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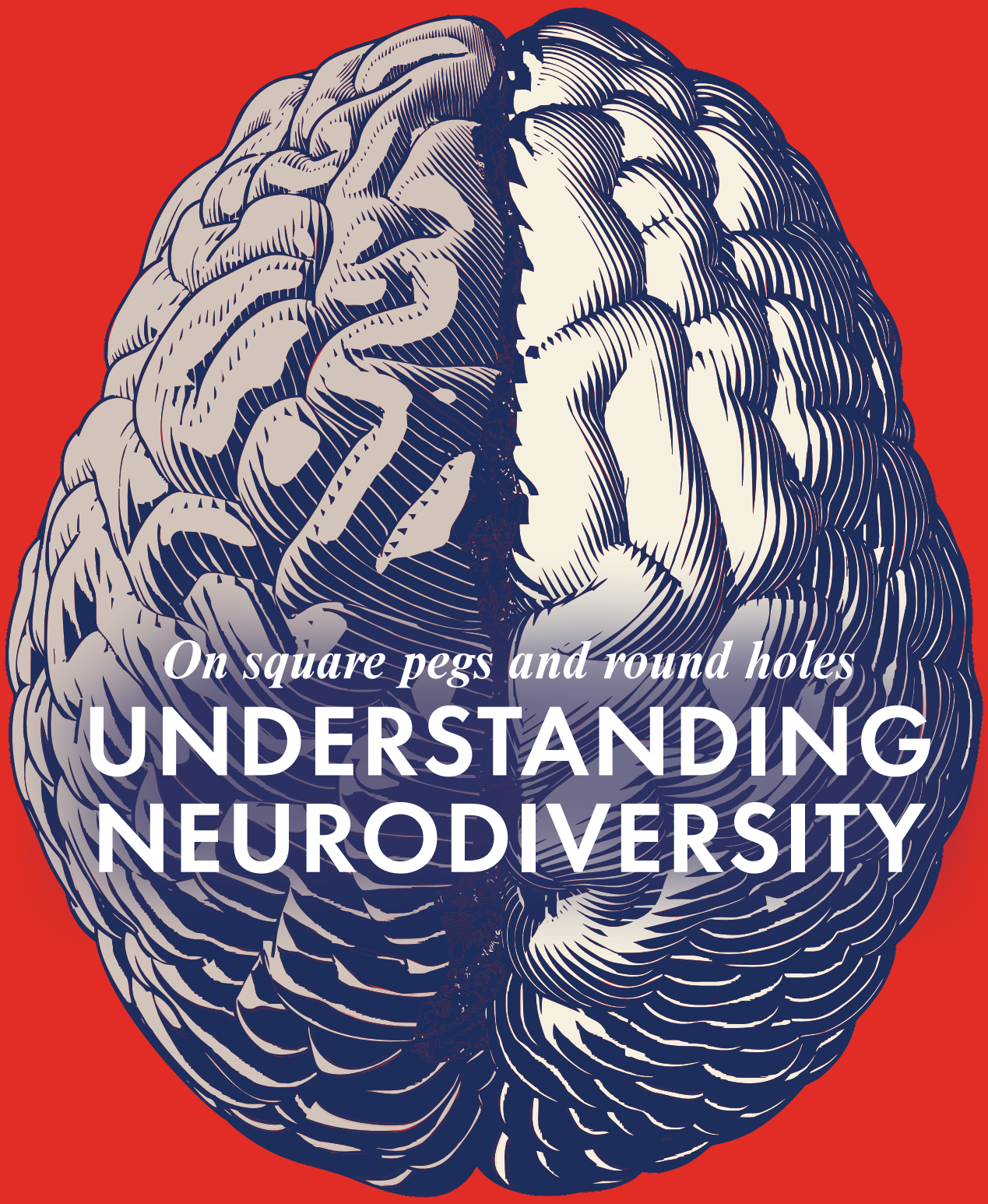

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VOLUME 79, NO. 3

columns

features

thank you

CONTENTS UNDER PRESSURE

BY JENNIFER THOMPSON

JENNIFER THOMPSON is a founding partner of the Edina construction law firm TTLO Law. She has also served on the Minnesota Lawyers Mutual Insurance Company board of directors since 2019.

Have you seen the movie *Encanto?* I'm a big Disney fan and have three kids, so it's pretty much been on repeat in my house since December. Lin-Manuel Miranda created the soundtrack, so there's that, too. One song that is particularly poignant is "Surface Pressure." It tells the story of Luisa, the physically strong sister who uses her strength to carry the weight of all of her family's burdens, but is silently being crushed by it all: *"I'm the strong one, I'm not nervous / I'm as tough as the crust of the earth is."*

Luisa goes on to sing about how because she's so strong, you should just give it all to her—all your burdens, worries, pressures.

Give it to your sister, it doesn't hurt
And see if she can handle every family burden
Watch as she buckles and bends but never breaks
No mistakes

Sound familiar to anyone? It sounds to me like a lot of lawyers I know. Our profession begs clients to let us shoulder the burdens weighing on them, to take their problems from them and let us work to solve them. We take their worries and fears and make them our responsibilities. We're the strong ones. We marshal law and facts to move mountains for our clients. We buckle. We bend. We don't break. No mistakes.

Luisa then sings honestly about the cost of this super-human strength: *"Pressure like a drip, drip, drip that'll never stop, whoa / Pressure that'll tip, tip, tip 'till you just go pop, whoa."*

Wow. Yeah, I've felt this kind of pressure and from the conversations I've had with other lawyers, I think a large portion of our profession has, too. Is it any wonder that the study by the ABA's Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation (the ABA Well-Being Study) found that our profession is grappling with serious barriers to well-being? And this was before you added in two years of a pandemic; backlogged caseloads; isolation from family, friends, and co-workers; increased household responsibilities; a racial reckoning; social unrest; a war.

The Minnesota Supreme Court's Call to Action for Lawyer Well-Being cited the ABA Well-Being Study as its impetus. The ABA study asked major stakeholders in the legal profession—like bar associations—to take "small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession." (*National Task Force on Lawyer Well-Being Report*, Aug. 2017, a*t https://lawyerwellbeing.net.)*

The MSBA accepted the Supreme Court's call to action. One of the ways it did so was by convening the Parental Leave Working Group. During the 2020-2021 bar year, the working group undertook great efforts to study the intersection between workplace pressures that undermine lawyer well-being (including court deadlines) and written parental leave policies, all with an eye toward developing recommended changes to the Rules of General Practice, Rules of Civil Procedure, and Rules of Appellate Procedure. The result of the working group's efforts is a petition that the MSBA filed with the Minnesota Supreme Court in February 2022 to implement such changes to the court rules.

Change in how law is practiced and how lawyers are regulated is change that requires much thought and careful consideration. In developing its recommended rule changes, the MSBA was committed to fairly, reasonably, and professionally balancing multiple (and often competing) interests, including lawyer well-being, judicial resources, and client interests. Lawyers who are empowered to take personal leave when it is necessary are not only doing good for themselves; they are doing good for their clients. Rules that require lawyers to seek input from their clients before seeking leave (as the proposed amended rules do) help remind lawyers of their ethical responsibility to keep their clients informed and engaged in their representation. And rules that uniformly and clearly outline how cases are to be handled during periods of leave create consistency and serve the profession's interest in equity, as well as clients' interest in a level playing field.

Lawyer well-being is a serious issue and to fully address it requires systemic changes in our profession. Tips on how to manage one's inbox, set boundaries with clients, and incorporate yoga into your daily routine are all helpful, but they place responsibility on the individual for solving (or, perhaps better said, working within) the toxicity that exists in our profession. That is not fair, and those types of personal changes alone cannot solve the issue. The MSBA has taken a step to change how law is practiced and thereby to improve incrementally the well-being of our profession. It is on all of us to continue to look for meaningful ways to do so—the Supreme Court, after all, has called us all to action. And there is hope, as Luisa sings, that if we *"could shake the crushing weight of expectations / Would that free some room up for joy / Or relaxation or simple pleasure?"* I'll save some popcorn and a seat on the couch for you and we can find out together. ▲

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EDITOR
Steve Perry
sperry@mnbars.org

ART DIRECTOR
Jennifer Wallace

ADVERTISING SALES
Pierre Production & Promotions, Inc.
(763) 497-1778

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IN-PERSON CLE EVENTS

2022 lawyer registration? *We can help*

The first wave of 2022 lawyer registration notifications has gone out. Lawyers are now beginning to see the changes made last year to Uniform Pro Bono Reporting. Two questions ask about approximate hours spent during the prior calendar year on pro bono service and activities for improving the law, the legal system, or the legal profession. An additional question, with a checkbox response, asks whether you provided financial support during the prior calendar year to organizations that provide legal services to persons of limited means. Your individual responses to these three new questions will not be made public, and government attorneys and judges are exempt from the requirement.

The MSBA has been working for over a year to gather resources for our members around this rule. If you have questions, you can visit our FAQ page at *www.mnbar.org/pro-bono-reporting*, check out the MSBA and Minnesota Judicial Branch informational video at *bit.ly/3u5G96D*, or watch a one-hour on-demand CLE on the topic co-hosted by the Minnesota State Law Library and the MSBA's Access to Justice Committee at *bit.ly/3wbZxBC*.

The MSBA advocated for this mandatory reporting rule to heighten the awareness of our profession's ethical responsibility to provide pro bono services to low-income Minnesotans. It also serves to give the courts, bar associations, and the legal community clearer data to use in analyzing, promoting, and recognizing statewide pro bono service, as well as a tool to educate the public about the great work done by our profession. These three simple questions will enable us to make progress toward providing access to justice for all. ▲

Next month: EJC IN MINNEAPOLIS!

The American Bar Association (ABA) and National Legal Aid & Defender Association (NLADA) Equal Justice Conference is coming to Minneapolis. From May 12-14, representatives from legal aid programs, access-to-justice organizations, the courts, and private practice across the country will be coming together to share and learn about developments and innovations in providing legal services to low-income persons.

