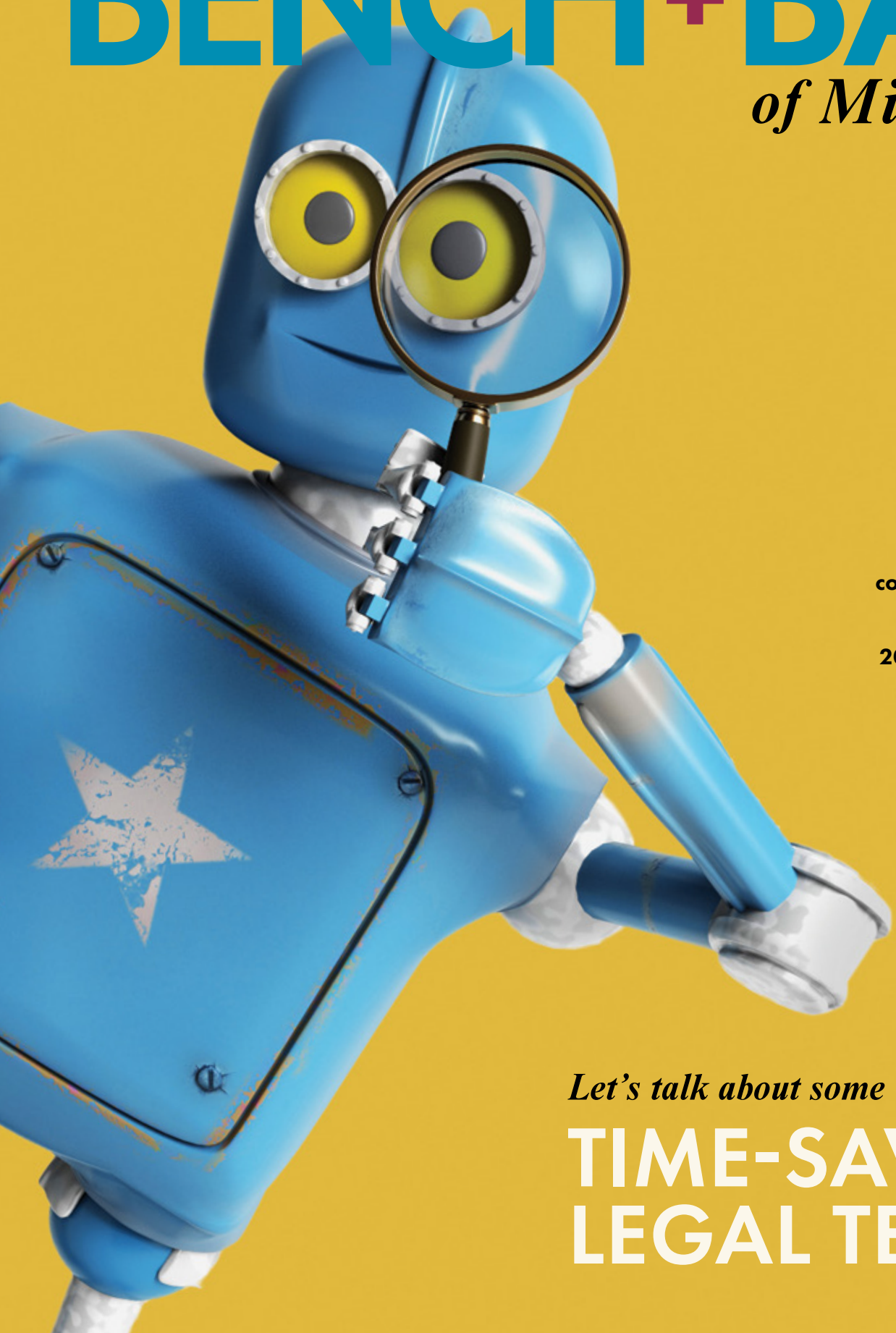
MINNESOTA STATE BAR ASSOCIATION

JANUARY/FEBRUARY 2022

BENCH+BAR of Minnesota



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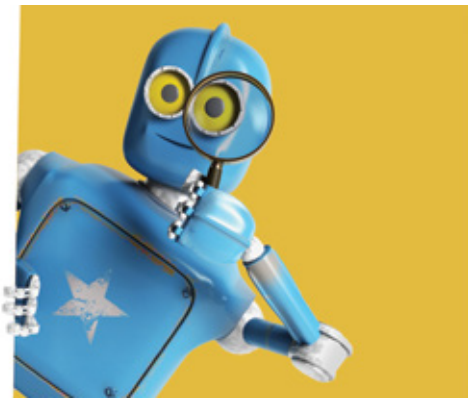
columns



features

bonus

WHAT WE'RE WORKING ON

BY JENNIFER THOMPSON

JENNIFER THOMPSON is a founding partner of the Edina construction law firm Thompson Tarasek Lee-O'Halloran PLLC. She has also served on the Minnesota Lawyers Mutual Insurance Company board of directors since 2019.

Every year, in continued service to its mission to promote the highest standards of excellence and inclusion within the legal profession, provide valued resources to its members, and improve the law and the equal administration of justice for all, the Minnesota State Bar Association advances numerous policy positions through multiple avenues. As we cross the midway point in the 2021-2022 bar year, here's an update on the MSBA's policy work.

Petitions in progress

■ ***Attorney licensure petition:*** This petition was filed in October and the MSBA continues to await action by the Minnesota Supreme Court. While the MSBA still firmly believes that the approach outlined in its petition is the preferable approach with respect to the scope of and process for studying attorney licensure in Minnesota, we also continue to work cooperatively with the Board of Law Examiners (BLE) in its bar exam study. The BLE is establishing a working group to study various topics and report back with any recommendations. MSBA-appointed Bar Admissions Advisory Council members will serve on the working group. For more information on the issue of attorney licensure, see Leanne Fuith's excellent article in the December issue of Bench & Bar.

■ ***Petition to amend Rule 7 of the Minnesota Rules of Professional Conduct:*** The MSBA filed this petition, which concerns attorney advertising, in June 2021. At the same time, the Office of Lawyers Professional Responsibility and the Lawyers Professional Responsibility Board filed an almost identical petition. The two petitions differ only in how they approach language pertaining to "specialist" or "specialty status." A comment period was open until December 20, and as this article went to press the MSBA had requested time to present its position at a public hearing on January 26.

■ ***Parental leave petition:*** This petition is being finalized as I write and is expected to be filed by the end of January.

Comments on petitions filed by other groups

The Office of Lawyer Registration (OLR) filed a petition in September to amend the Rules of Attorney Registration. The OLR is requesting that the income threshold for reduced fees be raised from $25,000 to $50,000. The petition also requests that certain information lawyers provide as part of the registration process no longer be made available to the public. In addition, the petition proposes some changes to the demographic questions on the attorney renewal form. The MSBA filed comments in support of the petition.

Amicus curiae

This past summer, the Minnesota Supreme Court granted the MSBA's request to participate as *amici curiae* with the MN Defense Lawyers Association and the Minnesota Association for Justice in the *Energy Policy Advocates v. Ellison* appeal. The *amici curiae* brief, filed in September, asks the Court to affirm that the common-interest doctrine is recognized in Minnesota, and to articulate a general rule that will provide additional guidance to Minnesota attorneys seeking to rely on the common-interest doctrine to advance client interests.

Access to justice

■ ***Fundraising:*** The Minnesota State Bar Foundation approved a request from the MSBA to use $75,000 of its reserves and provide a matching grant of up to $25,000 that will be distributed to income-based civil legal services providers in the state.

■ ***Civil Justice Subcommittee of the Committee for Equality & Justice:*** The MSBA and its appointees to the Civil Justice Subcommittee continue to work collaboratively with representatives of the Minnesota Judicial Branch on multiple projects to increase the number of low-income and disadvantaged people receiving civil legal assistance and reduce barriers to access in Minnesota state courts.

Legislative lobbying priorities

In December, the MSBA Council voted to approve the following lobbying priorities for the 2022 legislative session:

- a bill that addresses seven previously established MSBA positions relating to certain technical and other real property matters;
- a bill consisting of two previously established tax-related MSBA positions affecting single member LLCs;
- a bill establishing a civil right to appointed counsel in public housing eviction actions alleging breach of lease; and
- supporting proposals to ensure adequate funding for the courts, public defenders, and civil legal services.

While much policy work has been accomplished already this bar year, there is significant work yet to come. Watch for further updates on these and other policy matters in MSBA's weekly Legal News Digest. ▲

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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.

CELEBRATE PRO BONO

Don't miss our UNBUNDLED SERVICES CLE

Unbundled (aka limited scope) legal services are a growing part of access to justice work in our communities. Many of our fellow Minnesotans don't qualify for help from legal aid yet cannot afford full representation at the market rate. Unbundled allows people to get the particular kinds of help they most need at prices they can afford. (An attorney providing unbundled legal services might, for example, provide advice, draft or review paperwork, assist with negotiations, attend a mediation, or attend a single hearing in the course of their work.) On February 15, the MSBA is hosting a CLE to help expand the offering of unbundled services in our state.

In 2018, the MSBA, HCBA, and RCBA joined together to spearhead the Minnesota Unbundled Law Project to provide potential clients with easily accessible referrals to attorneys interested in providing unbundled representation through a central website, ***www.mnunbundled.org***. Potential clients select the relevant area of law and county in their search parameters. Attorneys receive referrals from the project website and agree to report back on the outcome of the referrals.

The February 15 session satisfies the training requirement to be eligible to participate on the attorney roster. In addition to the training, participants will be provided with a handbook containing helpful guidance for performing this type of work in an efficient and ethical manner. Topics covered will include ethics and insurance, developing an effective business model, and practical tips on how to build an efficient, lucrative practice that includes limited scope services. Register at ***www.mnbar.org/cle-events.*** ▲

2022 Time's Up is here

The 2022 Time's Up Manual (formal title: A Manual of the Statutes of Limitations in Minnesota for Civil Litigators) was recently released by the MSBA Civil Litigation Section. The manual identifies and organizes time limits imposed for civil claims in the state. It covers time limitations in the Minnesota Statutes, Minnesota Rules of Civil Procedure, General Rules of Practice in the District Courts, and the Minnesota Rules of Civil Appellate Procedure. Civil Litigation Section members get a free copy with their membership and can access the digital download by visiting *https://bit.ly/2022TIMESUP*. Non-section members can purchase a copy at *https://bit.ly/Buy2022TIMESUP*.

The section greatly appreciates the work of Elizabeth Fors of Robins Kaplan LLP in updating the manual. The section also extends its deep appreciation to the Hon. Marilyn Justman Kaman, who originated and coordinated the project from beginning to completion. Finally, the section recognizes the significant work of the law firm of Robins Kaplan LLP, and specifically Jan Conlin and Stacie Oberts, without whom the project would not have been possible. ▲

North Star LAWYER

CERTIFICATION OPEN

Did you complete 50 hours or more of pro bono work in 2021? Would you like to be recognized for your work and show your commitment to pro bono in our communities? If so, the MSBA's North Star Lawyer program is open for certification.

The North Star Lawyer program celebrates members who provide 50 hours or more of legal services as defined in Rule 6.1(a), (b)(1) and (b)(2) of the Rules of Professional Conduct. Beyond that, we celebrate the impact those hours represent and the improved access to justice that our members strive to provide. 2021 was another exceptional year for legal needs in our state, and we are proud of the work our membership has done pro bono.

MSBA members can visit ***www.mnbar.org/northstar*** to certify that they met the aspirational goal of providing 50 hours of pro bono service in 2021. Members who report their voluntary service will be recognized as North Star Lawyers and included on the annual roster insert published in the May/June issue of Bench & Bar as well as through other bar recognition opportunities. ▲

MAY 12-14

ABA Equal Justice Conference coming to Minnesota

The ABA's Equal Justice Conference (EJC) is being held in Minnesota this year for the first time in over a decade. The EJC, which will convene in Minneapolis May 12-14, is the nation's premier conference for legal services and pro bono issues. It brings together professionals from the private bar, legal services, and the courts to learn from and encourage each other in their work to increase access to justice for low-income individuals and families.

The MSBA has been supporting the efforts of a local host committee to ensure that as many Minnesota legal services staff as possible can attend the conference in our home state. To that end, we are seeking donations to sponsor the attendance of legal services attorneys and staff at the conference. If you are interested in making a donation to support this cause, please reach out to MSBA Access to Justice Director Katy Drahos (***kdrahos@mnbars.org***). If you are interested in attending the conference, learning more about it, or seeing materials from previous years, please visit the ABA's website: at ***www.americanbar.org/groups/probono_public_service/ejc.*** ▲

Pro bono spotlight
EMMA DENNY

Emma Denny has been volunteering with the Tubman Safety Project for the past six years, representing low-income victims of domestic violence in order for protection (OFP) cases. We recently asked her a few questions about the time she spends volunteering.

Why is pro bono important to you?

Volunteer work has always been important to me, but as an attorney I feel an extra obligation to use my JD to give back. Obviously, only a licensed attorney can represent these clients in OFP hearings, so knowing that I'm able to use my specialized skills and expertise to give back is extra rewarding and fulfilling.

How do you make time for pro bono?

I try to take at least two Tubman pro bono cases per year, so even when I'm busy, I make the time. I know from experience that I will never magically have a ton of extra time to volunteer, so instead I just do it and fit it in, even when I have a full caseload and am busy with my regular practice. Although we are all busy professionals, make the time to do pro bono work. You have the chance to positively impact the lives of so many clients, so make it a priority.

What have you learned from your pro bono practice?

Domestic violence can affect anyone. When someone is being abused, it impacts every aspect of their life—emotionally, physically, financially, at their job, as a parent. Getting an order for protection (OFP) gives them the confidence and closure to begin to pick up the pieces and rebuild their lives, not just for themselves, but for their loved ones. It's amazing the positive mental and emotional impact that piece of paper can have. ▲

Emma is a managing partner in the Minneapolis office of HKM Employment Attorneys, where she represents employees in legal disputes against their employers and former employers. She also currently serves as the chair of the MSBA Labor & Employment Law Council. To join Emma as a volunteer with Tubman, you can email the Safety Project at safetyproject@tubman.org or visit www.tubman.org/get-help/legal-services/the-safety-project.html.

PUBLIC DISCIPLINE *in 2021*

BY SUSAN 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.

Public discipline plays an important role in lawyer regulation. Its purpose is not to punish the involved attorney. The goal of public discipline is to protect the public, the legal profession, and the judicial system, and to deter further misconduct by the disciplined attorney and other attorneys. An attorney's public discipline record—including all cases cited in this article—is available by searching the attorney's name on our website (*www.lprb.mncourts.gov*) using the "Lawyer Search" button.

Each year I take this opportunity to provide an overview of public discipline imposed by the Minnesota Supreme Court in the prior year. Like many of you, I find it hard to credit that an entire year has passed since I last wrote a similar article. So much has happened, and yet time has lost so much meaning in the pandemic. While 2021 continued to cause havoc in our lives, the discipline system—like many of you—soldiered on, resulting in 28 individuals receiving public discipline.

Disbarments

The most serious discipline—disbarment—is reserved for the most serious misconduct. Four attorneys were disbarred in 2021, compared to three disbarments in 2020.

Barry Blomquist, Jr., Howard Kleyman, Nicholas Schutz, and William Sutor were disbarred in 2021. Like last year, these disbarments were notable primarily because the conduct in each went beyond the "normal" intentional misappropriation of client funds that typically leads to disbarment.

Mr. Blomquist (admitted to practice in 1980) was disbarred for misappropriating and converting trust assets for his personal use in violation of his fiduciary duties as trustee (he loaned himself $800,000 from the trust of which he was a trustee to allegedly invest in five start-up companies he claimed to have formed), refusing to comply with court orders, and failing to cooperate with the Director's investigation. Interestingly, while Mr. Blomquist was found to have failed to cooperate with the Director's investigation, he did vigorously dispute the claims asserted against him throughout the disciplinary process. Mr. Blomquist also argued that the discipline proceedings were moot because he wanted to resign his license. The Court rejected this argument because lawyers may not resign their licenses while discipline proceedings are pending. Finally, Mr. Blomquist's case is notable because when asked at oral argument by the Court if he acknowledged *any* misconduct, he replied, "None whatsoever."

Howard Kleyman was admitted to practice law in Minnesota in 1971. Fifty years later, almost to the month, he was disbarred for serious misconduct that included misappropriating client funds, knowingly misusing his client trust account to further fraudulent schemes, knowingly making false statements to the Director, and failing to cooperate during the disciplinary investigation. The scheme involved in Mr. Kleyman's case was his use of his trust account as an escrow account, taking in what were ultimately determined to be fraudulent checks, and disbursing the funds to the payee before they cleared the originating bank. This is a common scheme that lawyers have unwittingly gotten involved in by failing to conduct appropriate diligence on client transactions. Mr. Kleyman, however, was a willing participant because he continued to engage in the same conduct with the same fraudulent principals despite being advised of the scheme and long criminal history background of certain principals of the payor, and because he lied to the Director about whether he had stopped the misconduct. While the Director's Office was investigating the fraudulent scheme, we uncovered "normal" misappropriation in Mr. Kleyman's bankruptcy practice, where he routinely misappropriated filing fees from clients to pay other business expenses. One of the most interesting aspects of this case is that the complainant was a Japanese citizen who was defrauded, figured out how to complain to us, and originally thought the scheme was legitimate because his funds would be in an American lawyer's trust account. After Mr. Kleyman was disbarred, the Securities and Exchange Commission filed a civil complaint against Mr. Kleyman for his role in acting as a "paymaster" in lending schemes to defraud investors, the same transactions involved in his disbarment.

Nicholas Schutz, admitted to practice in 2005, was disbarred for practicing law while on a disciplinary suspension and engaging in dishonest conduct. This misconduct is unfortunately not particularly notable. But the background leading to the disbarment is. Mr. Schutz was originally suspended in 2014 (less than 10 years after his admission)

> SEVENTEEN LAWYERS WERE SUSPENDED IN 2021, AS COMPARED TO 24 SUSPENSIONS IN 2020. MOST OF THE SUSPENSIONS IN 2021 WERE LENGTHY, AND MOST ALSO INCLUDED A REQUIREMENT THAT THE ATTORNEY GO THROUGH A RENEWED FITNESS INVESTIGATION CALLED A REINSTATEMENT HEARING.

for failing to maintain books and records for his trust account. This is not that unusual. What was unusual was that because he would not provide or recreate the required books and records (and we could only see a portion of the activity in the account from the bank statements we subpoenaed), he stipulated to a 90-day suspension, where his reinstatement was conditioned on a reinstatement hearing and provision of the books and records that would allow the Director to perform an audit that could not be performed in 2014.

In 2018 Mr. Schutz petitioned for reinstatement, providing the previously requested trust account books and records, and unsurprisingly, the Director discovered intentional misappropriation of client funds. At the time, I was most troubled by the fact that Mr. Schutz only acknowledged the misappropriation when directly confronted with his misconduct. At that point, I considered disbarment due to the lack of candor upon initial petitioning for reinstatement (he had to know what we were going to find, right?), but did not believe the Court's case law (absent express dishonesty) supported such a position, particularly in light of the fact that Mr. Schutz had been out of practice for five years at this point. Mr. Schutz stipulated to an additional three-year suspension and the Court approved that disposition. Proving the axiom that you should trust your initial instincts, we soon saw Mr. Schutz again when we received a complaint regarding the immigration work he was doing. Non-lawyers can do a lot of immigration-adjacent work; they just need to be clear they are not acting as attorneys and should not cross the line into practicing law. Mr. Schutz failed to respect that line, and he ultimately stipulated to disbarment after we made it clear that no other option was on the table for him.

Finally, William Sutor (admitted to practice in 2010) was disbarred following his indictment and guilty plea to felony conspiracy to commit health care fraud. Mr. Sutor's conviction related to his personal injury practice and involved the use of "runners" to direct patients to chiropractors and clients to the firm by paying referral fees to those runners disguised as legitimate expenses. As a felony, this was undisputedly a serious crime. Mr. Sutor did not agree that disbarment was the appropriate disposition, however. Mr. Sutor argued that because he was remorseful, no individual client was harmed, and he fully cooperated with law enforcement and the Director's Office, a suspension would be more appropriate than disbarment. The referee disagreed, finding that Mr. Sutor lied to both law enforcement and the Director's Office, and continued to minimize his unlawful activity at the referee hearing—in part by providing false testimony at the hearing. Mr. Sutor stipulated to disbarment following the referee's recommendation for disbarment.

Suspensions

Seventeen lawyers were suspended in 2021, as compared to 24 suspensions in 2020. Most of the suspensions in 2021 were lengthy, and most also included a requirement that the attorney go through a renewed fitness investigation called a reinstatement hearing, which also requires court approval before the attorney may be reinstated to the practice of law. This too is unusual; in a typical year we will have more cases with suspensions of less than 90 days. (Suspensions of more than 90 days trigger the reinstatement hearing requirement unless it's waived by the Court.) In 2021, the Court also imposed its first 10-day suspension (usually the minimum suspension is 30 days) on condition that the lawyer permanently resign his license following the suspension. In combination, and under the unique facts presented, the Court agreed with the referee that the unusual arrangement adequately served the purposes of discipline.

