wrote poems and books and had them illustrated by my friends and family. I still have the book of poems I wrote in the style of author Shel Silverstein, the book about my deaf cat named Mouse, and the one about a mermaid who was adopted by whales. I practiced my craft and entered contests to determine if I was any good. I was thrilled when I was chosen to be in a young writers' anthology but crushed when my mom wouldn't pay for a copy of the book. She explained that it was just a scam.

My passion for writing wasn't limited to fiction. One summer in elementary school I convinced my cousin to help me write and distribute a neighborhood newsletter. I focused more on journalism as I got older. I was on the school newspaper and yearbook in elementary, middle, and high school. I even attempted to write my memoirs when I was in high school—but sadly, never finished them. Graduate school and law school seem to have gotten the need to write for fun out of my system, at least for now.

## MICHAEL DITTBERNER

*Michael Dittberner practices family law and is a shareholder in the firm Linder, Dittberner & McSweeney, Ltd., in Edina. He was chair of the Minnesota Lavender Bar Association from May 2021 – May 2023.*

The first thing I remember wanting to be when I grew up was a meteorologist. I was always fascinated by the weather and looked forward to watching the weather segment of the nightly local newscasts. I was five years old when two of the most impactful weather events in Twin Cities history occurred. First, there were the epic spring floods of April 1965, where I recall being mesmerized by standing water in our neighbors' yards in Maplewood. Then there was the May 6, 1965 tornado outbreak in which two deadly F4 tornadoes hit Fridley and Spring Lake Park.

On July 18, 1970, I was with my family on the far west end of Lake Miltona near Alexandria when I saw a tornado form overhead and drop down into the lake and cross to the east end of the lake, where it would eventually hit the business district of the town of Miltona—resulting in a lot of destruction but, thankfully, no fatalities. As I grew older, I realized I had a greater aptitude for the social sciences than the natural sciences. I was a political science/sociology double major at Gustavus Adolphus College and a big fan of the late-'70s TV show *The Paper Chase*. I decided that being a lawyer fit in well with my double major and interests, which led to my attending law school and my career as a family law attorney. I am very happy with my career choice, but the weather still fascinates me.

## JILL PROHOFSKY

*Chief Child Support Magistrate Jill Prohofsky is the married mother of two great humans, one tiny cat, and two big dogs.*

I knew I would work in a helping profession from an early age. My mother was a social worker, and my father was on active duty in the Navy. Based on their examples, I knew I would do something that made a difference in the lives of others. The first thing I can remember wanting to be when I grew up was a therapist. Human behavior fascinated me, but blood and guts did not. This ruled out attending medical school to become a psychiatrist, leading me to want to be a psychologist. I envisioned treating patients with behavioral interventions, and perhaps solving some crimes along the way. I wanted to be fictional characters Alex Delaware and Clarice Starling rolled into one.

With dreams of being a clinical psychologist who practiced for a few years before being recruited by the FBI as a profiler, I entered the University of Michigan as an undergraduate psychology student. My broad liberal arts studies eventually led me to courses like Psychology & the Law and Gender & the Law. I discovered that I could pair my interest in human behavior with advocacy for an underdog. With this realization, I abandoned my graduate school plans halfway through my senior year in favor of law school.

Immediately following my graduation from the University of Minnesota Law School, I worked at a very small plaintiff's firm. I was sent to hearings by myself just weeks after being sworn into the bar. Going to district court and administrative hearings as a young lawyer was immensely gratifying. The first time I received a favorable ruling in a Social Security appeal, helping an immigrant with persistent mental illness get one step closer to financial independence, I knew I had made the right choice. After several years of general civil practice, I began to focus on family law. My clients were people in difficult situations who needed help navigating the legal system, which often felt like working as a therapist. I came to view the courtroom as a place where people could resolve issues in a way that helped them move forward in their lives.

**IAN LEWENSTEIN**

*Ian Lewenstein is a paralegal and writing consultant. His article "Watch your abbreviations" appears on p. 22 of this issue.*

Because I enthusiastically pushed a toy vacuum around the house, my family was convinced that I was going to be a janitor. I'm not so sure. I played a lot of sports, and I particularly loved basketball and winning free-throw contests like my dad did at his age. And like many idealistic youth, I remember wanting to play in the NBA. Sadly, this dream peaked at the same time that my height did.

I'm blessed, however, that I was able to shift toward more-realistic endeavors. I had two parents in state public service: a middle-school math teacher and a state official for higher education. Looking up to my parents and their work, I knew that I had an easy decision to also serve Minnesota and the public. So I'm glad that the NBA didn't work out and that I can use my skills and passion for plain language in service of Minnesotans.

But I still love vacuuming, so maybe I can still work as a part-time janitor when I retire.

# TEXTBOOKS AND TODDLERS

## *Returning to law school as a parent*

BY OLIVIA LIZ-FONTS

Most would say that the perfect time to pursue law school is straight after graduating college. For me, it was after having my two children. After spending several years working in the human resources field, I made the decision to shift careers and attend law school. Though I was nervous about returning to school, I was eager for the transition—being a lawyer had been a dream of mine from a young age.

When I started law school, I quickly realized that the competitive environment extends far beyond the classroom. The rigorous curriculum, the competition engendered by the "class curve" in grading, and the demanding Socratic teaching methods are just a fraction of what makes law school challenging. There is also the expectation that students will immerse themselves in legal work and become part of the legal community. As students we feel pressure to join every student group and bar association and to participate in legal clinics, moot court, and law journal—while also attending all social events. In my attempt to keep up with these expectations, I joined what seemed like an unsustainable number of organizations and attended countless social events during my first year.

As I was settling into that first year, however, my family experienced an unexpected hardship that led to a shift in my priorities. Suddenly, law school didn't seem like a viable option. Although it was a tough decision to step away from pursuing one of my life-long dreams, I decided it was best to focus on my family's needs and return to work full-time. Shortly after I made that decision, I found out I was pregnant with my first child. At the moment it seemed to validate my decision to step away from law school; becoming a mother was another life-long dream. For the next few years, I continued to work and although I didn't have a solid plan to return to law school, I wasn't ready to close that chapter.

After my second child was born, I found myself thinking a lot about returning to law school. From a professional standpoint, my desire to have a greater impact on my community only grew. From a family perspective, the decision to attend law school while caring for young children was utterly terrifying—but it was also strangely empowering. I knew that one day I would share my journey in becoming a lawyer with my children. Fortunately, I mustered up the courage to apply for readmission and was accepted. Once again, I was eager to get started—or rather, to finish what I started.

My transition back to law school required a drastically different approach compared to my first year. Having experienced how demanding law school is, I recognized that my path would look a little different this time around. I had to balance schoolwork, networking in a new profession, and gaining practical experience, all while raising two toddlers. Admittedly, the transition was rough. I found myself struggling with being a nontraditional student given the gap in my law school path, my prior work experience, and my becoming a parent. Not only did I feel like an outsider in joining a new cohort mid-year; I also found myself hesitating to share with my new peers that I was a mother of two. As a working mother, I was aware of what was commonly referred to as the *motherhood penalty*—the common, stereotypical view that women are primary caregivers and therefore mothers who choose to work will be less committed to their jobs. As a result, I feared being judged or held back in my career. I did my best to blend in with other students but I found myself feeling inauthentic, especially when connecting with prospective employers. I didn't share much of my personal life and certainly did not talk about my children.

As the semesters continued, it became apparent to me that being a nontraditional student was nothing to hide. It was my biggest asset. I have work experience that stands to enrich my career as an attorney, and having children has required me to build a more structured and strategic law school experience. As I reflect on that experience, there are four lessons I have taken away. These four lessons allow me to have balance in raising my children while attending law school, participating in legal clinics, completing various externships, volunteering, taking on leadership roles in student groups, joining bar association committees, and continuing to immerse myself in the legal community.

AS THE SEMESTERS CONTINUED, IT BECAME APPARENT TO ME THAT BEING A NONTRADITIONAL STUDENT WAS NOTHING TO HIDE. IT WAS MY BIGGEST ASSET. I HAVE WORK EXPERIENCE THAT STANDS TO ENRICH MY CAREER AS AN ATTORNEY, AND HAVING CHILDREN HAS REQUIRED ME TO BUILD A MORE STRUCTURED AND STRATEGIC LAW SCHOOL EXPERIENCE.

### 1. Make thoughtful connections and nurture your network.

One crucial component of legal practice is building a network. The advice I often receive is to meet as many attorneys as possible. I am encouraged to attend social events such as bar association happy hours, member events, and galas to have facetime with practicing attorneys. During my first year, this social pressure was one of the most challenging facets of law school for me. Aside from my finding large social events intimidating, most of the events are held after work hours, which makes it difficult for me to attend. I have learned to prioritize which events I attend to maximize impact and opportunity. I attend one or two strategic social events each semester. Even with these limits, I have found that relying solely on this method seems to yield more in terms of quantity, rather than quality, of connections.

*OLIVIA LIZ-FONTS is a member of the University of St. Thomas School of Law JD class of 2023.*

The networking approach that has worked for me begins by exploring the relationships I already have. In the Minneapolis legal community, most attorneys are eager to share their connections. The opportunities presented by law school to connect with professors, peers, classroom guest speakers, and career counselors provide a great networking foundation. These individuals are often willing to share their legal experience, provide guidance, and connect students with other practicing attorneys. When an introduction is made or I am encouraged to reach out to someone, I request a "meet and greet." I prepare for these meetings by researching the attorney, their work experience, recent publications or awards, and community involvement. I have found that this preparation allows for a more fruitful conversation, as I can ask specific questions about their experience. People who are sharing their time with you really appreciate this.

The second component of my networking approach is to continue developing the relationship. I typically follow up with a second meeting or additional questions, sometimes sharing resources I think they may find interesting or simply sending an email to check in every so often. This one-on-one approach has allowed me to develop meaningful relationships within the legal community that have been beneficial to my personal and professional development.

## 2. Staying organized is half the battle.

People often ask how I have time to raise two young children and attend law school. Though I joke that my life runs on coffee and chaos, the truth is that my husband and I do our best to create a structured schedule for our family. One of the toughest elements of being a parent in law school is watching the sacrifices my children have to make. The time I spend attending class, volunteering, or networking is time taken away from my children. In all honesty, it can be tough to stay motivated when my children ask me to stop working to play with them instead or when they cry for me to stay home rather than go to class.

This is why having a schedule is so important for my family. A schedule holds me accountable as to how I am spending my time. Since each semester's class schedule is different, this also requires a strong alignment with my family and support system. Just as I allocate time to my classwork, I have a schedule for playtime with my children. We watch movies, have dance parties, color, bake delicious treats, or simply enjoy uninterrupted time together. Having a routine allows me to budget the time I spend on schoolwork, networking opportunities, volunteering, and other law school commitments while also ensuring I am present with my family.

## 3. Mental health is important.

When I became a mother, I quickly learned that if I am not okay, my children are not okay. In order for me to be the best possible mother and tend to my children's needs, I must also take care of my own needs. This, like many things, is easier said than done. It can be so easy to get caught up in the demands of motherhood and lose one's sense of self.

Unfortunately, law school is no different.

For me, setting aside one day a week to focus on things other than law school has been extremely beneficial. Making time to explore other interests and spend time with my family reminds me that law school is only a portion of my life. With that perspective, it is much easier to manage the stress and expectations that can become overwhelming.

## 4. It takes a village.

Most of us have heard the saying, "it takes a village to raise a child." I am fortunate enough to have the support of many in raising my children. From my parents, siblings, and friends to neighbors and teachers, my children have been surrounded by a strong village of supporters.

Like the village that has rallied around my children, I have also been fortunate to have my own village as I navigate law school. When I made the decision to step away from law school, I felt like I had failed. As I made the transition, I reached out to two attorneys I had met through law school and shared my circumstances with them. To my surprise, they both understood my decision and appreciated my transparency. My relationships with these two attorneys transformed into genuine friendships and they quickly became strong pillars within my village. When I decided to return to law school, they wrote letters of recommendation for my readmission. They continue to guide me as I figure out my career path, and most recently they wrote a character reference in support of my bar exam application.

The support I received from these two attorneys has encouraged me to continue sharing my story. I have found that when you are honest about your path, you find people who want to support you. Since returning to law school, my village has grown immensely. From professors to librarians, classmates, and colleagues, I have relied on their support to realize my dream of becoming a lawyer.

My legal journey has been far from simple, but I know now that being a mother has positively impacted my experience as a law student. Although the days can be long and chaotic, my responsibilities as a mother have given me perspective and allowed me to approach law school with a greater purpose. ▲

# Mitchell Hamline joins City of Saint Paul to help homeowners remove racial covenants

## Effort is continuation of work between law school and Just Deeds

BY TOM WEBER

Mitchell Hamline will work with the City of Saint Paul to help homeowners remove discriminatory racial covenants on their property deeds.

The partnership, announced in April, is part of the city's move to become one of nearly two dozen Minnesota cities to in a coalition called Just Deeds.

Just Deeds is a collaborative effort between community groups, attorneys, and government agencies to identify and remove racial covenants on property deeds in Minnesota. In the early 20th century, racial covenants were a common practice that placed legal agreements on property deeds that prohibited the sale or lease of property to African Americans and other people of color. They also helped maintain segregation and prevent integration in neighborhoods.

While they are now illegal and unenforceable, the language of these covenants remains a painful reminder of racist policies that have shaped history. "Racial covenants are a dark chapter in our city's history," said Mayor Melvin Carter, who spoke at a press conference at Mitchell Hamline. "Words matter, and we're committed to ensuring everyone in our community feels like they belong."

The city will work with Mitchell Hamline's Center for the Study of Black Life to identify volunteer attorneys and legal professionals, including law students, to assist with the effort. The partnership is an extension of work Mitchell Hamline has already incorporated in its coursework for several years. Hundreds of students have researched thousands of deeds on behalf of Just Deeds and its progenitor organization, Mapping Prejudice.

The latest class also occurred in April, when about 200 blended learning students heard about covenants from Just Deeds co-founder Maria Cisneros '14 and Mike Corey from Mapping Prejudice. They then worked with Cisneros's team to research property records and draft legal documents. City attorneys in Hennepin County will use that work to help homeowners discharge the covenants from their deeds.

"We're proud of all we've done to date with these groups," said Professor Mark Edwards, who has helped coordinate student work with the organizations, along with Professor Leanne Fuith '10. "This is a logical next chapter to this important work."

"We're not only interested in studying the ways in which the law orders and disorders Black living and dying," added Professor Anansi Wilson, director of Mitchell Hamline's Center for the Study of Black Life and the Law. "We're also interested in thinking about the ways in which people across race, gender, class, nationality, and ethnicity come together to create the American Dream that hasn't yet been born."

# WATCH YOUR ABBREVIATIONS

BY IAN LEWENSTEIN ian@capyourpenconsulting.com

The CEO KO'd our LOI with his MOU, and the SLA was BS for managing PNL, and the FDD was DOA, and now I'm on a PIP but next week I'm on ETO so WTF.[1]

If you can decipher this code of letters from a plain-language comic, congratulations. But if you're not C-3PO, you can probably start to understand why you should limit abbreviations in your legal writing. Used without limits, abbreviations reveal their secret life as an insidious form of jargon, serving as insider shorthand to the detriment of readers unfamiliar with this ABC lingo. Certain abbreviations—specifically, initialisms—are also confusing, distracting, and, as you'll see, usually unnecessary.

## THE DIFFERENT TYPES OF ABBREVIATIONS

Abbreviations are split into three different categories: acronyms, initialisms, and contractions. An **acronym** is read as a single word after taking the initial letters of its underlying phrase. For example, SCOTUS is pronounced as a word, standing for **S**upreme **C**ourt **o**f **t**he **U**nited **S**tates. While SCOTUS is uppercase, not all acronyms need be; for instance, there's the lowercase *laser* (**l**ight **a**mplification by **s**timulated **e**mission of **r**adiation) and *radar* (**ra**dio **d**etection **a**nd **r**anging).

An **initialism**, on the other hand, is read as a series of separate letters after taking the initial letters of its underlying phrase: "The ALJ (**a**dministrative-**l**aw **j**udge) at OAH (**O**ffice of **A**dministrative **H**earings) filed their decision on the agency's authority to adopt rules under the APA (**A**dministrative **P**rocedure **A**ct)." Sometimes, an initialism and an acronym fall in love and combine—with the first letter pronounced by itself and the remaining read as a word—such as in IOLTA, standing for **I**nterest **o**n **L**awyers' **T**rust **A**ccounts. And sometimes you can choose how to pronounce a word such as FAQ: "f-a-q" versus "fack."

Abbreviations also include **contractions** such as those found in the *Bluebook* like *App. Ct.* or *Civ. App*; additionally, they include those more-common ones with apostrophes: *isn't*, *don't*, *it's*, etc.

## GENERAL STYLISTIC PRINCIPLES

Some abbreviations are so well understood or normalized that they breeze right by without forcing us to think. You have the FBI and the CIA. You get your money from an ATM using a PIN. You take the dreaded SAT, ACT, and LSAT. You use a DVD player (well, not anymore). Writers, however, can get tripped up over stylistic issues, so here are some general principles to get you confidently using abbreviations.

**Using a period.** It's the Wild Wild West out there, or the WWW as they say. As the lexicographer Bryan Garner states on the period question, "Searching for consistency on this point is futile."[2] While lawyers will turn to the *Bluebook* for guidance on using a period, more-thorough recommendations can be found in the *Chicago Manual of Style* or by consulting an abbreviations dictionary (yes, such a thing exists).[3] The one caveat in the great period debate is that acronyms shouldn't have periods because they are pronounced as a word: You wouldn't write "The P.O.T.U.S. and F.L.O.T.U.S. were mad at S.C.O.T.U.S."