The conference will host over 75 workshops on topics ranging from technology improvements to maximizing pro bono impact to examining equity in legal services systems. Minnesota has a very strong showing, with presenters in at least 17 of the 75 workshops. The stellar lineup includes *Building Up In-House Pro Bono Partnerships and Opportunities* with Alyson Cauchy (US Bank) and Jeffrey Proulx (Target); *Community Coming Together to Respond to Civil Unrest* with a full panel of Minnesotans discussing the coordinated legal and social service response to civil unrest after the murder of George Floyd; and *The Afghanistan Humanitarian Crisis and Collaborative Responses,* with Sarah Brenes of Advocates for Human Rights and Rachele King from the Minnesota Department of Human Services.

The conference will also welcome a host of speakers, including video remarks from Senator Amy Klobuchar and a keynote address from Minnesota Supreme Court Justice Anne McKeig. For a full list of workshops, visit the conference website at *bit.ly/3wc7Kpq.*

For the past two years the conference has been held virtually, and ABA President Reginald Turner welcomes the return to a live format. "The ABA is pleased to join our partners nationally and in Minnesota to bring back an in-person Equal Justice Conference," he said. "The past couple of years have placed an unprecedented strain on our country's justice system, exposing its existing disparities and forcing us to look more closely and deliberately at the delivery of civil legal services. This conference joins all components of the civil legal aid community and furthers the work of so many to deliver assistance to underserved populations."

NLADA President and CEO April Frazier Camara added, "NLADA is grateful for our longstanding partnership with the ABA on the Equal Justice Conference. For more than 20 years, EJC has provided a space for advocates representing the full array of legal services and pro bono providers, partners, and supporters in the movement for access to justice. We are honored to join everyone in Minneapolis this year and recognize the work of Minnesota's access to justice community and that of our colleagues across the country."

That community, led by host committee co-chairs Tom Walsh of Volunteer Lawyers Network and Caryn Boisen of Larson King, has been working for nearly a year to help plan local content, scholarships for legal services staff, and to create gathering points to share and apply innovations to our state. This opportunity does not come often. The last time Minnesota hosted the EJC was in 2008, and travel to a national conference outside the state is generally out of reach for most legal services organizations.

While Minnesota is an established leader in pro bono and access to justice, the pace of innovation around the country is staggering and the need continues to grow. The pandemic forced changes to systems that, in many cases, had fallen behind the times long ago. The EJC is an opportunity to share successes arising from this badly needed paradigm shift and bring them home to courts and systems across the country. Anyone interested in being a part of this change is welcome and encouraged to attend. ▲

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PRIVATE 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.

In 2021 the Director's Office closed 88 complaints with admonitions—a form of private discipline issued for violations of the Minnesota Rules of Professional Conduct (MRPC) that are viewed as isolated and nonserious. This number was comparable to, but slightly higher than, the prior year (82).

The rule violations that lead to private discipline run the gamut, and a table of admonition violations by rule can be found in the annual report issued each July (which is available on our website). It is always true that a significant number of admonitions are due to lack of diligence (Rule 1.3) and lack of communication (Rule 1.4). Last year was no exception. In fact, there were 43 communication violations contained in the 88 admonitions. (I should mention that this doesn't mean that half of the admonitions were for communications violations, as some admonitions contain multiple rule violations—but it nonetheless shows the scope of communication failures.) Although it's easier said than done, the single best advice I can offer to avoid complaints is to work on your files and communicate with your clients. Much will be forgiven by clients if they feel you are paying attention to their matter, and you keep them up to date on what is happening. This is not only good customer service but an effective risk management tool.

Like last year, a high number of admonitions arose out of termination of representation (there were 19 citations to Rule 1.16(d) in 2021 admonitions) and numerous errors (also 19) related to failing to handle unearned fees correctly—mostly in flat fee arrangements (Rule 1.15(c)(5)). A high number of admonitions (13) contained violations of Rule 1.5(b)(3)—impermissibly calling a fee nonrefundable or earned upon receipt.

Let's look at a few specific rules and situations that tripped up lawyers in 2021.

Nonrefundable fees and other retainer agreement errors

Please, please take this opportunity to pull out your standard retainer agreement and review it against the ethics rules. Two areas frequently lead to private discipline—describing a fee as nonrefundable and failing to follow the rules related to compliant flat fee agreements.

Since 2011, Rule 1.5(b)(3), MRPC, has stated, "Fee agreements may not describe any fee as nonrefundable or earned upon receipt but may describe the advance fee payment as the lawyer's property subject to refund." If your agreement uses the term *nonrefundable* to describe your fee or calls an advance flat fee payment earned upon receipt, delete that language! You will receive an admonition if we see this impermissible language in a fee agreement, even if the client does not raise the issue or your fee is not in dispute in a complaint. Fifteen percent of admonitions in 2021 stemmed from this rule violation. You are expected to be familiar with the ethics rules applicable to your practice.

Flat or fixed fee arrangements are very common and are ethically permissible. If you use this type of fee arrangement, review Rule 1.5(b), MRPC, and its subparts in detail. There are several requirements, none of them onerous, that need to be met to satisfy the rules if you wish to treat the advance flat fee payment as your property subject to refund (and thus place it into your business account rather than your trust account). Make sure you know what the rules are and comply with them. Many admonitions annually are issued for these failures.

Ethically withdrawing from representation

In 2021, an unusually high number of admonitions (19) involved violations of Rule 1.16(d), MRPC, which provides:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fees or expenses that has not been earned or incurred.

One common failure to act led to several admonitions in 2021—namely, failing to provide notification to the court that an attorney withdrew. In civil matters, unlike criminal ones, permission from the court to withdraw is not needed, but take care: Because of efiling and eservice, if you fail to provide notice to the court that you have withdrawn (and no substitution of counsel or certificate of representation is filed by successor counsel), you and not your client will receive case notifications. This is an example of a step you should take to protect your client's interest upon termination of the representation—your client needs to get notices from the court. While opposing counsel might serve your client if they receive notice of your withdrawal, failing to notify the court runs the risk of leaving your client without

information necessary to handle their case on their own (in this instance, timely receipt of court notices).

Several admonitions were also issued due to unreasonable delays in providing the client a copy of their file upon request after termination. I'm not sure why this happens, but happen it does. Please make sure you or your staff attend to this task when requested, because it can prejudice the client and is clearly required by the rules. Note too that although Rule 1.16(d) does not contain the word *prompt*, Rule 1.15(c)(4) does. Providing a copy of the client's file upon request and doing so promptly is a practical—and required—step you can take to protect the client's interest in their legal matter when you withdraw.

Some admonitions were issued for failing to refund unearned fees on a flat fee representation, even though the services were not completed at the time of withdrawal. If you do not complete the representation, some amount of refund is due, because by definition you have not earned the full fee—the fee is fixed for specified services. Note also that Rule 1.5(b)(3), MRPC, requires that "[i]f a client disputes the amount of the fee earned, the lawyer shall take reasonable and prompt action to resolve the dispute." This is slightly different than if the fees were originally in trust—as Rule 1.15(b), MRPC, requires the disputed portion of the fees to be returned to trust until the dispute is resolved. Your obligation to timely resolve the dispute is the same whether it involves a flat fee or withdrawal of an advance fee retainer, and failure to do so can result in discipline.

Finally, the timing of the notice of your withdrawal can lead to discipline. While you may have a right or obligation to withdraw under Rule 1.16(a) and (b), MRPC, the rule requires you to give reasonable notice to the client of that withdrawal. While what is reasonable will depend upon the circumstances, providing no notice usually is problematic, as is doing so sufficiently close to key events when work is left incomplete and no extension has been secured.

Withdrawing from representation sometimes occurs in high-conflict circumstances. When that happens, take time to review Rule 1.16 in its entirety to make sure you have your bases covered. There are also several articles on our website on the topic of withdrawing from representation, which can be found at *lprb.mncourts.gov/articles*, and withdrawal is a frequent topic for our ethics hotline.

Conclusion

Only about 20 percent of complaints to the OLPR result in any discipline, and private discipline is far more prevalent than public discipline. Most attorneys care deeply about compliance with the ethics rules, but it is important to remember that ethical conduct involves more than refraining from lying or stealing; the rules contain specific requirements. You cannot go wrong by taking a few minutes each year to re-read the Minnesota Rules of Professional Conduct. They can be found on our website and in the Minnesota Rules of Court. You will find the time well spent. And remember, we are available to answer your ethics questions: 651-296-3952. ▲

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STILL ON THE DEFENSIVE

More on the Missouri website vulnerability investigation

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.

Late last year, I wrote an article ("On the Defensive: Responding to Security Suggestions" B&B Dec 2021) regarding a cybersecurity vulnerability discovered in a Missouri state education website—and Gov. Mike Parson's response to the situation. The St. Louis Post Dispatch first reported on the vulnerability, revealing that it left the Social Security numbers of educators unprotected and readily accessible on a public website. It became evident that a large number of educators' personal information had been compromised, their privacy was diminished, and the threat of identity theft for those affected was increased. The severity of the issue was obvious. Yet the governor's response was not one of concern or gratitude—for the research, for the notification, or for the opportunity to mitigate future damage. Rather, he responded with the threat of a lawsuit and the accusation that the newspaper was only out to make a profit by criticizing the state.

This past February, however, Missouri prosecutors stated that they would not be pursuing legal action after all, citing a lack of evidence.[1] While the governor insisted that the reporter was guilty of unlawful "hacking," a 158-page (!) report detailing the Missouri Highway Patrol's investigation ultimately revealed that no hacking had been required to access the Social Security numbers.[2] Rather, the numbers were publicly available due to a misconfiguration. No password was needed. The process to find and view them was easy to explain and easy to replicate.

The investigative report included multiple interviews with those involved in the incident, including Mallory McGowin, chief communications officer for the Communications Division of the Department of Elementary and Secondary Education (DESE). This interview uncovered key information regarding the existence of the vulnerability, including the fact that the vulnerability had existed since 2011. The investigator also asked about the lack of encryption:

> I asked... if she knew why the teacher's social security numbers were encoded instead of encrypted, and she stated she did not know. She stated based on what she had heard over the past few days, when the website was brought online in 2011, that practice would have been okay.... (Supplement 3, Section 15).
>
> I stated to Mrs. McGowin it was my understanding the website was developed in 2011, and that portion of the website had not been updated since 2011, and she indicated that was her understanding. *She stated DESE was working to ascertain what the vulnerability scans actually test for.* (Supplement 3, Section 16). (Emphasis added.)