Public reprimands

Seven attorneys received public reprimands in 2021 (three reprimands-only, four reprimands and probation), up from six in 2020. A public reprimand is the least severe public sanction the Court generally imposes. One of the most common reasons for public reprimands is failure to maintain trust account books and records, leading to negligent misappropriation of client funds. However, once again, 2021 proved to be unusual in that only one of the seven attorneys received a reprimand for books and records violations resulting in negligent misappropriation of client funds. The remaining attorneys received public discipline for client neglect, failure of communication, and, in one case, lack of diligence and competence that allowed a statute of limitations to run.

Finally, one attorney received a public reprimand for engaging in the practice of law while on restricted status for several years. This is of course a cautionary tale for us all—timely pay your annual registration fee and make sure you timely report your CLE compliance. The Minnesota Lawyer Registration Office and the CLE Board do a lot to remind lawyers of their non-compliance, but at the end of the day, it is the responsibility of each of us to ensure pro-active compliance, and that starts with always having your updated mailing and email addresses on file with the Lawyer Registration Office! As a gift to yourself in the new year, please double check that your information with the Lawyer Registration Office (*www.lro.mn.gov*) is current and that you understand any upcoming CLE reporting deadlines and have an up-to-date email address in OASIS (*www.cle.mn.gov*).

Conclusion

The OLPR maintains on its website (*lprb.mncourts.gov*) a list of disbarred and currently suspended attorneys. You can also check the public disciplinary history of any Minnesota attorney by using the "Lawyer Search" function on the first page of the OLPR website. Fortunately, very few of the more than 25,000 active lawyers in Minnesota have disciplinary records.

As they say, "there but for the grace of God go I." May these public discipline cases remind you of the importance of maintaining an ethical practice, and may they also motivate you to take care of yourself, so that you are in the best possible position to handle our very challenging jobs. Call if you need assistance—651-296-3952. ▲

THE LOG4J VULNERABILITY IS ROCKING THE CYBERSECURITY WORLD. *Here's why.*

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.

A recently discovered vulnerability is being described by some observers as the worst of the last decade, if not the worst ever. Startlingly, its presence has already been widely documented, even appearing in the very popular game Minecraft. As described in a December article in The Guardian, "The flaw, dubbed 'Log4Shell'... was uncovered in an open-source logging tool, Log4j, that is ubiquitous in cloud servers and enterprise software used across the industry and the government. Unless it is fixed, it grants criminals, spies and programming novices alike, easy access to internal networks where they can loot valuable data, plant malware, erase crucial information and much more."[1] Simply put, this vulnerability gives cyberattackers the opportunity to access almost anything they want.

Cybersecurity experts have been quick to acknowledge the immense danger this vulnerability poses for almost all organizations. There are many types of attacks that can be facilitated via this route, such as the installation of malware and ransomware attacks, making it an easy-to-use tool for cybercriminals. A recent article in the Washington Post described the scariness of this situation quite well: Imagine that a common lock, used by millions of people, is found to have a problem rendering it useless. It may be easy to replace the locks in a single building, but imagine trying to locate and fix every affected door.[2] Software vulnerabilities are often easy to overlook—and zero-day attacks are especially tricky since the people most educated on their usage and characteristics are often the hackers themselves. Patching will be a critical remediation step, but so too will be putting in the time and effort required to locate impacted devices, sites, applications, and services.

The staggering number of applications and systems that are vulnerable to this type of attack includes everything from online games to cloud services. Protecting servers and quickly applying available patches will help in counteracting the threat as efficiently as possible—but given the sheer amount of software in use that could be affected, it is likely that this will be an ongoing cause for concern. Companies such as Microsoft and IBM continue to release updates and patches in the hopes of mitigation and lessening the dependance on Log4j.[3] Unfortunately, just as engineers and technology experts are attempting to remediate the problem, hackers are trying to bypass defenses and continue to make use of the vulnerability for as long as possible. As in previous largescale attacks, it is very possible that hackers have been installing "back doors" to be exploited later, which will further hamper mitigation efforts and ensure that the impact of this vulnerability is felt for years to come.

Organizations should do what they can to patch their systems, stay aware of the nature of the threat, and promote best cybersecurity practices to counteract potential risks. As part of remediation efforts, security experts are also suggesting that organizations follow up with any third-party vendors to assess their individual risk levels and degrees of vulnerability. This attack demonstrates the impact of third-party risk and the value of establishing a cybersecurity action plan that extends beyond your own firm or organization. It is important to understand how any third party that has access to your data and assets is responding to, and securing themselves against, the vulnerability. This step will also provide a clear picture of how cybersecurity is prioritized within these companies.

It is undeniable that this discovery presents a serious threat to any organization, firm, corporation, or agency. The potential number of affected servers, applications, websites, devices, and systems is astounding. While any attack may be the "worst ever" for your organization, and investing in proactive measures is essential on any day of the week, the emergence of this vulnerability may pose new challenges. Like any zero-day threat, vulnerabilities may exist at any given time for which we are unprepared. These threats may materialize at the most inopportune moments and may seem tailored to compromise what is weakest in our organization's structure. Despite the fact this particular vulnerability was only recently discovered, it was a problem for years. The nature of our always-changing technological landscape may prevent us from having truly "perfect" security, but we can learn to incorporate the unexpected into our understanding of cybersecurity and our approach to security culture. ▲

Notes

[1] *https://www.theguardian.com/technology/2021/dec/10/software-flaw-most-critical-vulnerability-log-4-shell*

[2] *https://www.washingtonpost.com/technology/2021/12/20/log4j-hack-vulnerability-java/*

[3] *https://www.ibm.com/blogs/psirt/an-update-on-the-apache-log4j-cve-2021-44228-vulnerability/*

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TO ANSWER THE PHONE OR NOT TO ANSWER THE PHONE?

Notes on clients and boundaries

BY ELIZABETH DROTNING HARTWELL ehartwell@bestlaw.com

ELIZABETH DROTNING HARTWELL is a partner at Best & Flanagan LLP, where she practices family law.

Much has been written about the importance of attorneys imposing and maintaining professional boundaries—and the need to do so has been thrown into even sharper relief since the covid-19 pandemic forced many attorneys into work-from-home situations that dramatically blurred the lines between personal and professional time. As a family law practitioner, I am constantly assessing my practice and habits to ensure that my boundaries are functioning well. The old adage "put on your own oxygen mask before assisting others" may sound trite, but it's truer than ever during a time when nearly everyone's reserves feel depleted.

We are in a helping profession, but we cannot help our clients climb out of the ditch when we're down in it with them. It is imperative that we maintain our own well-being, and aside from the ubiquitous encouragement to practice "self-care," boundaries are the surest way I know to do that. And you don't need to go it alone; there are many excellent resources available that can assist attorneys in building boundaries that work for them (Minnesota Lawyers Concerned for Lawyers and a wellspring of CLE seminars among them).

> I BELIEVE THAT OUR ROLE AS COUNSELOR COMPELS US TO MODEL GOOD BEHAVIOR FOR OUR CLIENTS. NOT EVERY EMAIL (INDEED, VERY FEW EMAILS I CAN THINK OF) NEEDS A RESPONSE WITHIN 60 SECONDS.

This article isn't about those resources. Although maintaining professional boundaries is crucial for our own well-being, I'd like to offer an additional reason you should do so which I hope is also compelling: Professional boundaries are also a vital component in serving *our clients* well. Certainly, we are better able to help others when we are healthy ourselves, and our clients benefit when we are firing on all cylinders. But I believe it's much more than that. Maintaining boundaries with clients helps them develop and retain reasonable expectations, problem-solving skills, and self-sufficiency. When we impose and maintain healthy boundaries with clients, we help them with the very problems for which they hired us.

Let me explain. Every reader of this article is probably familiar with the ways technology has hindered attorney mental health and well-being in recent years. Gone are the days of pink "while you were out" message slips or mailing someone a letter. Email and smart phones have immeasurably improved our lives in some ways but have also created a monster: Instant responses are not only expected but often demanded. Tone of voice is often lost when texting; people reply to emails immediately and sometimes without thinking. I've done it, and my clients have definitely done it. I've trained myself over nearly 15 years of family law practice to never reply to an angry email without *at least* taking a walk around my office first (or, these days, my backyard). Do my clients, often going through a painful divorce or learning the ropes of co-parenting with no such habitual practices to draw from, have the same restraint? Of course—sometimes. Sometimes not.

I believe that our role as counselor compels us to model good behavior for our clients. Not every email (indeed, very few emails I can think of) needs a response within 60 seconds. When clients see us taking a beat and sending a deliberate, measured reply instead of an emotionally charged one, they may be encouraged to do the same.

Moreover, I fervently believe that setting reasonable expectations for client contact both defuses client anxiety and helps them develop stronger coping skills (which, in turn, further diminish client anxiety). If my client knows me to be a reliably prompt communicator who always responds to phone calls and emails within 24 business hours, then my client knows they will get a response to a Saturday email on Monday. Without an attorney to swoop in and fix it on Saturday, the client then has an opportunity to exercise their own judgment instead of relying on mine. Come Monday, we can debrief together and discuss what might be tried differently the next time.

I tested this theory with a totally unscientific survey of a handful of colleagues. Most attorneys and mental health professionals I talked with agreed that it's best to have a policy regarding response times and communications outside business hours,

and to ensure clients actually know what the policy is. Exceptions to such policies are also made: when there is an emergency, when law enforcement is involved, when self-harm is a factor, when an attorney has had to be out of the office during business hours and doesn't want clients to receive less attention because of it. Some colleagues give their personal cell phone numbers to some clients but not all, preferring to first discern who is, as one put it, a "responsible communicator." After all, definitions of what constitutes an emergency vary dramatically. (The "boy who cried wolf" story is a perennial for a reason.)

While the flexibility of working from home is in many ways wonderful (and often necessary), it may have created the unintentional consequence of unreasonable expectations regarding response times as well. If I have been helping my children with online learning all day (which, hopefully, will be firmly a thing of the past by the time this goes to print), I may choose to save work for evening hours. But then, responding within 30 minutes to a client's email sent in the evening may unintentionally create the expectation that this will always be the case. Many of us employ email delay features for this reason, drafting email replies in the evening but not actually sending them until morning.

Whether we are available to respond or not, there may be strategic reasons not to do so immediately. Family law attorneys receive daily inquiries from clients: *My co-parent was an hour late to a parenting time exchange—what should I do? My child doesn't want to go with their other parent—what should I do? My co-parent said blah blah blah—what should I say?* I believe we actually do clients a disservice in responding to such questions too soon. Rather, we encourage and foster the growth of our clients' problem-solving and anxiety reduction skills when we *don't* respond right away. If we respond too readily, we may inhibit clients from coming up with their own solutions. If we wait, clients often come up with solutions on their own.

It's a delicate dance, of course; sometimes it's truly an emergency, and sometimes a situation may escalate to a level that was avoidable had you simply talked that client off the proverbial ledge. But we attorneys tend to be too hard on ourselves about such things, and to assign ourselves too much blame for problems we usually had no part in creating. This happened to me almost all of the time when I was a new attorney; I would go home each night nearly frantic that I hadn't been able to fix a misunderstanding between co-parents or a parenting time exchange gone wrong. As I've grown in my practice, I've come to realize I'm not nearly that powerful. But my clients are: They can be the masters of their own fate, and it's an honor to help them do it (not to do it for them).

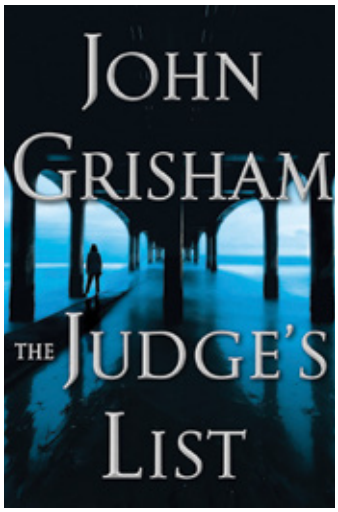
While writing this article, I confided to a colleague that I was a little nervous my chosen topic would convey that I can't be bothered to help my clients and won't answer their phone calls. Let me be clear: The title of this article is tongue-in-cheek. Good lawyers answer phone calls and emails. Good lawyers want their clients to feel cared for and listened to. Good lawyers want to help solve problems, not ignore them. However—and hear me out—good lawyers help their clients most when that help is constructive and impactful, not enabling or infantilizing. That requires us to be thoughtful about the time and manner in which we're trying to help. And, as my admittedly small sample of some of the most talented professionals in Minnesota demonstrated, I'm not alone in my convictions.

The advice in this piece isn't universally applicable; a criminal defense lawyer can't wait to respond to a Friday call from jail until sometime on Monday. In many practice areas, though—and family law is one—a lot of things can wait. Our clients hired us to guide them through a legal process so that they can return to their autonomous, if altered, lives. Truly, the ultimate goal is for the client not to need us anymore. If I'm available 24/7 to my client, how can my client ever get to that point?

Rule 1.4 of the Minnesota Rules of Professional Conduct, which addresses communication with clients, requires an attorney to promptly comply with reasonable requests for information. It's my resolute belief that "prompt" and "instantaneous" are not the same thing. And though it may come as a surprise, there's actually no rule of professional conduct requiring us to work on weekends. I encourage all my colleagues—particularly younger attorneys who have an opportunity to get this right earlier than I did—to develop, and keep, boundaries that allow you not only to preserve your own well-being, but to grow into a wise and trusted counselor. ▲

JUDICIAL DISCRETION
the John Grisham way

REVIEW BY TOM VASALY ✉ *morino7@msn.com*



The Judge's List: A Novel
by John Grisham
(Doubleday)
368 pp., $29.95

John Grisham, master of the legal thriller, reached an accommodation with his critics long ago. They stopped reviewing his books, and he stopped caring.[1] His goal is to entertain, and he has greatly succeeded. Grisham holds the record for number of books that have topped the NY Times bestseller list.[2] Many of his books have been made into well-received movies, including*The Firm*, *The Rainmaker*, *A Time to Kill*, and *The Pelican Brief*.[3]

The lead character in *The Judge's List* is Lacy Stoltz, the director of the fictional Florida Board on Judicial Conduct. In real life, I held a similar position in Minnesota, so I was very interested. Lacy, nearing 40, works in an office with low morale and inadequate funding where most lawyers stay for only a couple of years and don't bother returning from lunch on Fridays.

In contrast, in my decades of practice in the public sector, I have never worked in an office where the lawyers could do their jobs working only eight hours a day, let alone less than that. There was always plenty to do, and the work was interesting and important.

The Judge's List is based on the relationship between Lacy and Jeri Crosby, the daughter of a law school professor who was murdered over 20 years earlier. The police have stopped investigating, but Jeri, based on obsessive research, has discovered a half-dozen other victims of the same killer, and she is convinced that she has found the killer as well—a Florida judge. Jeri is terrified of the judge but nevertheless driven in her quest for justice. She pesters Lacy to open an investigation. That's not the kind of work a Judicial Board does, but Lacy gives in.

This is not one of those detective stories where the private dick starts out on a two-bit case and eventually stumbles onto a big conspiracy involving the rich and powerful. Here, Jeri deposits the conspiracy on Lacy's doorstep. Although the fictional Florida Judicial Board does not inform a judge of an investigation for 45 days, the judge finds out who is on his tail. The tension builds as Lacy and Jeri get closer and closer to a brilliant, methodical killer obsessed with eliminating anyone who has ever crossed him. The book is hard to put down.

Unlike the fictional Florida board, the Minnesota board promptly notifies a judge when it opens an investigation. A judge would certainly find it disconcerting to learn that he or she was secretly being investigated. The Minnesota board has the authority to delay notifying the judge of an investigation, but this never occurred during my tenure.[4] Of course, none of the complaints in Minnesota were against psychopathic serial killers, as far as I know.

Like all Grisham's thrillers, *The Judge's List* is very readable and doesn't demand too much from the reader. The novel alludes to serious issues such as race but doesn't explore them. Jeri is African American, but that has little impact on the story or how Jeri is presented. If you are looking for a different Grisham book to try out first, there are several that feature more prominently in the Grisham canon. One of the best is *The Appeal*, which deals intelligently with the problematic necessity of campaign contributions in judicial elections. In *The Appeal*, a corporation uses big money and smear tactics to sway a judicial election in order to obtain a favorable judge for the corporation's case on appeal.[5]

I thoroughly enjoyed *The Judge's List*, and I recommend it to anyone in need of a break from the troubles of the world. ▲

TOM VASALY is the former executive secretary of the Minnesota Board on Judicial Standards.

[1] *https://www.nytimes.com/2021/10/17/books/john-grisham-judges-list.html?searchResultPosition=1.*

[2] *https://wordery.com/best-selling-books-by-year?awc=9106_1638471511_8e42ede3163354e579068769023474de&utm_source=AWIN&utm_medium=affiliate&utm_campaign=259915.*

[3] I exclude Grisham's little-known *Skipping Christmas* (2001). The movie version, *Christmas with the Kranks*, is deemed by Rotten Tomatoes the second worst Christmas movie of all time. *https://editorial.rottentomatoes.com/guide/worst-christmas-movies/.*

[4] In Minnesota, when a meritorious complaint is received, Board staff reviews it, performs limited factual and legal research if necessary (e.g., a review of public case records), and presents an analysis to the Board. If the Board decides that the complaint should be investigated, the judge is promptly notified, unless the Board decides to "defer notice for specific reasons." Minn. R. Board Jud. Stand. 6(d)(3). Although the Minnesota Board never delayed notifying the judge during my tenure, delayed notifications did occur several times before then. The Minnesota Judicial Board can also withhold the name of the complainant from a judge under investigation but again, this never occurred during my tenure. Minn. R. Board Jud. Stand. 6(d)(2)(iv).

[5] As it happens, shortly after the publication of *The Appeal*, the U.S. Supreme Court issued *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), in which the Court thwarted a West Virginia coal baron's use of similar tactics. Another Grisham book is *The Whistler*, in which he first introduces us to Lacy. There is no need to read *The Whistler* before the *The Judge's List.* I plan on reading *The Whistler* next.

Institute to Transform Child Protection celebrates legislative wins in Minnesota

Joanna Woolman (right), from Mitchell Hamline's Institute to Transform Child Protection, speaks with Minnesota Gov. Tim Walz at an event in October to celebrate several new laws aimed at helping children and families.

BY TOM WEBER

After years of work, Mitchell Hamline's Institute to Transform Child Protection was part of a celebration with Governor Tim Walz and Lt. Governor Peggy Flanagan to mark several legislative wins for Minnesota families. The institute worked specifically on two proposals that are now law.

One measure requires lawyers to be appointed in child welfare cases for parents who can't afford one. The other removes critical barriers that had been keeping family members from serving as foster parents in cases where courts removed children from their parents' care.

"These two measures are critical to keeping more families together," said Joanna Woolman, executive director of the Institute to Transform Child Protection.

"We've been working on the parent representation bill for more than 10 years and the foster care licensing bill for four years. Several Mitchell Hamline students were involved in these efforts over the past decade."

Through a policy-focused clinic the institute offers, students work with Mitchell Hamline faculty and clinic leaders to help achieve the institute's legislative priorities. Student work includes researching, drafting language for possible legislation, and even testifying before lawmakers.

Earlier this spring, during her final semester of law school, Adrienne Baker testified before lawmakers for the right-to-counsel legislation. "I learned so much working with different committees to better understand the intricacies of both law and policy," noted Baker, who has since graduated. "The clinic showed me there are many ways I can use my law degree to be an advocate, and I'm very grateful for the experience."

Former Minnesota Supreme Court Justice Helen Meyer '83 has worked with the institute for more than a decade on the parent representation bill. In 2008, a change from a state-run to a county-run system left many parents without attorneys at their initial hearings and throughout cases. Meyer led a committee to explore how to improve Minnesota's system for providing attorneys to parents in child welfare cases. Minnesota was one of just seven states without such a guarantee. More than 6,000 children were removed from their parents' care for at least one day in 2020, according to the institute.

"The institute was established, in part, to develop data and urge policy change on this issue," said Meyer. "The bottom line is this reform will help children spend less time in foster care, with long-term stability being realized."

The institute hadn't been working on the second proposal that passed for as long, but it was no less important, added Woolman. "Minnesota had a lot of unnecessary criminal barriers in our foster care licensing statutes that kept relatives from being able to become foster parents to children where parental rights were terminated.

"I think this change will have a huge impact and be important for our BIPOC communities."

The new law removes several low-level and nonviolent offenses from the list of crimes that would disqualify a person from becoming a foster parent, which requires a license in Minnesota.

Natalie Netzel '15, the institute's education and advocacy director, told the Minnesota Reformer the changes will "make it significantly easier for kids to be placed with family members, if they need to be removed from their parents."

LET'S TALK ABOUT SOME TIME-SAVING LEGAL TECH

The pandemic brought a lot of lawyers into the world of legal technology. Here's a set of recommendations for integrating more tech and freeing up more time in '22.

BY TODD C. SCOTT
tscott@mlmins.com

TIME, TIME, TIME, SEE WHAT'S BECOME OF ME, WHILE I LOOKED AROUND FOR MY POSSIBILITIES.

– PAUL SIMON, HAZY SHADE OF WINTER

There's no time like the start of a new year to think about whether you could be getting things done more quickly by embracing some of the latest tools now emerging for lawyers. Attorneys are entering an era in which the tools and processes we use for the practice of law are changing in fundamental ways—hastened by social distancing, the desire to work from remote locations, and the emergence of hybrid law offices where you and your colleagues may be working from farther away.