**Capitalization.** Initialisms are almost always uppercase even if the underlying phrase isn't a proper noun (ALJ, for example). While acronyms such as *radar* or *laser* are lowercase, usually acronyms are uppercase. And when we look across the pond, we encounter differences between British and American preferences for mixing upper- and lowercase (Britain prefers to mix and match such as in BoE and DMofT—Bank of England and Dundee Museum of Transport, respectively). Additionally, while some publications use small caps, try and avoid doing so—mainly because correctly employing small caps is rare.[4] But if you can pull it off, great.

**Definite and indefinite article.** Should you use *a* or *an* before an abbreviation? The topic of many office water-cooler conversations, this question isn't as confusing as you think. First, acronyms are rarely preceded by an article unless you are using the acronym as an adjective as in "the confounding SCOTUS opinion."

For an initialism, the answer depends on how you would pronounce it—that is, whether the first syllable takes a vowel (*an*) or a consonant sound (*a*). For instance, "He was **an** FBI informant who secretively was **a** CIA contractor. Why he bought **a** DVD player, I have no idea, but he must have gotten his money from **an** ATM." Second, using *the* depends on how you would pronounce the initialism in a sentence: "**The** ALJ worked for OAH but she was also an expert in **the** APA. She started at MMB, but then went to work for DHS and **the** AG before ending up at OAH." You just have to sound it out.

**Redundant abbreviations.** Be careful of being redundant with your abbreviations: ATM machine, PIN number, PDF format. In other words, know what your abbreviations mean and refer to them accordingly.

## SOME DOS AND DON'TS

Now that you know the different categories of abbreviations and their stylistic guidelines, here are some dos and don'ts for using abbreviations in your legal writing.

| DO | DON'T |
|---|---|
| Spell out the abbreviation on first reference and then put the shortened form in parenthesis immediately after: "the Administrative Procedure Act (APA)." You can also use an appositive construction: "the Administrative Procedure Act, or the APA..." | Use quotes or legalese, or both, in the parenthesis: "the Administrative Procedure Act (hereinafter referred to as the 'Administrative Procedure Act')." |
| Be consistent after abbreviating a term. | Go back and forth between the abbreviation and its spelled-out version: the APA, Administrative Procedure Act, APA, etc. Also, don't reintroduce an abbreviation a second time, with one exception. |
| Limit your abbreviations and use a short glossary of abbreviations if needed. | Use so many abbreviations that you need a glossary. |
| Be careful of using less-common or rarely used abbreviations with more-commonly-known abbreviations. | Try and send a message with your abbreviations: *Ass. Prin.* should probably be *Asst. Prin.* or just *assistant principal.* |
| Know how to correctly abbreviate geographical terms, addresses, time designations, and scientific terms, if needed. | Guess and make up abbreviations. |
| Make sure if you first abbreviate in a headnote or footnote to abbreviate again in the body of the text. | Abbreviate a term that appears only once. |
| | Abbreviate normal phrases: *peace officers* for *POs.* |

And for the most important don't: Don't use abbreviations that speak to only insiders, as these distract and confuse your readers, preventing them from understanding your argument and sometimes even convincing them to stop reading.

## CATNIP FOR LAWYERS

For lawyers, abbreviations appear to be a sort of catnip; Garner has termed this affliction *initialese*.[5] Garner really, really despises initialese: "One of the most irritating types of pedantry in modern writing is the overuse of abbreviations..."[6] He goes on to characterize initialese as a "hybrid-English system of hieroglyphs" and as exemplifying a "puerile fascination with the insubordinate trappings of scholarship." Although he might appear a tad harsh toward these innocent letters, Garner does make a strong case, as we'll see with several examples of this "puerile fascination."

Take, for an example, an article[7] on federal changes to the Health Insurance Portability and Accountability Act, more commonly known as HIPAA (too bad it couldn't have been made to spell HIPPO). Apparently HIPAA enjoys worldwide fame, as the article's authors don't even write out what HIPAA stands for. While assuming that every reader knows what HIPAA stands for may seem an arguably safe assumption in a journal dedicated to lawyers, it's also probable that not everyone does know; making predictions about a narrow audience is more fraught and risky than you would think.

So the article is off to a bad start with the undefined HIPAA; next, we have the following abbreviations in succession, not all of which are spelled out: HHS, HITECH, PHI, ePHI, EHR, PHA, API, HCO, HCBS, and NPP. A gift basket of PHIs and EHRs to whoever comes up with a great joke using all these initialisms.

All jokes aside, there are several problems with using this many initialisms. First, some of the initialisms are just a letter removed from being mixed up, such as PHI vs. PHA. Second, some of the initialisms are surrounded with redundant quotes when they are first spelled out, so the initialism appears as an afterthought rather than as something necessary for the reader.

But third and most important, it's confusing and frustrating for the reader to have to wade through an army of letters while also trying to read and understand federal changes to the law. If this army of letters doesn't result in nightmares of being attacked by life-sized letters, I'm not sure what will.

Overloading on initialisms engenders these nightmares because readers need recognizable characters that they see as capable of acting; this concept is not only intuitive but also based in cognitive psychology.[8] For example, we write sentences as follows: the dog chased the cat, not the D chased the C. Or the paralegal chided the associate attorney, not the PL chided the AA.

As the quotation at the beginning of this article shows, initialisms are confusing not only because they are unrecognizable as characters capable of acting but also because they increase the cognitive load for the reader. This cognitive load is only worsened when the reader is trying to understand the arcane nature of federal medical-privacy rules.

Letters aren't seen as capable of acting, so the reader can't easily or logically follow the story that is being told. And in the article on HIPAA, there are too many letters and would make even an alphabet-soup can blush.

No doubt that the HIPAA authors used the initialisms to help them write and get pen to paper. The problem, however, is that writers are always beholden to their readers, so what works initially for the writer most times won't work for the reader.

But if you take the effort to use words and not abbreviations, you'll see how much better your writing can be and, consequently, how much better you can get your point across.

| ORIGINAL | REVISED |
|---|---|
| Two new definitions clarify the scope of **electronic PHI** (ePHI) requests. First, to clarify the scope of information within the purview of individuals' rights to access **ePHI**, **HHS** proposes to expand on **HITECH**'s definition of "**electronic health record**" (EHR). The proposed rule provides: | Two new definitions clarify the scope of requests for **electronic protected health information**. First, to clarify the scope of ~~information within the purview of individuals' rights~~ an individual's right to access **this information**, the **department** proposes to expand on **the act's** definition of electronic health record. The proposed rule provides: |

You'll probably cry foul. There is no way that I can do this! But you can. You're only being asked to reduce unnecessary abbreviations. As one prominent plain-language lawyer has espoused about the baleful effect of abbreviation overload, "[W]e should not be feverishly creating new ones at every opportunity. And we should certainly not have several different ones operating at once. Give words a chance."[9] Yes, it takes work to use words, but consider another benefit to this work: You'll have an opportunity to better understand and fine-tune your argument when you use words, not letters.

Here's another example of unnecessary abbreviations from a law-review article[10] that shows how quickly aspiring lawyers develop their trigger-happy instincts for abbreviating:

- Minneapolis Police Department = **MPD**
- Police Accountability Act = **PAA**
- Minnesota Public Employment Labor Relations Act = **MNPELRA**
- Bureau of Mediation Services = **BMS**
- Peace Officer Standards and Training board[11] = **POST Board**
- Continuing Legal Education = **CLE**

Pop quiz: How many of the abbreviations are unnecessary? The answer is all of them except CLE, which is an example of an entrenched abbreviation common among lawyers and other professionals. But even in this case, you should still spell out CLE because it's mentioned only once (see the **dos and don'ts**). The article also violates other dos and don'ts such as by enclosing an abbreviated term in quotes and reintroducing abbreviations that have already been abbreviated.

Here's how abbreviations could be avoided (hint: use words):

- Minneapolis Police Department = **the police department**
- Police Accountability Act = **Police Accountability Act**
- Minnesota Public Employment Labor Relations Act = **labor-relations act**[12]
- Bureau of Mediation Services = **the bureau**
- Peace Officer Standards and Training board = **the board**
- Continuing Legal Education = **continuing legal education**

By using words and identifiable characters, you ease a reader's comprehension, save them time, and spare them frustration: "Abbreviations are tempting to thoughtless writers because they can save a few keystrokes every time they have to use the term. The writers forget that the few seconds that they add to their own lives come at the cost of many minutes stolen from the lives of their readers."[13] In other words, don't instinctively reach for abbreviations as if you were eating out of a bag of chips or scarfing popcorn while watching a movie. Focus on the story that you are telling and what characters you need to tell that story.

The dos and don'ts also apply to legal shorthand in which a phrase is shortened for brevity (but not readability). Many minutes were stolen from readers in this all-too-common case opening:

> This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig on a Motion for Judgment on the Pleadings, or in the Alternative, for Summary Disposition (Complainant's Motion) filed by the Public Interest Legal Foundation (Complainant), and the Secretary's Motion for Summary Disposition (Respondent's Motion) filed by the Minnesota Secretary of State (Respondent). The record on the motions closed upon the filing of the parties' responses on July 22, 2022.[14]

So many parentheses. Try instead to excise all the shorthand:

> This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig on a Motion for Judgment on the Pleadings, or in the Alternative, for Summary Disposition ~~(Complainant's Motion)~~ filed by the Public Interest Legal Foundation ~~(Complainant)~~, and the Secretary's Motion for Summary Disposition ~~(Respondent's Motion)~~ filed by the Minnesota Secretary of State ~~(Respondent)~~. The record on the motions closed upon the filing of the parties' responses on July 22, 2022.

■ **Trust the reader.** Trust that the reader can figure out your story without your feeling the need to shorten the parties' names, which makes the writing unnecessarily turgid and pedantic and again introduces unrecognizable characters (complainant, respondent). And arguably, replacing parties' names with shorthand is dehumanizing because it takes an individual's identity and replaces it with a legal prop. Instead, strive to use recognizable characters (foundation, secretary of state, the foundation's motion, the secretary's motion).

■ **Respect the reader.** Respect a reader's time and avoid superfluous abbreviations; here, the opinion generously plops down abbreviations: HAVA, SVRS, DPS, NVRA (the last two are mentioned only twice, both in the same paragraph or footnote). So we get paragraphs such as the following:

> **Complainant** asserts that **HAVA** and Minnesota law must require **Respondent** to eliminate duplicate names from the **SVRS** because the alternative creates a 'procedural nightmare' in which **Complainant** would be required to bring claims against all 87 Minnesota counties to enforce **HAVA** compliance.[15]

Yes, there's a "procedural nightmare," and it involves us trying to decipher these abbreviations and shorthand while trying to understand federal voting law. As the great William Zinsser wrote, "You just can't assume that people know what you think any boob knows, or that they still remember what has once been explained to them."[16] Zinsser was discussing science and technical writing, but he stresses that this dedication to and respect for your reader apply to all types of writing. While we may have understood what SVRS stands for 10 pages ago, that doesn't guarantee that we'll remember what it means the second, or even third, time that we encounter it.

On a side note, abbreviating can be acceptable in internal memos or office emails (though not always for newcomers). But for public-facing communications, strive for clarity over purported brevity; as seen in these examples,[17] there are many convincing reasons to limit your abbreviations.

## PARTING ADVICE

Think of writing a brief, opinion, client letter, and other legal documents as telling a story with relatable characters (that is, people, not abbreviated abstractions). As Zinsser says, "It's the principle of leading a reader who knows nothing, step by step, to a grasp of the subject."[18] Remember, if your goal is to convince a judge that your argument should prevail, you can't do that if the judge is furiously flipping back and forth through your writing like a mad person, trying to separate the EHRs from the PAAs and the SVRSs.

And if not a judge, other readers may just stop reading if they stumble upon something like this: "Preparing and approving RFXs, NDAs, MSAs, SOWs, SLAs, KPIs, DPAs, and POs."[19] What the heck? With endless abbreviations like these, a writer's prose easily slinks into the realm of *abstractitis*[20] and obscurity, leaving the reader—and most likely the writer, too—without the faintest idea of what is being said.

So be as judicious in your abbreviations as you would be—or should be—in other areas of legal writing: Don't overcite authority, don't overquote, and don't overabbreviate.

**Note:** The following abbreviations cited as examples in this article were not harmed during the writing of the article: HIPAA, HHS, HITECH, PHI, ePHI, EHR, PHA, API, HCO, HCBS, NPP, MPD, PAA, MNPELRA, BMS, POST, CLE, HAVA, SVRS, DPS, NVRA, RFXs, NDAs, MSAs, SOWs, SLAs, KPIs, DPAs, and POs. ▲

### NOTES

[1] *Plain Language Cartoon*, Writers Write (7/23/2012), *https://www.writerswrite.co.za/plain-language-cartoon-71872/* .
[2] Bryan A. Garner, *Garner's Modern English Usage* 2 (4th ed. 2016).
[3] *See, e.g.*, Dean Stahl and Karen Kerchelich, *Abbreviations Dictionary* (10th ed. 2001).
[4] Matthew Butterick, *Typography for Lawyers* 104-05 (2nd ed. 2015).
[5] Garner, *supra* at 3.
[6] *Id.*
[7] Gregory J. Myers, David. W. Asp & Develyn J. Mistriotti, *Major Changes Coming to HIPAA Privacy Rules in 2022*, Bench & Bar of Minnesota, July 2022, at 30-34.
[8] Joseph M. Williams, *Style: Toward Clarity and Grace* (1990); *see also* Steven Pinker, *The Sense of Style* (2014).
[9] Joseph Kimble, *Lifting the Fog of Legalese* 155 (2006); *see also* Joseph Kimble, *Seeing through Legalese* 170 (2017).
[10] Kate Fredrickson, *Should the Call for Systemic Change Start with Police Grievance Arbitration?*, 48 Mitchell Hamline Law 624 (2022).
[11] Capitalization error: *board* should be uppercased as part of the agency's name.
[12] The initialism is used only twice, and in the same paragraph.
[13] Pinker, *supra* at 64.
[14] Office of Administrative Hearings, *In the Matter of the HAVA Elections Complaint of the Public Interest Legal Foundation*, OAH 71-3500-38362, 7/29/2022, at 1.
[15] *Id.* at 16.
[16] William Zinsser, *On Writing Well* 134 (3rd ed. 1988).
[17] The examples in this article weren't singled out; rather, they appeared out of the author's normal reading, only solidifying how sadly common it is for misused abbreviations to sit in the pantheon of other legal-writing maladies.
[18] Zinsser, *supra* at 134.
[19] This is a real example from a résumé.
[20] Garner, *supra* at 10.

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# We need to talk about ChatGPT

## A lawyer's introduction to the exploding field of AI and large language models

BY DAMIEN RIEHL damien.riehl@vlex.com

"The development of AI is as fundamental as the creation of the microprocessor, the personal computer, the internet, and the mobile phone." – BILL GATES

The legal profession has long been characterized by daunting hours, high-stress environments, and difficulty in balancing personal and professional lives. Lawyers are well aware of the sacrifice, intellect, and work ethic required to serve clients in this demanding field. What if lawyers could maintain (or increase) revenues while reducing workloads and work hours? What if this same solution could also potentially improve access to justice? Could we navigate the potential benefits and pitfalls? This may be a pipe dream. Or it may be here.

The ascendence of advanced large language models (LLMs) like GPT-4 and ChatGPT have sparked conversations about the future of the legal profession and how these AI-driven systems might help remedy some of the profession's less-favorable aspects. Recent, exponential leaps in LLMs have presented both opportunities and challenges that have the capacity to reshape the legal landscape, making the law more accessible and affordable. This article will examine the potential of LLMs like GPT, and how, if approached thoughtfully and ethically, these tools might contribute to a more balanced, efficient, and fulfilling legal career while also improving our society and justice system.

## What are large language models?

LLMs like GPT (and PaLM and Dolly) are advanced artificial intelligence (AI) systems capable of understanding and generating human-like text. Most people came to know LLMs through ChatGPT, which was released in November 2022, but LLMs' current technology has its roots in 2017, when a new process enabled exponential leaps in computational linguistic abilities.

LLMs ingest vast amounts of data from the internet, including judicial opinions, cases, statutes, and regulations. The LLMs also ingest law firm websites and blogs, which provide helpful legal information under various states' laws. LLMs read and incorporate all this text, creating a mathematical data model of ideas and concepts.

They then use all this information to predict the most statistically likely next word, sentence, or paragraph in a given context—representing ideas in a high-dimensional vector space. What is that? Visualize the world's three-dimensional space. Now try to visualize a *fourth* dimension. Able to do that? Well now, try to visualize an LLM's 12,000-plus dimensions. An LLM places words, sentences, phrases, and paragraphs in points among this 12,000-dimensional vector space.

In that 12,000-dimensional space:

- "Force Majeure" is close to "Act of God."
- "Motion to Dismiss" is close to "Demurrer" (in California).
- "New York Supreme Court" is close to "Trial Court" (remember, New York's "Supreme Court" is the lowest-level court).
- "Ruth Bader Ginsburg" is close to "Antonin Scalia."
- "Bob Dylan" is close to "Neil Young" and "Paul Simon."

In LLMs, closely related terms *linguistically* are also nearby *mathematically* (because those terms are in close proximity in the "statistically likely" sense). For example, the blank in the sentence "The hurricane triggered the <BLANK> clause" could be filled with either "Force Majeure" or "Act of God." They're both statistically likely. So in vector space, they're near each other.

The result: LLMs are able to respond to prompts by generating coherent and contextually relevant responses. As LLMs become more sophisticated, and as ingested legal sources become even more comprehensive, LLMs' potential applications in the legal field will likely expand—allowing them to excel at tasks of increasing complexity.