It is surely alarming to think that this flaw existed since 2011, and that this feature of the website had gone without updates during that entire time. Within this context, it is perhaps not much of a surprise that personal information had been compromised, but it is shocking to think about how long it took to notice. The report details how the Post-Dispatch researcher took steps to alert the appropriate parties prior to the publication of its article. An explanation was also provided as to how "hacking" and discovering a vulnerability are distinct, and how the process of the researcher did not involve bypassing encryption or accessing information without authorization. Rather, the researcher had simply pointed out that he could see information that anyone could potentially view on the website.

The Missouri Highway Patrol's investigation thoroughly examined the events and circumstances surrounding the history and unearthing of the vulnerability that left the private information of numerous educators up for grabs. But in many ways, the terrain they investigated is only the tip of the iceberg with respect to assessing the big-picture strengths and weaknesses of the security culture from which it originated. Given the out-of-date website, insufficient vulnerability scanning, lack of encryption, siloed departments, and miscommunication, it is not hard to believe that basic best practices might have fallen by the wayside. Even the investigation itself required resources, time, and effort that may otherwise have been allocated to improving cybersecurity within the state (and remediation services for those who have been affected, in addition to credit monitoring). The security issue was easy to fix—but the deeper issues that allowed it to exist for so long may prove more challenging to identify and resolve.

Despite the findings and the prosecutors' decision to not move forward with legal action, Gov. Mike Parson is still not convinced. At the time of this writing, the governor has refused to acknowledge, let alone apologize for, the error in his original statements or for his handling of the situation. According to one news account, "[Parson's] spokeswoman Kelli Jones continued to call Renaud's reporting 'the hacking of Missouri teachers' personally identifiable information' and a 'clear violation' of the state's computer tampering statutes."[3] Fortunately, though, no further resources will be expended, and with any luck this ordeal can be used as a good example of a bad response to security research.

Making strides in cybersecurity and maintaining that progress requires diligence and an open mind. Oftentimes, it is tempting to deny problems exist or to regard checking compliance boxes as a security "pass." A proactive approach requires top-down management support and a willingness to objectively assess weaknesses in the status quo. Achieving this kind of objectivity is easier said than done, but incorporating cybersecurity into the day-to-day makes problems easier to contend with when they arise. Whether it be an external researcher or an employee voicing a concern, it is critical that leadership respond to criticism with goals for improvement in mind. ▲

NOTES

[1] *https://missouriindependent.com/2022/02/21/prosecutor-no-criminal-intent-by-reporter-missouri-governor-accused-of-hacking/*

[2] *https://s3.documentcloud.org/documents/21271820/redacted-information-for-sunshine-request.pdf*

[3] *https://www.kansascity.com/news/politics-government/article258315738.html*

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Some pro tips for THE NEGOTIATING TABLE

BY AUSTYN BOOTHE AND DANIEL SHEIKHAN austynkboothe@gmail.com danielsheikhan@gmail.com

While in law school, AUSTYN BOOTHE founded an organization to increase law student involvement in bar associations, and worked as a judicial extern for Judge Mark C. Vandelist in the 1st Judicial District.

DANIEL SHEIKHAN is a Canadian serial entrepreneur and first-generation lawyer with a creative mind for all things business. He also has eight years of experience in the real estate industry.

Winning the ABA Negotiation Competition, as you might imagine, did not come easily. It involved hundreds of hours of preparation, consultations, scenario drafting, and oral arguments, and the 13 single and multi-party negotiations with domestic and foreign legal representatives were as challenging as they sound.

The competition consists of simulated legal negotiations in which law students, acting as lawyers, receive common and confidential facts related to a series of legal problems. The competitors are judged on their ability to work with the other side and reach a deal that meets their clients' goals and interests. Only the top team of law students from each country advances to the week-long International Negotiation Competition, where law students from around the world represent parties in negotiations regarding international business transactions and disputes.

Throughout the nearly year-long competition cycle, we developed a variety of skills that helped us earn the title of world champions; the following skills have greatly informed our work and the way we navigate real-world legal situations.

Ask why

One of the simplest and most effective negotiation tactics is a one-word question that all of us grew up uttering: Why? Asking it will help you better understand the underlying motives of the parties.

During our competition rounds, we found that many parties were so focused on attaining what was written in their confidential packets that they forgot to consider the reasons they were sitting at the table. During a personal injury settlement, while representing a school board, we were in discussions with the parents of a child who was injured on the football field. The parents' lawyers were adamant that their clients wanted specific language in the revised concussion safety protocols. Understanding that a school board was not intending to rely solely on what one child's parents wanted, we asked *why* the parents wanted those changes. Their response taught us that they wanted to ensure their experience would not be repeated by other families whose children also played contact sports. They wanted to feel heard by the school board. Understanding this reasoning, we offered the parents a more active role in the school board's safety committee. This was something that went over very well with the attorneys and earned us great bargaining power when discussing monetary settlement figures.

Not only was this line of questioning beneficial during every single round of our negotiations, but it proves extremely fruitful in real-world practice. Understanding why someone is making a demand can often force them to think about their own goals and interests and offer them to you in a more concrete way. Often a party will be able to tell you exactly what the root of their desire is, allowing you to offer creative options that best meet your client's interests. While there are many ways you can question a person's reasoning, asking why first anytime you hear a demand from an opposing party will ensure you have the best understanding of the opposing party's wants and needs when negotiating.

DURING OUR COMPETITION ROUNDS, WE FOUND THAT MANY PARTIES WERE SO FOCUSED ON ATTAINING WHAT WAS WRITTEN IN THEIR CONFIDENTIAL PACKETS THAT THEY FORGOT TO CONSIDER THE REASONS THEY WERE SITTING AT THE TABLE.

Remain solution-focused

Negotiations typically share a common goal of reaching agreement. It's important that neither party stands on disagreement. The idea that there needs to be some accommodation in order to reach an agreement allows all the parties to avoid stalemating the negotiation. During our competitions, we often saw opposing teams attempting to stay firm in their positions, sometimes refusing even to consider other viable options that would satisfy both parties simply because they did not want to feel as though they were giving anything up.

Lawyers are typically not tasked with interfering in the method by which business is conducted. Rather they are focused on crafting creative solutions that protect the client while allowing the client to reach their business goals and objectives. Remaining solution-focused will help you steer your client toward examining those options that may ultimately lead to an amicable and desirable solution.

Anticipate the unexpected and prepare

No two negotiations will ever be identical, and no amount of preparation can guarantee that either party will be perfectly versed in every issue that arises during a negotiation. During our competitions, we negotiated against parties that employed competitive, collaborative, compromising, accommodating, and avoidant styles. You can never fully anticipate what style of negotiator you will find at the table. It is your responsibility to ensure you are prepared for any negotiation style.

The competitions allowed us to see firsthand how important it is to anticipate the unexpected and prepare for any and every situation as best we could. One of our multi-party international conflicts revolved around space law, with a minor mention of intellectual property. While most of our preparation revolved around space, construction, and business law, we spent several hours exploring details of intellectual property law as there was a chance it would be discussed during the negotiation. For example, meeting with Michael Olsen, partner at Winthrop and Weinstine, to discuss intellectual property law and the implications of forming agreements with international parties prepared us with knowledge and confidence to be able to articulate the interests and important concerns we shared based on our client's position in the deal we were crafting. Although intellectual property was not at the forefront of the discussion, it surely made a large impact on the progress of establishing protections for our clients during the conversation and improving our confidence at the table.

While there is no one-size-fits-all approach to a successful negotiation, understanding both parties' goals and interests, remaining solution-focused, and anticipating the unexpected provide for a great foundation for any negotiator to conduct a productive and meaningful negotiation. ▲

Q: If you could reach back in time to give some advice to your first-year-in-practice self, what would it be?

Maya Missaghi
Missaghi Law, PLLC
maya@mmlawservices.com

Maya Missaghi owns and operates Missaghi Law, PLLC out of Saint Paul. She practices estate planning, probate and elder law.

I had major impostor syndrome starting out (honestly, it's only just getting better now, after six years)—who did I think I was, wielding the law and touting myself as a hardnosed attorney? I was just someone's mom, wife, and daughter playing dress-up. This sounds old-fashioned even to me, but trust me, this is what I wrestled with.

Now I would tell that younger, sweeter, less confident version of me, "You're going to pull this off, don't you worry." Because once you start, the word "practice" really hits home –to repeatedly exercise one's skills in order to improve one's proficiency.

And that's all anyone else is doing– practicing. If you reach out, you'll find many fellow attorneys willing to share what their exercises in the law have taught them. And in the not-too-distant future, you too will be able to share insights on forms and circumstances you've seen before.

Just keep practicing.

Sheina Long
State Farm
sheina.long.vaar73@statefarm.com

Sheina Long is a licensed attorney practicing in Minnesota and Wisconsin, although she also holds active licenses in Missouri and Illinois. Sheina currently works within the Claims Litigation Counsel Section for the Corporate Law Department of State Farm based in St. Paul, Minnesota.

I remember starting out as a first-year practicing attorney intimidated, overwhelmed, and, honestly, scared that I would fail. Although I had some experience from clerking with the local court and interning with a local attorney, I lacked confidence in my abilities as a new attorney. If I could go back and speak to my first-year-in-practice self, I would tell myself that, despite it all, remain confident in my practice, do not be afraid to ask questions of those who are more experienced than me, and do not be afraid to learn more on my own.

I spent three years learning the law and two years learning how to be a practicing attorney during my internships. I knew how to handle a case, how to try a case, and how to handle client interactions. I just needed to know that I could handle those things on my own. Had I been more confident in myself, I would not have spent endless hours worried that I would make a mistake. Having that confidence will not only make you more apt to get assignments from your manager and make you

seem like you have a stronger case to opposing counsel, but it will also make you a better attorney overall.

Along with being more confident, don't be afraid to ask questions of your managing attorney or other more experienced attorneys in your office. There will be times where something comes across your table that you have never dealt with before, but it is likely that someone else has experienced what you need help with. Remember, you do not have to reinvent the wheel. Ask those questions you need to ask in order to find an answer or strategize an approach that will help you achieve your end goal. Utilizing the knowledge of more experienced attorneys will allow you to learn so much more than you ever realized was possible.

Finally, do not be afraid to take the initiative to learn on your own. Whatever area of law you practice in, there is always room for development and ongoing learning. Whether it be by CLE, an additional designation, or certification, there is always something new to learn as a practicing attorney. Be confident in yourself, don't be afraid to ask questions, and don't hesitate to take the initiative and develop yourself as a practicing attorney. These will only help you to become the best attorney you can be.