As an attorney in private practice, if you did not already have up-to-date technology systems when covid struck in 2020, chances are you began pursuing them hastily. Topping the list of systems attorneys embraced in 2020:

- cloud-based, remote audio-visual systems for communicating in real time with legal colleagues and clients;
- cloud-based document production tools for creating and sharing electronic copies of documents—including electronic signature tools for obtaining remote, electronic signatures; and
- cloud-based data storage tools and mobile hardware tools for the creation of a safe virtual law office environment.

For legal professionals, the great leap forward into advanced cloud-based systems was long overdue. In 2020, the state of law office technology advanced about 10 years in less than 10 months. And not a moment too soon, since research indicates that consumers have embraced technology much more since the pandemic began. Consider the following data from "COVID-19's Impact on the Legal Industry," a recent study published by Themis Solutions, the makers of Clio:

- 58 percent of consumers said that technology is more important to them now than before the coronavirus pandemic.
- 50 percent of consumers say they are more comfortable with technology now than before the coronavirus pandemic.
- 52 percent of consumers say they use more types of technology tools now than before the coronavirus pandemic.

Lawyers responding to the Clio survey also reported that they plan to continue using technology after the pandemic in several ways:

- storing firm data in the cloud (96 percent);
- supporting electronic documents and e-signatures (95 percent);
- accepting electronic payments (96 percent);
- using practice management software (96 percent); and
- meeting clients through videoconferencing (83 percent).

The lasting changes to the legal profession brought about by the pandemic may also influence changes aimed at improving efficiency and accessibility in the judiciary. Any added efficiencies to the judiciary may impact the widespread concern for access to justice and the overall affordability of legal services.

So how can lawyers take advantage of the solutions that are changing the practice of law to create more time savings in their day-to-day practice? The time-saving solutions identified here focus on the core systems attorneys and their staff have relied on for decades to provide legal services in a timely fashion. Perhaps the greatest opportunity for time-saving tech solutions in your law practice lies in the long-standing methods and processes used to produce, send, store, and save documents in the firm. Client expectations about communication have changed along with their growing reliance on tech, providing lawyers an opportunity to rethink how their lobby should look if their clients will only be visiting them online.

Here are some key possibilities to consider in thinking about time-saving technology for your practice.

NO MORE INTERMEDIARIES: CLIENT PORTALS FOR QUICK, SECURE COLLABORATION

In an era when attorneys have advanced their personal and professional technology by leaps and bounds, perhaps the most significant technology for improving firm efficiency is just now emerging. Client portals may be the most significant advancement of our time in how attorneys and clients collaborate to conduct business, and the attorney universe has only recently begun to embrace it.

A client portal allows clients to have access to their personal and secure file space on your firm website. Chances are you are already using client portals when you log into your health care provider and gain access to information that is personal to you, such as test results. Client portals are also valuable for communicating privately with clients to share large documents. CPAs and tax preparers routinely use client portals to share packages of forms prepared exclusively for their clients, and so should attorneys.

There are many good reasons lawyers should be embracing portals. Clients enjoy having one secure, accessible-from-anywhere spot where they can find all the documents related to their legal matter online. Client portals bring peace of mind for both attorneys and clients when sharing documents and communicating with each other.

Top-level security is perhaps the most significant reason why lawyers should now be embracing client portals. Improved client service is another. Portal technology maintains client documents on encrypted web servers, where only persons with login credentials can gain access to the information. Additionally, both the attorney and client can be notified by email if information has been added or exchanged in the portal, so you will always be alerted when your client responds to your most recent request to review documents.

Don't worry if all of this sounds too futuristic—client portals are actually quite easy to use. It involves the same technology that you may already be using when you save a legal document on a cloud-based platform. There are a few different ways client portals can become available to you, and you may already own the tools to make it work for your firm.

Web developer portals

The advanced portals you may already be accustomed to using—through online banking, health care providers, and CPAs—are typically designed and integrated into a firm's website by a custom website developer. The cost for hiring a developer to do the job can range from $5,000 to $50,000; the cost factors include the features, design of the website, and efficiency of the developer. Don't let the price of this portal option scare you off, especially if you are already working with a website developer who makes changes to the website used by your firm. Many website developers have templates and packages that can quickly and easily add a client login portal to the site you already have at a reasonable price. If your business plan calls for big changes in the way your firm and your clients collaborate during their legal matter, hiring a web developer to tailor a client portal to your firm's needs is your best bet.

Client portal software

Out-of-the-box client portal software services are an easy and affordable option if your small firm wants a simplified and secure way to exchange documents and information with clients. Added features to read an invoice or pay their bill are available through integration with other products you may already be using such as QuickBooks Online, DocuSign, Hubdoc, or any software tools from the Microsoft Office Suite. Popular out-of-the-box client portals include Suitedash, Huddle, and SmartVault. These tools are all cloud-based subscription services and range between $19 and $99 per month.

CASE MANAGEMENT PORTALS

If you are already using a cloud-based case management solution for managing client information, documents, and calendaring tools, chances are you already have a cloud-based portal at your fingertips. Some of the most popular cloud-based case management tools (like Clio, PracticePanther, MyCase, CosmoLex, Smokeball, ProLaw, and Rocket Matter) include client portals. Clio is the most widely used case management tool for lawyers in North America and its Clio for Clients (formerly known as Clio Connect) comes with each Clio subscription. The features allow Clio license holders to share and exchange client documents and information in a secure web environment. Clio for Co-Counsel allows attorneys to easily share matter information from your legal practice management software (notes, communications, contact information, and more) with co-counsel.

NO MORE PAPER. EMBRACE THE CLOUD.

"A LAWYER'S TIME AND ADVICE, AND HIS OR HER DIGITIZED FORM TEMPLATES, ARE THEIR STOCK IN TRADE."

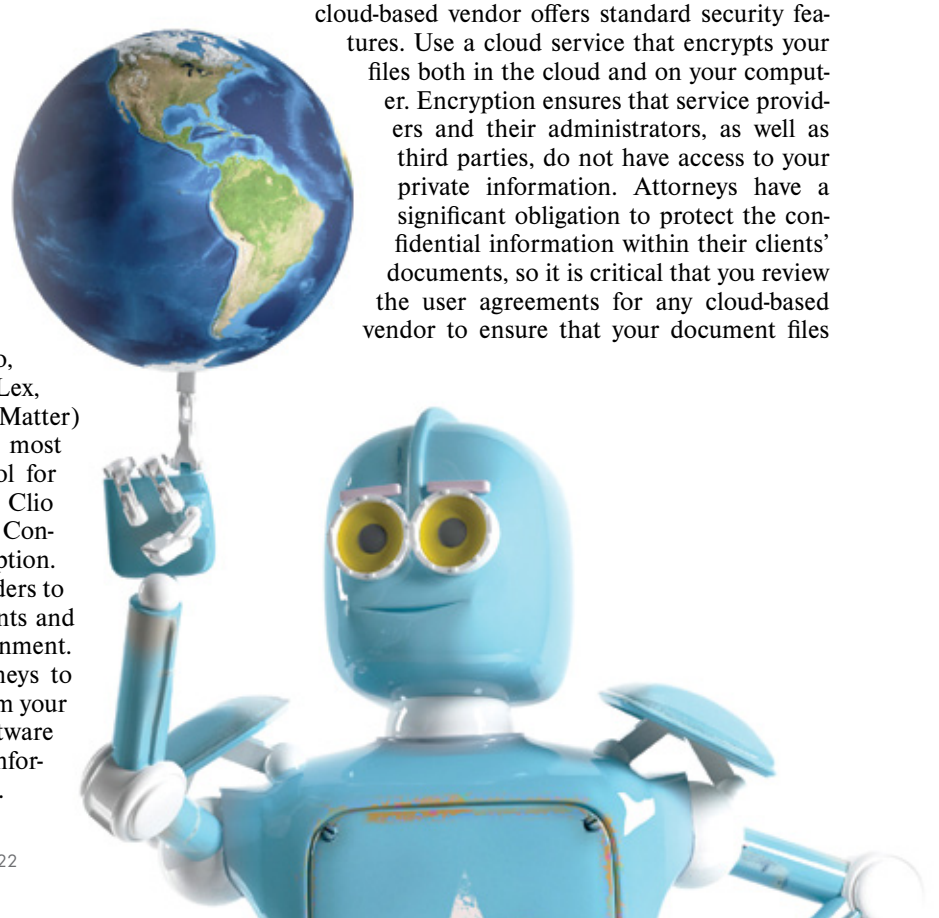
—ABRAHAM LINCOLN

Lincoln may not actually have mentioned digitized form templates and cloud-based file storage in his advice about good lawyering, but if he were around now he surely would agree that digitizing documents and storing them in the cloud is no longer aspirational, but necessary for efficiently saving, storing, securing, and transferring client data.

There are three goals for creating, storing, and transferring your digital documents and templates that will take you into the stratosphere for efficient and time-saving lawyering. It's likely that you have already accomplished the first goal, which is to save and store your digital documents in a safe, cloud-based online environment supported by a reputable vender. Two more tasks—converting frequently used documents to digital form templates and mastering the tools that allow you to obtain electronic signatures—are the next steps in your ascent toward digital document paradise.

Document cloud storage

Cloud services for storing legal documents are the safest way to protect your client's information from theft, loss, or accidental destruction, so long as your cloud-based vendor offers standard security features. Use a cloud service that encrypts your files both in the cloud and on your computer. Encryption ensures that service providers and their administrators, as well as third parties, do not have access to your private information. Attorneys have a significant obligation to protect the confidential information within their clients' documents, so it is critical that you review the user agreements for any cloud-based vendor to ensure that your document files



will always remain encrypted, and that your firm retains exclusive ownership of the information uploaded to the file storage service.

Microsoft OneDrive raised industry standards for delivering and storing documents safely in the cloud by introducing standard encryption while the document is en route and at rest. Safe document storage also became much more affordable when OneDrive added a free terabyte of cloud-based document storage for purchasers of the Microsoft Office Suite products or any popular Microsoft document production tool, such as Microsoft's Surface Pro.

Digital form templates

Your most frequently used documents can be converted to digital form templates using several different popular document production tools. Microsoft has always offered the ability to add merge fields to any document created with MS Word—but digital form templates are best if they are created within the tool that will be merging data with the form. For Clio users, that means investing in Clio Grow.

Clio Grow is a tool available in the Clio Suite that adds to the data-merging features and functionality of Clio. Clio Grow helps you manage your client data for client relationship management, client intake procedures, workflow automation, and reporting and data insights. It is also a tremendous document automation and e-signature tool.

There are two types of custom form templates that can be created using Clio Grow: text templates for creating forms in Word documents and SMS text formats, or PDF templates. A text editor template allows you to build a custom template simply by filling in the basic form content through typing or pasting the form information that will appear in all versions of the document. After that, you replace the specific contact and matter details in the text, and any other variables within the document, using the appropriate merge fields available in your form builder tool—such as client name, address, etc. Once the template is saved, it becomes a permanent part of your document template library and can be used for creating form documents that are finalized in MS Word or SMS text.

A PDF template editor creates form with fields in Clio Grow by uploading a PDF document and overlaying certain fields directly onto the document. PDF document templates are most commonly used for standardized legal documents like government filing forms. When putting these templates together, you will be asked to select which type of data fields you need to build the custom field template. After that, building the custom template involves dragging and dropping the custom fields, including signature fields, into the document. Once you choose to save the custom document template created from a PDF file, it will be added to your list of custom document templates for later use in any matter.

Adobe Acrobat Pro is still one of the best tools for creating fillable PDF form templates. The Adobe tool will create form templates from practically any file format, including .docx, .xlsx, .txt, and of course, .pdf. Adobe Acrobat Pro creates form templates in a manner similar to Clio Grow: by uploading your document, selecting form fields from a list on the toolbar, and clicking on the document where you want to add the field. You can drag the form field box to make it any size to fit your form document.

e-Signature tools

A new solution for finalizing contracts has been making its way through state government agencies throughout the U.S., adding warp-like speed to the notoriously glacial contract approval process historically found in state agencies. Beginning with a few receptive outside vendors, these agencies introduced e-signatures using e-Sign Live, a software application making inroads in the government approval process. The result has been a greatly shortened contract approval process in state agencies throughout the U.S. (including Vermont, which reported a government approval process reduced by at least 75 percent). In some cases, contracts are finalized within two business days.

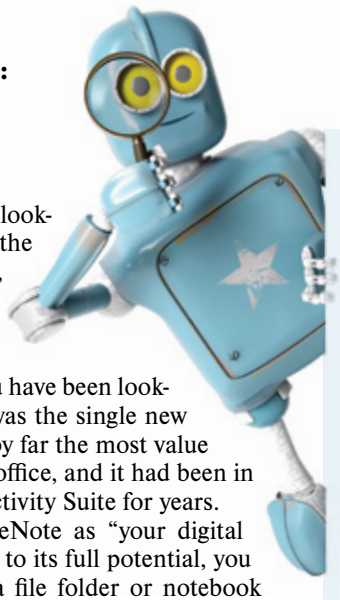
There has never been a better time for attorneys to make e-signature tools a regular part of their document-production process. When the great migration of attorneys working from home began in spring 2020, there were few processes that required a lawyer to intervene manually when engaged in document production. You don't need envelopes, postage meters, or high-end laser jet printers if the documents you produce from a home office are simply going to be sent to colleagues or clients through an electronic delivery process. But that smooth transition to a home office grinds to a sudden halt if the document requires the signatures of others who are likely working from their own home offices throughout Gopher Country.

IN 2020, THE STATE OF LAW OFFICE TECHNOLOGY ADVANCED ABOUT 10 YEARS IN LESS THAN 10 MONTHS. AND NOT A MOMENT TOO SOON, SINCE RESEARCH INDICATES THAT CONSUMERS HAVE EMBRACED TECHNOLOGY MUCH MORE SINCE THE PANDEMIC BEGAN.

Adobe Sign is one of the best e-signature tools and it's as easy to use as sending an email. The process starts by opening Adobe Sign, entering the client's email address, and selecting the document that you would like to send. If the document does not already have a signature field in it, you simply drag and drop fields into the document to be signed at the places that require a signature. Then save it and send it. The signer gets an email that quickly walks them through the steps needed to complete and sign the form. And signing is as simple as a finger on a phone or a tablet—or, if the signer prefers, a typed signature in the appropriate form field. When the signer is done, both you and the signer will get a secured PDF copy of the signed document.

The features in Adobe Sign allow you to track a document in real time, so you know when the document is viewed and when it is signed. To ensure that only the intended recipient receives the document for signature, there are security features like identity verification and passwords to protect the file. There are also options that allow a sender who needs multiple signatures to control the sequence in which the recipients are able to sign. For example, person B would not have the ability to sign the document until person A has successfully completed their electronic signature.

NO MORE NOTEBOOKS: MICROSOFT ONENOTE FOR ORGANIZING EVERYTHING



For lawyers who may be looking to organize some of the chaos in their computers, and use a lot less paper in their day-to-day processes, OneNote by Microsoft may be the software tool that you have been looking for. For this author, it was the single new software tool that brought by far the most value to my transition to a home office, and it had been in my Microsoft Office Productivity Suite for years.

Microsoft describes OneNote as "your digital notebook," and if you use it to its full potential, you may never have to create a file folder or notebook again. OneNote organizes all your digital information the way lawyers once used notebooks or binders with tabs, sections, and pages. The idea is to create digital workbooks for any project—or, more likely, client matter—you have, adding sections for each of the major tasks within the project. The pages within each section can hold any digital information: letters, notes, emails, texts, images, audio files, video files, PDFs, spreadsheets—literally anything you can copy and paste can be inserted into the pages of your workbooks as a link or as visible text or images.

The most typical way for lawyers to use OneNote is to create a workbook for each client matter or project, and then create sections in each notebook the way you would organize the subfolders within each client file. For example, a OneNote workbook may be titled "SMITH.JOH.21-01," representing the first file you've created for your client John Smith in 2021. The sections within the file may be labeled "Notes," "Pleadings," "Correspondence," "Transcripts," "Invoices," or just about any other task area associated with the client matter. Your notes and correspondence sections are likely to fill up quickly with copies of emails and texts related to the file, but you can add an unlimited number of pages in each section just by clicking the "+ Add page" button while you build the digital files.

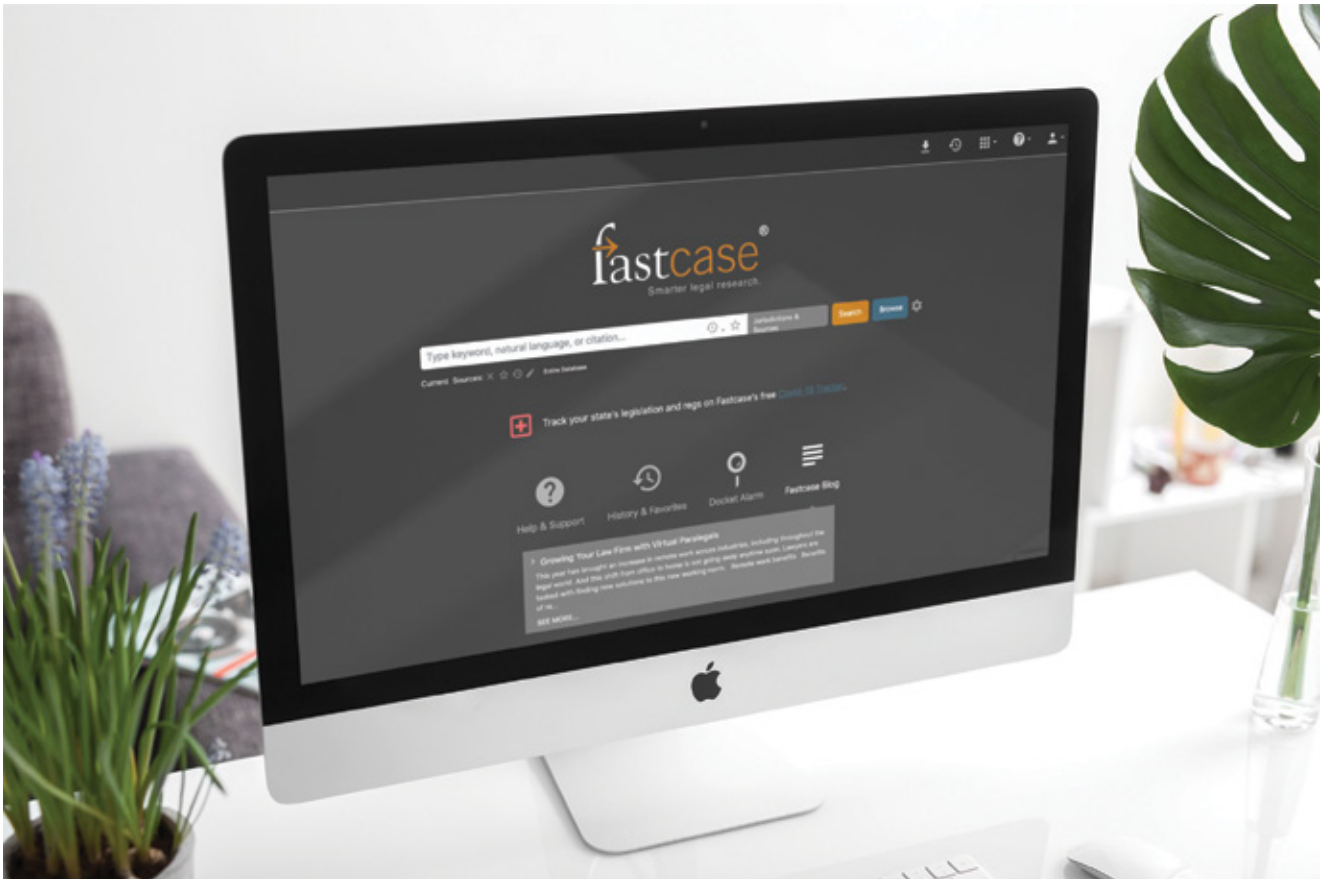
A couple of tips if you decide to start using OneNote to organize your work computer:

- Color-code your workbooks the way you would your work files, reserving some colors for client matters and others for additional operational, educational, and personal matters.
- Use the search tool in OneNote to find any information that may be hiding on any page in any workbook. The search tool will allow you to use a search term for finding information in any document or note within any workbook.
- OneNote is ideal for saving video files and audio files directly in the workbooks related to your client matters. For example, if you conduct an initial client interview via Zoom and you recorded the interview, simply drag the video file into the client workbook in the appropriate workbook section and you'll always know where to find it.
- If you have a touch screen tablet with a stylus pen, such as the Microsoft Surface Pro, your handwritten notes can go directly into the client matter workbook in OneNote. While in a client interview you can click the "Insert Audio" option and your device will start to make an audio recording of the event while you are entering handwritten notes using your stylus pen.
- OneNote also comes with a fairly accurate dictation feature that allows you to dictate notes directly into any page of any workbook.

Do you need OneNote if you already use case management software for client matters? The answer depends on how you are currently using your case management software. You may want to consider using OneNote in addition to your case management software if you have been looking for a way to organize office information not directly related to your client matters, such as vendor files, lease agreements, employee contracts, and personal files.