## Why do LLMs matter to the law?

Law's foundation is built upon words. We as lawyers craft those words to build the framework governing our society. And it turns out that LLMs like GPT are designed to excel at understanding and generating words. The number of GPT-3's trainable parameters? 175 billion. And GPT-4 is rumored to far exceed that.

This massively eclipses the number of words that any human could ever read, understand, and remember over a lifetime. The size of GPT-3's vocabulary is approximately 14 million words in 46 languages.[1] GPT-4's size is presumably larger. Bluntly, this dataset is unimaginably massive. As such, its performance at language tasks is currently at the postgraduate level.

LLMs' extensive knowledge base, combined with advanced analytical capabilities, positions these models as potentially transformative to the practice of law. One might consider an LLM like GPT to be akin to your highly knowledgeable and well-read colleague, but with superhuman writing speed. The vast quantity of legal texts and precedents that LLMs have absorbed can permit the model to provide insights and legal texts with remarkable proficiency. These models can improve (and are already improving) the speed and accuracy of legal work.

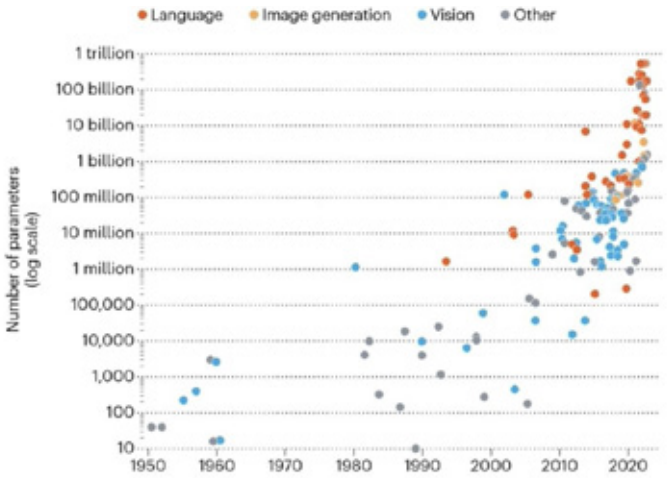
Within the legal industry, LLMs could outperform many human lawyers in various tasks (e.g., summarization and drafting), often at a drastically reduced cost. This provides lawyers and law firms with the potential to become more efficient, giving their clients faster, more accurate services. And integrating LLMs into legal workflows could free up valuable time, allowing lawyers to focus on high-level strategic thinking and complex problem-solving.

How good are the most recent LLMs? In March 2023, a team that included U. of Chicago – Kent professor Dan Katz and his partner Michael Bommarito used GPT-4, which powers the most advanced version of ChatGPT, on a simulated multistate bar exam, and GPT-4 outperformed 90 percent of humans.

This is a significant leap from GPT 3.5, which only three months earlier (December 2022) scored in the bottom 10 percent. It's remarkable: In three months, machines went from "bottom 10 percent" to "top 10 percent" of their human-lawyer competitors.

This astonishing improvement within a three-month timeframe underscores the LLM technologies' increasing prominence in the legal sector. The whirlwind speed of their exponential advancements invites contemplation about the evolving nature of the legal profession. As AI continues advancing rapidly, how will it redefine the roles of lawyers and other legal professionals?

To give a sense of acceleration, below are graphs demonstrating the progress on various metrics — all related to LLMs' number of parameters, which enhance its ability to perform natural-language (e.g., English) tasks and reasoning:




https://twitter.com/LinusEkenstam/status/1645569804818870274

Notably, the scale of the vertical axis is not linear; it is logarithmic—each horizontal line is 10x the line below it. This type of acceleration on a linear scale would be impressive; seeing this exponential acceleration on a logarithmic scale is mind-boggling. This technology is moving very, very quickly.

One might argue that even if GPT beat 90 percent of humans on the bar exam, legal practice is far different. And of course that's true. But how many legal tasks—the kind for which lawyers bill clients every day—are *easier* than the bar exam?

While the bar exam doesn't represent all, or even most, aspects of legal practice, how many of lawyers' daily legal tasks involve reading, writing, and analyzing information? And how quickly can you ingest legal writings and synthesize those writings into text? Faster than LLMs? Better than LLMs?

Today, LLMs can perform many of these tasks faster and perhaps more accurately than many human lawyers, especially when performance is compared to the first drafts from junior lawyers (such as first-year associates). Today's LLMs perform at a post-graduate level. Tomorrow's LLMs will be better. (See exponential growth curve, above.)

As LLMs become increasingly sophisticated and capable of handling complex legal tasks, that performance increase will also raise questions about the role of traditional legal education. Do today's law schools prepare lawyers for practice in an LLM world? If LLMs perform better than junior associates and this results in fewer junior associate hires, how much will law school enrollments drop? What prospective student will want to pay $150,000-plus for a legal education that won't get them jobs?

Everyone should consider these questions: How much could a "trusted LLM associate" improve lawyers' work quality and increase productivity? How can we prepare our law students for the jobs they'll have upon graduation? And can the adoption of LLMs spur new developments in legal technology, enabling the creation of novel tools and services to better serve clients?

Unquestionably, LLMs' costs are far, far lower than employing human lawyers: A GPT-4 prompt costs a fraction of a penny. And the newest open-source LLM models (e.g., Dolly 2) are free. How much could this increased affordability increase legal demand, as more individuals and businesses seek advice and assistance? Previously underserved markets may be able to gain access to legal services, further expanding the reach of the legal profession.

## How well do LLMs perform on legal tasks?

Personal experience and anecdotal evidence indicate that LLMs' current state provides impressive output in various legal tasks. Specifically, they provide extraordinary results on the following:

- Drafting counterarguments.
- Exploring client fact inquiries (e.g., "How did you lose money?").
- Ideating *voir dire* questions (and rating responses).
- Summarizing statutes.
- Calculating works' copyright expiration.
- Drafting privacy playbooks.
- Drafting motions to dismiss.
- Responding to cease-and-desist letters.
- Crafting decision trees.
- Creating chronologies.
- Drafting contracts.
- Extracting key elements from depositions.

While the output generated by LLMs might not be acceptable as a final draft, it usually surpasses the quality of work produced by junior lawyers (and even some senior lawyers).

Before you think "I don't trust it, and I don't want to edit a machine," ask yourself this: When was the last time you accepted an associate's draft without edits? How about your similarly experienced peers? Everyone needs an editor. And with LLMs, more experienced lawyers can begin editing output after waiting mere seconds, not days.

LLMs have increased performance in other language-based tasks—as demonstrated by related fields. For example, Michael Bommarito and Dan Katz founded two software companies, one before the advent of GPT and one afterward. In the first company, they hired 20 employees, and it took 24 months to build a product that they then sold, exiting the company. For the second company, they used a GPT-powered coding tool called GitHub Copilot that Michael Bommarito estimates allowed him to improve coding speed and accuracy by between 10x and 100x. So the second company didn't take 24 months to build; it became operational in just three months. And given Mike's 10x performance increase, they didn't have to hire 20 employees; they've hired none. The job market for coders decreased by 20. Those jobs no longer exist.

For coding, LLMs are transformative. Because LLMs are great at producing code. And LLMs are also great at producing words. Law is words.

## A transformed business of law?

Because lawyers spend much of their time reading, writing, and analyzing words, and because words are the currency of the LLM realm, the potential for LLMs to improve efficiency in legal tasks is substantial.

While it's difficult to quantify the exact performance increase that LLMs can provide to lawyers, the potential for significant improvements in efficiency is evident. The impact of LLMs on the legal industry could be akin to the effect of steam engines on the Industrial Revolution. Just as steam engines revolutionized manufacturing and transportation, drastically increasing productivity, LLMs could similarly reshape legal work by streamlining research and analysis. Lawyers could be enabled to tackle more complex cases and serve a broader range of clients, while also reducing overall costs.

Of course, the integration of LLMs into the legal industry presents new business opportunities and challenges. The classic Cravath law firm model, pioneered over 100 years ago by the prestigious Cravath, Swaine & Moore LLP, takes the shape of a pyramid: A large base of junior associates supports a smaller group of partners. Associates work long hours, while partners supervise and generate new business. That model has prevailed for over a century, but it might be in need of an update.

With LLMs' efficiency gains, leveraging associates' time under the Cravath model could become difficult or impossible: The technology may drastically reduce the time needed for legal research and document review. Tasks that took hours can now take seconds. How will partners leverage associates' time in a world where all lawyers, including associates, will spend far *less* time? Where is the leverage? Our industry may need to modify organizational structures and business models to better incorporate LLMs' unique advantages.

Let's take a common example: A corporate in-house lawyer needs to answer a legal question. In the age of LLMs, she is faced with two options:

**OPTION ONE: HUMAN ANSWER**

Client lawyer calls law firm partner.
Partner assigns associate.
**Turnaround:** Two days
**Fee:** $2,000? ($400/hr at 5 hours).

**OPTION TWO: ASK AN LLM**

Client lawyer asks LLM (e.g., GPT-4)
**Turnaround:** 20 seconds
**Fee:** $0.002 ($20/month for queries)

**CLIENT PERCEPTION OF ACCURACY:**

**Human Lawyer:** Perhaps 95 percent?
**Large Language Model:** Perhaps 90 percent (like the bar exam)?

Will clients believe that a human lawyer's added value is worth the massively increased time and cost? The traditional model of in-house counsel seeking legal advice from law firm partners, who then assign tasks to associates charging hourly rates, may well be disrupted.

The worst part: That Option One lawyer won't know why their phone didn't ring. The client simply didn't need them.

### HOURLY FEES VS. FLAT FEES

The efficiency and cost-effectiveness of LLMs could well nudge the legal industry away from hourly billing and toward flat fees. How will firms adapt where an hours-long legal task is reduced to seconds? Perhaps you can charge a flat fee—similar to what the lawyer would have earned after a few hours—reflecting not the hours worked but instead the conveyed value.

Value-based pricing models can consider factors like matter complexity, required expertise, and the clients' potential outcome. By focusing on the value delivered, firms can justify higher fees while maintaining their competitive edge. This shift could also lead to greater billing transparency and improved client satisfaction: Clients understand costs upfront, and lawyers have incentive to increase the efficiencies afforded by LLMs. Combining value-based pricing with LLM-driven efficiency gains could help law firms adapt to the changing dynamics of the legal industry while continuing to provide high-quality services to their clients.

### ONE MATTER, ONE LAWYER?

The integration of LLMs into legal practice could also shift the focus from a leverage model, where multiple associates work on a single matter, to a model in which one lawyer (perhaps a senior associate or above) works on a single matter. Assisted by an LLM, that senior associate might be able to increase productivity by 10x. And because the senior associate has enough experience to give the LLM the perfect prompts, their performance can exceed that of junior associates, who lack the subject-matter knowledge to prompt effectively.

In this new world, what will be the job prospects for junior associates? And if associates' job prospects decline, what does that mean for law school enrollment? Again, who will want to spend $150,000-plus on a legal education to enter a legal market that doesn't need first-year associates?

And if associates become rarer: How will junior associates grow into senior associates? How does one get experience absent the traditional routes to gaining experience?

### INCREASED ACCESS TO JUSTICE?

If we're moving toward "one matter, one lawyer," perhaps those junior associates can cut their teeth by hanging out a shingle and serving clients who might not be able to afford a lawyer in today's system. And because LLMs will make them more efficient, those junior lawyers could serve many more clients.

This approach could expand opportunities for junior lawyers potentially displaced by a "one matter, one lawyer" system. By serving more clients, those junior lawyers could gain valuable experience while simultaneously addressing the justice gap that exists for many individuals and small businesses. Armed with LLMs, junior lawyers could efficiently provide cost-effective legal services to clients who were previously priced out of the market.

By reducing legal costs and increasing efficiency, LLMs have the potential to improve access to justice for individuals and organizations. Could this shift level the playing field for those who were previously unable to afford legal representation?

## Specifically legal LLMs

The current LLMs are trained on the entire internet, including low-quality sources such as social media. And it still beat 90 percent of humans in the bar exam.

Now, what if an LLM were trained on high-quality legal documents—such as judicial opinions, statutes, and regulations? How much better would this type of "law foundation model" fare on legal tasks? How much better would its legal reasoning be for items like the Rule of Perpetuities? Or more-complex legal tasks?

Researchers from NYU, MIT, Chicago, and Stanford are currently exploring the potential of such specialized large-language legal models. By building a foundational model solely on legal text, the researchers believe that the legal LLM might know the

law "natively." And as such, the legal LLM might be even more capable of completing tasks of ever-increasing complexity.

By focusing on authoritative and reliable sources of legal information, this specialized legal LLM would likely demonstrate a deeper understanding of the intricacies of legal reasoning and the nuances of various doctrines and complex concepts. This enhanced knowledge base might enable the legal LLM to tackle a broader range of tasks with greater accuracy and efficiency, providing even more value to lawyers and clients alike.

With a "law first" legal LLM, the legal industry could witness a further transformation in the way it approaches and resolves legal issues. This new model could be capable of not only handling tasks of increasing complexity, but also of contributing to the evolution of legal practice. The LLM could handle increasingly complex research and analysis, while human lawyers would be permitted to focus more on strategic decision-making, advocacy, and negotiation.

This would move our industry from "Lawyers vs. Robots" to "Lawyers with Robots." (Centaurs!) Symbiotic relationships between legal professionals and advanced LLMs could lead to the emergence of a more agile and adaptive legal ecosystem, capable of addressing our increasingly diverse clients and our increasingly regulated corporate clients.

## Implications for courts

As LLMs become more widely used by lawyers and clients alike, courts may face new challenges that require new solutions. Today, courts are often overwhelmed by the volume of cases. Current court backlogs are substantial. With litigants and their lawyers aided by LLMs, might those backlogs get longer?

To address the current backlog, which may be exacerbated by the potential rise in caseload, courts might choose to employ AI-powered tools. This would be a modern approach addressing access to justice, while ensuring fairness. Judges and courts could use these tools to help prioritize cases based on urgency or complexity, automatically generate first-draft procedural orders, and identify issues that can be quickly resolved. By streamlining initial litigation, courts could then allocate resources to focus on cases that require more judicial attention.

Other tools could help in the judicial decision-making process. For example, courts could use AI tools to compare the parties' briefs, more quickly demonstrating "apples to apples" arguments, elucidating logical gaps, and expediting judicial drafting. These tools could not only expedite the decision-making process, but also better ensure that judicial decisions are consistent with established legal principles.

Of course, any technical assistance must be guided by the bright lights of human oversight. Judges and their staff must always guide those processes. Additionally, one could imagine platforms that help *pro se* litigants navigate the legal system more effectively, reducing the burden on court staff and judges. (Of course, the widespread use of AI tools could potentially increase caseloads by increasing the volume and viability of *pro se* litigation, but that is a subject for another article.) These platforms could also be designed to encourage early settlement or resolution, further easing judicial strain.

By embracing AI-driven solutions to manage and decide cases more efficiently, the judiciary can adapt to the changing landscape of litigation and continue to uphold the principles of justice and fairness.

## Conclusion

LLMs like GPT-4 have given the legal profession the potential to positively transform society. But this is, of course, just one possible future. It might not happen. Our profession, our clients, and our courts could shrug their collective shoulders and go back to business as usual. We could continue practicing law with the same business model and substantive habits that we've used—and the access-to-justice crisis that we've endured—for many decades.

But this time, it might really be different. As LLMs become more sophisticated and specialized, they could help streamline legal processes, reduce costs, and improve access to justice. While the integration of LLMs into the legal profession raises many questions about the future roles of lawyers and the business of law, it could benefit lawyers individually and collectively, as well as improving society more broadly.

The rise of LLMs presents an opportunity for the legal profession to address long-standing issues, such as the access-to-justice gap and the need to streamline dispute-resolution mechanisms. By leveraging LLMs, lawyers can provide more affordable and accessible legal services to a broader range of clients, helping to bridge the justice gap and promote greater equity within the legal system.

Lawyers, technologists, and policymakers should work together to address ethical, regulatory, and practical challenges. But LLMs like GPT-4 have the potential to improve the legal profession and redefine the way legal services are delivered. We can improve how the law serves society. By embracing change and proactively adapting to the evolving legal landscape, the legal industry can potentially lead the way to a more efficient, accessible, and just legal system. ▲

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# U.S. IMMIGRATION STRATEGIES FOR EMPLOYERS IN A TIGHT LABOR MARKET

*An obscure Biden administration policy change creates new opportunities*

BY CALLEIGH M. MCRAITH, MISTI A. BINSFELD, AND ROBERT P. WEBBER

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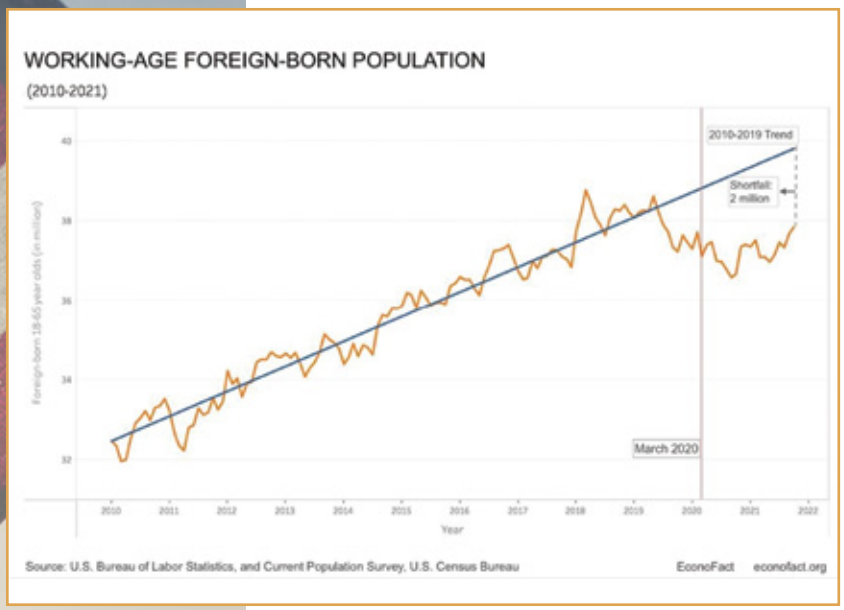
The November 2022 mid-term elections brought divided government to Washington D.C., with the Republicans winning a majority in the U.S. House of Representatives and the Democrats retaining control of the U.S. Senate (and of course the White House). New Speaker of the House Kevin McCarthy has vowed not to move forward on immigration reform legislation during the 2023-2024 Congress.