My views expressed herein do not necessarily reflect the view and position of State Farm and they are given in my individual capacity.

Amy Krupinski,
Collins, Buckley, Sauntry & Haugh, PLLP
akrupinski@cbsh.net

Amy Krupinski is a partner at Collins, Buckley, Sauntry & Haugh, PLLP in St. Paul, MN. She focuses her practice on family law. She also spends her time volunteering with AFCC-MN, MSBA Family Law Section, RBCA, and MWL.

I was eager to put the first year behind me and get as much experience as I could, to build a network and build my practice, so I said yes to every opportunity I was presented with to join organizations and take on new clients. I wanted to fast forward to a point where I would have the clients and the knowledge and the experience. Looking back, I would tell myself something that I know I heard but did not really heed: "Be patient." The experience and clients will come. But there is only a short period of time to prioritize learning something new, trying new experiences, and finding good mentors. Be patient and enjoy the freedom to try new things.

George Soule
Soule & Stull LLC
gsoule@soulestull.com

George Soule is a partner at Soule & Stull LLC in Minneapolis. He is a civil trial lawyer, tribal court judge, and Rule 114 qualified neutral. His community activities include past service as chair of the Minnesota Commission on Judicial Selection.

My mentors at Gray Plant and Bowman and Brooke—Franklin Gray, Richard Bowman and others—gave me excellent advice when I was a young lawyer. They said to work hard, to do my best work on each case and for every client, and to always be prepared. They encouraged me to work independently and gave me opportunities to engage directly with clients and experts and to get great litigation experiences. They taught me to be a good partner, to be collegial, and to support all members of the team. They showed me how to act ethically and professionally, to deal with adversaries with respect, and to be forthright with clients, judges and juries. Finally, they afforded me time to connect with people and to get involved in and give back to the community.

My mentors were great trial lawyers and role models, while encouraging me to be myself, to find my own style, to be comfortable with my methods of advocacy. I am sure that I have made missteps, but I have tried to follow this advice and I have had an interesting, challenging, and fulfilling career. I could not have provided better advice to my first-year-in practice self, and I have given this same advice to many other young lawyers over the years.

MINNESOTA COURTS EMBRACE TECHNOLOGY

to enhance access, convenience, and transparency

BY CHIEF JUSTICE LORIE S. GILDEA

Minnesotans have long understood that a basic tenet of a fair and equal system of justice requires the courts to be open to all. Access to justice is defined not just by a physical location but also by how services are provided, how resources are accessed, and how information is shared. In today's digital environment, the courts stand on the threshold of a technological evolution to increase access, transparency, and convenience in our court system.

In the decade preceding the pandemic, the Minnesota Judicial Branch transformed how people interact with the courts through our eCourt initiative. The innovations we developed during that time proved crucial in allowing the courts to keep their doors to justice open during the public health crisis of the past two years. Court user-driven technologies remain a top priority for the courts and a driving force behind our work to continue modernizing how we operate.

MCRO

One of the most notable innovations launched by the Minnesota Judicial Branch in the past year was providing online access to district court case documents through Minnesota Court Records Online (MCRO). This long-anticipated online platform provides the ability to search for and retrieve public documents for certain case types in state district courts without needing to visit a courthouse or the State Law Library.

The Judicial Branch first began working on this project more than six years ago when the Rules of Public Access were updated to increase remote access to public case records and documents. At that time, the courts used the Minnesota Public Access (MPA) Courthouse and MPA Remote systems to provide access to this information. Both tools required individuals to physically visit a courthouse or the State Law Library to access and obtain copies of court documents.

In the move to increase online access and comply with the updated Rules of Public Access, the Judicial Branch had significant hurdles to overcome. To start, we learned the vendor for MPA Remote was no longer updating or enhancing the tool. Then, after three years of working with our vendor to build a new tool, we determined that the vendor was not able to satisfy our requirements for public access, data security, and user experience. In the face of these setbacks, we decided the best and most cost-effective path forward was to develop the online platform using an internal development team that leveraged the experience and expertise of our judicial officers and court staff, attorneys, and other justice partners to inform and test its design.

Balancing the time required to fully develop the new online platform against the emerging public need for remote access, the Judicial Branch decided to launch MCRO in three phases. This allowed the courts to begin providing online access to records and documents during phase one while building out the platform's full functionality in the subsequent phases.

RAPIDLY EVOLVING TECHNOLOGY CHALLENGES THE COURTS TO ADOPT NEW METHODS AND SYSTEMS RESPONSIBLY AND SECURELY.

Phases one and two

The first phase of MCRO, launched in March 2021, provided individuals with the ability to access and retrieve certain public court documents when searching by a case number. The pent-up demand for this type of access was quickly demonstrated when more than 3,700 users downloaded more than 10,000 case documents on the first day.

The second phase of MCRO, which launched in December 2021, addressed the most requested functionality based on user feedback. Enhanced search functionality allowed people to search for cases and documents using a person's name, a business name, or an attorney name, as well as by case number or citation number. A redesigned Register of Actions provided more details about each case, including case events, document index numbers, hearings, parties, and financial information.

The demand for access remains just as strong today as it did when MCRO first launched. Nearly 5 million documents have been downloaded via the online platform over the past year.

Coming this year: Phase three

The final phase of MCRO will be implemented this summer, and it will feature additional search functionality for hearings on court calendars and monetary judgments. Shortly thereafter, the Judicial Branch will begin applying an access fee to view, download, or print uncertified digital court documents that are more than one page. Approximately two-thirds of court documents available through MCRO are one page and would not be subject to this fee.

The access fee will cost the same amount as purchasing an uncertified copy of a document at a courthouse. The uncertified copy fee is currently set at $8 per document by state statute (Minn. Stat. §357.021, subd. 2(2)). The revenue generated from that fee goes to the state General Fund, as would the revenue generated from the MCRO access fee.

The Minnesota Legislature has the authority to clarify or change the fee to purchase copies of court documents. Several proposals are being considered this legislative session to change the fee to purchase uncertified court documents, either remotely or at a courthouse. The Judicial Branch supports the Legislature's examination of this issue and hopes for a timely resolution so that our continued implementation of MCRO is not delayed.

It is important to remember that if a party or counsel is required to be served or provided with a document in a case per state statute or Court Rules, they will continue to receive those documents as they do today and will not be charged to purchase that document.

In addition to MCRO, the Judicial Branch is also working on other technology enhancements to improve attorneys' and litigants' interaction with the courts. A new digital exhibit management system will provide an easier and more secure way to share digital exhibits with the courts and make it easier for the courts to manage and display those exhibits in online and in-person hearings. Also, a new online hearing check-in process will allow case participants to complete their required administrative work up to five days before a hearing. These systems are anticipated to be available statewide within the next year.

Rapidly evolving technology challenges the courts to adopt new methods and systems responsibly and securely. Each of these new tools demonstrates our current and forward-looking commitment to leverage technology to increase access to justice, create a more efficient and user-friendly court system, and have a positive and lasting impact on the way we deliver justice in Minnesota. ▲

LORIE SKJERVEN GILDEA is the chief justice of the Minnesota Supreme Court. Previously she served as an associate justice on the Court (2006-2010) and as a Hennepin County District Court judge (2005-2006).

– ON SQUARE PEGS AND ROUND HOLES –

UNDERSTANDING NEURODIVERSITY

BY ROBERT M. SCHUNEMAN robert@tentingerlawfirm.com

"What do you think about _____?" is a common question. We ask this question because we recognize that what people think about a particular subject varies based on numerous factors. On many topics, most of us would stipulate to a wide variety of opinions and thoughts.

Suppose we extend that understanding to a different question: "*How* do you think?" We don't know how—that is, by what specific processes—our brains think, react, or otherwise process information. Theories abound to explain all manner of neurological functioning, but ultimately, we have few definitive answers about how our brains work. Could there be a diversity of processing and function similar to the observed variety of opinions and thoughts?

Many researchers tacitly acknowledge the lack of understanding of how our brains work by using the *black box model*, which is defined at Oxfordreference.com as "a model of information processing in which an individual is considered to be a black box into which information flows from the environment. The information is processed in various ways inside the box until it is expressed as observable behavior (the output). Researchers using this model focus mainly on what goes into the box (the information or stimuli) and the behavioral output. Nothing of the structure of the box is known beyond what can be deduced from the behavior."[1]

Within this context, medical and psychological fields identify specific behavioral patterns as disorders or diseases, presupposing that the behavior patterns *per se* represent pathological deviations from the norm. But what if this model is flawed? What if the observed behavioral patterns aren't deviations but instead are rooted in the diversity inherent in our DNA?[2]

These seminal questions became the starting point of neurodiversity. Haley Moss, an attorney and neurodiversity movement advocate, defines neurodiversity as an understanding that "we all have different brains. We all think differently, and no two people experience the world in the exact same way. No one brain is better than another."[3] In the words of another activist, John Elder Robison, "neurodiversity is the idea that neurological differences like autism and ADHD are the result of normal, natural variation in the human genome."[4] Judy Singer, the person credited with coining the term neurodiversity, observes, "We are ALL neurodiverse because no two humans on the planet are exactly alike; our planet has a neurodiverse population."[5]

Approximating "normal" cognitive information processing

Evaluating whether behavior conforms to a society's expectations—to a norm—is a straightforward exercise that lawyers regularly undertake, particularly when the expectations are codified as law. But what is a behavior if not an observable result of brain activities and processes that cannot be directly observed? To conclude that the same or similar behaviors result from the exact same brain processes is faulty. Consider, for example, two people who arrive at the courthouse simultaneously. It would be improper to conclude or even theorize that, since they both arrived at the same place contemporaneously, they took the same route or even the same mode of transportation. It would be equally fallacious to conclude that each time the same person goes to the courthouse, they use the same route and method of transportation.