One last thing to keep in mind. In recent years there have been a few variations in OneNote's user interface, as it came in different versions (OneNote for Office 365, OneNote 2016, and OneNote for Windows 10). Fortunately, Microsoft has begun phasing out previous versions of the software for the one with the best, most intuitive user-interface: OneNote for Windows 10, which is pre-installed on all Windows 10 devices or available as a free download from the Microsoft Store. ▲

TODD C. SCOTT, VP of risk management at Minnesota Lawyers Mutual Insurance Company, has been a law practice management advisor for over 20 years. For more information on law office technology systems or any other practice management matter, please get in touch by email: tscott@mlmins.com.



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A LAWYER'S GUIDE TO THE MINNESOTA LEGISLATIVE PROCESS

BY ANNE SEXTON asexton@umn.edu

Whether you are a person who spews the latest political polling data unprompted at the office water cooler—or perhaps the office Zoom check-in—or one who treats avoiding all political conversations like an Olympic sport, our state legislative season is upon us. Jokes aside, being a competent attorney necessitates understanding key aspects of Minnesota laws and the state legislative process. Through a strictly nonpartisan lens, here are 10 concepts to help us on that front.

Session laws v. statutes

As a refresher from your 10th-grade civics class, all proposed laws start as bills. All bills that are passed by the Legislature, and not vetoed by the governor, become law. (Unless of course, the veto is overridden by the Legislature.)

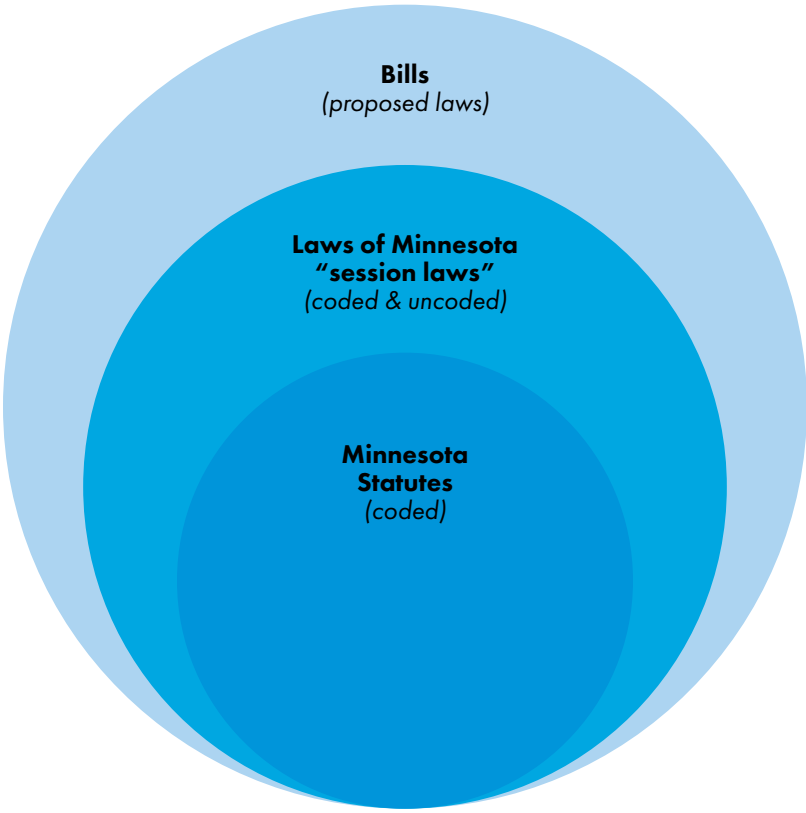
Minnesota Laws, or session laws, is an umbrella term for all bills that become law. These are compiled and published by legislative session in Laws of Minnesota. For example, Laws 2021 is a compilation of all the laws passed in the regular 2021 legislative session. Laws 2021 First Special Session is a compilation of all the laws passed in the first special session in 2021.

A subset of Minnesota Laws, published as Minnesota Statutes, comprises only the coded laws from session laws. Coding simply refers to the section reference numbers in Minnesota Statutes. For Minnesota Statutes, section 13.01, section 13.01 is the "coding." What is included in Minnesota Statutes or left solely in Minnesota Laws is the distinction between coded and uncoded laws. For example, Laws 2020, chapter 70, article 1, section 1 amends Minnesota Statutes, section 144.4199, subdivision 1. The changes to section 144.4199, subdivision 1 were incorporated in the next version of Minnesota Statutes. Meanwhile, section 3 of that same article is uncoded and will only ever appear in session laws, specifically Laws 2020, not Minnesota Statutes.

But this begs a larger question: Which laws are coded? Laws that are permanent and have general application receive coding.[1] Appropriations and one-time studies are examples of laws not usually coded because they are not typically both permanent and general in their application. Both session laws and statutes can be amended. Minnesota Laws are printed with the strikes and underscoring, whereas Minnesota Statutes are "cleaned." (That is, the stricken text is removed and new text is incorporated.)

MINNESOTA LAWS INCLUDE ALL LAWS PASSED IN A SESSION, BOTH CODED AND UNCODED. MINNESOTA STATUTES IS A COMPILATION OF ALL SESSION LAWS PASSED WITH CODING. IT IS HELPFUL TO UNDERSTAND THE DIFFERENCE NOT ONLY TO USE THE TERMS CORRECTLY BUT ALSO TO KNOW WHERE TO LOOK FOR THE INFORMATION YOU SEEK.

To recap, Minnesota Laws include all laws passed in a session, both coded and uncoded. Minnesota Statutes is a compilation of all session laws passed with coding. It is helpful to understand the difference not only to use the terms correctly but also to know where to look for the information you seek. If you are a visual person, think of the relationship between bills, session laws, and statutes this way.



Minnesota Statutes, chapter 645: clarifying the muddle

Have you ever read a statutory section that mentioned *holiday* and wondered whether that included religious holidays, only federal holidays, both federal and state holidays, or some other combination? If the rule or statutory section you are reading does not provide a definition, Minnesota Statutes, section 645.44, subdivision 5 provides the definition for holiday. A term as simple as "holiday" can significantly impact filing deadlines, licensing, review periods, and many other obligations.

Are you looking for more support for your argument that *may* is permissive? See section 645.44, subdivision 15. Want to finally settle the debate with your colleague about whether *must* and *shall* have the same statutory meaning? See 645.44 subdivisions 15a and 16. (Spoiler alert: Both mean mandatory in Minnesota Statutes.)

Minnesota Statutes, chapter 645 includes useful information for interpreting statutes. Note, there are several definition sections not near one another in the chapter: sections 645.44 through 645.451 are likely to be the most generally applicable. And a word of caution for using chapter 645: All great lawyers also check the statutory chapter and section they are in for additional definitions that supplement or supersede chapter 645.

Statutory notes: Ignore them at your peril

Have you ever visited the Office of the Revisor of Statutes' (revisor's office) website and accidentally scrolled to the bottom of Minnesota Statutes, section 256B.0625, or been curious what "[See Note.]" meant after subdivision 3h? Although their text is not the law, those statutory notes contain critical information—like, for example, whether the statutory text is in effect. In the case of the aforementioned section 256B.0625, failing to read the note for subdivision 3h would leave you unaware that the language enacted by Laws 2021, First Special Session chapter 7, article 6, section 12, is not effective until federal approval is obtained.

Naturally, you could have discovered the effective date information for this subdivision by reviewing the extensive legislative history for section 256B.0625. I will admit, however, that this is not a practice many of us do for each and every word in Minnesota Statutes. Reviewing notes can save you time on your legislative history and alert you to special considerations about the text.

Do not mistakenly hang your case on a headnote

In Minnesota Statutes, the bolded text before sections and subdivisions is called a headnote. Headnotes are not the law, but simply act as guides or catchphrases to assist the reader.[2]

Is that administrative rule still in effect?

As a brief administrative law recap for those who have evaded the land of promulgation and the Minnesota Administrative Procedure Act, a rule is created through an administrative process, not the Legislature. The Legislature provides authority for agencies to add detail and specificity to laws by creating administrative rules.[3] Every administrative rule must have a law authorizing the rule.[4]

In 1981, the Legislature added an interesting and rarely utilized provision to the Minnesota Administrative Procedure Act: "If a law authorizing rules is repealed, the rules adopted pursuant to that law are automatically repealed on the effective date of the law's repeal unless there is another law authorizing the rules."[5] The next time you apply an administrative rule, be sure to check whether its statutory authority is still valid. And don't forget the last half of the sentence—"unless there is another law authorizing the rules."[6] You will need to research whether a different statute authorizes the rule.

Roadmap for bills

Whether you are delving deep into legislative history research or tracking pending legislation, it is useful to know the simple organizational structure of bills in the Minnesota Legislature. (As with bill-drafting and the legislative process, there is an exception to everything. If you searched, you could find bills that broke from the standard organizational practice for some reason or another.)

In the vast majority of cases, you will find this order:

- coded sections (amendments to Minnesota Statutes and proposed Minnesota Statutes in statutory order);
- amendments to session law;
- uncoded sections (one-time studies, instructions to commissioners, appropriations, etc.);
- revisor's instructions;
- repealers; and
- effective dates or application sections.

Large bills (usually omnibus bills) may include articles. Each article will be arranged in the same format as above. One notable exception to this arrangement is omnibus appropriation bills, which may start each article with an appropriation description and summary of appropriation by fund.

Not all bills will have each of these components. All bills will start with a title and an enacting clause, which are mandatory.[7] It is not a complicated system, but understanding it can save you a significant amount of time in looking through an 800-plus-page omnibus bill.

Identical text, but not companions

For a bill to become law, identical provisions must first pass both the House and Senate. When bill language is drafted by the revisor's office, two sets of "jackets" are created. Two green jackets go to the House and two yellow jackets go to the Senate for introduction. The revisor number on all four of these bills is identical. This system allows the House and Senate desks to track what is known as companion bills. A bill introduced in the House with a revisor number identical to that of a bill introduced in the Senate will automatically be deemed a companion.

But the legislative process gets complicated and messy fast, and bills with identical content will not always bear the same revisor number. Members may wish to introduce the same language in a new bill (also known as *clones*) for various reasons, or perhaps the amendment process changes the original language of one bill to be identical to another bill in the other body with a different revisor number. Even if the language between the two bills is identical, when the revisor number in the House file differs from that of the Senate file, the bills are not automatically deemed companions.

If you were starting to grow concerned that bills containing identical language with different House and Senate revisor numbers would not make it through the legislative process, rest easy. The House and Senate desks have a process to deem bills companions that do not share the same revisor number.

Understanding how identical language can be in bills that are not companions to one another can help improve your legislation-tracking abilities and reassure you that you have indeed not lost your wits.

Minnesota: A journal entry state

The Minnesota Constitution requires that "[b]oth houses shall keep journals of their proceedings..."[8] Minnesota is a journal entry state. Every legislative day, the House and Senate track the daily activity in their respective journals and the official communications of each body.

Minnesota legislative staff work hard to ensure the accuracy of the journals. For you, the journal of either body is one source to establish legislative intent.[9]

Tracking session law changes: Easier than it sounds

Session law does not have the same legislative history as Minnesota Statutes. This can make it challenging to track changes to session law, which may include repealers, amendments, or other legislative actions. The Minnesota Revisor of Statutes maintains Table 1, which allows you to enter in a session law and see any session law amending it. Table 1 is available at *www.revisor.mn.gov/laws/table1*. This table is especially useful for tracking changes to appropriations or mandated reports and studies.

Mandated reports: One MN nice database

If you have worked for a state agency, listened to a committee hearing, or read any bills, you have probably noticed that the Legislature mandates many, many reports and studies. The Minnesota Legislative Reference Library maintains a Mandated Reports Database (available at *www.leg.state.mn.us/lrl/mndocs/mandates_search*). This helpful database includes reports that the library received or expects to receive.

Reports can be useful for understanding future policy dynamics or quickly gathering information on a topic without going through a government data request.

Conclusion

Understanding our legislative process is an important part of being a responsible citizen, but for lawyers there is an added layer. You are applying—or trying not to apply—these laws, statutes, and administrative rules. Understanding our laws and the state legislative process can go a long way toward using them well. ▲

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A *MARVEL*-OUS COPYRIGHT WAR

BY LARINA ALTON AND GABRIEL RAMIREZ-HERNANDEZ
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Disney's latest fight to protect its intellectual property interests is no Mickey Mouse effort. The company, which owns Marvel Entertainment, is suing to assert its exclusive ownership rights after a group of five creators filed notices to terminate transfers and licenses of copyright-protected work in an attempt to retain the valuable copyrights. Among the Marvel characters playing starring roles in the legal battle are Spider-Man, Thor, Black Widow, Hawkeye, Ant-Man, and Iron Man.

Of course, Disney has been fighting for years to protect its intellectual property interests. Perhaps its most memorable effort to protect the rights to its content and creations was to pursue the Copyright Term Extension Act of 1998, colloquially referred to as the Mickey Mouse Protection Act, which extended the length of copyright protection to the life of the author plus 70 years—an increase of two decades. The current dispute over the Marvel characters involves creators Lawrence D. Lieber, the estates of Steve Ditko and Don Heck, and the heirs of Don Rico and Gene Colan. Under the Copyright Act, a creator may terminate assignment of a work after 35 years by providing at least two years' notice.[1]

A creator seeking to exercise termination rights must serve notices of termination on the grantees of any assignment for the copyright-protected work and file notices of termination with the U.S. Copyright Office, stating the effective date of termination. In a successful termination action, rights that were transferred under the grant return to the creator. The creator can then renegotiate terms of a previous agreement, enter into new agreements, or otherwise make use of the copyright-protected work as the creator wishes. A creator cannot, however, terminate a "work made for hire" under this mechanism.

DISNEY HAS BEEN FIGHTING FOR YEARS TO PROTECT ITS INTELLECTUAL PROPERTY INTERESTS. PERHAPS ITS MOST MEMORABLE EFFORT TO PROTECT THE RIGHTS TO ITS CONTENT AND CREATIONS WAS TO PURSUE THE COPYRIGHT TERM EXTENSION ACT OF 1998, COLLOQUIALLY REFERRED TO AS THE MICKEY MOUSE PROTECTION ACT.

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GABRIEL RAMIREZ-HERNANDEZ, an attorney in Maslon's litigation group, focuses on assisting clients in intellectual property disputes, insurance, construction, and general business litigation.

In response to the notices of termination that the creators filed with the U.S. Copyright Office, Disney filed complaints in U.S. District Court for the Southern District of New York seeking injunctive relief to declare the termination notices invalid and requesting attorney fees and costs. Disney alleged that any of the creators' contributions were made at Marvel's "instance and expense," that Marvel retained creative control over the contributions, and that Marvel paid per page for the contributions. For these reasons, Disney argues that the works were created as works made for hire, and that consequently, the notices of termination are invalid.

Section 101 of the Copyright Act defines "work made for hire" as (1) work prepared by an employee within the scope of his or her employment, or (2) work specially ordered or commissioned for use *if* the parties expressly agree in a written agreement signed by both parties. The first category requires a fact-intensive inquiry guided by federal common law of agency. The U.S. Supreme Court has previously identified a non-exhaustive list of factors to assist courts in determining when a work was prepared within the scope of an employee's employment: control over the work, control over the employee, and status and conduct of the employer.[2] Although control over the work and control over the employee are factors under agency law, neither is wholly dispositive. Because the Supreme Court interpreted the legislative intent to apply the Copyright Act to a "conventional employment relationship," less conventional employment relationships will raise challenges for both creators and assignees in asserting and defending on the work-made-for-hire basis.

Circuit courts have developed the "instance and expense" test for employment for rights vested before the 1976 Copyright Act, which considers three factors: (1) at whose instance the work was prepared, (2) whether the hiring party had the power to accept, reject, modify, or otherwise control the creation of the work, and (3) at whose expense the work was created (who bore the risk of the work's profitability).[3] Because the creators allege that their copyrights vested before 1976, the district court will apply the "instance and expense test."[4] For their part, attorneys for the creators have so far claimed that the creators were "freelancers or independent contractors, working piecemeal for car fare out of their basements," not employees, according to the *New York Times*. The creators' recent pleadings reflect this understanding, asserting that the creators were neither employees nor independent contractors, but authors who would offer completed or near-completed work to consider for potential publication. The creators recently filed their answers to the complaints, asserting that they bore the financial risk of the works because they "worked hand to mouth, at [their] own premises, using [their] own instruments and materials."

If the creators are not "employees" under general agency law, then in order to retain its sole ownership rights, Disney must show that it has written work-for-hire or assignment agreements with them that are signed by both the creators and by Disney. So far, Disney has not asserted that such writings exist. The creators assert that the only written statement regarding ownership was not a "work for hire" agreement but an "assignment" printed the back of their checks.

Of particular note, Disney has not asserted that it had an implied license. "An implied license is created when one party (1) creates a work at another person's request; (2) delivers the work to that person; and (3) intends that the person copy and distribute the work."[5] Although an implied license is a relatively well-developed defense to copyright infringement, its viability as a defense to copyright termination has yet to be decided by the Supreme Court. On one hand, the Copyright Act excludes assignment of nonexclusive licenses from the definition of "transfer of copyright ownership," because the creator retains the rights in common. But on the other hand, the plain language of section 203 is arguably more expansive than the language in the copyright infringement context because it includes "the exclusive *or nonexclusive* grant of a transfer or license of copyright or of *any right* under a copyright."[6] (Emphasis added.)

In *Korman v. HBC Florida, Inc*., the 11th Circuit considered the case of a former employee who had written several jingles for a radio station where she worked, but had no written agreement with the station. The station argued that the jingle writer worked on "a freelance basis" and that because there was no writing expressing the duration, any implied license could not be considered "executed" under section 203. In other words, the radio station argued that section 203 did not apply to implied licenses. The 11th Circuit rejected that argument and concluded that the right to terminate applies to "all nonexclusive grants of a license" and that "nothing in the statute excludes those that are implied."[7] No circuit court has taken up the issue since *Korman*[8] and no circuit court has reviewed these arguments in the context of section 304 (c) (covering transfers and licenses under the Copyright Term Extension Act), which employs similar language.

As these matters proceed, we can expect to see disputes related to these issues as the case progresses. With such valuable and inspiring intellectual property at issue, and Disney's longstanding commitment to the preservation of its asserted ownership rights, the dispute could be just as entertaining as any other in the Marvel universe. At least for the lawyers. ▲

Notes

[1] 17 U.S.C. §§203 (general termination of transfers and licenses) and 304 (c) (termination of transfers and licenses covering extended by the Copyright Term Extension Act).

[2] *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 109 S.Ct. 2166 (1989) (citing to Restatement (Second) of Agency §228 (1958)).

[3] *See Twentieth Century Fox Film Corp. v. Entertainment Distributing*, 429 F.3d 869 (9th Cir. 2005).

[4] The court will apply the "instance and expense" test even though the 2nd Circuit recognizes and employs the 13 factors set forth in *Reid*, 490 U.S. at 737 for rights vested after the 1976 Copyright Act. *Compare Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 137 (2d Cir. 2013) (applying instance and expense test to rights vested before 1976), *with Horror Inc. v. Miller*, 15 F.4th 232, 244 (2d Cir. 2021) (applying *Reid* factors to rights vested after enactment of 1976 act in the course of ruling that the screenwriter for the original *Friday the 13th* film could reclaim the rights to his script under the termination rights of Section 203 because, among other factors, he was not paid benefits and was not treated as an employee for tax purposes).

[5] *Latimer v. Roaring Toyz, Inc.*, 601 F.3d 1224, 1235 (11th Cir. 2010).

[6] 17 U.S.C. §203 (a).

[7] 182 F.3d 1291, 1294 (11th Cir. 1999).

[8] The 9th Circuit signaled approval of *Korman*'s interpretation of section 203 but the issue was not dispositive. *Garcia v. Google, Inc.*, 786 F.3d 733, 743 (9th Cir. 2015) (disposing of injunctive relief for copyright infringement because plaintiff failed to establish that law clearly favored her position). One federal district court, without significant analysis, appeared to contradict *Korman* on this issue. *See C.D.S., Inc. v. Zetler*, 298 F. Supp. 3d 727, 765 (S.D.N.Y. 2018) (suggesting that an indefinite duration to an implied license precluded the creator's rights under section 203). Because *C.D.S.* was recently decided in the same district in which Disney has filed for declaratory relief, its arguments contrary to *Korman* may have more traction there than in other forums. The 2nd Circuit recently alluded to independent contractors' section 203 termination rights, but the defendant in that matter made no assertion that it enjoyed an implied license. *Horror Inc.*, 15 F.4th at 256 ("In sum, Miller must be considered the author of the Screenplay, and the Act empowers him now to terminate the rights in the Screenplay that he earlier permitted the Companies.").

AFTER BRITNEY

An FAQ on Minnesota guardianship/ conservatorship law

BY DAVID L. LUDESCHER

The Britney Spears guardianship and conservatorship case captured the imagination and inspired disbelief among many who were watching. The general public found it hard to fathom how someone with the capabilities of Britney Spears could be under guardianship and conservatorship for 13 years, have her freedom of movement restricted, be unable to have her own attorney, have a court-appointed attorney charge $3 million while doing little or nothing to seek her restoration to capacity, even as her father got paid $13 million for "helping" Britney for the last 13 years. Then, almost as suddenly as the case started, it ended.

Now that it is completed, it may be easy for us in the legal profession to dismiss the Spears case as an anomaly. It involves a celebrity; it's out of California, which often appears to produce unusual legal decisions; and it appears that the result was dictated more by widespread media attention than by an adherence to the principles that had guided the court and actors for the prior 13 years. Nevertheless, it left many public observers curious about how Spears could remain under court supervision for so long when by all outward appearances she had the ability to manage most, if not all, of her life for at least a decade (and maybe the entire 13 years). The media attention brought to light how easily the system can go astray. Could this happen in Minnesota? What safeguards exist? Are they followed?