Amid this new gridlock, employers around the country (and particularly in Minnesota) continue to struggle with finding workers. In a speech on November 30, 2022, Federal Reserve Chair Jerome Powell identified a "net plunge" in immigration as a key factor in the national labor shortage and ongoing, persistent high inflation. The "net plunge" in immigration is attributed to restrictive policies of the Trump Administration from January 2017 to December 2020 followed by pandemic-related closures of U.S. consulates worldwide.




Because the ongoing labor shortage impacts employers in nearly every industry, some employers have pursued creative options to find and retain workers, including hiring foreign national workers to fill highly skilled and less-skilled positions. In what seems to be an effort to facilitate options for foreign nationals and employers, the Biden administration has quietly rolled out some relatively obscure policy changes. Employers, however, may be unaware of immigration options (including these relatively new options) that can help address labor shortages. The purpose of this article is to highlight a few strategies.

## Opportunities to sponsor individuals with temporary protected status (TPS)

On July 1, 2022, the Biden administration announced a policy change related to travel documents for recipients of temporary protected status (TPS) that opened a pathway for employers to sponsor individuals with TPS for long-term employment.[1]

TPS is a program designed to allow people to stay in the United States while their home country is in crisis, due to either natural or political disasters. As of February 16, 2022, there were over 350,000 TPS holders in the United States.[2] Nearly 200,000 of these are people from El Salvador who have been in the U.S. since 2001.[3] Other countries with significant TPS populations include Honduras, Venezuela, Haiti, and Nepal.

Individuals with TPS can obtain an employment authorization document (EAD)—sometimes called a work card—but that work card is only valid while the TPS designation remains in place. If the TPS designation for any given country ends, the work authorization of a TPS national from that country also ends. This ongoing threat of TPS termination has created an uneasy situation for people with TPS. They worry that TPS for their country could end, meaning they would be forced to return to their home country and leave behind family and friends in the United States. Thus, many TPS holders desperately want to transition to a more stable and permanent immigration status within the United States. Likewise, a sudden end to TPS would be destabilizing for employers, as all workers with TPS status would no longer be able to continue their employment.

Fortunately, the July 2022 policy change by the Biden administration has made permanent resident (green card) status possible for TPS holders, provided they find an employer who will sponsor them. Permanent resident status allows the individual to remain in the U.S., with work authorization, indefinitely. For the majority of TPS holders, switching to permanent resident status was not an option historically because their initial entry into the United States did not involve a formal and valid admission. But pursuant to the new Biden Administration travel document policy, TPS holders may cure this defect from their initial entry. When such persons secure a travel document and use it to re-enter the United States, this new entry will be considered a formal and valid "admission," making the TPS holder eligible for a green card through the relatively standardized I-485 adjustment of status process. Adjustment of status is available for these people using a technical exception that is only available to those seeking employment-sponsored green cards, essentially forgiving any previous time of being in the U.S. without valid visa status or working without authorization.[4]


A JULY 2022 POLICY CHANGE BY THE BIDEN ADMINISTRATION HAS MADE PERMANENT RESIDENT (GREEN CARD) STATUS POSSIBLE FOR TPS HOLDERS, PROVIDED THEY FIND AN EMPLOYER WHO WILL SPONSOR THEM.

Employers can sponsor TPS employees through the PERM labor certification process, which is available for any type of job as long as the employer can prove to the U.S. Department of Labor that they cannot find enough qualified U.S. workers to fill open positions. In the current economy, with its severe labor shortages in multiple sectors, many employers can readily document a shortage of qualified and willing U.S. workers. Thus, sponsoring TPS holders with work cards can be an attractive way to find and retain workers.

The typical case plan would look like this:

1. Begin the green card process for the employee, known as PERM labor certification. This would require obtaining a 9141 prevailing wage determination from the Department of Labor, as well as completing the required labor market test recruitment to document a labor shortage in the sponsored position.
2. Assist the employee in applying for TPS travel document.
3. When the employee receives TPS travel document, they take a brief trip outside of the U.S. and re-enter using the newly established travel document (creating an "admission" for immigration law purposes).
4. Continue with the green card process, culminating in an application to adjust status to green card holder. At the final stage (adjustment of status), the employee will need to show they have an admission to the U.S., which was secured through the TPS travel.

The above case plan process represents a significant new opportunity for employers with labor shortages, as they can attract TPS holders to join their workforce by offering employment-based sponsorship for a green card. Workers could start work immediately using their TPS work card, and the green card process (which could take two-plus years) is a powerful tool to retain the sponsored employees at the company. Employers who sponsor workers for green cards may find that even after the green card is received, the employee often will remain loyal to the company out of gratitude for the green card sponsorship.

Further, sponsored employees can also become the best recruiters for the company, spreading the word to other TPS holders that their employer is willing to do green card sponsorship. The green card sponsorship process also ensures that the company will not suddenly lose their TPS workers if the TPS designation were to abruptly end.

## A case study regarding PERM sponsorship of TPS workers

We are familiar with several companies that have used the PERM labor certification process for TPS holders to strengthen their workforce. One company in the landscaping and groundskeeping industry decided to sponsor its current TPS workers after learning that there was a growing political movement to end TPS for El Salvador and Honduras. If TPS ended for those countries, the company stood to lose several employees whose only work authorization was through the TPS program.

The company began green card sponsorship for a group of its employees in 2018, even before the July 2022 policy changes by the Biden administration.[5] Several employees have already received their green cards or are in the final stages of the process. The company is now going to use the TPS travel document pathway to sponsor additional employees who did not qualify under the pre-2022 standards.

## Other creative workforce solutions

In addition to sponsoring employees from TPS to a green card, there are several other categories of workers who can be sponsored for a green card through the PERM labor certification process. The benefits are similar: The company can use offers of green card sponsorship to attract new workers and to stabilize the workforce by sponsoring current employees who might otherwise lose their work authorization through policy changes.

The following are categories of foreign nationals already in the United States who may be eligible for green card sponsorship through PERM labor certification:

- asylum applicants who entered the U.S. with a visa and timely filed their asylum application;
- individuals who came to the U.S. on humanitarian parole and are maintaining that status (humanitarian parole programs exist for Afghanistan, Ukraine, Venezuela, Haiti, Cuba, and Nicaragua);
- F-1 international students currently working on CPT or OPT (work authorization provided by the school); and
- individuals (including those without current work authorization) who had an I-130 or I-140 visa petition filed for them, their spouse, or their parent prior to April 30, 2001.[6]

## Expanded policies for highly skilled workers

The above options are available for the vast majority of job openings in the economy, but employers seeking highly skilled workers benefit from very narrow policy changes of the Biden administration to facilitate the hiring and retention of highly skilled workers.

In January 2022, the Biden administration issued updated guidance to facilitate the use of O-1 outstanding ability temporary work visas for STEM graduates as well as green card sponsorship through an exemption for PERM labor certification called EB-2 National Interest Waiver (NIW). The EB-2 NIW category has the added appeal that it permits self-petitioning, and F-1 international students in STEM fields particularly have been able to use the updated and more liberalized policies for work authorization. It may prove worthwhile for employers to also screen their workers for individuals who may fall into one of these categories.

## Conclusion

Immigration reform through Congress is very much the broader and more significant change the U.S. immigration system needs to increase the supply of workers in the growing post-pandemic economy. In light of the divided government in Washington, however, the Biden administration appears committed to making executive branch policy changes to expand opportunities for employers to sponsor workers.

Some of these options are relatively obscure, but we encourage lawyers in the bar association to work with their employer clients to see if it makes sense to pursue green card sponsorship for current or future workers to better meet the needs of their workforce. ▲

## NOTES

[1] U.S. Citizenship and Immigration Services, "Policy Memorandum: Recission of *Matter of Z-R-Z-C* as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries," (7/1/2022), available at *https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf*.

[2] Congressional Research Service, Temporary Protected Status and Deferred Enforced Departure, RS20844 at 7 (4/19/2022), available at *https://sgp.fas.org/crs/homesec/RS20844.pdf*.

[3] In order to qualify for TPS for El Salvador, individuals must prove they have been in the U.S. since at least 2/13/2001. U.S. Citizenship and Immigration Services, *https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador* (last visited 1/10/2023). *See also* 66 Fed. Reg. 14214, at 14214 (3/9/2001).

[4] *See* 8 U.S.C. §1255(k), known as INA §245k, which allows for the forgiveness of prior unauthorized work or time out of status as long as the individual has not accrued more than 180 days of unauthorized work or unauthorized presence in the U.S. since their last entry. The travel using the TPS travel document becomes the new last entry, making individuals eligible for adjustment of status post-travel as long as they continue to maintain their TPS status.

[5] Although the travel document policy announced in July 2022 created the most recent iteration of the pathway for sponsorship, there were brief windows of similar pathways in the past. For example, for a brief time the 8th Circuit held that the grant of TPS itself constituted an admission, thereby curing the prior entry without valid documents and allowing TPS holders to adjust to green card status with sponsorship. *See Velasquez v. Barr*, 979 F. 3d 572 (8th Cir. 2020). That pathway closed, however, with the 2021 SCOTUS decision *Sanchez v. Mayorkas*, which held that the grant of TPS did not constitute an admission. *Sanchez v. Mayorkas*, 141 S.Ct. 1809 (2021). The employers described here were able to use these previous iterations to sponsor their initial batch of TPS workers.

[6] These individuals with visa petitions filed prior to 4/30/2001 are grandfathered into a more generous immigration standard that forgives time in the U.S. without status and work without authorization. 8 U.S.C. §1255(i), known as INA §245(i). To benefit from this generous standard, however, the individual has to find a sponsor either through close family (spouse, parent, etc. with U.S. citizenship or green card holder status) or an employer.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# LANDMARKS IN THE LAW

***Current developments in judicial law, legislation, and administrative action together with a foretaste of emergent trends in law and the legal profession for the complete Minnesota lawyer.***



## Criminal Law
### JUDICIAL LAW

**Theft: Aluminum foil used to evade anti-theft security sensors is "shoplifting gear."** Appellant was arrested after being found in a retail store with a bag containing unpurchased items with aluminum foil wrapped around the anti-theft security sensors attached to the items. She was found guilty of possessing shoplifting gear and filed a postconviction petition, arguing there was insufficient evidence to support her conviction because aluminum foil is a common household item not designed to assist in shoplifting or defeat electronic article surveillance systems. The district court denied her petition and the court of appeals affirmed.

The Supreme Court holds that an "instrument designed to assist in shoplifting or defeating an electronic surveillance system," under Minn. Stat. §609.521(b), "means any item produced with special intentional adaptation to assist the defendant in shoplifting or defeating an electronic article surveillance system." The dispute in this case centers on the term "designed" in section 609.521(b) and whether aluminum foil used in a particular manner was "designed" as required by that section.

The Court notes that all definitions of "design" or "designed" put forth by the parties "share a common focus on the creation of an item or idea to effectuate a particular 'end,' 'purpose,' or 'plan.'" The shoplifting gear statute "prohibits the possession of an item that is planned or produced with special intentional adaptation to the specific end of shoplifting."

The Court disagrees with appellant's argument that she merely used aluminum foil to shoplift, and that aluminum foil was not "designed" to assist in shoplifting or defeating an electronic surveillance system. Aluminum foil has a commercial design to act as a barrier to light, oxygen, moisture, and bacteria. However, it is sold in packaged rolls, a form rendering the foil useless as a barrier. It is only used for its designed purpose when molded and formed into a shape, so its use necessarily involves forming the raw foil material into a new object. Appellant did just this by fashioning foil into wrappings around sensors to defeat the store's electronic surveillance system in order to shoplift. The evidence was sufficient to support her conviction. ***Douglas v. State***, 986 N.W.2d 705 (Minn. 3/15/2023).

**6th Amendment: No violation of right to counsel by state reviewing recorded calls between the defendant and his attorney because the defendant chose not to use an available unrecorded phone line.** Appellant was incarcerated for murder and awaiting resentencing following an earlier appeal when he made a number of phone calls on a recorded jail phone line to his attorney and to a third party discussing defense strategies. The jail provided a process for communicating with counsel on an unrecorded line, but appellant never used this option. The state received and reviewed recordings of the calls. The district court ordered the state to establish a taint team to ensure the state did not listen to or use any privileged communications between appellant and his defense team. The Minnesota Court of Appeals subsequently granted the state's petition for a writ of prohibition, concluding that there was no 6th Amendment violation and a taint team was not warranted.

In some situations, the state's interference with the confidential relationship between a defendant and his attorney may implicate the right to counsel. But an intrusion into that relationship, on its own, does not constitute a 6th Amendment violation. The Supreme Court declines to articulate a full standard as to when such interference or intrusion amounts to a violation of the right to counsel. Instead, the Court holds "that the Sixth Amendment right to counsel is not implicated when the State provides an incarcerated defendant a process for communicating with counsel on an unrecorded phone line, and the defendant instead chooses to communicate with counsel or share defense strategies with a third party by a method the defendant knows is recorded." Therefore, the district court was not authorized by law to order a taint team and the court of appeals did not err when it granted the state's

petition for a writ of prohibition. ***In re State (State v. Flowers)***, 986 N.W.2d 686 (Minn. 3/15/2023).

**Traffic: Statute prohibiting operating a motor vehicle with license canceled or denied as inimical to public safety is enforceable on private property.** Respondent was found guilty of felony DWI and driving after cancellation (inimical to public safety), under Minn. Stat. § 171.21, subd. 5 (DAC-IPS statute), after police saw him driving a motor vehicle down a private driveway when respondent's license was canceled as inimical to public safety. The court of appeals reversed, concluding the DAC-IPS statute is not enforceable on private property.

The DAC-IPS statute makes it a gross misdemeanor to "operat[e] in this state any motor vehicle, the operation of which requires a driver's license, while the person's license or privilege is canceled or denied," if the license or privilege was canceled or denied under section 171.04, subd. 1(10), and they were given notice of or reasonably should have known of the cancellation or denial. Minn. Stat. §171.24, subd. 5.

The Supreme Court looks to prior versions of the DAC-IPS statute, which explicitly limited their application to the operation of motor vehicles "upon streets or highways in this state." This limitation was removed in 1984, broadening the geographic reach of the statute and showing the Legislature's intent for the statute to apply to drivers on non-public roads. The Court holds that the DPS-IPS statute is not limited to public streets and highways and may be enforced on private property. The Court also finds the district court properly denied respondent's motions to suppress and dismiss. The court of appeals is reversed, and respondent's convictions are reinstated. ***State v. Velisek***, A21-0275, 986 N.W.2d 696 (Minn. 3/15/2023).

**Competency: Defendant bears burden of proof when asserting their own competence.** Appellant was charged with second-degree murder and the district court ordered a competency evaluation of appellant. The district court found appellant was not competent and this appeal followed.

The Supreme Court held in *State v. Curtis*, 921 N.W.2d 342 (Minn. 2018), that "[w]here a defendant's competency is disputed," Minn. R. Crim. P. 20.01, subd. 5, creates a "presumption of incompetence," which requires the party claiming competence to carry the burden of proof. Yet the question of who bears the burden of proof in a contested competency proceeding when a defendant asserts his own competence has not yet been resolved. The Court in *Curtis* stated that who bears the burden "can only be ascertained once a party affirmatively asserts that a defendant is competent to stand trial."

The Minnesota Court of Appeals holds that, when a defendant asserts their own competence in a contested competency proceeding under Rule 20.01, the defendant bears the burden of proving competence. Here, the district court did not place the burden on either party, instead determining competency on the weight of evidence alone. This competency determination without allocation of the burden of proof to appellant was erroneous. The case is remanded to the district court for another competency hearing. ***State v. Thompson***, A22-0737, __ N.W.2d __, 2023 WL 2564636 (Minn. Ct. App. 3/20/2023).

**Procedure: Order dismissing complaint for lack of probable cause is appealable if it is not based solely on a factual determination.** Respondent was charged with four counts of second-degree criminal sexual conduct relating to alleged sexual abuse of a young girl in the United Kingdom and in Edina. He reported the incidents to child protection, wrote a letter of apology to the victim's father, and acknowledged his offenses in a phone call to a detective. In a forensic interview of the victim, she described the incident in the United Kingdom but did not recall the Edina incident. The United Kingdom charges were dismissed for lack of subject matter jurisdiction and are not at issue in this appeal. The district court also granted respondent's motion to dismiss the Edina charges for lack of probable cause. The district court found the only evidence supporting these charges were respondent's confessions and determined that multiple confessions cannot corroborate themselves. The court of appeals dismissed the state's appeal, finding the dismissal order not appealable, because it was based solely on a factual determination.