Consequently, while we can evaluate the conformity of behavior to a norm, we cannot assess the underlying brain processes similarly. Observed behavior becomes a proxy representing our assumptions about the underlying brain processes. Without a better method of determining the cause of the deviant behavior, our behavioral assessment prevails. The evaluation of an individual's behavior becomes associated with—and perhaps inseparable from—the individual. As Damian E.M. Milton has written, "To be defined as abnormal is potentially to be seen as 'pathological' in some way and to be socially stigmatized, shunned, and sanctioned."[6]

Neurodiversity is a DEI issue

The term "neurodiversity" is political rather than scientific. In her seminal work on the subject, sociologist Judy Singer wrote, "For me, the key significance of the 'Autistic Spectrum' lies in its call for and anticipation of a politics of Neurological Diversity, or 'Neurodiversity.' The 'Neurologically Different' represent a new addition to the familiar political categories of class/gender/race."[7]

Singer's "original conception of Neurodiversity was as an addition to the categories of intersectionality[,] thus an analytical lens for examining social issues such as inequity and discrimination; an umbrella term as a possible name for a civil rights movement for the neurological minorities beginning to coalesce around the pioneering work of the Autistic Self-Advocacy Movement."[8] Singer's vision of an umbrella concept under which multiple neurological minorities could coalesce reflects today's neurodiversity movement. As she wrote, "The Neurodiversity Movement refers to the disability rights movement aimed at full inclusion for all neurodivergent[9] people."[10]

From its roots in autism self-advocacy, the neurodiversity movement umbrella now "encompasses neurocognitive differences such as autism, attention deficit hyperactivity disorder (ADHD), dyslexia, Tourette's syndrome, anxiety, obsessive-compulsive disorder, depression, intellectual disability, and schizophrenia as well as 'normal' neurocognitive functioning."[11]

The neurodiversity movement rallies around its motto, "Nothing about us without us!" while fighting to change conversations about neurodiversity.[12] Movement activists decry the status quo in which "[n]eurodivergent people are routinely excluded from key conversations that impact their lives. In high-level policy discussions, social justice and disability rights activism, autism [and other conditions] awareness campaigns, contemporary 'mainstream' media discourse, and everyday conversations, autistics and other neurodivergent people are often 'erased, silenced, [and] derailed.'"[13] One of the movement's animating principles seems both obvious and intuitive: "Disabled people know better than non-disabled people what it is like to be disabled. Disabled people who do activism or advocacy tend to have a keen grasp of issues affecting them and people like them."[14] Yet neurodivergent people are routinely left out of meaningful policy discussions.

ROBERT M. SCHUNEMAN practices civil litigation and business law in Apple Valley. He brings substantial practical experience as a business executive and educator to his practice. Before joining the Tentinger Law Firm in February 2022, he served as outreach coordinator for Minnesota Lawyers Concerned for Lawyers.

Neurodivergence and identity

The freedom to define and express one's own identity is highly valued and protected, at least on an individual basis, as long as one lives within the framework of generally accepted behavioral norms. Problems commonly arise when aspects of a person's identity or the expressions of those aspects run counter to those norms. American society typically views neurodivergent conditions as medical or psychiatric anomalies, things to be "treated" and "cured" if possible, or "managed" when a cure is not available. Within the neurodiversity movement, however, and particularly among autism activists, many advocates embrace their neurodiversity as part of their identity. Consider this observation from Jim Sinclair, an early autism activist: "Autism is a way of being. It is pervasive; it colors every experience, every sensation, perception, thought, emotion, and encounter, every aspect of existence. It is not possible to separate the autism from the person—and if it were possible, the person you'd have left would not be the same person you started with."[15]

There are two general ways to talk about someone who has a health condition. As the attorney and advocate Haley Moss has written, "Person-first language is intended to keep the human at the center of the conversation and is intended to be respectful of an individual. Identity-first uses the disability as a defining characteristic, similar to race, religion, sex, or gender. Person-first language sounds like 'Haley has autism' or 'Haley is a woman with autism' and identity-first language sounds like 'Haley is autistic."[16]

A person may have a preference for how they want to be described or referred. The best practice for lawyers is to listen when someone tells them their preference and follow their advice. This is consistent with the emerging practice of communicating using one another's preferred personal pronouns.

What lawyers need to know about neurodiversity

Neurodiversity is a new term reflecting an old reality—that we're all different and unique. Yet neurodiversity transcends that common understanding by seeking to value not only the differences but also their source. Complicating factors include the value society places on the differences, the accommodations it is willing to make to include people with differences, and its willingness to recognize their inherent dignity and worth.

The neurodiversity movement challenges the conventional "medical model of disability." The movement seeks recognition that specific neurological conditions have occurred throughout history and may not result from "disease" or "defect" but instead from the diversity inherent in the human genome. Furthermore, while these conditions are typically associated with their deficits, they can also confer benefits upon those who have them. (See table.) Not all neurodivergent people experience the attributed strengths to the same degree, if at all.

WORK-RELATED DIFFICULTIES AND STRENGTHS ATTRIBUTED TO NEUROMINORITIES[17]

	PURPORTED DIFFICULTY	ATTRIBUTED STRENGTHS
ADHD	• *Time management* • *Concentration, attention and self-regulation difficulties* • *Insomnia, depression, injury and absence* • *Maintaining employment* • *Difficulty with teamwork*	• *Creative thinking* • *Visual-spatial reasoning ability* • *Hyper-focus, passion and courage*
AUTISM	• *Time management* • *Concentration and coping with more than one task* • *Social and communication difficulties* • *Need for routine*	• *Memory ability, and other 'specialist individual skills' including reading, drawing, music, and computation* • *Innovative thinking and detail observation*
DCD [DYSPRAXIA]	• *Difficulties with driving, self-care, organization, communication and self-esteem* • *Processing speed and working memory* • *Persistence of motor difficulties in operating equipment*	• *High verbal comprehension ability*
DYSLEXIA	• *Literacy, memory, organization, communication and self-esteem* • *Memory, organization skills, time management, stress management, literacy* • *Workplace participation in terms of mental functions and social interactions* • *Cognitive functioning and social self-esteem* • *Higher incidence of worklessness and incarceration*	• *Entrepreneurialism* • *Creativity and cognitive control* • *Visual reasoning* • *Practical skills, visual-spatial skills and story-telling ability*

Work-related difficulties and strengths attributed to neurominorities

Neurodivergent people experience implicit bias, stigma, and preconceptions based on stereotypes

Many of the barriers to inclusion encountered by neurodivergent people result from implicit bias, stigma, and preconceived notions of what "a person with x condition" can and cannot do. These same barriers encourage neurodivergent people to "act the part" of a "normal" person to the extent they are able.

Perhaps we're asking the wrong question when we ask "how should we deal with" neurodiversity and related issues. A better question might be, "how can we better support our neurodivergent clients and colleagues?" As Haley Moss observed, "[W]e ultimately are a service profession providing access to justice and need to be sure to be equitable and accessible to those who are often denied access to justice—neurodivergent people are often silenced and unheard in the legal system."[18] I'd add an observation that, for most people, interacting with lawyers and the legal system is stressful, which can exacerbate many neurological conditions.

> "[W]E ULTIMATELY ARE A SERVICE PROFESSION PROVIDING ACCESS TO JUSTICE AND NEED TO BE SURE TO BE EQUITABLE AND ACCESSIBLE TO THOSE WHO ARE OFTEN DENIED ACCESS TO JUSTICE—NEURODIVERGENT PEOPLE ARE OFTEN SILENCED AND UNHEARD IN THE LEGAL SYSTEM."

Within a person-centered service model, a lawyer goes beyond a mere presumption of the client's competence to develop an understanding of the context within which the client's legal issue arose. This context can be, and often is, best understood by recognizing a client's neurodivergence and adapting to it. For example, an autistic client may be quite capable of managing a list of three tasks related to their case, but a list with 20 items might be overwhelming. This limitation doesn't affect the client's competence, yet it would affect the client's ability to participate in their case within the lawyer's deadlines. It may be more work for the lawyer to break down the more extensive list into smaller chunks. Still, increased client satisfaction and participation should justify the extra effort both for our clients and ourselves.

Lawyers are people too

Many neurodivergent legal professionals, including lawyers, excel at their jobs, although some may hide their neurodivergence. As a profession, we all benefit when each member is encouraged to do their best work and welcomed for the unique set of skills, experience, and perspective they bring.

In addition, countless legal professionals have wrestled—and continue to grapple—with mental illnesses or addictions. "Depression, anxiety and obsessive-compulsive disorder are three common characteristics that exist in every law firm," noted writer Terry Carter in an ABA Journal article. "The reality is that firms are dealing with this whether it's in the open or not."[19]

Maybe instead of trying to "deal with" these issues as though they are problems with potential solutions, we should instead ask, "how can we create an environment where everyone can do their best work?" Imagine a workplace organized around supporting and encouraging everyone to do their best work.

That would be a fantastic place to work. Let's build it. ▲

NOTES

[1] Oxford Reference, *Black Box Model*, available at *https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095509539*.

[2] *See* Thomas Armstrong, *The Myth of the Normal Brain: Embracing Neurodiversity*, AMA J. Ethics, 17 (4):348-352 (April 2015).

[3] Haley Moss, *Great Minds Think Differently: Neurodiversity for Lawyers and Other Professionals*, ABA Senior Lawyers Division, (2021), pp. xvii.

[4] John Elder Robison, *What is Neurodiversity?*, Psychology Today (blog) (10/7/2013), available at *https://www.psychologytoday.com/us/blog/my-life-aspergers/201310/what-is-neurodiversity*.

[5] Judy Singer, *What is Neurodiversity?,* Reflections on Neurodiversity: Afterthoughts, Ideas, Polemics, Not always serious (blog), available at *https://neurodiversity2.blogspot.com/p/what.html*.

[6] Damian E. M. Milton, *On the Ontological Status of Autism: the 'Double Empthy Problem'*, Disability & Society, 27 (6):883-887, (2012).

[7] Judy Singer, *Neurodiversity: The Birth of an Idea*, (2017) (ebook), loc. 90 (quoting a book chapter she authored in *Disability Discourse*, Open University Press, UK (1998), p. 64.)

[8] Judy Singer, *What is Neurodiversity?,* Reflections on Neurodiversity: Afterthoughts, Ideas, Polemics, Not always serious (blog), available at *https://neurodiversity2.blogspot.com/p/what.html*.

[9] "*Neurodivergent* individuals are those whose brain functions differ from those who are neurologically typical, or *neurotypical*." Jessica M. F. Hughes, *Increasing Neurodiversity in Disability and Social Justice Advocacy Groups*, Autism Self Advocacy Network, (2016), p. 3.