My intent in this brief article is not to provide a detailed analysis of the Britney Spears case or of guardianship and conservatorship law in Minnesota. Rather, I wish to show how the protections afforded by "the system" can fail people in Minnesota as well.

What is the difference between a guardianship and conservatorship in Minnesota?

Broadly speaking, a guardianship is a legal proceeding in which an incapacitated person has court-supervised assistance with respect to his or her personal needs, including food, clothing, shelter, healthcare, and social/recreational requirements.[1] A conservatorship is a court-supervised arrangement governing how the estate (money) of the person is to be managed, spent, or distributed to or for the person subject to conservatorship.[2] The distinction between the two actions is important. People are sometimes able to manage their personal affairs (shelter, food, medical care, etc.) quite well yet still at abiding risk of falling prey to scammers, family members, or dishonest financial advisers. Sometimes the situation is reversed. The proper level of court control can only be judged on an individual basis.

While the two actions should involve reaching separate findings and conclusions, in my experience guardianships and conservatorships generally go hand in hand in both form and substance. Britney Spears was under both a guardianship and a conservatorship. Thus, all aspects of her life were controlled by her guardian and conservator, even though by all accounts she did not lack the ability to provide for her financial needs.

Is it necessary to have a guardianship or conservatorship if a person cannot fully take care of himself/herself?

No. Many people who need assistance already have in place powers of attorney or health care directives (or both) that can be used to manage a person's affairs. In fact, the statute provides that the court should examine all other alternatives and should adopt only those powers that pertain to the demonstrated needs of the person.[3] These documents can be used whether the person is incapacitated or not. Thus, Spears's family could have worked with her on both her financial arrangements and her personal needs to ensure her health and welfare without involving the court. The main difference is that powers of attorney and health care directives can be revoked by the person alleged to be incapacitated.

Does a person under guardianship or conservatorship have any rights that he/she can enforce?

The Bill of Rights for Persons Subject to Guardianship or Conservatorship that was passed in 2009 (Minn. Stat. §524.5-120) specifically provides that a person retains all rights not restricted by a court order and that *these rights must be enforced by a court*. The rights include:

- to be treated with dignity and respect;
- to receive due consideration of stated personal desires and preferences;
- to participate in decision-making;
- to exercise control over all aspects of their life unless specifically delegated by a court order;
- to be consulted regarding the disposition of their clothing, furniture, vehicles, or other personal property;
- to privacy;
- to interact with whomever they want unless it can be established that they pose a significant harm to the person;
- to marry;
- to procreate;
- to petition for decision for modification of the conditions of the guardianship or conservatorship;
- to vote;
- to execute a healthcare directive and appointment of a healthcare agent; and
- most importantly, a protected person has a right to be represented by an attorney in any proceeding or for the purposes of petitioning the court.

But there is no easy way for a protected person to enforce these rights, because the statute does not provide for a remedy.

One of the arguments in Spears's case involved whether she was entitled to have her own attorney rather than one appointed by the court. The court-appointed attorney charged her estate $3 million for his representation of her but apparently did very little

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to advance what she wanted done. The potential for abuse is magnified the more money a protected person has. The incentive for a court-appointed attorney is to keep a case going so they can "milk a cow they do not own." If a private attorney were to represent a client without their approval, charge an exorbitant fee, and advance legal arguments against the client's wishes, we would be disbarred, and rightly so. But court-appointed attorneys do not receive the same scrutiny.

While it is almost unfathomable that Britney Spears had to ask permission of the court to hire her own lawyer, in at least one county in Minnesota, an alleged incapacitated person not only has to ask permission to hire his lawyer—he or she must ask for and receive court permission to fire their attorney.

For indigent clients, the situation can be even worse. In my home county, the county attorney's office often brings guardianship or conservatorship petitions on behalf of the social service agency's claim of a need. The court administrator's office then appoints an attorney from a list of attorneys who have signed contracts with the county for representation of both indigent and private-pay clients. The county attorney's office is in charge of letting the contracts. Thus, a person who is alleged to lack capacity and has no money must appear in court with an attorney who has a contract for payment with the very office that is seeking to limit the person's rights.

What needs to be proven to establish a guardianship or conservatorship?

Voluntary guardianships or conservatorships can be ordered by the court. This is often the case when a family member wishes to have someone else in the family care for him or her and make adult decisions. If the person is not agreeing to a guardian or conservator, the petitioning party must prove, by clear and convincing evidence, that the person proposed to be subject to the guardianship or conservatorship is an incapacitated person.[4] The statute defines an incapacitated person as an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety even with appropriate technological and supported decision-making assistance.[5]

The evidence needed to prove a case against a person like Britney Spears can be subject to a lot of different interpretations given the vagueness of "clear and convincing," "incapacitated person," "demonstrated needs," and "sufficient understanding." Consequently, this area is ripe for misinterpretation and abuse. For example, should a hoarder of personal property be allowed to make the personal decision to hoard? What if that person is able to meet all their personal needs, but a family member or a government employee decides that that person has a demonstrated need for a better shelter and safety because of the potential danger associated with hoarding?

Who can be the guardian or conservator?

Minn. Stat. §524.5-309 and §524.5-413 specify the priorities for who may be a guardian or conservator. Both of these statutes list the considerations a court should weigh in appointing someone to take on these roles. In Spears's situation, her dad had priority under law, and a father would also have priority in Minnesota. But the court, charged with acting in the best interests of the person, may also decline to appoint a person who has priority and appoint a person who has lower priority or no priority.

But the statute does not define "best interests of the person subject to guardianship and/or conservatorship." This standard can create problems for the protected person. For example, many elderly patients are quite opposed to being placed in a nursing home. Many would prefer to live at home, even though it presents greater medical dangers. While the quality of care may be better, the protected person may view the quality of life as substantially poorer. One client, now deceased, described her life in a nursing home as "glorified jail." She was well cared for. But she did not have what she valued most—freedom.

What kinds of powers can a guardian or conservator be given?

The powers of a guardian and conservator are listed in Minn. Stat. §524.5-313 and §524.5-417. If the court grants powers to the guardian and/or conservator, the powers can cover virtually every aspect of a person's life and money. A guardian can have the power to establish a place of abode; to give consent to receive medical and professional care; to petition the court for psychosurgery, electroshock, sterilization, or experimental treatment; and to exercise many other powers.

A conservator may be given the power to approve or withhold approval of any contract, except for necessities; to revoke, suspend, or terminate durable powers of attorney; to petition to set aside previous transactions with approval of the court; to fix a reasonable amount of support; and a host of other powers. In the Spears case, her father was given extensive powers. Some conservators view these powers as a grant to seize bank accounts, limit access to monies, seize cars (even though a person has a valid driver's license), take possession of the protected person's house, and change locks—all without a court order and against the wishes of the protected person.

Are the powers ever limited?

These same statutes provide that the court should only approve the powers necessary to provide for the demonstrated needs of the person subject to a guardianship and/or conservatorship.[6] In other words, guardianships and conservatorships need to be limited to only the things the protected person cannot do. In practice, however, people petitioning for guardianship or conservatorship almost always ask for all powers regardless of the level of need. Courts, in turn, seldom examine in detail the demonstrated needs of the protected person. In the 12 years since the bill of rights passed into law, I have yet to see a petition that explained how the guardian or conservator was going to honor it by including the person in matters such as decision-making, protecting their rights to visitors, and honoring the right to an attorney.

Can a Britney Spears type of case happen in Minnesota?

Unfortunately, it already has, and the numbers of cases were in the dozens in just my county. About 15 years ago, before the bill of rights was adopted, a company called Estate Resources, Inc. and its principals were charged with and pled guilty to or were convicted of multiple counts of theft. In spite of such abuses, I still see petitions with summary allegations of incapacity, and summary allegations of the need for full guardianship and conservatorship powers, and court orders that contain few if any actual findings by the court. And I have yet to see a court order advising a conservatee of the rights they retain. I do not see that the actual handling of such cases has changed much over my 32 years of practice.

I hope the Spears case opens everyone's eyes to how important procedural and substantive due process is to people who enter the system. Ultimately, the responsibility for change lies with the judiciary, which needs to ensure that the petitioning party proves his or her case by clear and convincing evidence, and that the court puts the conservator or guardian to their burden of proof for fulfilling the rights of the protected person. And protected persons need to have easy access to the court when they have complaints. Finally, protected persons need access to lawyers to advocate for them. Without the media attention, Britney Spears would probably still be under conservatorship and guardianship. ▲

Notes

[1] Minn. Stat. §524.5-313(c)(2).

[2] Minn. Stat. §524.5-402.

[3] Minn. Stat. §524.5-313(b) and §524.5-417(b).

[4] Minn. Stat. §524.5-310.

[5] Minn. Stat. §524.5-102 subd. 6.

[6] Minn. Stat. §524.5-313(b) and §524.5-417(b).

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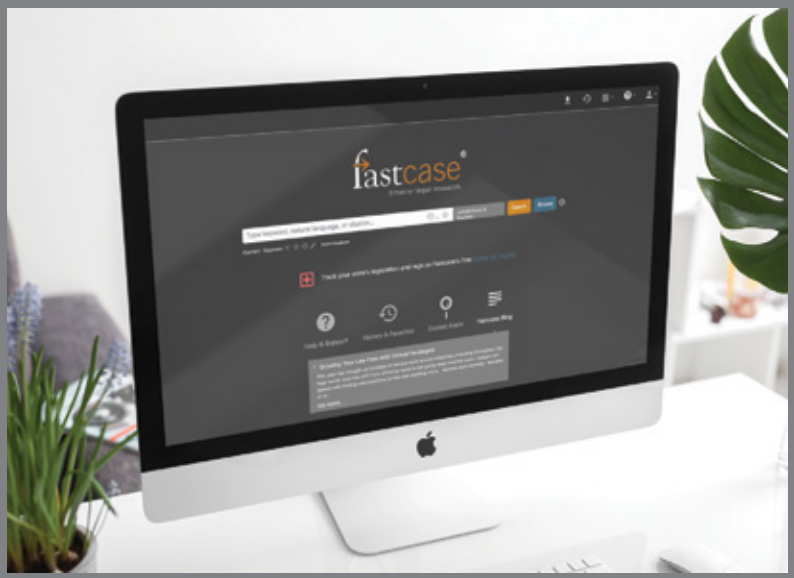

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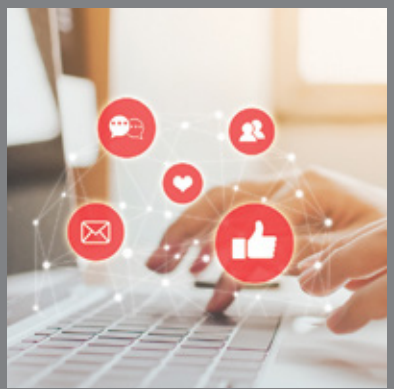

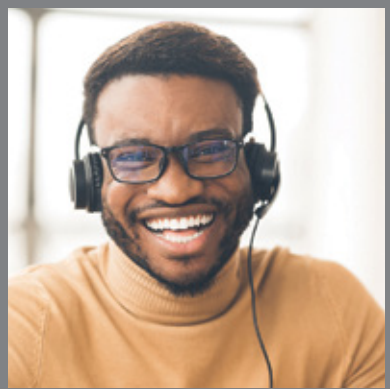

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Speedy trial: Neither state nor defendant are responsible for delay caused by covid-19. Appellant was charged in March 2020 with a felony violation of a DANCO. That same month, the Minnesota Supreme Court prohibited the commencement of new jury trials due to covid-19. Trials could commence after July 6, once the court had submitted and received approval of a safety plan. Appellant demanded a speedy trial in May, and trial was scheduled for July 6. However, the trial was delayed until August 3, 77 days after the speedy trial demand, because a covid safety plan had not yet been approved. Trial began on August 3, after which a jury found appellant guilty. He appealed, arguing his speedy trial right was violated.

The Minnesota Court of Appeals finds no violation of appellant's 6th Amendment right to a speedy trial. The delay in this case of greater than 60 days raises the presumption that a violation occurred. However, the court of appeals notes that the cause of the delay was solely the pandemic. An earlier trial would not have been safe, and the delay was not a deliberate attempt by the state to hamper the defense. Appellant asserted his speedy trial demand throughout the proceedings, but all parties were aware that a safe trial could not occur within the 60-day speedy trial period. Finally, because appellant was already in custody for another, unrelated offense, he was not prejudiced by the delay. Appellant's conviction is affirmed. ***State v. Jackson***, A21-0126, __ N.W.2d __, 2021 WL 5173146 (Minn. Ct. App. 11/8/2021).

Evidence: Confession must be corroborated by independent evidence reasonably tending to prove that the offense was committed. Appellant was charged with criminal sexual conduct involving his 13-year-old stepdaughter, C.D. In an interview with police, appellant confessed to sexually abusing C.D., specifically admitting to four incidents, including an act of sexual abuse that occurred while appellant and C.D. were deer scouting. A jury found appellant guilty of five counts of criminal sexual conduct. The Minnesota Court of Appeals reversed appellant's conviction on the count related to the deer scouting incident. At trial, evidence of appellant's confession to this incident was introduced, but his confession was not corroborated with other evidence.

Minn. Stat. §634.03 provides, in relevant part, that "[a] confession of the defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed..." The Supreme Court considers the meaning of the phrase "evidence that the offense charged has been committed." The Court finds that section 634.03 is not ambiguous, and that its plain language "requires the State to present evidence independent of a confession that reasonably tends to prove that the specific crime charged in the complaint actually occurred in order to sustain the defendant's conviction."

As to the "deer scouting incident" in this case, the charge was based solely on appellant's confession during a police interview. The state argues that three pieces of evidence corroborate appellant's confession: C.D.'s testimony regarding other sexual assaults by appellant, C.D.'s testimony about appellant's sexual assault during duck season, and the general lack of coercion surrounding appellant's confession. The Court finds this evidence insufficient. Section 634.03's corroboration requirement cannot be fulfilled simply by introducing evidence of other offenses, especially other offenses that differ significantly in detail. The Court also holds that lack of coercion in obtaining a confession is not independent evidence that the charged offense was committed. The court of appeals' reversal of appellant's conviction for the deer scouting incident is affirmed. ***State v. Holl***, A19-1464, 966 N.W.2d 803 (Minn. 11/17/2021).

Controlled substances: "Sell" includes an offer to sell a prohibited amount of a controlled substance, even if a lesser amount was delivered. While entering a guilty plea to first-degree sale of 10 grams or more of heroin, under Minn. Stat. §152.021,

subd. 1(3), appellant admitted selling heroin to an informant four times in a 20-day period. He specifically admitted to offering to sell the informant an aggregate amount of 13 grams of heroin on those four occasions and delivering 8.908 grams. The district court accepted appellant's guilty plea, but he later moved to withdraw the plea, arguing section 152.021, subd. 1(3), requires proof that 10 or more grams of heroin were actually delivered. The district court denied his motion and the court of appeals affirmed.

Section 152.021, subd. 1(3), prohibits unlawfully selling a total weight of 10 or more grams of heroin on one or more occasions within a 90-day period. Section 152.01, subd. 15a, defines "sell" as "(1) to sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture; or (2) to offer or agree to perform an act listed in clause (1); or (3) to possess with intent to perform an act listed in clause (1)." The plain language of the definition of "sell" includes offering or agreeing to sell. Inserting this definition into section 152.021, subd. 1(3), the Supreme Court reads the statute as prohibiting unlawfully offering or agreeing to sell a total weight of 10 or more grams of heroin on one or more occasions within a 90-day period.

Because appellant admitted to offering to sell more than 10 grams of heroin, his guilty plea to first-degree sale of heroin was accurate and valid. ***State v. Fugalli***, A19-2007, 967 N.W.2d 74 (Minn. 12/1/2021).

Wrongfully obtaining public assistance: Proof is required of intent to defeat the purposes of one of the listed public assistance programs. Appellant received over $65,000 in public assistance through multiple county programs. In his applications, appellant repeatedly claimed he had no income or assets, and claimed rent as his only expense. An investigation revealed appellant had earned gambling income, had thousands of dollars in three bank accounts, owned 12 cars, owned a home, and did not pay rent. At trial, appellant claimed he was unaware of mistakes on his applications, and he had no explanation for how false statements were included on multiple applications. A jury found appellant guilty of wrongfully obtaining public assistance, in violation of Minn. Stat. §256.98, subd. 1(1). The court of appeals affirmed.

Section 256.98, subd. 1, identifies various acts or omissions that are considered "theft" if "done with intent to defeat the purposes of sections 145.891 to 145.897, the MFIP program..., the AFDC program..., chapter 256B, 256D, 256J, 256K, or 256L, *and* childcare assistance programs." Appellant argued for a "joint" reading of this phrase, while the state argued for a "several" reading. The Supreme Court concludes that the only reasonable interpretation of this section "is that it requires proof that a defendant acted with the 'intent to defeat the purposes of' any one or more of the public assistance programs listed" in that section. This is the only interpretation that gives effect to all provisions of the wrongfully obtaining assistance statute.

The Court concludes that the circumstances proved

at trial are consistent only with appellant's guilt. The evidence, viewed in the light most favorable to the verdict, proved beyond a reasonable doubt that appellant acted with intent to defeat the purposes of the aid programs for which he applied. ***State v. Irby***, A20-0375, __ N.W.2d __, 2021 WL 5912899 (Minn. 12/15/2021).

Restitution: Court must expressly state it considered a defendant's ability to pay and the record must include sufficient evidence for a court to consider a defendant's ability to pay. Appellant entered an *Alford* plea to first-degree arson following a house fire. The presentence report did not contain any information regarding appellant's income, resources, obligations, or ability to pay restitution. There was also no mention of any of this information at the sentencing hearing. The district court ordered $87,500 in restitution, but, again, the order made no mention of appellant's ability to pay. A restitution hearing was held, at which the focus was the timeliness of the restitution request. At the hearing, there was no mention or evidence of appellant's income, resources, or obligations. The court again ordered $87,500 in restitution in an order that did not mention appellant's ability to pay. The court of appeals affirmed, and the Supreme Court granted review on the sole issues of whether the district court fulfilled its statutory obligation to consider appellant's ability to pay restitution.

Minn. Stat. §611A.045, subd. 1, provides that a court "shall consider... the income, resources, and obligations of the defendant." The Supreme Court finds that this statutory provision requires the court to affirmatively consider the defendant's ability to pay when awarding and setting the amount of restitution. To fulfill this mandate, the district court must expressly state, orally or in writing, that it considered the defendant's ability to pay. Specific findings regarding the defendant's income, resources, and obligations are not required, but the record must contain sufficient information about these items to allow a district court to consider a defendant's ability to pay.

The restitution order in this case was insufficient, as it did not expressly state that the district court considered appellant's income, resources, and obligations. The record is also devoid of any information about appellant's ability to pay. The court of appeals is reversed, and the case is remanded to the district court. ***State v. Wigham***, A20-0857, __ N.W.2d __, 2021 WL 6057995 (Minn. 12/22/2021).

Implied consent: *Birchfield* did not invalidate law allowing an officer to request a PBT with reasonable suspicion a driver was driving while impaired. Appellant's vehicle was stopped for speeding. Appellant smelled of alcohol and had slurred speech and watery, glassy, bloodshot eyes, leading the state trooper to believe appellant was impaired. Appellant denied drinking alcohol, but the trooper noted several indicators of impairment during field sobriety tests. The trooper asked appellant to submit to a PBT, but appellant refused. Appellant was then arrested for DWI, and his driver's license was revoked. Despite finding much of the trooper's testimony at the implied consent hearing was not credible, the district court—finding that the trooper had reason to believe appellant was impaired and that the trooper therefore properly requested a PBT—sustained the license revocation.

The Minnesota Court of Appeals considers whether Minn. Stat. §169A.41, subd. 1, violates the 4th Amendment by allowing an officer to request a PBT based on reasonable suspicion and not probable cause. The court rejects appellant's argument that *Birchfield v. North Dakota*, 136 S.Ct. 2160, renders section 169A.41, subd. 1, unconstitutional. *Birchfield* discussed chemical breath tests, which the court distinguishes from a PBT, which cannot be used to establish any element of a crime and may be refused by a driver with no resulting direct penalty.

Ultimately, the court finds the district court did not err in concluding that a reasonable suspicion existed to support the trooper's request for a PBT. The court affirms the district court's decision to sustain the revocation of appellant's driver's license. ***Mesenburg v. Comm'r Pub. Safety***, A21-0578, __ N.W.2d __, 2021 WL 6110021 (Minn. Ct. App. 12/27/2021).

Sentencing: "Convicted of a violation of this chapter" in Minn. Stat. §152.025, subd. 4(a), includes a petty misdemeanor violation of chapter 152. Appellant was convicted of petty misdemeanor possession of marijuana (Minn. Stat. §152.027, subd. 4(a)) in 2005. In 2007, he was convicted of fifth-degree possession of cocaine. In calculating his criminal history score for his 2019 domestic assault conviction, the district court assigned one-half of a felony point for the 2007 conviction, rejecting appellant's argument that the 2007 conviction should be classified as a gross misdemeanor under the 2016 Drug Sentencing Reform Act (Minn. Stat. §152.025, subd. 4(a)) because his 2005 petty misdemeanor conviction was not a qualifying prior conviction. The court of appeals affirmed.