The Supreme Court reverses, finding the district court's order was appealable because it was based on the district court's interpretation of Minn. Stat. §634.03. Minn. R. Crim. P. 28.04, subd. 1(1), which allows the state to appeal a pretrial dismissal order based on questions of law, but not pretrial dismissal orders *premised solely on a factual determination*. The issue here is the italicized portion that rule. The Court determines that "if the basis for a district court's probable cause dismissal is exclusively factual, then the probable cause dismissal is not appealable," but "if the basis for... the dismissal is a construction of facts that is based on a legal conclusion, then the dismissal" is not appealable.

Here, the dismissal order was based on the district court's legal conclusion regarding corroboration requirements—that is, the court interpreted section 634.03 ("A confession of the defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed.") to require the state to corroborate respondent's confessions with evidence other than another confession. As it was based in part on a legal conclusion, the dismissal order here was appealable. The matter is remanded to the court of appeals to consider this case in light of *State v. Dixon*, 981 N.W.2d 387 (Minn. 2022) (holding that section 634.03 does not preclude a probable cause finding based on an uncorroborated confession) (decided while respondent's appeal was pending). ***State v. Gray***, 987 N.W.2d 563 (Minn. 3/22/2023).

**Restitution: The state is not required to prove a defendant's ability to pay.** Appellant was convicted of second-degree murder and ordered to pay restitution. He challenged the restitution order, arguing he was unable to pay, but the district court rejected his challenge. The court of appeals affirmed, but the case was remanded for the district court to establish a payment schedule.

Minn. Stat. §611A.045, subd. 3(a), places on an offender the burden of producing evidence to challenge the amount of restitution or specific items of restitution. The burden then shifts to the state to prove the amount of loss sustained by the victim and the appropriateness of a particular type of restitution. Then, the court is to resolve any dispute as to the proper amount or type of restitu-

tion by a preponderance of the evidence. In deciding whether to order restitution and the amount of restitution, subdivision 1(a) of the statute requires the court to consider (1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant. Appellant argues these two subdivisions create a requirement that the state prove a defendant's income, resources, and obligations. In other words, he argues the state's burden of showing the appropriateness of a particular type of restitution requires the state to prove his ability to pay restitution.

The Supreme Court holds that section 611A.045 does not assign a burden of proof regarding a defendant's ability to pay. Subdivision 3(a) requires the state to demonstrate not the general appropriateness of a restitution order, but the appropriateness of a particular condition—that being the "type of restitution." Looking to the plain and ordinary meaning of this phrase, the Court notes that the focus of the term "type of restitution" is on the kind or category of restitution at issue. Put another way, the inquiry under subdivision 3(a) is whether the state has shown that the victim's request for restitution consists of the type, kind, or categories of expenses that should be compensated through restitution. The court of appeals is affirmed. ***State v. Cloutier***, 987 N.W.2d 214 (Minn. 3/22/2023).

**Controlled substances: Amendment changing definition of "marijuana" to exclude hemp mitigated punishment; amelioration doctrine applies.** Appellant was convicted in 2020 of two marijuana-related fifth-degree controlled substance offenses, one for possessing three pounds of a plant material the state claimed was marijuana and the other for possessing vaporizer cartridges filed with a liquid mixture containing tetrahydrocannabinols. He argues the evidence was insufficient to support the jury's guilty verdicts because of a 2019 amendment to the definition of marijuana, which excluded "hemp" and went into effect 10 days after appellant was charged but seven months before his trial. The court of appeals reversed appellant's conviction for possession of the plant material but upheld his conviction for possession of the vaporizer cartridges.

Under the common law amelioration doctrine, an amended criminal statute applies to crimes committed before its effective date if: (1) there is no statement by the Legislature clearly establishing a contrary intent; (2) the amendment mitigates punishment; and (3) final judgment has not been entered when the amendment takes effect. The only requirement at issue here is the second—that is, whether the removal of certain conduct from the definition of a crime is a mitigation of punishment.

In previous cases, the amelioration doctrine has been considered in the context of the Legislature's reduction of the penalty for a crime, but the Supreme Court finds it illogical to limit the scope of mitigation to only sentence reduction. The Court holds "that a statutory amendment mitigates punishment... when a change in the law either reduces the penalty for criminal conduct or redefines criminal conduct in a manner benefitting the defendant, including through the decriminalization of the conduct."

Next, the Court considers whether the 2019 amendment decriminalized the possession of hemp. Before the amendment, the definition of marijuana in Chapter 152,

which creates criminal penalties for possessing controlled substances, made no exceptions for hemp. After the 2019 amendment, the definition of marijuana explicitly excluded "hemp." Thus, the amendment made it no longer a crime to possess hemp (the plant *Cannabis sativa L.* and its derivatives with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent). By decriminalizing the possession of hemp, the amendment mitigated punishment.

Under the 2019 amendment, the only material difference between marijuana and hemp is the delta-9 THC concentration. Because the amendment effectively incorporates the delta-9 THC requirement into the definition of marijuana, the delta-9 THC concentration of a substance is a required element to be proven by the state. Thus, the state must prove beyond a reasonable doubt that a substance is marijuana by proving the delta-9 THC concentration exceeds 0.3 percent on a dry weight basis.

Here, the state did not test the delta-9 THC concentration of the plant material. Thus, the jury could reasonably infer that the circumstances proved *either* that the plant material in appellant's possession had a delta-9 THC concentration greater than 0.3 percent *or* less than 0.3 percent. As such, the evidence was insufficient to support appellant's conviction for possessing the plant material.

The state also never tested the concentration of the liquid in the vaporizer cartridges. However, the court of appeals found the evidence sufficient to sustain appellant's conviction for possessing with intent to sell the cartridges under Minn. Stat. §152.025, subd. 1(1), on the basis that the liquid substance therein was illegal in any amount as a Schedule I controlled substance. However, hemp is now legal and defined based on its delta-9 THC concentration. Thus, section 152.025, subd. 1(1), no longer broadly criminalizes the sale of all tetrahydrocannabinols. The state did not test the liquid mixture here for the specific type of THC present nor the specific concentration of delta-9 THC. Therefore, again, the jury could rationally conclude that the liquid mixture had a delta-9 THC concentration of either greater than 0.3 percent or less than 0.3 percent. The evidence was insufficient to support appellant's conviction relating to the vaporizer cartridges. ***State v. Loveless***, 987 N.W.2d 224 (Minn. 3/22/2023).

**Exoneration compensation: Petition for declaration of eligibility is a postconviction proceeding requiring no filing fee or grant of in *forma pauperis* status.** Appellant's controlled substance conviction was overturned, and appellant sought compensation under Minn. Stat. §590.11 based on his exoneration. He filed a "civil complaint" with the district court, which was filed into a new file separate from his criminal case, as well as an affidavit to proceed *in forma pauperis* (IFP). His IFP application was denied and appellant appealed the denial.

The Minnesota Court of Appeals first finds that the exoneration compensation procedure is a postconviction process. Section 590.11, the exoneration compensation statute, establishes a framework for compensating individuals who served time in prison after a wrongful conviction. The court notes that section 590.11 is included in chapter 590, which governs postconviction relief and incorporates several postconviction procedures. Although appellant titled his petition "civil complaint," the filing made clear his intent was to obtain an order declaring eligibility under section 590.11. Therefore, as a type of postconviction filing, no filing fee was required for the 590.11 petition. The district court erred in denying appellant's IFP application. The matter is remanded for the district court to consider appellant's request for a declaration of eligibility for exoneration compensation. ***Aery v. State***, A22-1123, __ N.W.2d __, 2023 WL 2638240 (Minn. Ct. App. 3/27/2023).

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## Employment & Labor Law

### JUDICIAL LAW

**Age and sex discrimination; claims dismissed.** A woman who claimed wage inequity and discrimination had her claims dismissed on grounds that the employer established that the differences in her pay and that of two male colleagues was justified based on prior work experience. The 8th Circuit Court of Appeals, affirming summary judgment, also ruled that the claimant did not establish a *prima facie* case of sex discrimination because she did not show that the charge was more likely than not based upon intent to discriminate against her because of her gender. ***Mayorga v. Marsden Building LLC***, 55 F.4th 1155 (8th Cir. 12/20/2022).

**Gender, race claims; settlement rescinded, claim dismissed.** An employee who asserted race and gender discrimination claims against her employer was successful in rescinding a settlement agreement and re-opening it but failed on the merits of her claim. The 8th Circuit, affirming a lower court ruling of U.S. District Court Judge Eric Tostrud in Minnesota, held that the claimant did not establish discrimination based on her race and gender. ***Thomas v. Wells Fargo Bank, N.A.***, 2022 WL 17661148 (Minn. Ct. App. 12/14/2022) (unpublished) (per curiam).

**Union benefit funds; payment restriction upheld.** A collective bargaining agreement regarding contributions to a union's benefits fund was restricted to construction and highway workers, rather than all employees, regardless of the type of work. Affirming summary judgment for the employer, the 8th Circuit held that the collective bargaining agreement unambiguously required only contributions for "building construction" and "highway/heavy" work and did not extend to contributions for other types of work not listed in the agreement. ***Greater St. Louis Construction Laborers Welfare Fund v. RoadSafe Traffic Systems, Inc.***, 55 F.4th 609 (8th Cir. 12/9/2022).

**Bargaining unit; broader group required.** A bargaining unit for sheriff's office employees was properly expanded to include county-wide clerical and technical personnel. Affirming a ruling of the Bureau of Mediation Services, the court of appeals accepted the broader group proposed by Anoka County to represent those employees for collective bargaining purposes. ***Anoka County v. Law Enforcement Labor Services***, 2023 WL 2564408 (Minn. Ct. App. 3/20/2023) (unpublished).

**Unemployment compensation; failure to be vaccinated**. An employee who refused to be vaccinated for covid or wear a mask

in the workplace was properly denied unemployment benefits. Upholding a decision of an unemployment law judge (ULJ), the Minnesota Court of Appeals held that the employee was ineligible for unemployment benefits because the discharge was due to "misconduct" in not complying with company policies. ***Sun v. Pepperl & Fuchs, Inc.***, 2022 WL 17748244 (Minn. 12/19/2022) (unpublished).

**Unemployment compensation; sexual harassment allegation.** An employee who quit his job because the company did not investigate sexual harassment allegations against him that did not lead to disciplinary action was denied unemployment benefits. The court of appeals, affirming a decision of an unemployment law judge, held that the employee lacked a good reason to quit because he was accused of unfounded harassment. ***Mathieu v. University of St. Thomas***, 2023 WL 2126134 (Minn. Ct. App. 2/21/2023) (unpublished).

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## Environmental Law

### JUDICIAL LAW

**Lawsuits by state and local governments against petroleum companies remain in state court.** In an action brought by the state of Minnesota under Minnesota law, the 8th Circuit is the latest court to find that petroleum companies cannot avoid state law claims addressing the climate change impacts of their products by removing the cases to federal courts in favor of federal common law disposition. The court held that federal common law on transboundary pollution did not completely preempt state law claims, federal question jurisdiction was not warranted, and removal authorized by specific federal statutes did not apply. In doing so, the 8th Circuit affirmed the remand of the case back to state court.

In keeping with a line of cases seeking to address Big Oil's responsibility for climate change, Minnesota Attorney General Keith Ellison sued the American Petroleum Institute, Exxon Mobil and Exxon-Mobil Oil Corporations, Flint Hills Resources LP and Flint Hills Resources Pine Bend, and Koch Industries. Minnesota asserted that these defendants committed common law fraud and violated the state's consumer protection statutes by knowingly misrepresenting the effect of fossil fuels on the environment. The state asks the defendants to publish research they possess about climate change and to fund a related public education campaign. It also asks for unspecified restitution and damages for "billions of dollars of economic harm due to climate change."

In this and other similar cases brought by state and local governments around the country, the defendants have immediately removed the cases to federal court. The federal courts (including six federal circuit courts and 13 federal district courts) have held that the cases should remain in state court, as did the 8th Circuit.

The U.S. Supreme Court may ultimately decide whether these decisions are correct. In a 10th Circuit appeal, the Court has invited the U.S. solicitor general to file a brief on whether to grant *certiorari*. The Biden administration plans to assert that the case should remain in state court. ***Minnesota by Ellison v. Am. Petroleum Inst.***, 63 F.4th 703 (8th Cir. 2023).

### ADMINISTRATIVE ACTION

**EPA proposes more stringent vehicle emissions standards.** On 4/12/2023, the Environmental Protection Agency (EPA) proposed new, more stringent emissions standards designed to reduce air pollutant emissions from light- and medium-duty vehicles. The standards would begin with model year 2027 through model year 2032 vehicles. The overarching goal of the proposal is to significantly reduce greenhouse gas (GHG) emissions. Passenger cars and trucks are significant contributors to the problems caused by GHG, such as climate change and the health effects of impaired air quality, with transportation representing the single largest source of GHG in the U.S. The proposal aims to reduce light-duty vehicle fleet GHG emissions by 56%, and medium-duty fleet emissions by 44%, relative to existing standards.

Pursuant to the Clean Air Act, the EPA has the authority to regulate emissions of GHG and other pollutants from sources such as automobiles. The crux of EPA's new proposal sets fleet average emissions of 82 grams of carbon dioxide emission per mile by model year 2032 for light-duty vehicles. Light-duty automobiles are those with a gross vehicle weight rating of less than 8,500 pounds. For medium-duty vehicles, the proposal sets an average of 275 grams of carbon dioxide emission per mile. Medium-duty vehicles are those with a gross vehicle weight of 8,501 to 10,000 pounds. The rule proposes a phase-in schedule containing certain milestones that manufacturers must meet each year through 2032.

The proposal also modifies emissions standards of other criteria pollutants such as nonmethane organic gases, nitrogen oxides, particulate matter, carbon monoxide, and formaldehyde. These standards also have multiple phase-in scenarios and contain early compliance options should manufacturers elect to do so.

The EPA also proposes more robust battery durability performance and monitoring requirements for light-duty plug-in hybrids (PHEV) and battery-powered electric vehicles (BEV). Manufacturers of these vehicles would be required to provide customers with a readable battery health system that reports the vehicle's state of certified energy (SOCE). There would also be a minimum SOCE batteries must meet depending on certain year or mileage thresholds. For example, under the proposal, batteries used in light-duty PHEVs or BEVs with 5 years or 62,000 miles would need to have at least 80% SOCE. The proposals also include certain provisions that are available to small-volume manufacturers producing fewer than 5,000 vehicles per year. EPA will hold at least two public hearings in May 2023 to collect comments from stakeholders, interested parties, and members of the public.



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## Federal Practice
JUDICIAL LAW

**Standing; ADA "tester;" *certiorari* granted.** The United States Supreme Court has granted *certiorari* on the question of whether an ADA "tester" has standing to challenge a public accommodation's failure to provide disability accessibility information on its website even if she does not intend to visit the public accommodation. The circuits are badly divided, with the 1st and 11th Circuits finding standing, and the 2nd, 5th, and 10th Circuits rejecting standing. ***Laufer v. Acheson Hotels, LLC***, 50 F.4th 259 (1st Cir. 2022), *cert. granted*, ___ S. Ct. ___ (2023).

**Arbitration; 9 U.S.C. §10(a)(3) AND (4); factual errors not reviewable.** Affirming a district court's grant of a motion to dismiss, the 8th Circuit found that appraiser's alleged "factual errors" did not provide a basis for vacating an arbitration under 9. U.S.C. §10(a)(3) or (4). ***Martinique Props., LLC v. Certain Underwriters at Lloyd's of London***, 60 F.4th 1206 (8th Cir. 2023).

**Voluntary dismissal to create appellate jurisdiction criticized yet again.** Where the partial grant of a motion to dismiss was appealed only after other claims were dismissed without prejudice, the 8th Circuit again criticized "the use of dismissals without prejudice to manufacture appellate jurisdiction in circumvention of the final decision rule." ***Core & Main, LLP v. McCabe***, 62 F.4th 414 (8th Cir. 2023).

**Remand for lack of federal question and CAFA jurisdiction affirmed.** Affirming a decision by Judge Tunheim, and following similar decisions by the 1st, 3rd, 4th, 9th, and 10th Circuits, the 8th Circuit rejected defendants' argument that environment-based claims asserted under Minnesota law were "completely preempted" by federal law or "necessarily raised" issues of federal law, and also rejected defendants' "novel" argument in support of removal under CAFA. ***Minnesota v. Am. Petroleum Inst.***, 63 F.4th 703 (8th Cir. 2023).

**Collateral order doctrine; *ex parte* communications prohibited.** Where a district court granted plaintiffs' motion for an emergency protective order prohibiting certain *ex parte* communications, the defendants appealed, and the plaintiffs moved to dismiss the appeal for lack of jurisdiction but subsequently withdrew that motion, the 8th Circuit found that the district court's order was neither an appealable collateral order or an injunction, and dismissed the appeal for lack of subject matter jurisdiction. ***Collins ex rel. J.Y.C.C. v. Doe Run Resources Corp.***, ___ 4th ___ (8th Cir. 2023).

**Denial of motion for preliminary injunction affirmed; delay.** Affirming an order by Judge Nelson, the 8th Circuit found that the plaintiff's 13-month delay in seeking a preliminary injunction was "unreasonable," and belied any claim of irreparable harm. ***Ng v. Bd. of Regents***, ___ F.4th ___ (8th Cir. 2023).

**Fed. R. Civ. P. 37; spoliation; adverse inference sanction imposed.** Judge Wright adopted a report and recommendation by Magistrate Judge Leung that recommended the denial of plaintiff's motion for a default judgment against the defendants as a sanction for their failure to preserve video from a jail camera, but also recommended that the defendants be subject to an adverse inference instruction and an award of attorney's fees related to the expenses incurred as a result of defendants' failure to preserve the video. ***Vogt v. MenD Correctional Care, PLLC***, 2023 WL 2414551 (D. Minn. 1/30/2023), *Report and Recommendation adopted*, 2023 WL 2414531 (3/8/2023).