[10] *Supra note 8.*

[11] *Id.* Lists of included conditions vary by source. *See* Mirriam Moeller, et al., *Neurodiversity can be a workplace strength, if we make room for it*, The Conversation (9/8/2021), available at *https://theconversation.com/neurodiversity-can-be-a-workplace-strength-if-we-make-room-for-it-164859* (listing "[t]he most common are: Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorder (ASD), Dyslexia, Dyspraxia, Dyscalculia, and Tourette syndrome). *See also* Judy Singer, *What is Neurodiversity?*, Reflections on Neurodiversity: Afterthoughts, Ideas, Polemics, Not always serious (blog), available at *https://neurodiversity2.blogspot.com/p/what.html* (containing a graphic of The Neurodiversity Movement depicted as a large umbrella under which are smaller umbrellas labeled autism, ADHD, DYS+ [representing dyslexia, dyspraxia, dysgraphia, and dyscalculia], tics [a class of disorders including Tourette's syndrome, essential tremors, and related neurological movement disorders], LD [learning disabilities], speech, and "other?").

[12] Jessica M. F. Hughes, *Increasing Neurodiversity in Disability and Social Justice Advocacy Groups*, (2016), p. 4.

[13] *Id.* at p. 3. (quoting A. Hillary, *Erased, silenced, derailed*, Yes That Too (blog) (3/5/2013), available at *http://yesthattoo.blogspot.com/2013/03/erased-silenced-derailed.html*).

[14] *Id.* at 4. (quoting Lydia Brown, *Autistic Representation Crisis in Massachusetts (but dying of not surprise)*, Autistic Hoya (blog) (2/3/2016), available at https://www.autistichoya.com/2016/02/autistic-representation-crisis-massachusetts.html).

[15] Jim Sinclair, *Don't Mourn for Us*, Autonomy, the Critical Journal of Interdisciplinary Autism Studies, vol. 1, no. 1 (10/3/2012).

[16] Moss, pp. 23-24.

[17] Nancy Doyle, *Neurodiversity at work: a biopsychosocial model and the impact on working adults*, British Medical Bulletin, 2020, 135:108-125, p. 116 (internal references omitted; each element in the table is supported by one or more references).

[18] Moss, p. 25.

[19] Terry Carter, *The biggest hurdle for lawyers with disabilities: preconceptions*, ABA Journal (6/1/2015), available at *https://www.abajournal.com/magazine/article/the_biggest_hurdle_for_lawyers_with_disabilities_preconceptions*

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Watertown-Mayer High School will represent Minnesota at the National High School Mock Trial Championship (NHSMTC) in May. This is their first State Championship. The team is coached by Lori Sieling, Sarah Soley, and Patrick Neaton, Esq.

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Mitchell Hamline alum uses NCAA platform to raise awareness of Native athlete representation

BY TOM WEBER

Jessie Stomski Seim '08 is convinced she would have never attended law school or become general counsel for a tribal government if not for the scholarship she received to play basketball at the University of Wisconsin.

Stomski Seim was a member of the local organizing committee executive board for the NCAA Women's Final Four that was held in Minneapolis the first weekend of April. A citizen of the Muscogee (Creek) Nation of Oklahoma, she used that position to raise awareness of the dearth of Native student-athletes.

"Native student-athletes are not getting recruited," said Stomski Seim, who works for the Prairie Island Indian Community. "And even when they are, there's a retention issue. If they come from tribal communities, the culture shock of going to a campus can be significant.

"Supporting those students is equally important."

As important as basketball and sports are for many tribal communities, barely one percent of all NCAA student-athletes are Native. In Minnesota, for example, Red Lake High School has enjoyed success on the basketball court, earning several trips to state tournaments for both the boys' and girls' teams. But it wasn't until 2019 that the first Red Laker, Grace White, earned a scholarship to play Division I college basketball.

Stomski Seim's career at the University of Wisconsin earned her an induction into the program's hall of fame. She was also drafted in the 2002 WNBA draft and played professionally in France and Greece. "Physical competition was part of our traditions long before contact with Europeans, and basketball is good medicine for me."

Stomski Seim worked to secure programming at the Women's Final Four, including a halftime show that showcased Minnesota's tribal culture; in-game videos that highlighted former Native women student athletes discussing the need for more opportunity; a basketball clinic for Native youth; a WBCA clinic for coaches who recruit athletes; and 300 tickets for Native youth to attend.

Long term, Stomski Seim hopes to see a culture change in the way college coaches recruit high school athletes. She notes tribal reservations are often several hours from city centers, which means less opportunity for athletes to be seen. But Stomski Seim says the NCAA can also be part of efforts to support students on the ground. "If you don't have somebody who can drive you to practice, that's a barrier," she said. "A lot of these efforts take money, and we have to support the people in tribal communities who are willing to do that work to encourage those young people to stay with it.

"Sports isn't for everyone, but we know from research there are so many benefits to kids who play sports, and it's time away from things that are unhealthy."

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LANDMARKS IN THE LAW

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

Criminal Law
JUDICIAL LAW

Driving after cancellation: Offense does not apply when operating a motor vehicle on private property. A sheriff's deputy visited appellant at his mother's home to fill out an annual predatory offender registration form. Appellant's driver's license was cancelled as inimical to public safety at that time. The deputy saw appellant driving a car in the driveway, but appellant stopped before reaching the road. Appellant was arrested for driving after cancellation and, following a chemical test that revealed methamphetamine, he was also charged with first-degree DWI. Appellant argued the deputy had no probable cause to arrest him, because he drove only on private property. The district court denied the motion. He was found guilty of both charges after a stipulated facts trial.

Under Minn. Stat. §171.24, subd. 5(3), a person disobeys an order cancelling his or her license by operating a motor vehicle for which a license is required. Minn. Stat. §171.02, subd. 1(a), requires a valid license to drive a motor vehicle "upon a street or highway," which are defined to exclude private property. Thus, the plain language of the cancellation statute covers only situations in which a person operates a motor vehicle on a public street or highway. Here, the deputy lacked probable cause to believe appellant drove after cancellation, because he observed appellant driving only on a private driveway, and the evidence obtained as a result of his arrest should have been suppressed. Appellant's convictions are reversed. ***State v. Velisek***, A21-0275, __ N.W.2d __, 2022 WL 351175 (Minn. Ct. App. 2/7/2022).

Guilty plea: Parole eligibility determination is a collateral consequence that does not implicate a guilty plea's intelligence. Appellant pleaded guilty to first-degree criminal sexual conduct, including one heinous element of great bodily harm, first-degree assault, and inducement to prostitution, under an agreement with the state that he would receive a life sentence with the possibility of parole after 30 years. Prior to entering his plea, both appellant's counsel and the district court informed him that the parole decision would be made by the Department of Corrections (DOC) based on his conduct in prison, which is only one factor the DOC is to consider. *See* Minn. Stat. §244.05, subd. 5(c) and (d). Appellant later sought to withdraw his guilty plea, arguing he was misinformed of the consequences of the plea. He was sentenced on the first-degree criminal sexual conduct offense first, followed by the inducement to prostitution offense. The district court sentenced appellant to life with the possibility of parole after 30 years. Appellant appealed from his sentence and the court's denial of his motion to withdraw his guilty plea.

The Minnesota Court of Appeals holds that parole eligibility determinations are collateral consequences of a guilty plea that do not affect the intelligence of the plea. Parole eligibility determinations are based on factors that occur after the imposition of the sentence, so they cannot be "definite," "immediate," or "automatic" results of the sentence, as with direct consequences. Sentences and their direct consequences serve to punish defendants, while parole eligibility determinations also serve to ensure public safety. Any incomplete information appellant received about the parole eligibility determination did not render his guilty plea unintelligent.

The court also finds appellant's plea was not induced by an unfulfillable promise by the district court. Appellant entered his plea to avoid a life sentence without the possibility of parole, a real risk in his case, not because of any statements the district court made about parole eligibility. The district court also did not tell appellant that *only* his in-prison conduct would be considered by the DOC, did not guarantee good behavior would automatically entitle appellant to parole, or affirmatively promise anything regarding the DOC's parole eligibility process.

The case is nonetheless remanded for resentencing. Appellant should have been sentenced first on the inducement to prostitution offense, as it occurred first in time. The district court also used an incorrect criminal history score. Finally, the district court's

The court of appeals notes that the masks prevented the jury from seeing only the witnesses' mouths and nose. The jury was still able to see the witnesses' eyes, observe their body language, and hear their tone and vocal inflections. Thus, the masks did not render the testimony unreliable.

The court of appeals also finds appellant's right to a public trial was not violated. The courtroom was closed to prevent the spread of covid-19 and, to maintain public access, the court provided live video of the proceedings in a nearby courtroom that remained open to the public. The record also suggests the district court considered alternatives, but given the Supreme Court's social distancing requirements and the small size of the courtroom, limiting public access to the courtroom was necessary to maintain safety.

Appellant's right to confrontation and a public trial were not violated by the district court's covid-19 prevention measures here, and his convictions are affirmed. ***State v. Modtland***, A21-0146, __ N.W.2d __, 2022 WL 433245 (Minn. Ct. App. 2/14/2022).

Restitution: State does not bear burden of producing evidence of a defendant's ability to pay. Following his sentencing for second-degree unintentional felony murder, the district court ordered appellant to pay $7,500 in restitution as repayment for the victim's funeral expenses. Appellant argued he was unable to pay that amount, testifying he had no prison job, could not collect Social Security, and had no assets. The district court denied appellant's motion to eliminate or reduce the restitution order.

The court of appeals first rejects appellant's argument that the state bears the burden of proving a defendant's ability to pay and that the state failed to do so here. The plain language of the restitution statute, Minn. Stat. §611A.045 and 611A.05, places the initial burden on the defendant to contest restitution and produce evidence stating his challenges. Then, the statute places two burdens on the state: (1) to demonstrate the amount of loss sustained by a victim, and (2) to demonstrate the appropriateness of a particular type of restitution. The statute plainly does not require the state to produce evidence of or proving the defendant's ability to pay restitution.

The only mention of a defendant's ability to pay in the restitution statute is the requirement that a district court consider the same in making a restitution determination. The district court must expressly state that it considered a number of factors, including the defendant's ability to pay, and the record must contain sufficient evidence to facilitate the court's consideration. Here, the district court made sufficient findings regarding appellant's ability to pay, and the record supports those findings.