Under section 152.025, subd. 4(a), a 5th-degree possession offense is a felony, unless the defendant "has not been previously convicted of a violation of this chapter [152]," and other requirements are met. If the requirements are met, the 5th-degree possession offense is deemed a gross misdemeanor for criminal history score calculation purposes.

The statute does not define "convicted" or "violation," but they are defined elsewhere, and the Supreme Court finds that the definitions apply to chapter 152. Section 609.02, subd. 5, defines "conviction" as a plea of guilty or a verdict or finding of guilty. Section 645.44, subd. 17, defines "violate" as "failure to comply with." Neither definition distinguishes between criminal and non-criminal offenses or carves out an exception for petty misdemeanors.

Given these definitions, the Court concludes that section 152.025, subd. 4(a), unambiguously includes appellant's 2005 petty misdemeanor conviction. Appellant was convicted of the petty misdemeanor following the acceptance of his guilty plea, in which appellant admitted to violating chapter 152. Thus, appellant's 2007 possession conviction was properly counted as a felony. ***State v. Morgan***, A19-1902, __ N.W.2d __, 2021 WL 6133171 (Minn. 12/29/2021).

4th Amendment: Pretrial release violation does not constitute criminal activity to support expanding a traffic stop. While appellant was on pretrial release in a DWI and controlled substance case, he was a passenger in a vehicle pulled over by police for failing to properly signal a turn. The officer recognized appellant and was aware he was on pretrial release. The officer smelled alcohol coming from the vehicle and asked the driver if she had been drinking. She said no. The officer then asked the passengers if they

had been drinking. Appellant responded affirmatively and admitted a condition of his release was abstaining from alcohol. Appellant then blew 0.03 on a PBT. He was arrested for violating his release conditions. During a search of his person, the officer found shotgun shells in his pocket. Appellant was charged with illegal possession of ammunition. The district court denied appellant's motion to suppress the shotgun shells, concluding the evidence was found during a valid search incident to arrest. Appellant was convicted after a stipulated facts bench trial. The court of appeals found the expansion of the traffic stop was reasonable and affirmed the district court's denial of appellant's suppression motion.

The Supreme Court disagrees, holding that the officer's investigation into appellant's non-criminal violation of his pretrial release conditions exceeded the permissible scope and duration of the traffic stop. There is no dispute that appellant was seized when the officer questioned him about his pretrial release conditions. The seizure was warrantless, and, therefore, *per se* unreasonable. To evaluate the reasonableness of seizures during traffic stops, however, the Court asks whether the traffic stop was justified at its inception by a reasonable articulable suspicion of criminal activity and whether law enforcement's actions during the stop were reasonably related to and justified by the circumstances that first gave rise to the stop.

After an initially lawful traffic stop, any expansion of the scope or duration of the stop must be justified by a reasonable articulable suspicion of other criminal activity. The Supreme Court applies prior case law holding that a probation violation does not constitute criminal contempt to conclude that a violation of a condition of pretrial release is not a crime. The Court reaffirms that an officer must have reasonable articulable suspicion of conduct that is specifically a crime under Minnesota law, not merely "illegal activity" generally, to expand the scope of a traffic stop.

The court of appeals is reversed, and the case is remanded to the district court with directions to vacate appellant's conviction and grant his suppression motion. ***State v. Sargent***, A19-1554, __ N.W.2d __, 2021 WL 6133172 (Minn. 12/29/2021).

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Employment & Labor Law

JUDICIAL LAW

FLSA claims; jurisdiction defense not waived; case dismissed. A collective action brought under the Fair Labor Standards Act (FLSA) for overtime pay was properly dismissed by U.S. District Court Judge Paul Magnuson. The 8th Circuit, affirming the lower court's decision, held that the company did not waive a jurisdictional defense to the claims for certification, and correctly threw out claims with no connection to Minnesota, along with finding that the two claimants in the case were not employees but traveling on their work, and therefore, the company was not obligated to pay for their them. ***Vallone v. CJS Solutions Group, LLC***, 9 F.3rd 861 (8th Cir. 08/18/2021).

Reinstatement of employee; arbitration award upheld. An arbitrator's

award was upheld on grounds that the arbitrator properly reduced the employee's discharge or suspension. The 8th Circuit affirmed the lower court decision upholding the arbitration award, on grounds that the arbitrator did not exceed his authority in finding that it was just cause for discipline but not termination. ***WM Crittenden Operation, LLC v. United Food & Commercial Workers, Local Union 1529***, 9 F.4th 732 (8th Cir. 08/16/2021).

■ **Noncompete provision nixed; employer terminated agreement.** A noncompete and nonsolicitation provision of an employment contract were no longer in effect after the employer terminated the agreement in writing. Reversing the lower court decision, the 8th Circuit held that the employer's termination of the agreement in writing made the noncompete agreement "inoperable" and that the nonsolicitation provision was too broad in impermissibly prohibiting the employee from accepting unsolicited business from her former clients. ***Miller v. Honkamp Krueger Financial Services Inc.***, 9 F.4th 1011 (8th Cir. 08/24/2021).

■ **Long-term disability; ERISA claim denied.** A claim for long-term disability benefits by an employee under the Employee Retirement Income Security Act (ERISA) was rejected. The 8th Circuit upheld a lower court determination that the plan did not abuse its discretion in interpreting the provisions of the policy or in denying the claim. ***Harris v. Federal Express Corporation Long Term Disability Plan***, 856 Fed. Appx. 637 (8th Cir. 08/20/2021) (per curiam).

■ **Workers' compensation; noncompliant opiate treatment not compensable.** Treatment of an injured employee with opiate mediation that was noncompliant with the long-term opiate treatment protocols promulgated by the Department of Labor and Industry barred compensation under the state's workers' compensation system. Reviewing a decision of the Workers' Compensation Court of Appeals, the Supreme Court held that the employee's condition did not qualify as a "rare exception" to the treatment parameters developed by the agency. ***Johnson v. Darchuks Fabrications Inc.***, 963 N.W.2d 227 (08/18/2021).

■ **Unemployment compensation; HIPAA violation bars benefits.** An employee of a mental health facility who violated the federal HIPAA law concerning privacy of medical records was denied unemployment compensation benefits. Following a decision by an unemployment law judge with the Department of Employment & Economic Development, the court of appeals held that the employee's access to medical records for "personal reasons" constituted disqualifying "misconduct." ***Wilson v. Pines Mental Health Center, Inc.***, 2021 WL 3722082 (Minn. Ct. App. 08/23/2021) (unpublished).

■ **Increased commute; employee entitled to benefits.** An employee was entitled to unemployment benefits after he quit because his employers' change in policy resulted in a 120-mile daily round trip commute, adding some 12-20 uncompensated hours of time each week. The appellate court ruled that the employee had "good reason" caused by the employer to resign. ***Sirek v. Northwest Respiratory Services***, 2021 WL 5441808 (Minn. Ct. App. 11/22/2021) (unpublished).

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Environmental Law

JUDICIAL LAW

■ **Minnesota Court of Appeals affirms broad statutory standing under MERA §116B.10.** On 12/27/2021, the Minnesota Court of Appeals held that that Minn. Stat. §116B.10, subd. 1, of the Minnesota Environmental Rights Act (MERA) broadly grants standing irrespective of whether a party establishes an injury. The case involved a complaint filed by an environmental group, Northeastern Minnesotans for Wilderness (NMW), under MERA section 116B.10 against the Minnesota Department of Natural Resources (DNR), challenging the adequacy of the DNR's nonferrous metallic mining rules, Minn. R. ch. 6132, to protect the Rainy River Headwaters (RRH), Boundary Waters, and other natural resources from pollution, impairment, or destruction. Twin Metals, a nonferrous mining company holding federal mineral leases in the RRH, intervened in the case and filed a motion to dismiss NMW's claim for lack of standing. The district court held that NMW had standing and denied Twin Metals' motion to dismiss.

In affirming the district court, the court of appeals rejected Twin Metals' argument that NMW lacked standing because it failed to allege a concrete, particularized, and imminent injury. A party suing on a matter of public interest, the court noted, must show either (1) an injury different from that of the public or (2) express statutory authority to sue. The court concluded that section 116B.10 "unambiguously" confers statutory standing upon any organization with members in Minnesota, a minimal qualification NMW had met; the statute "contains no limiting language requiring that the entity suing must be aggrieved by, interested in, or otherwise injured by the rule." The court referenced other instances of Minnesota statutes conferring express authority to sue upon plaintiffs even in the absence of actual harm. *See, e.g.*, *League of Women Voters v. Ritchie*, 819 N.W.2d 636, 645 n.7 (Minn. 2012) (interpreting Minn. Stat. §204B.44 (2010)). Because the court concluded NMW had established statutory standing, it did not address the issue of whether NMW had established a concrete, particularized, and imminent injury. ***NE Minnesotans for Wilderness v. Minn. Dep't of Nat. Res.***, No. A21-0857, 2021 Minn. App. Unpub. LEXIS 1007 (12/27/2021).

■ **8th Circuit mandamus order prohibits EPA's blending policy.** In December the United States Court of Appeals for the 8th Circuit granted the Iowa League of Cities' request for mandamus relief regarding its challenge to the U.S. Environmental Protection Agency's regulation of blending at municipally owned sewer treatment facilities. "Blending" refers to the practice of channeling surplus wastewater during wet-weather events around a sewer facility's secondary treatment units (which are typically biological-based processes, sensitive to abrupt increases in flow), treating the diverted wastewater with other (typically non-biological) treatment methods, and blending it with the fully treated wastewater before discharge. The blended discharge must still meet all applicable effluent limitations. In the early 2000s, EPA established a policy that this practice of blending is prohibited; rather, the policy provided, the practice constituted a "bypass"—a

temporary exceedance of effluent limitations that is only allowed under EPA regulations when there are "no feasible alternatives." 40 C.F.R. §122.41(m)(4).

In prior 2013 litigation between EPA and the League before the 8th Circuit, the League argued, among other things, that the practical effect of EPA's blending policy was to apply effluent limits to individual waste streams exiting a facility's supplemental treatment unit, prior to blending with the fully treated wastewater and final discharge to the receiving water body; by applying effluent limits to internal treatment processes rather than at "end of pipe," EPA's policy exceeded the agency's authority. The 8th Circuit agreed and vacated the blending rule.

In the current action, the League sought mandamus relief to stop EPA from regulating blending as a prohibited bypass in combined sewer systems. EPA attempted to distinguish its current blending prohibition by noting that the court's 2013 decision addressed blending in separate sewer systems, and thus was inapplicable to the agency's blending approach for combined sewer systems. The court flatly rejected this argument—"we did not differentiate [in the 2013 decision] between combined and separate sewer systems"—and opined that "EPA's *sub rosa* enforcement of its blending rule and its efforts to resist making its position public appear calculated so as to evade ordinary appellate review." (Citations omitted.) The court ordered EPA to obey the court's 2013 mandate and "cease and desist treating blending as a prohibited bypass within the Eighth Circuit." The court limited its mandate to the 8th Circuit, finding that the League lacked standing to pursue nationwide relief because all its members were located in the 8th Circuit. ***Iowa League of Cities v. EPA***, No. 11-3412, 2021 WL 6102534 (12/22/2021).

ADMINISTRATIVE ACTION

Overview of EPA and the Corps' proposed interim definition of WOTUS. In December the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers proposed an "interim rule" defining "Waters of the United States" (WOTUS). The definition of WOTUS is significant because it prescribes the reach of federal jurisdiction under the Clean Water Act (CWA), including the NPDES and 404 permit programs. Recall that a set of 1986 rules defining WOTUS had been subject to numerous fractured interpretations by the Supreme Court of the United States, including the Court's decision in *Rapanos v. United States*, 547 U.S. 715 (2006). In that case Justice Scalia, in a plurality opinion, articulated a jurisdictional test that the CWA extends only to waters that are "relatively permanent, standing or continuously flowing" or to wetlands that are immediately adjacent to such waters. But Justice Kennedy, in a partially concurring opinion, said federal "jurisdiction over wetlands depends upon the existence of a significant nexus between the wetlands in question and navigable waters in the traditional sense."

During the Obama era, EPA adopted a new definition of WOTUS, incorporating the broader "significant nexus" approach of Justice Kennedy in *Rapanos*. That definition was repealed by the Trump EPA and replaced by the Navigable Waters Protection Rule (NWPR), which found CWA jurisdiction primarily under Justice Scalia's more narrow "relatively permanent" standard. In August and September, federal district courts in both Arizona and New Mexico vacated the NWPR. Subsequently, EPA and the Corps announced that they would stop implementing NWPR and rely on the 1986 rule.

The agencies' new proposed interim rule is based on the 1986 rule but also codifies aspects of the *Rapanos* decision, including *both* the "relatively permanent" and "significant nexus" tests. In short, the proposed rule would interpret WOTUS to include:

- traditional navigable waters, interstate waters, the territorial seas, and their adjacent wetlands;
- most impoundments of WOTUS;
- tributaries to traditional navigable waters, interstate waters, the territorial seas, and impoundments that meet either the relatively permanent standard or the significant nexus standard;
- wetlands adjacent to impoundments and tributaries, that meet either the relatively permanent standard or the significant nexus standard; and
- "other waters" that meet either the relatively permanent standard or the significant nexus standard.

The agencies plan to eventually replace this interim rule with a permanent rule defining WOTUS. **86 Fed. Reg. 69372** (12/7/2021).


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Federal Practice
JUDICIAL LAW

9 U.S.C. §4; Motion to compel arbitration; disputed issued of fact. Where the defendant removed an action and moved to compel arbitration, the district court denied the motion, and the defendant appealed, the 8th Circuit held that because material facts relating to the arbitration agreement were disputed, the district court should have held a trial in accordance with 9 U.S.C. §4. ***Duncan v. Int'l Markets Live, Inc.***, ___ F.4th ___ (8th Cir. 2021).

Fed. R. Civ. P. 60(b)(1); attorney's lack of diligence; no excusable neglect. Affirming a district court's denial of a motion for reconsideration that it had treated as a Fed. R. Civ. P. 60(b)(1) motion, the 8th Circuit found that an attorney's "lack of diligence" did not constitute "excusable neglect" for purposes of Rule 60(b)(1). ***United States v. Mills***, 18 F.4th 573 (8th Cir. 2021).

Declaratory judgment act; claims moot; no actual controversy. Where the plaintiff sought a declaratory judgment that its rights had been violated but sought no damages, the 8th Circuit found that the plaintiff sought "nothing more than a judicial pronouncement that its constitutional rights were violated," and affirmed the district court's dismissal of the action for lack of subject matter jurisdiction. ***Regional Home Health Care, Inc. v. Becerra***, 19 F.4th 1043 (8th Cir. 2021).

28 U.S.C. §1442(a)(1); federal officer removal rejected; other grounds for removal waived. Where plaintiffs filed separate cases in Iowa state courts arising out of the

covid-related deaths of workers at meat processing plants; the defendants removed the cases on the basis of federal officer removal, alleging that they were "acting under" federal direction when they continued their operations in the early month of the pandemic; the district court rejected the grounds for removal and remanded the actions to the Iowa courts; and the defendants appealed, the 8th Circuit rejected defendants' argument that they were performing "a basic governmental task or operating pursuant to a federal directive" and affirmed the district court's remand order.

The 8th Circuit also determined that the defendants had waived their alternative argument for federal question removal where they limited their argument to a footnote and failed to submit supplemental authority that might have supported that argument even after the Supreme Court issued a decision that would have permitted the 8th Circuit to consider that argument. ***Buljic v. Tyson Foods, Inc.***, ___ F.4th ___ (8th Cir. 2021).

Abuse of discretion in discovery irrelevant absent evidence of harm. The 8th Circuit declined to reach the plaintiff's argument that the district court had abused its discretion in a series of discovery-related decisions, finding that the plaintiff had failed to establish any harm arising from those decisions. ***Tilghman v. Allstate Prop. & Cas. Ins. Co.***, ___ F.4th ___ (8th Cir. 2022).

Redactions for non-responsiveness again found to be improper. Magistrate Judge Docherty followed a number of previous decisions in the District of Minnesota and recently held that otherwise relevant documents produced in discovery cannot be redacted for non-responsiveness or irrelevance. ***Target Corp. v. ACE Am. Ins. Co.***, ___ F. Supp. 3d ___ (D. Minn. 2021).

Service of process on a registered agent; time for removal. Distinguishing service on a *registered* agent from service on a *statutory* agent, Judge Wright granted the plaintiff's motion to remand where the defendant did not remove the case within 30 days of service on its registered agent. ***RedWind Renewables, LLC v. Terna Energy USA Holding Corp.***, 2021 WL 5769308 (D. Minn. 12/6/2021).

Sanctions; local counsel; L.R. 83.5(d)(2)(a); reconsideration denied. In December 2021, this column noted an award of sanctions by Judge Wright against plaintiff's counsel jointly and severally.

More recently, plaintiff's local counsel sought leave to file a motion for reconsideration of that order, arguing that they should not be liable for the attorney's fee award because of the "narrow scope of their responsibilities as local counsel."

Judge Wright rejected that request, finding that Local Rule 83.5(d)(2)(A) required local counsel to "participate in the preparation and presentation of the case," local counsel's name had appeared on all of the submissions related to the sanctionable conduct, and to the extent that counsel had *not* participated in the preparation of those papers, counsel's *lack* of participation "demonstrate[d] an intentional or reckless disregard" of their duties under the local rule. ***Niazi Licensing Corp. v. St. Jude Medical S.C., Inc.***, 2021 WL 5371159 (D. Minn. 11/18/2021).

Fed. R. Civ. P. 11; sanctions; "utterly frivolous" claims. Finding that an attorney's claims for "Vexatious Litigation, Unbridled Violation of Ethic Rules and Abuse of Legal/Court Process" against counsel who had represented prevailing plaintiffs in a malpractice suit against the attorney or acted as an expert witness in that action were "utterly frivolous" and brought "for an improper purpose," Judge Schiltz imposed Rule 11 sanctions against the plaintiff and awarded those defendants attorney's fees and costs in an amount to be determined. ***Igbanugo v. Minn. Office of Lawyers Prof. Resp.***, 2021 WL 5216904 (D. Minn. 11/9/2021), *appeal docketed* (8th Cir. 12/10/2021).

Fed. R. Civ. P. 23(g)(3); motion to appoint interim class counsel granted despite objection. Despite the defendant's argument that appointment of interim class counsel was "premature" because only one action was pending and there was no "rivalry or uncertainty" among class counsel, Judge Frank found "no downside" to appointment of counsel and granted plaintiffs' Rule 23(g)(3) motion. ***Chen v. Target Corp.***, 2021 WL 6063632 (D. Minn. 12/22/2021).

Motion to amend scheduling order; prejudice; relevant factors. Granting in part and denying in part the plaintiff's motion to amend a scheduling order, Magistrate Judge Docherty found that the scheduling of other cases was not "prejudice" that warranted denial of the motion, and that prejudice "must be prejudice originating within the case at bar, not prejudice arising from another case." ***Marks v. Bauer***, 2021 WL 6050309 (D. Minn. 12/21/2021).

Request for award of attorney's fees slashed. Criticizing plaintiff's counsel for excessive hourly rates, "blatant over-charging of hours," vague billing entries, and block billing, Judge Magnuson reduced the fee request by two-thirds, awarding less than $100,000 on a request for almost $300,000 in fees. ***Lamplighter Village Apartments LLP v. City of St. Paul***, 2021 WL 5888532 (D. Minn. 12/13/2021).

Younger* abstention; attempt to rely on exceptions rejected.** Rejecting the plaintiff's attempt to rely on the "patently and flagrantly unconstitutional" and "bad faith" exceptions to *Younger* abstention, Chief Judge Tunheim dismissed the action without prejudice on the basis of *Younger* abstention, and declined to consider whether the claims stated a claim for purposes of Fed. R. Civ. P. 12(b)(6). ***Marohn v. Minn. Bd. of Architecture, Eng'g, Land Surveying, Landscape, Architecture, Geoscience and Interior Design, 2021 WL 5868194 (D. Minn. 12/10/2021).

Local rules amendments. Relatively minor changes to L.R. 7.1(d)(3)-(4) took effect on 1/1/2022. In addition, L.R. 7.1(f)(1)(C) was amended to make clear that tables of contents and tables of authorities do not count toward the word and line limits in L.R. 7.1(f)(1).

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Intellectual Property
JUDICIAL LAW

Patents: Local counsel liable for attorneys' fees award. Judge Wright recently denied local counsel's motion for leave to file a motion for reconsideration of the court's 10/25/2021 order granting in part defendant St. Jude Medi-

cal S.C., Inc.'s motion for attorneys' fees. In its 10/25 order, the court awarded St. Jude's reasonable attorneys' fees and costs pursuant to 35 U.S.C. §285 and 28 U.S.C. §1927 for unreasonable and vexatious litigation after the court's October 2019 claim construction order. Local counsel moved under Local Rule 7.1(j) for leave to file a motion for reconsideration, contending there were compelling reasons local counsel should not be held liable for the award of attorneys' fees. Motions for reconsideration are limited to correcting manifest errors of law or fact or to presenting newly discovered evidence. A motion for reconsideration cannot be employed to repeat arguments previously made, introduce evidence or arguments that could have been made, or tender new legal theories for the first time. The court found local counsel did not present any newly discovered evidence but instead argued that they should not be held liable for the award of attorneys' fees because of the narrow scope of their responsibilities as local counsel. The court rejected this argument, citing Local Rule 83.5(d)(2)(A), which requires local counsel to "participate in the preparation and presentation of the case." Additionally, the court found local counsel should have made such arguments when the plaintiff first opposed St. Jude's fees motion. ***Niazi Licensing Corp. v. St. Jude Med. S.C., Inc.***, No. 17-cv-5096 (WMW/BRT), 2021 U.S. Dist. LEXIS 222960 (D. Minn. 11/18/2021).