**Fed. R. Civ. P. 702; *Daubert*; class certification.** Applying a "less stringent *Daubert* standard" at the class certification stage, Judge Tunheim denied defendants' *Daubert* motions and then certified separate plaintiff classes in a price-fixing MDL. ***In Re: Pork Antitrust Litig.***, 2023 WL 2696497 (D. Minn. 3/29/2023).

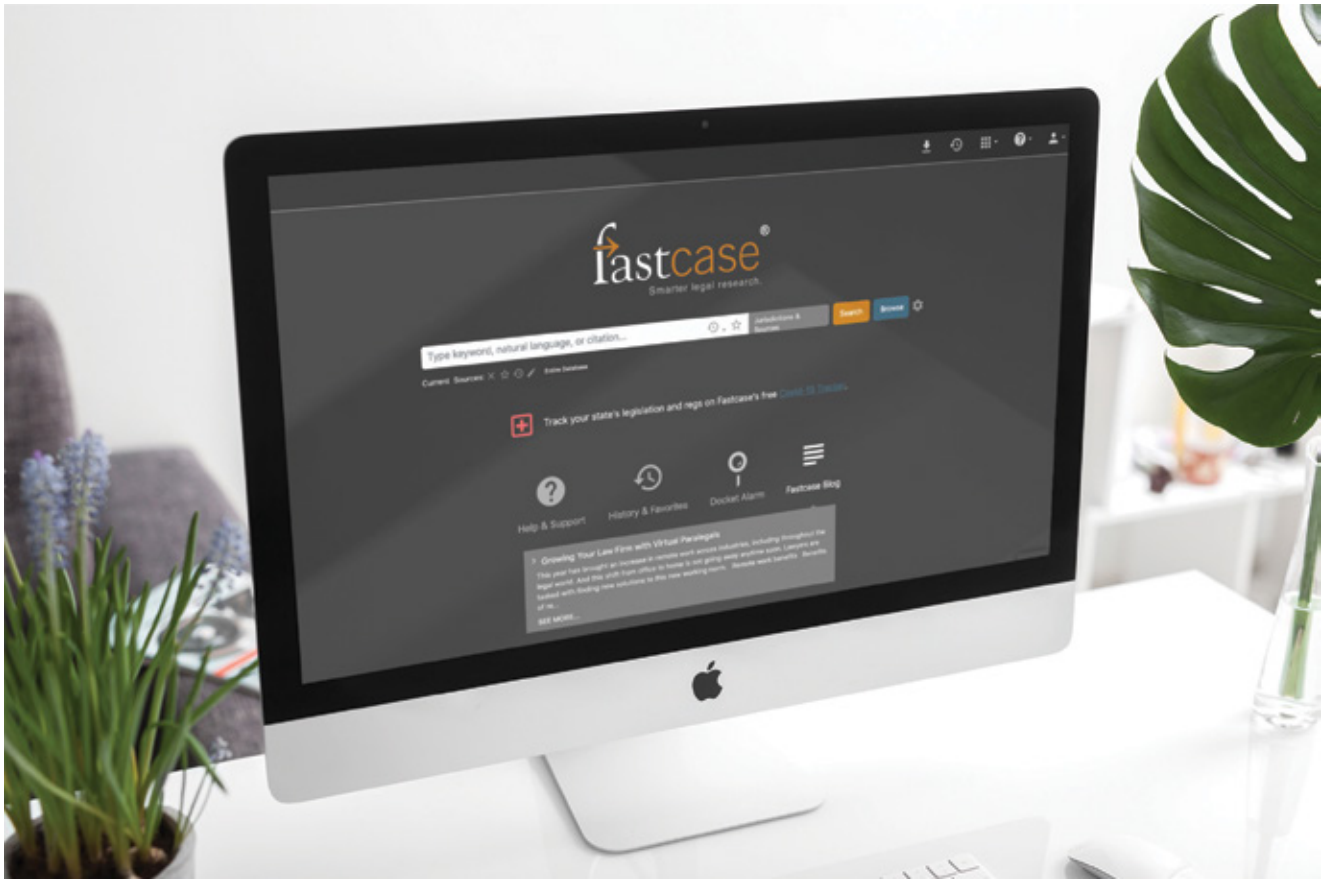
**Fed. R. Civ. P. 702; *Daubert*; expert excluded.** Judge Nelson granted defendants' motion to exclude the opinion of plaintiffs' industrial hygiene expert in an action arising out of plaintiffs' alleged occupational exposure to chemicals, finding that the expert could not establish that he conducted tests using the same chemical that plaintiffs claimed they were exposed to. ***Cole v. Ecolab, Inc.***, 2023 WL 2609343 (D. Minn. 3/23/2023).

**L.R. 7.1(b) and 15.1; motion to amend complaint denied for failure to comply with rules.** Where Judge Tunheim granted a motion to dismiss brought by a number of defendants but stayed entry of the judgment for 30 days to allow the plaintiff to file a motion to amend his complaint; the plaintiff filed a motion to amend, a first amended complaint, and a proposed order on the last possible day; filed a meet-and-confer statement two days later stating that he had not met and conferred because his motion was brought pursuant to Judge Tunheim's order; and did not file a notice of hearing, a redlined version of the proposed amended complaint or a memorandum until 13 days later, Magistrate Judge Wright denied the motion without prejudice due to the plaintiff's failure to comply with Local Rules 7.1(b) and 15.1(b). ***Mitchell v. Kurkowski***, 2023 WL 2435168 (D. Minn. 3/9/2023).

**Motion to strike class allegations denied.** Where it was undisputed that some members of the proposed class were subject to arbitration clauses, Judge Menendez denied defendants' motion to strike class allegations, finding that the named plaintiff was not subject to an arbitration clause and that the presence of class allegations did not preclude the defendants from seeking to compel arbitration where warranted. ***Triple S Farms LLC v. DeLaval, Inc.***, 2023 WL 2333410 (3/2/2023).

**Video Privacy Protection Act; motion to dismiss for lack of standing denied.** Agreeing with "every federal circuit court that has considered the issue," Judge Tostrud found that the plaintiff's allegations of "intangible harm" arising out of the "nonconsensual sharing of his private information" were sufficient to confer standing. ***Feldman v. Star Tribune Media Co.***, ___ F. Supp. 3d ___ (D. Minn. 2023).

**28 U.S.C. §1927; attorney's fees awarded.** In October 2022, this column noted Judge Wright's grant of the defendant's motion for attorney's fees pursuant to 28 U.S.C. §1927 in an amount to be determined. Judge Wright recently found plaintiff's counsel to be liable for more than $12,000 in attorney's fees. ***Ricketson v. Advantage Collection Profs., LLC***, 2023 WL 2529211 (D. Minn. 3/15/2023).

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**28 U.S.C. §1292(b); motion for leave to appeal denied.** Judge Frank denied the defendant's motion to certify for interlocutory appeal his decision conditionally certifying an FLSA collective class, finding that the defendant was unable to meet any part of the controlling three-part test governing requests for 28 U.S.C. §1292(b) certification. ***Babbitt v. Target Corp.***, 2023 WL 2540450 (3/16/2023).

**Redactions for relevancy not permitted.** While ultimately allowing a defendant to redact irrelevant "commercially sensitive and trade secret information," Magistrate Judge Docherty recently added to the growing body of law in the District of Minnesota holding that a party "may not unilaterally redact information from responsive documents." ***Chairez v. AW Distrib., Inc.***, 2023 WL 2071375 (D. Minn. 2/17/2023).

**Fed. R. Civ. P. 35; right to record physical examination.** Where the parties agreed that the plaintiff's physical condition was at issue, Magistrate Judge Docherty granted the defendant's motion to compel the physical examination of the plaintiff but denied its motion to prevent the plaintiff from recording the examination. ***Silbernagel v. Westfield Ins. Co.***, 2023 WL 2264277 (D. Minn. 2/28/2023).

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## Indian Law
### JUDICIAL LAW

**Indian tribe has standing to challenge land swap where lands are within ceded territory.** The Fond du Lac Band of Lake Superior Chippewa filed suit against the United States Forest Service and others, seeking review of a land exchange between the Forest Service and PolyMet Mining, Inc., involving tracts within the territory ceded by the Band, along with other tribes, in the 1854 Treaty of LaPointe. The Band alleges the swap resulted in the loss of 6,650 acres of public land on which it will no longer be able to exercise its usufructuary rights reserved in Article 11 of the treaty. The district court rejected PolyMet's argument that the treaty only reserved rights to individuals, finding instead the language in Article 11 was intended to create tribal rights, sufficient for the Band to have standing to challenge the land swap. ***Fond du Lac Band of Lake Superior Chippewa v. Cummins***, ___ F. Supp. 3d ___, 2023 WL 2214533 (D. Minn. 2023).

**The *habeas corpus* relief provision of the Indian Civil Rights Act does not extend to an action barring an individual from running for tribal office.** An enrolled member of the Leech Lake Band of the Minnesota Chippewa Tribe challenged a decision of the Minnesota Chippewa Tribe (MCT) Election Court of Appeals finding that he was ineligible to run for tribal office under both the MCT Constitution and the MCT Uniform Election Ordinance because of a prior felony conviction. The district court held that he could not maintain his suit against the named tribal defendants because the Indian Civil Rights Act's *habeas* provision—one avenue for the requested relief—requires a "detention," but the order barring him from running for elected office was not a detention under existing case law. The court also dismissed the member's claims against the federal defendants for failure to exhaust administrative remedies and a lack of standing. ***LaRose v. United States Dep't of the Interior***, ___ F. Supp. 3d ___, 2023 WL 2333408 (D. Minn. 2023).

**Tribe's inherent sovereign and federally delegated law-enforcement authority applies to all lands within the exterior boundaries of its reservation, and includes the authority to investigate violations of federal, state, and tribal law.** The district court issued rulings resolving a number of pending motions in the long-running dispute between the Mille Lacs Band of Ojibwe and Mille Lacs County over the extent of the Band's law-enforcement authority. Following a previous ruling that the Band's reservation had not been diminished or disestablished, the court found that the Band's inherent sovereign, as well as federally delegated (through the Tribal Law and Order Act, among other federal laws), law-enforcement authority extended to the entirety of the Mille Lacs Reservation. Reviewing a number of Supreme Court and 8th Circuit decisions addressing tribal criminal jurisdiction, the court found that the nature of this authority included the ability to investigate violations of federal, state, and tribal law, no matter whether the subject was Indian or non-Indian, or whether the alleged crime took place on lands held in trust by the United States for the benefit of the Band and its members, or was owned by non-Indians. The court did acknowledge that where the suspect was non-Indian, the Band's inherent sovereign law-enforcement authority did not include the ability to arrest the suspect, but only to detain and investigate prior to turning the individual over to a jurisdiction with prosecutorial authority. While granting much of the declaratory relief requested by the Band, the court denied the prospective injunctive relief as advisory, given the not-yet-presented scenarios of future violations of the court's rulings. ***Mille Lacs Band of Ojibwe v. County of Mille Lacs, Minn.***, ___ F. Supp. 3d ___, 2023 WL 146834 (D. Minn. 2023).

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## Intellectual Property
### JUDICIAL LAW

**Trade secret: DTSA does not apply to acts outside the United States.** Judge Menendez recently granted defendant Hosokawa Micron BV's (HMBV) motion for summary judgment against plaintiff Bepex International, LLC. Bepex sued Hosokawa alleging claims of trade secret theft under the Defend Trade Secrets Act, 18 U.S.C. §1836 (DTSA), and Minnesota's Uniform Trade Secrets Act, Minn. Stat. §325C (MUTSA) related to the design and manufacture of custom industrial processing equipment. Bepex, a Minnesota limited liability company, alleged that HMBV, a corporation headquartered in the Netherlands, breached a license agreement that permitted HMBV to use Bepex's proprietary and trade secret information to manufacture and sell Bepex products in certain European countries.

HMBV argued Bepex could not establish misappropriation because HMBV did not take acts in furtherance of the alleged misappropriation in the United States. The court found a plaintiff cannot sue for trade secret misappropriation occurring outside the United States unless the defendant is a citizen of the United States, an entity organized under its laws, or if "an act in furtherance of the offense was committed in the United States." 18 U.S.C. §1837. The parties did not dispute that HMBV was not a United States citizen or organized under its laws. Analogizing to federal conspiracy law, the court found the act in furtherance of the misappropriation need not be the act of misappropriation itself but must be connected to the misappropriation. Actions by HMBV that occurred in the United States but were unrelated to the misappropriation were insufficient.

Because all the trade secrets were transferred and accepted as part of a years-long licensing agreement and business partnership, there were no acts in furtherance of the misappropriation within the United States. Royalty payments to United States bank accounts and sales to customers in the United States were also insufficient. Because there was no "act in furtherance of the offense" committed in the United States, the claims under the DTSA and MUTSA failed. Summary judgment on Bepex's misappropriation claims was granted. ***Bepex Int'l, LLC v. Hosokawa Micron BV***, No. 19-cv-2997 (KMM/JFD), 2023 U.S. Dist. LEXIS 66233 (D. Minn. 4/17/2023).

**Trademark: Rejection of fair use as defense to preliminary injunction.** Judge Doty recently granted declaratory judgment defendant ServerLift Corporation's motion for preliminary injunction. ServerLift manufactures and sells products that transport and position data center equipment such as computer servers. Declaratory judgment plaintiffs PHS West, LLC and R on I, LLC, are direct competitors. Plaintiffs filed an action requesting a declaration of noninfringement and cancellation of ServerLift's trademarks. ServerLift moved for a preliminary injunction enjoining use of the phrases "server lift," "server lifter," and any phrase including any form of the word "server" followed immediately by any form of the word "lift." After finding ServerLift established a likelihood of confusion, the court considered plaintiffs' argument that the fair use doctrine applies. Under the fair use doctrine, the accused party has the burden of establishing: (1) use of the registered term or device is in a way other than as a trade or service mark; (2) the term or device is descriptive of the accused party's goods; and (3) the accused party is using the term fairly and in good faith only to describe to users those goods and services. The court found plaintiffs could not meet their burden because the use of terms "server" and "lift" appeared to be used as trademarks and there was an open question as to whether the marks were used in good faith. Accordingly, the court granted ServerLift's motion and enjoined plaintiffs from using "SERVER LIFT, SERVER LIFTER and any other phrase including any form of the word SERVER followed immediately by any form of the word LIFT." ***PHS West, LLC v. ServerLift Corp.***, No. 22-1673 (DSD/TNL), 2023 U.S. Dist. LEXIS 31614 (D. Minn. 2/27/2023).

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## Probate & Trust Law
### JUDICIAL LAW

**Rental option in a will is not unconstitutional.** A will provided one child the option to rent farm property. The decedent's second child moved the district court for a finding that the rental option was void under Article I, Section 15 of the Minnesota Constitution—a portion of the Constitution which finds that leases and grants of agricultural lands in excess of 21 years are void. The district court found that the rental option was not void. The court of appeals affirmed and specifically found that a rental option is neither a grant nor a lease. The court of appeals stated that because an option conveys no interest in land until it is exercised, it is not subject to Section 15 of the Constitution. Further, while the option can be used in an unconstitutional manner, that does not render the rental option itself unconstitutional. ***Brenda Legred v. Brent Legred, et al.***, A22-0543, A22-0545, A22-0547, 2023 WL 3047794 (Minn. Ct. App. 4/24/2023).

**Trustee breach of loyalty: Distinction between breach related to sale versus breach related to amount paid.** The trustee (who was also a beneficiary) of a trust purchased two pieces of real property from the trust. The district court determined that the trustee purchased the properties for less than fair market value and that it was unreasonable for the trustee to do so. The remaining beneficiaries asked the district court to unwind the sale of the two properties. The district court refused and instead ordered the trustee to pay to the trust the difference between the fair market value and the amount she paid for the properties (less additional capital gains tax that the estate would otherwise have had to pay). The remaining beneficiaries appealed. The Minnesota Court of Appeals ruled that when a trustee commits a breach of the duty of loyalty, a district court can take any number of actions to remedy the breach. Because the terms of the trust allowed the trustee to purchase the two pieces of real property, the court of appeals found that unwinding the sales was not an appropriate remedy for the breach. Specifically, the breach related only to the amount paid for the properties and not for the actual sale. Therefore, the court affirmed the district court's opinion. ***In re the Joan C. Ranallo Trust***, A22-0767, 2023 WL 2637379 (Minn. Ct. App. 3/27/2023).

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## Tax Law
### JUDICIAL LAW

**A question of timing: Delivery of check to attorney on December 27 does not entitle cash-method taxpayers' deduction where attorney did not pass along check until the following calendar year.** Petitioners were Oklahoma residents and cash-method taxpayers who entered into an $875,000 settlement with HUD following years of controversy surrounding foreclosures on several nursing homes. The parties eventually agreed to a settlement, and on 12/27/2012, the taxpayers purchased and delivered to their attorney a cashier's check for $875,000. The taxpayers then claimed a business loss deduction of $900,000 (the payment and their legal fees) on their 2012 return. The commissioner issued a notice of deficiency (the commissioner conceded that the legal fees were properly deducted).

The taxpayers argued the $875,000 settlement was deductible as an ordinary and necessary business expenses and further that the timing of the deduction in 2012 was appropriate. The Service countered that the taxpayers got the timing wrong—the settlement was not paid in 2012 since the taxpayer's attorney didn't deliver the check until 2013—and further that the amount would not be deductible in any event, since the payment represented punitive damages. (Section 162(f) provides that "[n]o deduction shall be allowed under subsection (a) for any fine or *similar penalty* paid to a government for the violation of any law." (26 U.S.C.A. §162(f)(West).