But the case is remanded to the district court for the court to assign responsibility for developing a restitution payment schedule or structure. The restitution statute requires that a restitution order include a payment schedule or structure and permits the court to assign responsibility for developing the schedule or structure to probation, court administration, or another person. The court here merely stated there was no deadline for payment, which does not satisfy the statute's payment schedule requirements. ***State v. Cloutier***, A21-1270, __ N.W.2d __, 2022 WL 518480 (Minn. Ct. App. 2/22/2022).

Samantha Foertsch
Bruno Law PLLC
samantha@brunolaw.com

Stephen Foertsch
Bruno Law PLLC
stephen@brunolaw.com

Employment & Labor Law
JUDICIAL LAW

Whistleblower claims; independent contractor not covered. An emergency room physician who was terminated was not entitled to seek relief under the Minnesota Whistleblower Law, Minn. Stat. §181.932. The 8th Circuit Court of Appeals, affirming a ruling of U.S. District Court Judge Joan Ericksen in Minnesota, held that because the doctor was an independent contractor, he was not covered by the statute and further held that a breach of contract claim was untimely. ***Placzek v. Mayo Clinic***, 18 F.4th 1010 (8th Cir. 11/30/2021).

Retaliation rejected; other claims dismissed. An employee was unsuccessful in suing for retaliation, defamation, and intentional infliction of emotional distress after she was terminated for insurance fraud related to enrolling her adult daughter on her health plan even though she was not entitled to be on it. The 8th Circuit, affirming a lower court ruling, held that the claims were not actionable, including an assertion that the claimant had been retaliated against for testifying before state oversight committees, because her employers had no knowledge of her testimony and thus, there was no causal connection warranting a retaliation claim. ***Ackerman v. State of Iowa***, 19 F.4th 1045 (8th Cir. 12/06/2021).

1st Amendment retaliation; deputy sheriffs lose. Another retaliation claim, this one brought under the 1st Amendment by deputy sheriffs who were terminated or demoted by a newly elected sheriff, allegedly because they supported the sheriff's opponent, was unsuccessful. Affirming a lower court ruling, the 8th Circuit held that the sheriff was allowed to take adverse action against them because they were not immune under existing case law limiting the right of government employees to support political candidates. ***Burns v. Cole***, 2022 WL 108607 (Minn. Ct. App. 01/11/2022) (unpublished).

FMLA claim denied; failure to re-certify. An employee who was on family & medical leave under FMLA lost his claim for wrongful termination after he was fired for failing to produce re-certification from his psychiatrist after initial approval for intermittent leave for depression and anxiety. The 8th Circuit upheld summary judgment for the employer because it was reasonable for it to require re-certification based on a significant change in circumstances of the employee's absence. ***Whittington v Tyson Foods, Inc.***, 21 F.4th 997 (8th Cir. 12/29/2021).

Arbitration upheld; employment age discrimination claim rejected. An arbitration ruling favoring an employer in an employment discrimination case was upheld by the 8th Circuit. It upheld a decision by U.S. District Court Judge Michael J. Davis in Minnesota that there were no legitimate grounds to overturn the arbitrator's decision. ***Zhang v. United Health Group***, 2021 WL 6137359 (Minn. Ct. App. 12/29/2021) (unpublished).

Untimely arbitration challenge; arbitration compelled. An untimely effort by employees to challenge a district court order compelling arbitration and denying a motion for extension of time to object to an arbitrary decision was rejected. The 8th Circuit held that there was no basis to reverse the lower court ruling

confirming the arbitration award. ***Livingston v. Progressive Eldercare Service–Cleveland, Inc.***, 2022 WL 200813 (Minn. Ct. App. 01/24/2022) (unpublished).

Court reporters not entitled to arbitrate; judge's decision not subject to arbitration. A pair of court reporters who were terminated by district court judges in Minnesota for "disruptive and disrespectful" conduct were not entitled to arbitrate under their collective bargaining agreements. A decision by Ramsey County District Court barring an arbitrator's decision allowing an arbitration to proceed was affirmed by the Minnesota Court of Appeals because the court reporters are "at will" employees and their bargaining agreement does not permit arbitration of a determination by a judge to discharge them. ***Minnesota Judicial Branch v. Teamsters Local 320***, 2022 WL 200361 (Minn. Ct. App. 01/24/2022) (unpublished).

Collective bargaining agreements implemented; legislative challenge moot. A challenge by state legislators to the action by the Minnesota Management and Budget (MMB) commissioner to implement certain public sector collective bargaining agreements failed. The appellate court, affirming a decision of Ramsey County District Court, denied the argument that the agreements were not properly ratified by both houses of the Legislature because it was clear that both the House of Representatives and the Senate intend to fully ratify them and effect their implementation and their terms, which rendered the case moot. ***O'Neill v. Schowalter***, 2022 WL 200336 (Minn. Ct. App. 01/24/2022) (unpublished).

Reasonable accommodations; dismissal reversed. An employee who sued for failure 30-year minimum term of imprisonment was an upward departure from the sentencing guidelines, but the court failed to state as much in its sentence or make any findings of substantial and compelling aggravating factors to support the departure. "This failure... requires reversal of the sentence and prohibits any future upward departures from the guidelines." ***State v. Bell***, A21-0283, __ N.W.2d __, 2022 WL 351122 (Minn. Ct. App. 2/7/2022).

Confrontation clause: No violation of confrontation right to require witnesses to wear face masks to prevent the spread of covid-19. After a jury trial, appellant was convicted of third-degree possession of a controlled substance and giving a false name to police. During his trial, due to covid-19, the district court required witnesses to wear a face covering while testifying and closed the courtroom, while providing a live video feed of the proceedings in a nearby courtroom. On appeal, appellant argues these measures violated his rights to confrontation and a public trial.

A defendant's confrontation rights are not absolute and may be satisfied without a full physical, face-to-face confrontation at trial if the interference with confrontation is necessary to further an important public policy and the testimony's reliability is otherwise assured. Here, the district court's covid-19 procedures followed the Supreme Court's covid-19 orders and safety plans. The district court also noted that research showed an increase in the spread of covid-19 was higher absent mask-wearing and that the courtroom in which the trial took place was small. The trial also took place before covid-19 vaccines were available and experts were still learning how to best prevent the spread of covid-19.

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to reasonably accommodate a disability had her dismissal reversed and remanded by the court of appeals. The appellate court determined that the Hennepin County District Court erred in granting summary judgment because the record reflected an issue of material fact, based upon a strong inference that the employee was wrongfully discharged from employment after being only six minutes late for her scheduled meeting with human resources, where she was intending to ask for an accommodation for her disability. ***Layeux v. Dedicated Logistical Services***, 2021 WL 6109805 (Minn. Ct. App. 12/27/2021) (unpublished).

Reasonable accommodation offered; employee denied unemployment benefits. An employee who quit his job on grounds of a medical necessity was denied unemployment compensation benefits. The appellate court, affirming a ruling of an unemployment law judge (ULJ) with the Department of Employment & Economic Development (DEED), held that the employer offered the claimant a reasonable accommodation in the form of an unpaid leave of absence, which came prior to the time the employee quit. ***Walker v. Knutson Counseling & Seminars, Inc.***, 2022 WL 17133 (Minn. Ct. App. 01/03/2022) (unpublished).

Marshall H. Tanick
Meyer, Njus & Tanick
mtanick@meyernjus.com

Federal Practice
JUDICIAL LAW

FDCPA; standing; absence of particularized harm. Declining to resolve an intra-district split between Judges Schiltz and Magnuson on an FDCPA preemption issue, the 8th Circuit instead found that the plaintiff lacked standing to pursue his FDCPA claim where he failed to sufficiently allege any "concrete and particularized" harm or a "concrete injury in fact," and remanded the action with instructions to dismiss. ***Ojogwu v. Rodenburg Law Firm***, 26 F.4th 457 (8th Cir. 2022).

9 U.S.C. §4; arbitration enjoined. Finding that the defendants had waived any argument that the district court had lacked the power to enjoin a FINRA arbitration under 9 U.S.C. §4, the 8th Circuit affirmed the district court's injunction, finding that the defendants were not "customers" who were entitled to invoke the FINRA arbitration process. ***Principal Secs., Inc. v. Agarwal***, 23 F.4th 1080 (8th Cir. 2022).

Preliminary injunction; equitable estoppel; delay. While agreeing with the district court that the plaintiff had established a likelihood of success on its claim that the defendants breached a license agreement, the 8th Circuit nevertheless reversed the district court's entry of a preliminary injunction, finding that the court had abused its discretion in rejecting defendants' equitable estoppel defense, that the plaintiff could not establish irreparable harm where any harm was compensable by money damages, and that the plaintiff's delay of more than a year in bringing the action had prejudiced the defendants. ***Wildhawk Invests., LLC v. Brava I.P., LLC***, ___ F.4th ___ (8th Cir. 2022).

Fed. R. Civ. P. 65(a)(1); procedural due process; injunction reversed; case reassigned. Where a hearing on a request for a temporary restraining order was converted to a hearing on a request for a preliminary injunction with roughly one hour's notice, the 8th Circuit expressed "grave doubts" that the defendant received "sufficient notice" of the request for an injunction. The 8th Circuit also found a "lack of evidence" sufficient to support the injunction. Finally, the 8th Circuit found this to be the "rare case... to warrant reassignment of the case on remand." ***Tumey v. Mycroft AI, Inc.***, ___ F.4th ___ (8th Cir. 2022).

Statute of limitations; federal holiday rule; no forfeiture. Where the statute of limitations on the plaintiff's Section 1983 claim would have run on a date that happened to be a federal holiday, the plaintiff commenced his action the following day, the defendants moved to dismiss on the basis of the statute of limitations, the plaintiff never raised the federal holiday rule, Judge Doty acknowledged the existence of the federal holiday rule but dismissed the claims because the plaintiff had failed to invoke the rule, and the plaintiff appealed, the 8th Circuit reversed the dismissal of the claims that had been dismissed on the basis of the statute of limitations, finding no "forfeiture" of a "purely legal issue," while suggesting that "bad lawyering" may have played a role. ***Robinson v. Norling***, 25 F.4th 1061 (8th Cir. 2022).