Patent: Ordinary observer test for design patent infringement. Judge Tostrud recently granted defendant KMDA, Inc.'s motion for summary judgment of noninfringement of plaintiff Pro-Troll Inc.'s design patent for a fishing lure. Pro-Troll owns U.S. Design Patent No. D516,663, entitled "Fishing Lure," which issued on 3/7/2006 and expired on 3/7/2020. Pro-Troll filed the action in July 2020, and KMDA moved for summary judgment. A design patent protects the novel, ornamental features of the patented design. As with infringement of utility patents, infringement of a design patent requires a two-step process: claim construction (determining the meaning and scope of the patent claims asserted to be infringed) and comparing the accused device to the properly construed claims. Infringement of a design patent is not determined by breaking down an accused device into elements and comparing those elements to corresponding limitations in a claim. Rather, a court must apply the "ordinary observer test." This test examines whether—in the eye of an ordinary observer, giving such attention as a purchaser usually gives—two designs are substantially the same. Relying on the statement of patentability from a prior reexamination of the patent-in-suit, the court found that an ordinary observer familiar with the prior art would focus on characteristics dissimilar between the patented design and the accused product. Thus, despite the similarities between the patented design and the accused design, the court found an ordinary observer would not be deceived into purchasing the accused product believing it was the patented design. ***Pro-Troll Inc. v. Proking Spoon Ltd. Liab. Co.***, No. 20-cv-01576 (ECT/LIB), 2021 U.S. Dist. LEXIS 241269 (D. Minn. 12/17/2021).

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Real Property
JUDICIAL LAW

Challenging a city's revocation of a conditional use permit. A city was reasonable when it revoked a conditional use permit (CUP) after a company impermissibly expanded the use of the original property by changing the nature and scope of its use. In *Croix Holdings, LLC*, the case centers on a dispute between appellant Croix Holdings, LLC and respondent City of Newport over the use of properties owned by Croix Holdings. The 1986 CUP allowed camper trailer sales where sales of this nature were not allowed under the city's zoning ordinance. After the city revoked the CUP for one property and ordered Croix Holdings to cease its nonconforming use of its other property, Croix Holdings filed a declaratory judgment action in the district court. The city moved for summary judgment, and the district court granted the city's motion. On appeal, Croix Holdings argued that the district court erred in granting the city's summary judgment motion.

The court noted that while the 1986 CUP could have been more explicit about the nature of the original permitted use, the CUP was expressly conditioned on that use remaining the same. Croix Holdings stipulated that there are no genuine issues of material fact and therefore, there was no factual dispute that Imperial Camper applied for the CUP so that it could sell nonmotorized campers on the lot. The court therefore rejected Croix Holdings' argument that the city unreasonably went beyond the plain language of the CUP in determining that multi-dealer auto sales was a "change of use" from camper sales. Croix Holdings failed to show that the city's decision to revoke the 1986 CUP was arbitrary and capricious. Because the city had a legally sufficient basis to determine that Croix Holdings substantially changed the use of the original property in both nature and scope, and the record supported that basis, the court held the city's decision to revoke the CUP was not unreasonable. Thus, the district court did not err in granting summary judgment in favor of the city. ***Croix Holdings, LLC v. City of Newport***, No. A21-0630, ___N.W.2d ___, 2021 WL 5999561 (Minn. Ct. App. 12/20/2021).

Clarifying when consideration is required in a deed. Consideration is required to support a contract for deed. In *TC Investment Group, LLC*, a son-in-law, along with two of the decedent's grandchildren, formed TC Investment Group, LLC to purchase the decedent's property after having suffered a heart attack a few months before her death. The decedent and her grandson executed a contract for deed for the sale of the property, and three days later, decedent executed a warranty deed in fulfillment. The grandson did not pay for the property and the decedent died 10 days after executing the warranty deed. After the decedent's estate was entered into probate, the attorney for the estate filed a notice of *lis pendens*. Soon after, the grandson executed a warranty deed conveying the property to TC Investment. TC Investment did not pay for the property. In this appeal from the district court's order granting title of the disputed property to the estate, TC Investment argued that (1) the district court erred by invalidating the first conveyance of the property for lack of consideration; (2) the notice of *lis pendens* on the property was invalid; and (3) the district court erred by

determining that its prior decision bound appellant's claims under the doctrines of *res judicata* and collateral estoppel. TC Investment relied on *Brandes v. Hastings*, 203 N.W. 430, 431 (Minn. 1925), which held deeds are valid conveyances without consideration. The court noted subsequent case law limits *Brandes*'s holding. The court clarified that no consideration is necessary in a quitclaim deed and that if there is no consideration, then the quitclaim deed operates like a gift and constitutes a valid conveyance. The court added that the deed at issue was a warranty deed, and as such, *Brandes* does not apply. The court held the contract for deed, like any contract, required consideration. Neither party disputed the fact that the grandson did not pay any of the contracted sales price, and as such, the contract for deed was not supported by any consideration, rendering it invalid. Because the issue of consideration was dispositive, the court did not address the other two issues of the notice of *lis pendens* and *res judicata* and collateral estoppel bars. ***TC Investment Group, LLC v. King***, No. A21-0531, ___N.W.2d.___, 2021 WL 5173770 (Minn. Ct. App. 11/8/2021).

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Tax Law

JUDICIAL LAW

District court and tax court hold overlapping jurisdiction in innocent spouse claim. Alice Coggin and her late husband had been married over 50 years before his death. They each owned 50% of an S Corp, and Ms. Coggin learned shortly before her husband's death that he had made untimely tax payments—or in some cases, partial or no payments—on behalf of the couple for several tax years. On the advice of her attorney, Ms. Coggin filed individual Forms 1040 for tax years 2001-09 on which she reported her 50% shares of the income from the S corporation. On those returns she elected "married filing separately" status. The separate returns for years 2001-07 reported that Ms. Coggin was entitled to refunds for those years. These returns did not mention Section 6015 and did not claim innocent spouse status. Ms. Coggin's filings in district court—where she sought tax refunds for years 2001-07 after they were denied by the Service—similarly did not mention innocent spouse. The United States sought summary judgment in the district court on the refund claims for 2001-07, and it counterclaimed in seeking judgment against Ms. Coggin for remaining balances due for years 2002-09.

The district court granted the government's motion for summary judgment as to tax years 2001-07 and ordered that the government's counterclaims for tax years 2008 and 2009 would proceed to trial. At the same time, the district court stated that it "has not evaluated and makes no ruling on whether the innocent spouse exception relieves Ms. Coggin of liability from the defendant's counterclaim for [tax], penalties and interest."

A few months after that order, Ms. Coggin finally raised the innocent spouse issue when she submitted a Request for Innocent Spouse Relief to the IRS and then a few days later moved to stay the proceeding with the district court, "until such time as [her] request for Innocent Spouse Relief... has been fully processed in the Internal Revenue Service and, as may be applicable, litigated in the United States Tax Court." The district court stayed the case pending resolution of the innocent spouse defense.

Although Ms. Coggin did not receive a notice of final determination of relief or other communication from the IRS regarding her request for innocent spouse relief, she received through counsel a letter from the United States Department of Justice (Tax Division) denying her claim. She cited that denial in her tax court petition. The commissioner challenged the tax court's jurisdiction and moved to dismiss Ms. Coggin's petition on that basis.

The tax court began its analysis by articulating its limited jurisdiction. By statute, Congress gives the tax court jurisdiction over innocent spouse claims, and Congress also sets up a statutory framework for those claims. That framework contains a limitation: The tax court loses its jurisdiction where "a suit for refund is begun by either individual filing the joint return pursuant to section 6532." The tax court interpreted this limitation to mean that "[w]here... a District Court acquires jurisdiction in a suit for refund, it acquires jurisdiction over the entire liability for that tax year including the taxpayer's claim for recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected. Accordingly, [the commissioner's] motion to dismiss for lack of jurisdiction will be granted as to years 2001-07."

On the other hand, since neither Mr. Coggins nor Ms. Coggins had paid the full amounts due in 2008 and 2009, the district court did not claim to (and the tax court noted it likely could not attain) "refund jurisdiction." The tax court reasoned that the statutory framework "does not address this overlap in jurisdiction." On the basis of comity, and the tax court's understanding of the intention of the district court's "anticipa[tion] that we will proceed in considering Ms. Coggin's innocent spouse relief claim to the extent of our jurisdiction," the tax court denied the commissioner's motion with respect to Ms. Coggin's claims for years 2008 and 2009. ***Coggin v. Comm'r***, No. 21580-19, 2021 WL 5827338 (T.C. 12/8/2021).

Fiduciary fundamental to self-directed IRA; unfettered control over IRA asset amounts to distribution. Self-directed IRAs permit investors to sock money away for retirement in assets beyond stocks and bonds. For example, through a self-directed IRA an investor can hold precious metals, real estate, and even cryptocurrencies. Like all IRAs, though, self-directed IRAs are subject to requirements that, if violated, subject the holder to adverse tax treatment.

Taxpayers Andrew and Donna McNulty researched self-directed IRAs and decided to invest in them. Mr. McNulty, a plant manager, invested in American Eagle coins (AE) and real estate, while Mrs. McNulty, an RN, invested in American Eagle coins. Both taxpayers directed assets held in their IRAs to invest in single-member limited liability companies (LLC), and Mrs. McNulty was the manager of the LLC to which she directed her investments. The issues surrounding Mr. McNulty's IRA were generally resolved in the commissioner's favor, which left the court facing the commissioner's claims that Mrs. McNulty received taxable distributions from her IRA.

Mrs. McNulty funded her IRA through direct transfers from two qualified retirement accounts and did not report any part of these transfers as gross income. She then instructed the custodian to

transfer the purchase price of the membership interests from the IRA to the single-member LLC's bank account. In turn, Mrs. McNulty, as the LLC's manager, had the LLC use almost all of the funds to purchase AE coins from Miles Franklin, Ltd., an authorized coin dealer. The funds to purchase the coins were transferred from the LLC's bank account to Miles Franklin. Mrs. McNulty took physical possession of the coins, which she kept in a safe in the home she shared with Mr. McNulty. In compliance with the requirements of the custodian, Mrs. McNulty provided a yearend valuation of the assets, which the custodian reported to the commissioner. On audit, the commissioner determined that Mrs. McNulty received taxable distributions upon their receipt of the AE coins equal to the cost of the coins.

Mrs. McNulty and the commissioner disagreed about whether Mrs. McNulty met several of the many requirements of Section 408, but for purposes of this decision, the tax court homed in on one: Who can have physical possession of the AE coins purchased with IRA funds? In addressing this question, the court emphasized the importance of a qualified custodian or trustee, which the court termed "fundamentally important to the statutory scheme of IRAs." IRA owners cannot have unfettered command over the IRA assets because such access violates this fundamental principle. A contrary holding "would make permissible a situation that is ripe for abuse and that would undermine the fiduciary requirements of section 408." Because Mrs. McNulty had unfettered control over the coins, she had taxable distributions from her IRA when she received physical custody of the AE coins irrespective of her status as the LLC's manager. ***McNulty v. Comm'r***, No. 1377-19, 2021 WL 5371215 (T.C. 11/18/2021).

11th Circuit weighs in on conservation easement saga; IRS reading of conservation easement extinguishment reg is invalid and violates the APA. In *Hewitt v. Comm'r of IRS*, the circuit court reversed a tax court decision and held that a regulation affecting conservation easements is arbitrary and capricious under the Administrative Procedure Act (APA) and thus is invalid. In this decision, the court addressed "whether §1.170A-14(g)(6)(ii), as interpreted by the Commissioner to prohibit the subtraction of any amount of proceeds attributable to post-donation improvements to the easement property in the event of judicial extinguishment, is procedurally valid under the APA where: (1) one commenter... made specific comments raising the improvements issue as it relates to extinguishment proceeds and recommended deletion of the provision; (2) six other organizations submitted comments criticizing or urging caution as to the regulation; and (3) Treasury failed to specifically respond to any of those comments, instead simply stating that it had considered 'all comments.'" Citing extensively to the dissenting opinions of Judges Toro and Holmes in the case the lower court deemed controlling, the 11th Circuit held that Treasury had failed. "Simply put," the court declared, the comments received were "significant and required a response by Treasury to satisfy the APA's procedural requirements. And the fact that Treasury stated that it had considered 'all comments,' without more discussion, does not change our analysis, as it does not enable us to see [the commentor's] objections and why [Treasury] reacted to them as it did." ***Hewitt v. Comm'r of IRS***,

No. 20-13700, ___ F.4th__ 2021 WL 6133999 (11th Cir. 12/29/2021) (internal quotations omitted).

"Assessor's office slipped one by me:" Court denies county's motion to dismiss for petitioner's failure to comply with mandatory disclosure rule. On behalf of St. Peter Hospitality, LLC, Rodney Lindquist filed a property tax petition alleging that the estimated market value of the subject property located in St. Peter was unequally assessed when compared with other properties. In January 2021, Nicollet County sent Mr. Lindquist a letter stating that he may be required to provide data on the property pursuant to Minn. Stat. §278.05, subd. 6, Minnesota's mandatory disclosure rule. Mr. Lindquist provided the required data for the year of the assessment date but failed to provide information for the year prior to the assessment date. In July 2021, the county assessor emailed Mr. Lindquist solely requesting that he confirm that he was not open for business the year prior to the assessment date. Mr. Lindquist responded that "we opened July-August 2019."

The county subsequently filed a motion to dismiss for the petitioner's failure to disclose the required information, stating that it did not receive information for the year prior to the assessment date. Mr. Lindquist filed a response stating that he misunderstood the assessment date and that he honestly believed he filed the proper information required by statute. Additionally, he stated that in his reply email, he stated, "I am not aware of anything else but please let me know if I am missing anything." Mr. Lindquist stated he trusted he would hear back if something was missing and took the county's silence as acceptance.

In cases where the petitioner contests the valuation of income-producing property, to be in compliance with the mandatory disclosure rule, the petitioner must provide specified information to the county assessor no later than August 1 of the taxes payable year. *See* Minn. Stat. §278.05, subd. 6. Failure to submit the required documentation will result in an automatic dismissal of the petition unless an exception applies. One such exception is if the petitioner "was not aware of or informed of the requirement to provide the information." *Id.*, subd. 6(b)(2). If the petitioner proves that it was unaware of the requirements, the petitioner has an additional 30 days to provide the information from the time it became aware.

In informing a petitioner of the requirement to provide the required information, a county does not need to reproduce the contents of the subdivision verbatim. However, when it is clear that the petitioner does not understand the meaning of the statute but made a good faith effort to comply with its requirements, "the petitioner is 'not aware of or informed of the requirement' according to the plain language of the statute," and has an additional 30 days to provide the information.

The county asserted that its January letter to the petitioner constituted a notice of the requirement to provide information concerning income-producing property to the county assessor. The court stated that generally, a letter referring to the required statute is sufficient, but Mr. Lindquist demonstrated his lack of understanding of the terms used in the statute, and, since he is not an attorney, nor was St. Peter Hospitality represented by counsel, he was deemed unaware of the requirement. The court denied the county's motion to dismiss and allowed an additional 30 days for St. Peter Hospitality to submit the required information.

In addition to denying the county's motion to dismiss, the court provided that "not later than thirty days after [this] date..., St. Peter Hospitality LLC must file an affidavit with this court stating whether it is a single-member LLC or not." "The purpose is to determine St. Peter Hospitality's compliance with Minnesota Administrative Rule 8610.0010(D) (2019), which provides that a lawyer must represent a limited liability company, with the exception of a single-member limited liability company, which may appear through its sole member." Following the dismissal, Mr. Lindquist filed a membership roster with the court that included seven members. In a subsequent order, the court directed St. Peter Hospitality to be represented by licensed legal counsel no later than 1/5/2022. ***Lindquist v. Nicollet Co.***, 2021 WL 5504203 (MN Tax Court 11/15/21); ***Lindquist v. Nicollet Co.***, 2021 WL 6133338 (MN Tax Court 12/23/2021).

Session Law 74 includes petitions filed both in the district court *and* the tax court. Petitioner Timber New Ulm filed a property tax petition on 12/31/2020 challenging the 2019 assessment for property located in New Ulm. The petition was filed using Minnesota Tax Court Form 7 and checked the box on that form for the "Regular Division" of the tax court.

"On August 10, 2021, the County filed a motion to dismiss on the ground that the petition was untimely. The County argued that the Minnesota legislature, in response to the COVID-19 pandemic, extended the deadline for property tax petitions filed in the district court but did not similarly extend the deadline for property tax petitions filed in the tax court." Because the tax court recently considered this question in *WMH Prop. Owner LLC v. Cnty. of Hennepin*, Nos. 27-CV-20-6274 & 27-CV-21-4306, 2021 WL 4312988 (Minn. T.C. 9/9/2021), "the court requested that the parties submit supplemental briefs that addressed the court's ruling in that case."

Minnesota Statutes chapter 278 provides the "taxpayer a choice of forum: the taxpayer may 'have the validity of the claim, defense, or objection determined by the district court of the county in which the tax is levied or by the Tax Court.'" Regardless of the forum chosen, a chapter 278 petition must be filed on or before April 30 of the year in which the tax becomes payable. Minn. Stat. §278.01, subd. 1(c). Failure to timely file and serve a petition deprives the tax court of jurisdiction to hear the matter. *See Kmart Corp. v. Cnty. of Clay*, 711 N.W.2d 485, 488-90 (Minn. 2006).

However, in response to the covid-19 pandemic, the Minnesota Legislature continued to extend the filing deadline for petitions concerning property taxes. Specific to taxes payable in 2020, the Legislature enacted Session Law 74, which extended certain statutory deadlines as follows. In relevant part, the governor's Executive Order 20-01 authorized extensions for 60 days after the end of the peacetime emergency or 2/15/2021, whichever is earlier.

"In *WMH*, [the tax court] addressed the effect that Session Law 74 had on chapter 278 property tax petitions and held that, under the plain meaning of the statute, Session Law 74 extended the deadlines in all district court proceedings, including chapter 278 petitions filed in the *district court*." The court did not, however, address whether Sessions Law 74 included deadline extensions for chapter

278 petitions filed in the *tax court* because the petitioner in *WMH* filed claims in both the district court *and* the tax court. The court in *WHM* held that at a minimum, the petitioner's district court was timely filed and did not address whether the tax court petition was also timely.

In the current matter, the county argued that petitioner's failure to file a petition in the district court deprives the tax court of jurisdiction in this matter. The tax court disagreed with the county's assertion, stating that "it merely requires the court to decide the question left unanswered in *WMH*—whether Session Law 74... also extended the filing deadline for chapter 278 petitions in the tax court."

Session Law 74 states that "[t]he running of deadlines *imposed by statutes* governing proceedings in the district and appellate courts... is suspended[.]" Act of Apr. 15, 2020, ch. 74, art. 1, §16. The court concluded that Session Law 74 plainly refers to deadlines imposed by chapter 278 and could not rationalize any reason why the Legislature would create a deadline for the district court involving the same claims and property subject that would not also apply to deadlines if filed in the tax court. Because the court determined that Session Law 74 suspended deadlines for the both the district court and the tax court, it denied the county's motion to dismiss, concluding that petitioner's claim was timely. ***Timber New Ulm Properties LP v. Brown Co.***, 2021 WL 5856123 (MN Tax Court 12/7/2021).

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Torts & Insurance
JUDICIAL LAW

Insurance: resident-relative exclusion is enforceable. A two-year-old resided with his grandparents. After the child suffered injuries from a dog in his grandparents' home, his father filed a claim with his parents' insurer. The insurer denied coverage because of a "resident-relative exclusion," which excluded coverage for: "'bodily injury' to 'you,' and if residents of 'your' household, 'your' relatives and person(s) under the age of 21 in 'your' care or in the care of 'your' resident relatives." Parents then filed suit. While the parents agreed that the exclusion applied on its face, the parents claimed that the exclusion was void as a violation of public policy. The district court rejected plaintiffs' argument and granted insurer's motion to dismiss for failure to state a claim. The court of appeals affirmed.

The Minnesota Supreme Court affirmed. The thrust of the plaintiffs' argument was that the abolition of intrafamilial tort immunities was meant to permit injured parties to recover through insurance funds, and that resident-relative exclusions should be invalidated as an attempt to circumvent the abolition of those immunities. The Court disagreed, noting that "abolishing judicially created immunities is fundamentally different than requiring insurers to provide coverage for resident-relatives that their insureds injure." The Court reasoned that while both sides presented compelling arguments in favor and against such exclusions, the question of their enforceability was best left to the Legislature. ***Poitra v. Short****, LLC*, No. A20-0491 (Minn. 11/24/2021). *https://mn.gov/law-library-stat/archive/supct/2021/OPA200491-112421.pdf*

Jeff Mulder
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MEMBER NEWS

We gladly accept announcements regarding current members of the MSBA. BB@MNBARS.ORG

Dan Gustafson was awarded the "Richard S. Arnold Award for Distinguished Service" by the 8th Circuit Bar Association. Dan is a founding member of Gustafson Gluek PLLC and leads the firm's practice in prosecuting complex and class action litigation. He also regularly represents pro bono clients in Minnesota federal and state court.