Judge Holmes sided principally with the Service, though the court determined that the taxpayers were not liable for any accuracy-related penalty. The taxpayers were not entitled to the deduction, the court reasoned, because cash-method taxpayers may take deductions only the year in which the amount is actually paid (not when liabilities accrue). Although the taxpayers handed the cashier's check to their attorney in 2012, the check was not delivered to the government until 2013. The taxpayers argued, though, that Oklahoma law ought to apply and that under Oklahoma law, a payment is made when there is a *tender* of payment. Their purchase of the cashier›s check, delivery of that check to their attorney, and the attorney's act of offering the check to the Assistant U.S. Attorney was a tender. (The AUSA refused to accept the check in 2012 because the settlement agreement had not been approved.) The court decided it did not need to evaluate the taxpayer's state-law argument around Oklahoma tender law, because the court held that federal law applied and under federal law, tender did not amount to delivery for purposes of deductibility.

Because the court held that the payment was not deductible since it was not paid in 2012, the court did not need to decide the 162(f) question for purposes of the deductibility. However, whether the taxpayers' position on the 162(f) issues was reasonable mattered to the penalty. The court's discussion of whether the taxpayer's settlement was an ordinary and necessary business expense provides useful background and guidance in distinguishing payments that are not deductible because they fall within 162(f) and payments that are deductible because they are "compensatory damages paid to the government." ***Gage v. Comm'r***, T.C.M. (RIA) 2023-047 (T.C. 2023).

**Whistleblower's request for over-$1B nondiscretionary award properly denied.** A whistleblower who assisted the DOJ and IRS in the investigations of two Swiss bankers petitioned for a nondiscretionary award of over a billion dollars.

In February 2011, the IRS announced its second iteration of the Offshore Voluntary Disclosure Initiative (OVDI), which followed the first initiative by the same name and ran for tax years 2003–2010. OVDI incentivized taxpayers to voluntarily disclose noncompliance to avoid criminal prosecution and receive reduced penalties. This second iteration followed the nationally covered case

of the Swiss bankers whose guilty plea was announced in December 2010. The whistleblower alleged that his assistance in their arrests led to the success of the OVDI because the public trial and arrest "spurred U.S. taxpayers to enter into the voluntary disclosure program." *Shands v. Comm'r of Internal Revenue*, No. 13499-16W, 2023 WL 2399912 at 2. As a result, the whistleblower requested an award from the IRS Whistleblower Office of 30% of the proceeds collected as a result of the February OVDI, which totaled over $1 billion.

The commissioner brought a motion to dismiss for lack of jurisdiction. The court has jurisdiction in whistleblower cases when the IRS "proceeds with any administrative or judicial action... based on information brought to [its] attention by a whistleblower." 26 U.S.C.A. §7623(b)(1) (West). In this case, the IRS did not proceed with any action when it denied the whistleblower's request. The court followed the reasoning in *Li v. Commissioner*, which states that a rejection "by nature means the IRS is not *proceeding* with an action." *Li v. Comm'r of Internal Revenue*, 22 F.4th 1014, 1017 (D.C. Cir. 2022). While a rejection and denial are dissimilar, *Li* further "explains that the IRS may issue a denial where the IRS 'did not proceed [with an action] based on the information provided by the whistleblower.'" *Shands* quoting *Li*. Since the IRS did not proceed with any action regarding the whistleblower's information, the court granted the commissioner's motion to dismiss for lack of jurisdiction. ***Shands v. Comm'r of Internal Revenue***, No. 13499-16W, 2023 WL 2399912 at 2 (T.C. 3/8/2023).

**Casualty deduction arguments sinking faster than a leaky boat.** In a deficiency case concerning casualty loss tax deductions, taxpayers' claim for their vacation home and boat damage was disallowed by the commissioner.

In 2017, winter storm Stella swept through Cape May, New Jersey, flooding the city and causing millions in property damage. The taxpayers in this case claimed casualty losses of more than $820,000 for the damage to their vacation home and boat, resulting in a deduction of roughly $740,000.

As the notice of deficiency is presumed to be correct, the taxpayers bore the burden of proving their entitlement to a deduction. *Welch v. Helvering*, 290 U.S. 111, 115 (1933). While the couple testified that they had pictures of the damage to their vacation home and boat, they explained they were deleted in a phone software update and the only pictures presented were of the home during construction and the boat prior to any damage. The court found the taxpayers' testimony to be not credible without evidence of any storm damage to the home. Further, after the storm, the taxpayers failed to submit insurance claims for damages to either the vacation home or the boat. Finally, the court rejected the calculus done for the loss of value for both the home and boat as the taxpayers failed to present sufficient evidence to substantiate the loss of value in each case.

The court concluded that the taxpayers failed to prove Stella caused the damages, failed to substantiate the values of their losses, and failed to file insurance claims on either the home or boat. When making deductions for your boat, as this decision advised, "absence of proof of damages causes [your] case to founder, and absence of proof of valuing that damage causes it to sink altogether." ***Richey v. Comm'r of Internal Revenue***, at *8 T.C.M (RIA) 2023-043 (T.C. 2023).

**Parcels in Woodbury shopping center undervalued.** Tamarack Village Shopping Center challenged the county's valuation of two parcels that are part of the Washington County shopping center. The court found the assessor's estimated market values understated their market values as of the assessment date. The court considered the three traditional approaches to valuation—cost, income, and sales comparison—in determining market value. The court agreed with both appraisers that the income capitalization approach should be afforded predominant weight (approximately 70%). The court also considered the sales comparison approach but determined that the cost approach should be afforded no "genuine weight" in the court's reconciliations. The most robust discussion was around the income capitalization approach, which included analysis of potential gross income, vacancy and credit loss, operating expenses, capitalization rate, and direct capitalization indication. The parties' principal disagreements seemed to involve potential gross income, as well as vacancy and credit loss. The court ordered the assessed values of the two parcels increased in accordance with the court's extensive findings of fact and conclusions of law. ***Tamarack Vill. Shopping Ctr., LP v. Cnty. of Washington***, No. 82-CV-20-2003, 2023 WL 2669686, (Minn. Tax 3/28/2023).

**Hennepin County properties exempt from taxation as institutions of purely public charity.** The Minnesota Constitution exempts from taxation "institutions of purely public charity." Two entities dedicated to providing affordable housing for low- and very-low-income people in Minneapolis challenged their classification as taxable properties. The Minnesota Tax Court agreed with the taxpayers and held that the properties met the requirements for exemption as of the assessment date. Both entities were "institutions of purely public charity" as that term is defined by Minnesota

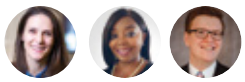
statute and both entities' use of the "propert[ies] is in furtherance of the tax-exempt charitable purpose of the organization[s]." The court provides a brief history of the purely public charity exemption in its memorandum opinion. ***All. Hous. Inc. v. Cnty. of Hennepin***, No. 27-CV-20-7738, 2023 WL 2604570, at *6 (Minn. Tax 3/22/2023).

■ **Property tax: If a qualified farm property is disposed to a non-family member within three years after decedent's death, the estate no longer qualifies for a deduction.** The estate of a deceased taxpayer sought relief from the imposition of additional real estate taxes on the sale of qualified farm property. In 2018, the taxpayer transferred "certain property" to two brothers, reserving a life estate in each property for himself. After the taxpayer's death in 2019, the life estates were automatically transferred to the two brothers as future interests, which, for estate tax purposes, should be included in the taxpayer's estate. In late 2020, the estate filed form M706 listing the properties as qualified farm properties (QFP), which would allow them to qualify for the QFP deduction. In 2021, one of the brothers sold two of the stipulated properties—one to his brother and the other to a third party. Under Minnesota Statutes section 291.03, subdivision 11, taxpayers may still take advantage of a qualified small business and farm property deduction if the sale is a "disposition to a family member." After the sale to the third party, the estate sent an amended Schedule A to substitute the QFP sold to the third party and filed an amended Minnesota estate tax return, "amending the list of assets it elected to have deducted from the Minnesota taxable estate as QFP." The estate also filed a Minnesota Estate Tax Informational and Recapture Return, which stated that "no sales to a non-family member of the property on the Amended M706 had occurred within three years of the date of death" and paid a disputed recapture tax payment. The Department of Revenue (DOR) requested consent to change the tax liability, which the estate disputed. After the estate responded to a second request from the DOR, a tax order was issued. The estate appealed and both the estate and DOR filed cross-motions for summary judgment. Because only a portion of the QFP estate included property sold to a third party, the parties disputed "whether the recapture tax is imposed on the value of the specific QFP disposed, or the entire amount of the QFP exclusion."

Regarding the first issue, the estate argued that the election of qualified farm property is revocable and that an estate can "substitute different QFP for which it did not initially make the election, and that its informational returns concerning disposition of property was accurate based on the substitution of property." The commissioner disagreed, arguing that there are not exceptions: "If qualified farm property is sold to a non-family member before the end of the three-year holding period, then the estate does not retain the benefit of the subtraction...." The court agreed with the commissioner.

Next, the estate argued that "the statute is ambiguous and if the Commissioner may impose a recapture tax, it is limited to the specific QFP" that was sold to the third party. The commissioner argued that the additional estate tax should be imposed on all QFP excluded from the Minnesota taxable estate. The court agreed with the estate, denied the commissioner's motion for summary judgment, and granted the estate's motion for summary judgment. ***Est. of Enestvedt v. Commr. of Revenue***, 9539-R, 2023 WL 2543142 (Minn. Tax 3/16/2023).

■ **Property tax: Once exemption status is granted, the status will likely remain intact unless a material change is present.** Two taxpayer organizations challenged the assessed value and classification of 21 parcels of real property in Minneapolis. The taxpayers' property previously held exempt status, but the designation was removed beginning 1/2/2021. The taxpayers challenged the assessor's revocation of the exempt classification. Each organization is funded through charitable donations, gifts, or government grants for services to the public and services individuals who fall between 30% and 50% of the area median income. Prior to January 2020, 12 of the properties were classified as exempt, but the January 2021 assessment classified the 12 properties as Class 4a, 4b, or 4bb under Minn. Stat. §273.13, subd. 25(a) and the remaining nine properties as Class 4d, qualifying as low-income rental housing under Minn. Stat. §273.13, subd. 25(e). The properties submitted renewal applications in late 2018 to maintain exempt status but the applications were denied by the Minneapolis city assessor. The properties appealed, submitting "sufficient credible evidence to rebut the prima facie validity of the exempt status," and the court deemed the properties exempt. ***All. Hous. Inc. v. County of Hennepin***, 27-CV-20-7738, 2023 WL 2604570 (Minn. Tax 3/22/2023).



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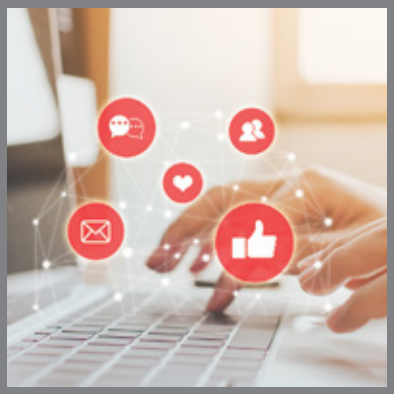

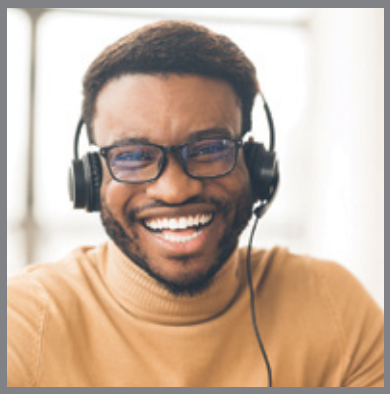

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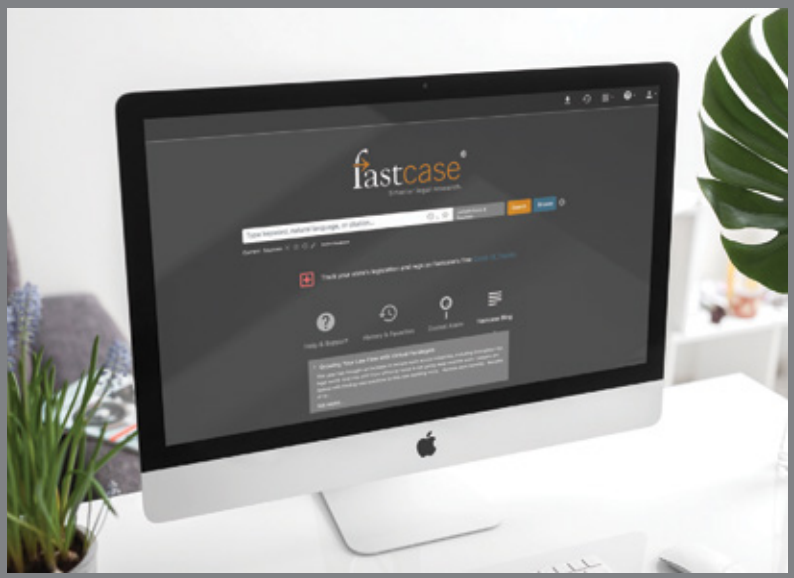


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# PEOPLE + PRACTICE

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Gov. Walz appointed **Sarah Hudleston** and **Matthew Frank** as district court judges in Minnesota's 4th Judicial District. Hudleston will be replacing Hon. M. Jacqueline Regis and Frank will be replacing Hon. Nicole A. Engisch. Hudleston is an assistant U.S. attorney in the violent and major crimes section of the U.S. Attorney's Office for the District of Minnesota. Frank is the managing attorney of the criminal division at the Office of the Minnesota Attorney General.

Gov. Walz appointed **Tori Stewart** as district court judge in Minnesota's 1st Judicial District. She will be chambered in Red Wing in Goodhue County. Stewart is an assistant county attorney in Dakota County and will replace Hon. Kevin F. Mark.


Gov. Walz appointed **John Bowen** and **Jason Steffen** as district court judges in Minnesota's 10th Judicial District. The seats will be chambered in Buffalo in Wright County and Pine City in Pine County. Bowen is the assistant civil division chief in Wright County and will be replacing Hon. Bethany A. Fountain Lindberg. Steffen is an assistant county attorney in Chisago County and will be replacing Hon. Ellen L. Maas.


**Ben Hamborg** and **Allison Plunkett** were elected shareholders at Henson Efron. Hamborg is part of the litigation practice group and Plunkett is part of the business law and real estate practice groups.

**Elizabeth (Lisa) Henry** was appointed to the board of directors of Chestnut Cambronne. Henry practices in the area of civil litigation with a focus on trust and estate litigation and elder law issues.

**Cameron A. Lallier** has joined Bassford Remele as a shareholder. Lallier's practice focuses on representing banks and other financial institutions in matters involving workouts, bankruptcy, and the enforcement of security interests.

**Tommy L. Harshaw** has joined Eckland & Blando. His practice areas include commercial litigation, maritime law, government contracts, and product liability.

**Judah Druck**, a partner at Maslon LLP, will be honored with the 2023 Arthur T. Pfefer Memorial Award from the Twin Cities Cardozo Society at its June 22 annual dinner.

**Bryan Freeman**, a partner at Maslon LLP, has been appointed to serve as co-chair of the firm's insurance coverage group.

**John March** joins Smith Gendler, PA as a shareholder after 31 years at the Hennepin County Attorney's Office. He will join the leadership of the property tax appeal group.


**Courtney Latcham** and **Savannah Welch** have joined Heimerl & Lammers, LLC in the firm's family law practice.

## *In memoriam*

**JEROME J. HOLMAY**
age 79, of St. Paul died on February 19, 2023. He practiced law and provided tax return services in St. Paul for 50 years.

**DOUGLAS A. HEDIN**
of Minneapolis, died on March 20, 2023. He graduated from the University of Pennsylvania Law School in 1968. He served in the Army as part of the Judge Advocate General's Corps in Heidelberg, Germany. He later established an independent firm in Minneapolis specializing in employment and discrimination law. He retired in 2005. He served on the board of directors of the National Employment Lawyers Association, and in his wife's honor, founded the Barbara Steffens Hedin Library at the University of Minnesota Law School.

**DALE JOHN MOE**
age 74, of Deephaven, MN died on March 26, 2023. He graduated from William Mitchell in 1976 and served on the Deephaven City Council, Deephaven Planning Commission, and various other governmental organizations. Moe was active with the state bar association and practiced as a real estate attorney at Eastlund Hutchinson Ltd. for over 35 years until the day he passed.

**KEITH E. SJODIN**
age 72, of Waconia, MN, passed away Monday, April 3, 2023. Sjodin, an accomplished cellist, was accepted into The Julliard School but chose instead to pursue his law degree at the University of Minnesota Law School. Upon finishing law school in 1975, he moved to Waconia, where he joined the law firm that eventually bore his name: Melchert, Hubert and Sjodin.

**MARK ALAN JACOBSON**
died of cancer on April 27, 2023, at the age of 62. He received his JD from the University of Minnesota Law School. He was a lawyer at Arnold & Porter in Washington, D.C., chair of the litigation department at Lindquist & Vennum LLP in Minneapolis, and proudly ended his career at the law firm Cozen O'Connor.