Steve Plunkett was named recipient of the DRI Tom Segalla Excellence in Education Award. The award honors a member of DRI whose contributions through legal scholarship exemplify the highest educational standards of DRI and further its mission of improving the skills of the defense practitioner. Plunkett is a shareholder at Bassford Remele.

Kristine L. Cook became a partner at Peterson, Logren & Kilbury. Her practice will continue in workers' compensation and occupational disease defense, as well as in civil litigation, including subrogation claims.

Mitchell L. Dooley joined Christensen & Laue, PLLC as an associate attorney. His practice will include real estate and business transactions, estate planning, probate and trust administration, and civil litigation.



Elizabeth (Lisa) Henry, Nicole Appelbaum, and Jennifer Crancer were named partners at Chestnut Cambronne PA. Henry practices in the areas of civil litigation, elder law, estate and trust litigation, and business representation. Appelbaum has almost two decades of litigation experience. Crancer practices in the areas of civil litigation, business representation, insurance coverage and litigation, and criminal defense.


Maslon LLP announced that Judah Druck and Jason Reed were elected to the partnership. Druck represents corporate and individual policyholders in insurance coverage and business disputes. Reed focuses his legal practice on corporate trustee representation, corporate trust litigation, and bankruptcy concerns.


Gov. Walz appointed Helen Brosnahan and Kari Willis as district court judges in Minnesota's 10th Judicial District. The seats will be chambered in Stillwater in Washington County and Buffalo in Wright County. Brosnahan is an assistant Dakota County attorney in the Civil Division. Willis is an assistant county attorney with the Wright County Attorney's Office.

Barbara J. Gislason received the Presidential Gold Medal from UIA President Jorge Marti in Madrid, Spain. Gislason is the editor-in-chief of the *Juriste International,* the flagship publication of the Paris-based Union Internationale des Avocats (UIA).

Winthrop & Weinstine, PA announced the promotion of three new shareholders and six new managing associates. New shareholders are Samantha Heaton, Ian Rubenstrunk, and Quin Seiler. New managing associates are Raha Assadi-Lamouki, Catherine Cumming, Amber Kraemer, Kyle Kroll, Neil Mahoney, and Joshua Noah.

Shannon E. Eckman joined Trepanier MacGillis Battina PA as an associate attorney practicing in the areas of business, employment, and real estate litigation.

Brian L. Stender joined DeWitt LLP as a partner in the Minneapolis office. He focuses his practice on all facets of intellectual property.

Jeremy M. Walls has joined Moss & Barnett with the firm's business law team. Walls advises clients on a broad range of business and financial transactions.

Gary L. Voegele joined Virtus Law as an of counsel attorney. Voegele will continue to handle a variety of general practice matters in the firm's Faribault office.



Lommen Abdo announced the addition of two new shareholders, Josh Feneis and Sara Wilson, and one new board member, Lauren Nuffort. Feneis focuses on family law practice as well as real estate disputes and business litigation. Wilson's transactional practice focuses on real estate. Nuffort is a civil litigator, practicing mainly in the areas of insurance, transportation, professional liability, and construction law.

Eric H. Schilling joined Fredrikson & Byron as an associate. Schilling provides counsel to banks and other financial institutions in a variety of regulatory, mergers and acquisitions, and other transactional matters.

Stinson LLP elected three new partners in the firm's Minneapolis office. Micah Revell advises clients on energy, environmental, and natural resources law. Aalok Sharma is an entertainment and sports lawyer with experience in, business, construction, and products liability litigation. Bill Thomson defends insurers and other businesses.

In memoriam

CHARLES S. 'CHARLEY' RAVINE
of St. Paul passed away on November 15, 2021 at age 74. He graduated from the University of Minnesota Law School in 1973. Charley then began his career of public service, which focused on providing legal assistance to nonprofit organizations working to meet community needs—especially the needs of under-served communities.

PAUL CONRAD GLAESER,
age 64 of Gibbon, died on November 18, 2021. He graduated from William Mitchell College of Law. He was a lawyer who made house calls and hospital calls and always advised his clients with warmth, but also candor.

EDWARD (ED) RASMUSSEN
passed away at age 93 on November 29, 2021. While teaching at Mahtomedi, he attended night school at William Mitchell College of Law, earning his law degree in 1960. In 1962 Rasmussen was elected to the Minnesota State House of Representatives. In 1964 he joined the law practice established by his father-in-law in Bagley, MN, and never looked back.

JOHN M. SANDS,
age 85, died November 26, 2021 in St. Paul. Sands practiced law with a variety of firms in St. Paul. He capped his long record of public service by serving a term as a Ramsey County District Court judge.

DONALD VENNE,
age 73, of Coon Rapids, died November 18, 2021. He served 26 years as an Anoka County District Court judge before retiring in 2012.

MICHAEL MILES BADER
passed away on November 23, 2021, at age 68. Bader was a successful St. Paul attorney for 40 years.

RICHARD P. 'DICK' MAHONEY
died on November 25, 2021 at the age of 92. He graduated from William Mitchell College of Law in 1957. He was a noted litigator and speaker and the recipient of multiple awards. Mahoney was one of the founding members of the Minnesota Defense Lawyers Association, serving as its president and as a member of its board.

JOHN J. HORVEI,
age 81 of Shoreview, passed away on December 2, 2021. He graduated from the University of Minnesota Law School in 1967. He worked at Insurers of Wassau as well as Abrams and Spector before starting out in private practice, eventually becoming a founding partner of Horvei, Gubbe & Kruger PA.

RODERICK B. (ROD) MCLARNAN
died December 15, 2021 at age 95. His legal career in Moorhead began with Saetre and McLarnan in 1958 and ended 54 years later with McLarnan, Hannaher, Vaa and Skatvold. He was a trial lawyer who embraced the challenge of the courtroom. He loved being a lawyer and spending time with lawyers.

WILLIAM G. SWANSON,
age 75, passed away on December 16, 2021. He was a graduate of the University of Minnesota Law School. He spent his career as an attorney in Brooklyn Center.

MARK A. MYHRA
died on December 18, 2021, at age 60, in Plymouth. He attended law school at Loyola University in Chicago. In 1993, Myhra co-founded the Greene Espel law firm in Minneapolis. In 2006, he moved to Boston Scientific, ultimately rising to senior managing counsel.

DAVID FULTON HERR
died on December 22, 2021 at age 71. He graduated from William Mitchell in 1978. Herr began his career with Robins, Kaplan. In 1981 he began his 40-year association with Maslon, LLP, in their litigation group, where he became a highly regarded appellate lawyer, complex case litigator, and managing partner. He was also an adjunct professor at William Mitchell for more than 30 years.

FRED PRITZKER,
age 71, died on January 10, 2022. He attended the University of Minnesota Law School, worked briefly for the Attorney General's office, and practiced at several prestigious law firms until deciding to set his own course. He practiced law for over 40 years and was a nationally known legal expert on foodborne illness.

CLASSIFIED ADS

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ATTORNEY WANTED

ASSOCIATE ATTORNEY

Campbell Knutson, PA, one of Minnesota's leading municipal law firms, is seeking an associate to start immediately. Our firm's practice is dynamic and growing. We assist our client cities in responding to any legal needs, including labor and employment, contracts, real estate, zoning, ordinance drafting, civil litigation, and prosecution services. Civil associates will provide legal advice to city officials and city staff; attend meetings; and draft resolutions and ordinances, and contracts, among other varied responsibilities. Prosecution associates will handle non-felony cases from start to finish. This includes reviewing for charging, drafting formal complaints, all discovery, any pretrial motions, preparation of all notices as required by the Minnesota Rules of Criminal Procedure, all pretrial hearings, and any jury or court trial. Prior experience with governmental representation is useful, but not required. Prior legal experience of two to five years is preferred, but not required. Campbell Knutson, PA offers a collegial and team-oriented atmosphere and an excellent benefits program. Salary is based on knowledge, skills, and abilities, and years of practice. Campbell Knutson, PA was founded in 1986 and provides civil representation and prosecution services to cities across the metro area. We value our long history in working with Minnesota municipalities to build strong communities. We also understand the importance, now, more than ever, to collaborate with our clients in building equitable and inclusive communities, which harness the vibrancy of the many varied cultures, communities, traditions, and backgrounds of Minnesotans. Our firm is a proud partner of the Just Deeds project. Furthermore, our firm is a sponsor of the Minnesota City Attorney Association's Facing Forward series on systemic racism. Our firm believes it is paramount that we engage in conversations regarding systemic racism and how cities and their legal counsel, can do better. We are motivated to recruit and retain talented attorneys from diverse backgrounds. Interested applicants should send a resume, cover letter, and writing sample to: Soren Mattick (smattick@ck-law.com). The position is open until filled.

ASSOCIATE ATTORNEY LABOR AND EMPLOYMENT

Flaherty & Hood, PA, St. Paul, Minnesota, seeks an associate attorney to join its growing and diverse practice representing Minnesota public entities in the area of public labor and employment law. Education and a demonstrated interest in labor and employment law is required with some litigation experience preferred. Flaherty & Hood, PA provides a collaborative firm environment and competitive salaries and benefits, such as group insurances; 401(k); health club and data plan allowances; and paid holidays and paid time off. Please submit your resume by email to Brandon Fitzsimmons, Shareholder Attorney, at bmfitzsimmons@flaherty-hood.com. More information about the firm is available at: http://www.flaherty-hood.com.

ASSOCIATE CRIMINAL DEFENSE ATTORNEY

I am a sole practitioner in Alexandria and am looking to hire an associate. I practice exclusively in criminal defense, but you would likely do that and whatever other lawyers do to round out your hours. (I wouldn't know.) If you have prosecution or defense experience, that would be ideal. I'm looking to retire in 10 years. If you're bright and competent and want to live here, you could set yourself up for a very successful career. Inquires can be directed to my email at chriskarpanlaw@live.com.

COUNSEL POSITION AT GRINNELL MUTUAL

Grinnell Mutual, a property-casualty insurer, is hiring for a Counsel position. Overview: This position provides legal counsel to internal departments advising on laws and compliance and manages litigated claims. May work from our home office in Grinnell, Iowa, or remotely from your home. Please visit grinnellmutual.com/careers for more information and to apply. https://careers-grinnellmutual.icims.com/jobs/1683/counsel/job

EMPLOYMENT COUNSELING ASSOCIATE ATTORNEY

Winthrop & Weinstine, an entrepreneurial, full-service law firm, located in downtown Minneapolis has an excellent opportunity for an associate attorney in its fast-paced employment counseling practice. This associate will focus on researching employment related topics; preparing and revising multi-state employment handbooks and policies; preparing employment agreements, non-compete agreements and release agreements for multiple states; and responding to charges of discrimination. Two or more years of Employment law experience and a strong desire to grow the practice preferred. In addition, candidates must have excellent verbal and written skills, a strong work ethic and strong academic credentials. Winthrop & Weinstine offers competitive salary and benefits and a team approach to providing our clients with top quality service. EOE. https://bit.ly/2YWOhug

FINANCIAL SERVICES ASSOCIATE

Maslon LLP is seeking an associate with two plus years of experience to work in its financial services practice group. A successful candidate will be a highly motivated self-starter who is able to work well in a fast-paced environment. This position provides an excellent opportunity to do sophisticated legal work in a mid-size law firm setting. Prior experience with corporate or municipal bond structures, securitization trusts and bankruptcy, with an emphasis on representing and advising financial institutions acting in various agency roles, is preferred but not required. Preference will be given to candidates located in the Twin Cities or willing to relocate to the Twin Cities, but exceptional remote candidates residing outside of Minnesota will also be considered. For more information, please visit: www.maslon.com/careers. Maslon LLP is an Equal Employment Opportunity and Affirmative Action employer. Our firm continues to be dedicated to providing a workplace that is free of unlawful discrimination, harassment, and retaliation.

LITIGATION ASSOCIATE

Capstone Law, LLC is a boutique construction law firm in need of an associate with three plus years of litigation experience, excellent research and writing skills, and knowledge of civil procedure and discovery.

Experience working directly with clients is a plus. Hybrid office/ remote or primary remote. Send a resume to: info@capstonelaw.com

ASSOCIATE ATTORNEY

Rajkowski Hansmeier Ltd., a regional litigation firm with offices in St. Cloud, MN and Bismarck, ND, has an opening for an associate attorney with zero to five years' experience to join its team of trial attorneys. Our firm has a regional practice that specializes in the handling of civil lawsuits throughout the State of Minnesota, North Dakota and Wisconsin, including a significant volume of work in the Twin Cities. We offer a collegial workplace with experienced trial attorneys who are recognized leaders in their field of practice. We are seeking an associate who has relevant experience, strong motivation and work ethic along with excellent communication skills. Our lawyers obtain significant litigation experience including written discovery, motion practice, depositions coverage, trial and appellate work. We try cases and are committed to training our younger attorneys to provide them with the skills to develop a successful litigation practice. Competitive salary and benefits. Please submit resume, transcript, and writing sample to: Human Resources, Rajkowski Hansmeier Ltd., 11 Seventh Avenue North, St. Cloud,, MN 56302, 320-251-1055, humanresources@rajhan.com EOE

REAL ESTATE ATTORNEY WANTED

Wilkerson, Hegna, Kavanaugh & Johnston, PLLP is seeking an associate attorney to join its team. The firm practices in the areas of in real estate, business and litigation. The right candidate will be able to work independently and have one to five years of experience in real estate and business transactions, and civil litigation matters. This is a great opportunity to grow in your career with flexible billing requirements, and also work directly with clients ranging from individuals and small business owners, to top building contractors and nationally recognized leaders in the industry. Please submit your resume to Mr. Morgan Kavanaugh via email at: mkavanaugh@wilkersonhegna.com.

ASSISTANT/SR. ASSISTANT ATTORNEY

Olmsted County Attorney's Office is seeking a full-time provisional assistant/sr. assistant county attorney in the criminal division. Please find our job posting on the Olmsted County website at https://www.olmstedcounty.gov/government/county-departments/human-resources or https://www.governmentjobs.com/careers/olmsted

BUSINESS LITIGATION ATTORNEY

Anthony Ostlund Louwagie Dressen & Boylan PA is looking for an exceptional associate to join its fast-paced business litigation practice in Minneapolis, Minnesota. Applicants must have one to six years law firm experience in business litigation, excellent academic credentials, and superior writing and communication skills. The position offers a competitive compensation and benefits package. Visit the firm website at anthonyostlund.com. Send resume and relevant writing sample in confidence to Janel Dressen at: jdressen@anthonyostlund.com. An equal opportunity employer.

ASSISTANT SWIFT COUNTY ATTORNEY

Swift County is currently accepting applications for the position of an Assistant Swift County Attorney. Duties and Responsibilities: Assists the county attorney in the prosecution of crimes, the enforcement of child support, and the protection of children and vulnerable adults. Acts as legal counsel for all county departments and agencies. In order to be considered for this position, we require a Juris Doctor; licensed as an attorney in the State of Minnesota; minimum of one year of relevant experience; and have a valid driver's license. Prior experience in a county attorney's office preferred. Pay Range: $63,984.96 - $83,472.48/annually Hours: 36 hours/week Closing Date: Open until filled with preference given to applications received by December 5, 2021. To be considered for this position, please visit our website at www.swiftcounty.com/jobs, complete the application process, and submit a resume as well as a writing sample.

ATTORNEY WANTED

Jones Law Office, based in Mankato, Minnesota, provides a wide variety of legal services across south central Minnesota. At Jones Law Office, we know that success stems from a personal commitment to each and every client we represent. Our commitment is to understand each client's unique issues and relationships to achieve maximum results. We are looking for an attorney to join our litigation team. This position provides a wide variety of litigation opportunities in a fast-paced environment. Our attorneys work individually and collaboratively to provide the best results for our clients. The ideal candidate will share our core values: positive attitude, attention to details, team player, and hard working. We offer competitive salary with a bonus structure as well as a benefit package. To apply, please submit your cover letter and resume to: Jeannie@joneslawmn.com.

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It is an exciting time to be at Rinke Noonan! We are a unique, forward-thinking firm, conveniently located in St. Cloud, MN, and we think you'll be pleased with the rich challenges and opportunities you can find here. We are currently hiring for the following positions: Government and Real Estate Attorney, Litigation Attorney, Environmental/ Litigation Attorney. As an attorney with Rinke Noonan, you can expect the following: Flexible atmosphere for a great work/life balance. Reasonable billing hour requirements. Teamwork culture. Excellent training. Mentorship program. Opportunities to focus your practice areas on what you are passionate about. Fantastic benefits. Equity opportunities for ownership. Independent management of your own files. We are considering licensed attorneys with zero to three plus years of experience, including 2022 graduates. We value passionate people who want more than just a job. The culture at Rinke Noonan values and supports people who contribute their individual talents and experience in a collaborative, team-based environment. We are passionate about the law, devoted to clients, and dedicated to serving the community and recognize that full, well-rounded lives is important to providing excellent legal counsel. Can you see yourself fitting in with our talented team? Join our talent pool by sending your cover letter, resume, transcript, and writing sample to: humanresources@rinkenoonan.com. https://www.rinkenoonan.com/careers/

EMPLOYEE BENEFITS - LITIGATION ASSOCIATE

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ASSOCIATE ATTORNEY

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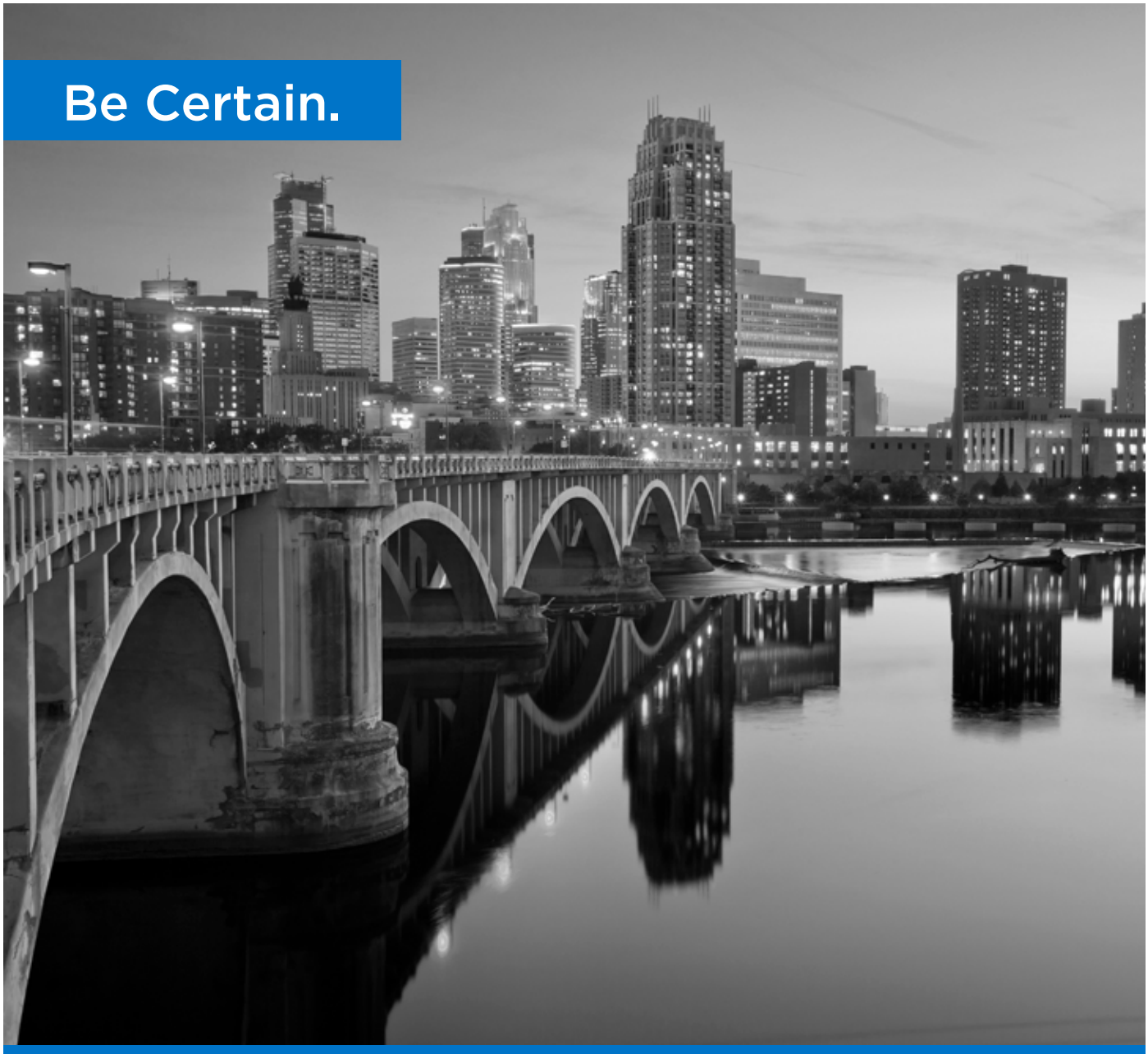

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