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Terzich & Ort, LLP, Maple Grove, Minnesota, is seeking an associate attorney who is a self-starter and values a team environment to join its Family Law practice. The position is one for direct case management with occasional project-based responsibilities. Qualified applicants will be able to provide a demonstrable knowledge of family court procedure and laws. Experience with direct client contact is not required but preferred. Exclusive Family Law practice is also preferred but not required. Terzich & Ort, LLP, provides competitive salaries, bonus structure, and other benefits, such as medical insurance, 401(k) plan, and cell phone expense reimbursement. Please submit your cover letter and resume by email to Partners Jodi Terzich, Shannon Ort, and Kaitlyn Andren, at jterzich@tolawoffice.com, sort@tolawoffice.com; and kandren@tolawoffice.com. More information about the firm is available at: http://www.TOlawoffice.com

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Kennedy & Graven, Chartered practices as general and special counsel to local governments including cities, townships and school districts. Our main office is at 150 South Fifth Street, Suite 700, Minneapolis, MN 55402. This position focuses on representation of school districts. The work includes a wide variety of legal areas including data privacy, state and federal anti-discrimination laws, special education, labor and employment law, litigation and constitutional law. Work tasks will include working with school district

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ABST Law seeks an experienced lawyer. This position requires a highly-motivated candidate with a minimum of one to three years of experience. Candidates should be detail-oriented, have outstanding oral and written communication skills, have excellent academic credentials and professional recommendations. Send cover letter, resume, professional references and law school transcript to: Jennifer Schoepp, ABST Law, P.O. Box 10247, Fargo, ND 58106-0247; or by email at: jschoepp@abstlaw.net.

**TRIAL ATTORNEY**

Unique opportunity in a flexible, transparent, and supportive environment that upends the traditional law firm model. Boutique litigation defense firm seeking attorney with five to ten years of complex litigation experience; first or second chair trial experience a plus. Position involves immediate courtroom experience including jury trials, direct client contact, management of challenging litigation and oversight of firm personnel. Remote-friendly role with a competitive salary and benefits. If you are self-motivated and looking to further your practice as part of a team where everyone has a key role in delivering results, we'd love to hear from you. Send cover letter and resume to: info@sl-pllc.com. No calls please.

**STAFF ATTORNEY**

Central Minnesota Legal Services seeks full-time attorney for its Minneapolis office. Housing law, some work in other poverty law. Licensed in MN preferred. Post-law school poverty law, housing law, or clinical experience preferred. Spanish or Somali language a plus. Salary $60,000-$72,258 D.O.E. Excellent benefits. Hybrid work policy. Resume, cvr letter, references and writing sample to: Hiring Committee: info@centralmnlegal.org. EOE.

**INSURANCE COVERAGE ATTORNEY**

Meagher + Geer is searching for an Associate Attorney with three to five years of insurance coverage experience for the Minneapolis or Chicago office. Remote or hybrid work option available. Applicants should have excellent academic credentials, strong writing skills, persuasive speaking and analytical skills. Wisconsin bar license strongly preferred for applicants based in either office. Applicants are asked to submit a cover letter, resume, and two writing samples to: recruitment@meagher.com. We are committed to diversity within the legal profession and strongly encourage diverse applicants to apply for positions. Established in Minneapolis in 1929, Meagher + Geer has earned a reputation as one of the leading litigation defense and insurance coverage firms in the Midwest. We serve clients nationwide and are based in Minneapolis, with additional offices in Phoenix, Los Angeles, Chicago, Dallas and Bismarck. Our 80+ attorneys, licensed in more than 17 states, represent businesses of all sizes, public entities, non-profit organizations, and individuals in the areas of civil and commercial litigation defense with special emphasis on insurance, products liability, complex mass tort-toxic tort, professional liability, health care, employment practices, construction, and catastrophic loss. We also provide advice and representation in matters involving corporate law, corporate transactions, wills, estates and trusts, and real estate transactions. Visit our website for more information about Meagher + Geer, one of the leading civil litigation and insurance coverage firms in the country.

**PATENT ATTORNEY**

Mueting Raasch Group (MRG), an Intellectual Property law firm, has an opening for a Patent Attorney specializing in electrical engineering, computer engineering, software, computer science, or a related engineering field. The Patent Attorney will assist clients with intellectual property management and protection including preparation and prosecution of high technology patent applications. Responsibilities: Provides legal advice and representation to individuals and businesses seeking patent prosecution. Evaluates viability of patent requests; completes and files patent applications. Maintains knowledge of scientific, technological, and legal developments including completion of continuing legal education. Performs other related duties as assigned. Requirements/Abilities: Superior verbal and written communication skills. Thorough understanding of technology and scientific developments. Thorough understanding of intellectual property law. Excellent interpersonal and customer service skills. Excellent organizational skills and attention to detail. Excellent time management skills with a proven ability to meet deadlines. Strong research, analytical, and problem-solving skills. Ability to prioritize tasks and to delegate them when appropriate. Ability to function well in a high paced, and at times, stress environment. Proficient with Microsoft Office 365 or related software. Education and Experience: Bachelor's degree in electrical engineering, computer engineering, software, computer science, or a related engineering field. Juris doctor or equivalent from an accredited law school, required. (Or expected completion). Active license to practice law and/or membership in State Bar or pending. Passage of the Bar exam will be condition of employment. Registration to practice before the USPTO. Mueting Raasch Group offers a competitive salary and a comprehensive benefits package including medical, dental, vision, life, disability, and 401k/profit sharing retirement package. For immediate consideration, please forward your resume, along with a cover letter, to: jobs@mrgiplaw.com. Please include your salary expectations. Mueting Raasch Group is an equal opportunity employer.

**STAFF ATTORNEY — FTE**

Anishinabe Legal Services is looking to hire a highly motivated attorney, or 2023 law school graduate, to provide civil legal assistance and court representation to program clients before area Tribal Courts, State Courts, and Administrative Forums. This attorney will be housed out of our main administrative office on the Leech Lake Reservation in Cass Lake, Minnesota. Primary duties will include handling a wide variety of civil matters before State and Tribal Courts.
COMPENSATION: $62,000/yr.+ D.O.E. Generous benefit package includes individual and family health and dental insurance, paid time off, and life insurance. To Apply: Please email a cover letter, resume, and three references to Litigation Director Valerie Field, at: vfield@alslegal.org. Applications will be accepted until the position is filled.

**TAX PROFESSIONAL**

Moss & Barnett, A Professional Association, seeks a licensed attorney or certified public accountant with 7-15 years of experience in general and transactional tax work.

Desired candidates will have experience in mergers, acquisitions and divestitures; partnerships, LLC and joint ventures; and Federal and state income, sales and use, and employment tax matters. Responsibilities will include designing transaction structures for desired tax impact, reviewing tax-related transaction terms and representations, overseeing tax due diligence, providing guidance related to multistate tax issues, communicating key tax matters to stakeholders and serving as an office resource on various tax matters. Open to applicants seeking less than 40 hours per week schedule. Salary commensurate with experience and qualifications. Interested candidates should email a cover letter, resume and law school transcript (if licensed attorney) or undergrad transcript (if certified public accountant) to: Carin Del Fiacco, HR Director, carin.delfiacco@lawmoss.com . Moss & Barnett is an affirmative action/EEO employer.

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**ASSOCIATE ATTORNEY**

Rochester MN firm with immediate opening for an associate attorney to assist a growing solo practice. Opportunity for growth into partnership. Seeking a MN licensed attorney to assist in current practice areas (criminal defense, personal injury, and child protection) as well as grow other areas of practice. Salary and benefits commensurate on experience and qualifications. Great opportunity to gain courtroom experience as well as work hands on with an experienced trial attorney. Please send cover letter and resume to: Mike@schatzlawmn.com.

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**STAFF ATTORNEY**

Central Minnesota Legal Services seeks to hire full-time staff attorney in its Minneapolis office. Responsibilities: The attorney will focus primarily on family law with expansion into another practice area within CMLS priorities. This position will involve litigation. Background: The mission of Central Minnesota Legal Services is to increase access to justice by providing high quality legal services to individuals experiencing poverty, challenging inequities, and empowering community members to participate in our civil legal system. CMLS is a three-office program providing free legal representation to low-income clients in 21 counties in central Minnesota. The Minneapolis office serves Anoka and Hennepin Counties. Minneapolis attorneys may spend some time at a new satellite office in Anoka, usually one day per week. CMLS is funded primarily by federal and state grants. CMLS also has other funding sources to provide civil legal services to specific low-income populations in its service area. CMLS enjoys a good rapport with, and strong support from, the organized bar and the local judiciary. Qualifications: Demonstrated commitment and sensitivity to the problems of marginalized communities and individuals experiencing poverty. Prior experience with family law preferred. Poverty law litigation experience or law school clinical experience a plus. Candidates should be licensed to practice law in Minnesota or be a candidate for Bar admission. Attorneys admitted to practice in another state with 18 months' employment in a poverty law office can obtain temporary pre-exam admission. Valid driver's license and reliable vehicle required. Ability to speak a second language, particularly Spanish or Somali, is a plus. Demonstrated commitment to furthering principles of diversity, equity, and inclusion and ability to work effectively with people from different backgrounds are essential. We strongly encourage candidates of all identities, experiences, and communities to apply. We welcome information about how your experience can contribute to serving our diverse client community. Must have strong communication skills, ability to work constructively in a team setting, exhibit good judgment, ability to learn quickly and work independently, and be able to effectively handle contested hearings. Salary: $60,000 -$72,258 D.O.E. pursuant to the CMLS salary schedule. Excellent benefits. Remote work available in a hybrid weekly schedule. Starting Date: Negotiable. Application: Send cover letter, resume, references, and writing sample to: Hiring Committee, Central Minnesota Legal Services, 111 North Fifth Street, Suite 402, Minneapolis, MN 55403-1604. Email applications: info@centralmnlegal.org. No phone calls please. Central Minnesota Legal Services is an Equal Opportunity Employer.

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**ASSOCIATE ATTORNEY**

Associate attorney with one to three years of experience, particularly as it relates to litigation, is sought by Coleman & Erickson, LLC (www.jwcolaw.com), a local boutique construction law firm with litigation and general business law practices. Qualified candidates will possess a background in construction, architecture, engineering or insurance. Pluses are: a technical background and a strongly evidenced interest in technically complex issues and having served as a law clerk. This is a unique opportunity to interact with a group of senior, experienced construction law attorneys. Interested applicants should mail or email: (1) a resume; (2) a writing sample; and (3) a cover letter expressing why you are interested in this opportunity and your long-term career goals to: Denise Baune (dmb@jwcolaw.com). Salary commensurate with experience.

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**SENIOR ASSOCIATE — CORPORATE**

Messerli Kramer, a top-20 law firm in Minnesota, is looking for an experienced transactional attorney with corporate experience to join our established and growing practice. This individual will manage a range of corporate transactions including mergers and acquisitions, corporate restructuring, succession planning and general corporate advice and counsel. The successful candidate will have extensive experience in all aspects of corporate transactions and the ability to lead and manage projects and negotiate deal terms. Requirements: three to eight years of experience as a licensed attorney. Experience with a wide range of corporate transactions, including direct experience in the past several years with an emphasis on M&A and business structuring. Partial book of portable business. We offer a comprehensive salary/benefits package and the opportunity to work with commensurate professionals who are experts in their field. We are looking for excellent attorneys who are self-starters, entrepreneurial and detail oriented. To apply, please send your resume and cover letter to: recruiting@messerlikramer.com.

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**ASSOCIATE ATTORNEY**

Miller & Stevens Law is a general practice firm seeking an attorney with experience in your preferred area of law, or the Firm has a caseload if you are seeking to learn new areas. Residing in or a close proximity to Forest Lake is required. Please submit your resume and cover letter describing your experience and reason for applying to: Amber@millerstevens.com.

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**IN-HOUSE LEGAL COUNSEL**

Federated is seeking an attorney to provide technical and legal advice, sales solutions, training, and individual recommendations to sales representatives, new clients, and network attorneys in order to increase advanced life sales in the Life Company. Responsibilities: Provides information and advises sales representatives on advanced life sales solutions, including legal/tax implications and comparison of strengths/weaknesses for available options in the areas of non-qualified annuities, business continuation and estate planning, non-qualified employee benefits, insurance design arrangements, and premium payment arrangements. Researches and advises others on federal tax laws and regulations that apply to individual life, annuity, retirement, disability, and estate and business planning products. Produces advanced life bulletins and brochures. Recommends sales methods to assist sales representatives in increasing sales. Participates in the development, maintenance, and training of the advanced life training curriculum, materials and manuals. Provides review of work relating to the fed-

eral anti-money laundering, OFAC compliance, and product suitability programs as needed. Investigates and resolves complaints as assigned. This position is located in our Owatonna, MN office location. To apply visit our website: https://careers-federatedinsurance.icims.com/jobs/4268/in-house-legal-counsel/job

**ASSISTANT COUNTY ATTORNEY-REAL ESTATE**

Assistant County Attorney with five or more years of experience, particularly as it relates to real estate, is sought by Ramsey County. This position provides legal advice and representation to the County and its departments on a wide range of real estate, affordable housing, economic development, and transit matters. Interested applicants should mail or email: (1) a resume; (2) a writing sample; and (3) a cover letter expressing why you are interested in this opportunity and your long-term career goals to: Yvonne Schneider (yvonne.schneider@co.ramsey.mn.us). Salary commensurate with experience.

**LABOR & EMPLOYMENT ATTORNEY**

Maslon is seeking a lateral attorney with significant counseling experience (five plus years). Our lawyers represent employers in virtually all aspects of their employee and labor relations. Qualified candidates must have significant counseling experience with superior knowledge of the law, a strong commitment to client service, the ability to work efficiently to help our clients problem solve, the ability to build rapport with clients, fellow attorneys and staff, communication and drafting skills that inspire the confidence of our clients, a willingness to generate publications and speak in public to help our clients stay on top of workplace developments. Depending on a candidate's experience, the candidate will be considered for an associate, counsel or partner level position. The firm is willing to consider small groups for this position. For more information, visit us at: www.maslon.com. To apply, please submit a resume and cover letter to Angie Roell, Legal Talent Manager, at: angie.roell@maslon.com.

## FOR SALE

**LAW FIRM FOR SALE**

Solo practice, 25-year established law firm for sale in Buffalo, MN. Emphasis in estate planning, probate, real estate and business law. Elder law and tax law would be additional excellent fits. Turnkey practice with fully furnished office, client files and existing clientele. Continuous client stream with no advertising needed. Office with financial advisory and insurance practices with which we share client referrals, and firm is networked with several other financial advisors and tax accountants who refer. Minnetonka office (short 30-mile commute) available as-needed for metro-area client meetings. Contact Wanda Weber, wanda@weberlawfirm.net, 763-360-6571 (leave detailed message).

**LAW PRACTICE AVAILABLE**

Long-term attorney's General Practice available in Lake City, Minnesota, the "Birthplace of Waterskiing." Attorney in business since 1966. Building available to purchase or lease. Large, equipped, five-room office with two rental apartments above. Stored files and index in full basement area. Contact Gartner Law Office: 1-651-345-3308. Email: phil.gartner@embarqmail.com.

## OFFICE SPACE

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Flexible office space available in Edina. If you are looking for an affordable private. co-working or virtual office in a stylish, locally owned Executive Suites with full amenities, we'd love to share our space. Learn more at: www.collaborativeallianceinc.com or email: ron@ousky.com

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**BOARD OF DIRECTORS**

If you are looking for an opportunity to serve on the board of directors of a growing $1 billion credit union committed to an impactful mission and vision we would like to hear from you. MCCU is a not-for-profit financial institution serving 50,000 members in Minnesota and Wisconsin. As a credit union, each member is an owner and our strategic direction is driven by a future-focused board. MCCU values inclusivity and encourages all applicants to express their interest. Email us at contracts@membersccu.org or call (218) 625-8618 to learn more. Mission: To make our communities stronger, our employees happier, and our world better. Reimbursement is provided to volunteers.

**ANALYST I OR II (WORKING TITLE: "DEPUTY DIRECTOR")**

Legislative Commission on Pensions and Retirement. An excellent opportunity is available in the Minnesota legislature to serve as an Analyst I or II for the Legislative Commission on Pensions and Retirement, a bipartisan commission of fourteen legislators. The Analyst performs research, analysis, and bill drafting to assist the Commission in developing legislation on retirement and pension issues. The position reports to the Executive Director. The posting and position description for this unclassified, non-partisan, full-time position are available at: https://www.lcc.leg.mn/jobs or call 651-296-2750 to request a copy. The recruitment salary ranges for the positions are as follows: Analyst I: $73,000 to $88,000; Analyst II: $80,500 to $100,000. Starting salary and level will be commensurate with experience. The State offers an excellent benefits package including low cost medical and dental insurance, employer paid life insurance, pre-tax spending accounts, pension plan and 457(b) plan with a match, vacation and sick leave and paid holidays each year. The position will remain open until filled. To be considered, please submit a cover letter, resume, and a brief writing example via email to: lcpr@lcpr.mn.gov or mail to Legislative Commission on Pensions and Retirement, 600 State Office Building, 100 Rev. Dr. Martin Luther King, Jr. Blvd., St. Paul, MN 55155.

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# Recognizing Minnesota's Pro Bono Lawyers

The Minnesota State Bar Association is proud to recognize the **685 North Star Lawyers** who, in 2022, certified that they provided at least **50 hours of pro bono** legal services annually to low-income people at no fee and without expectation of a fee.

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The MSBA is committed to reducing barriers to civil justice for low-income Minnesotans by connecting members with opportunities to serve legal services clients. Through presentations, trainings, recognition, and articles, the MSBA promotes the value and importance of pro bono work, as expressed in Rule 6.1 of the Rules of Professional Conduct. The MSBA also supports **ProJusticeMN.org**, a collaboration with Legal Services State Support and Pro Bono Net designed to provide a central online resource for pro bono lawyers.

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