Fed. R. App. P. 3 and 4; intervenor; failure to file separate notice of appeal. Where the plaintiff commenced an action that was eventually removed on the basis of ERISA preemption, another plaintiff intervened, the district court granted the defendant's motion for summary judgment, only the original plaintiff filed a notice of appeal, both plaintiffs filed briefs in the 8th Circuit, and the defendant moved to strike the intervenor's appellate brief, the 8th Circuit granted the motion to strike the intervenor's brief and dismissed the intervenor from the appeal where the intervenor neither filed his own notice of appeal nor formally joined in the plaintiff's appeal. ***Vercellino v. Optum Insight, Inc.***, 26 F.4th 464 (8th Cir. 2022).

Reduction of requested attorney's fees affirmed; no abuse of discretion. The 8th Circuit found no abuse of discretion in a district court's reduction of a request for attorney's fees of more than 75% in an FLSA action where the law firm had a long history of unreasonable fee requests and had "engaged in negotiating tactics that unreasonably extended the litigation." ***Oden v. Shane Smith Enters., Inc.***, ___ F.4th ___ (8th Cir. 2022).

Removal; mootness; remand required. Agreeing with the district court that the previously removed action was moot, the 8th Circuit reiterated in an unpublished opinion that the "proper disposition" of a removed action that is determined to be moot is to remand rather than dismiss the action. ***Clark v. Forte***, 2022 WL 620553 (8th Cir. 3/3/2022).

Personal jurisdiction; "conspiracy-based" jurisdiction rejected. Chief Judge Tunheim granted a motion to dismiss for lack of personal jurisdiction brought by the attorneys general of Connecticut, Maryland, and New York, rejecting the plaintiff's argument that the defendants were subject to "conspiracy-based personal jurisdiction" and finding that conspiracy-based jurisdiction only applies where the "harm of the overt act taken in furtherance of the conspiracy" must be "directly felt within Minnesota's borders." ***WinRed, Inc. v. Ellison***, 2022 WL 228244 (D. Minn. 1/26/2022), *appeal docketed*, No. 22-1238 (8th Cir. 2/1/2022).

Preliminary injunction denied; delay belied claim of irreparable harm. Where the plaintiff waited 13 months before seeking a preliminary injunction, Judge Nelson found that his delay "negate[d] a finding of irreparable injury." ***Ng v. Bd. of Regents of the Univ. of Minn.***, 2022 WL 602224 (D. Minn. 3/1/2022).

Fed. R. Civ. P. 68; motion to strike offer of judgment denied. Following Magistrate Judge Schultz's decision in *Borup v. CJS Solutions, Group, Inc.* (333 F.R.D. 142 (D. Minn. 2015)), Magistrate Judge Wright denied plaintiffs' motion to strike defendants' Rule 68 offer of judgment, rejecting plaintiffs' argument that defendants were attempting to "pick off" the name plaintiffs prior to class certification in an FLSA action. ***Murphy v. Labor Source, LLC***, 2022 WL 378142 (D. Minn. 2/8/2022).

Fed. R. Civ. P. 37(b)(2)(C); sanctions imposed for deficient discovery responses. While rejecting one defendant's request that plaintiff's claims be dismissed as a sanction for her "deficient" discovery sanctions, Magistrate Judge Leung did award the defendant the "reasonable expenses and attorneys' fees" associated with its motion. ***Peterson-Rojas v. Dakota Cnty.***, 2022 WL 336829 (D. Minn. 2/4/2022).

Fed. R. Civ. P. 37(a)(5)(B); L.R. 37.1(b); request to withdraw discovery motions denied; fees and costs awarded. Where the plaintiff filed multiple "placeholder" motions to compel without specifying which document requests, interrogatories, and depositions were at issue, defendants asserted that they were unable to respond substantively to the "barren" motions and also asserted that the plaintiff had not complied with her meet-and-confer obligations, and the plaintiff sought to withdraw her motions at the motion hearing, Magistrate Judge Leung denied the request to withdraw the motions and awarded the defendants their attorney's fees and costs incurred in responding to the motions. ***Brinkman v. Sprinkler Fitters Local #417***, 2022 WL 420881 (D. Minn. 2/11/2022).

Personal jurisdiction; successor corporation; corporate veil. Judge Brasel denied a motion by multiple defendants to dismiss for lack of personal jurisdiction, finding that the plaintiff had raised sufficient allegations of successor liability against the limited liability company defendant to plead specific jurisdiction, and that the plaintiff also sufficiently asserted veil-piercing claims against the individual defendants to make them subject to personal jurisdiction. ***HEK, LLC v. Votum Enters., LLC***, 2022 WL 329682 (D. Minn. 2/3/2022).

28 U.S.C. §1292(b); personal jurisdiction; *Knowlton*; leave to appeal denied. Having previously denied one defendant's motion to dismiss for lack of personal jurisdiction premised on the alleged abrogation of *Knowlton v. Allied Van Lines, Inc.* (900 F.2d 1196 (8th Cir. 1990)), Judge Schiltz denied a request to certify that order for interlocutory appeal, finding that even if the defendant was correct that *Knowlton* has been abrogated by subsequent Supreme Court decisions, the defendant might have sufficient contacts with Minnesota to establish personal jurisdiction. ***Brunhilda v. Purdue Univ. Global, Inc.***, 2022 WL 607408 (D. Minn. 3/1/2022).

Punitive damages; Minn. Stat. §549.191; intra-district split remains. Acknowledg-

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ing the "disagreement" in the District of Minnesota on the applicability of Minn. Stat. §549.191 to a motion to amend a complaint to add a claim for punitive damages, Magistrate Judge Brisbois applied Minn. Stat. §549.191 and denied the plaintiff's motion to amend. ***Morton v. Park Christian School***, 2021 WL 7082938 (D. Minn. 12/15/2021).

Josh Jacobson
Law Office of Josh Jacobson
joshjacobsonlaw@gmail.com

Indian Law
JUDICIAL LAW

Mille Lacs Reservation created by 1855 treaty not diminished or disestablished. In an exhaustive opinion granting the Mille Lacs Band of Ojibwe's motion for partial summary judgment, the United States District Court for the District of Minnesota held that the Mille Lacs Reservation's boundaries remain as they were created under Article 2 of the 1855 Treaty with the Chippewa. The court applied the United States Supreme Court's standard framework for determining whether later treaties or laws change the boundaries of a reservation by examining statutory language and textual indications of Congress's intent, and rejected the arguments of the Mille Lacs County defendants that the band's reservation was diminished or disestablished through the Treaties of 1863, 1864, and 1867, the Nelson Act, or three other 19th century congressional actions. The court's decision allows the band to continue to litigate its claims for declaratory and injunctive relief concerning the scope of its law enforcement authority within the reservation. ***Mille Lacs Band of Ojibwe v. County of Mille Lacs***, 2022 WL 675980, slip. op. (D. Minn. 3/4/2022).

Leah K. Jurss
Hogen Adams PLLC
ljurss@hogenadams.com

Intellectual Property
JUDICIAL LAW

Copyright: SCOTUS holds mistakes of law in copyright registrations are eligible for safe harbor. The Supreme Court of the United States recently vacated an appellate court's decision holding that 17 U.S.C. §411(b), a "safe harbor" provision, excused mistakes of law and mistakes of fact in the registration of copyrights. In 2016, Unicolor sued H&M for copyright infringement of Unicolor's fabric designs. A jury found in favor of Unicolor. H&M moved to vacate the verdict, contending the copyright registration was invalid under 37 C.F.R. §202.3(b)(4) because Unicolor had registered 31 independent works within a single application. The district court denied H&M's motion, finding that because Unicolor did not know it failed to meet the "single unit" requirement, the copyright registration was not invalid. H&M appealed the decision to the United States Court of Appeals for the 9th Circuit, which reversed the district court and held that a collection of works did not meet the "single unit" requirement in §202 unless published as a "singular, bundled unit" and failure to know of the requirement did not save the copyright.

The Supreme Court vacated the 9th Circuit's decision. With a focus on §411(b)'s safe harbor provision, the Supreme Court held that the provision included both mistakes of law and mistakes of fact. The Supreme Court first interpreted "knowledge" to be broad enough to cover knowledge of both facts and law through statutory construction principles. Second, the Court cited past cases, prior to the enactment of §411(b), that held inadvertent mistakes in registration certificates were not a means to invalidate a copyright. Finally, the Court reviewed the legislative history to find that §411(b) was added to make obtaining valid copyrights easier and to eliminate loopholes for preventing enforcement of copyrights. H&M argued that "ignorance of the law is no excuse," but the Court rejected the argument, finding that the maxim applied to the *mens rea* element of a crime but not to "civil case[s] concerning the scope of a safe harbor that arises from ignorance." The Court further noted that claims of mistake are not automatically accepted, and circumstantial evidence should be reviewed for instances of willful blindness. ***Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.***, No. 20-915, 2022 U.S. LEXIS 1226 (2/24/2022).

Copyright: Copyright claims based on sovereign nation status dismissed as frivolous. Chief Judge Tunheim recently dismissed a local man's lawsuit for copyright infringement where plaintiff, a man claiming to be a sovereign citizen, alleged that Brown County, Minnesota, owed monetary damages for the wrongful use of his copyrighted name during criminal proceedings against him. The court dismissed the copyright claim as "plainly frivolous" because 37 C.F.R. §202.1(a) prohibits the copyrighting of "[w]ords and short phrases such as names." Accordingly, plaintiff could not seek monetary damages for the use of his name by state courts. The court also found that the criminal proceedings against plaintiff were not invalid due to the supposed copyright violation because the existence of a copyright or trademark does not prevent a court from exercising jurisdiction over a civil or criminal matter. ***Gould v. Brown Cty.***, No. 21-2762 (JRT/DTS), 2022 U.S. Dist. LEXIS 27505 (D. Minn. 1/5/2022).

–Zachary Zadow
–Joe Dubis
Merchant & Gould

Joe Dubis
Merchant & Gould
jdubis@merchantgould.com

Zachary Zadow
Merchant & Gould
zzadow@merchantgould.com

Real Property
JUDICIAL LAW

Park dedication fees. A municipality may not impose a park dedication fee as a condition of subdivision approval unless it makes an individualized determination that the proposed development will result in a need to acquire, develop, or approve land for a park or other public uses identified in Minn. Stat. §462.358, subd. 2b(a) and the reasons given by the municipality have a factual basis in the record. Furthermore, the amount of the fee must relate in both nature and extent to the impact of the project. In *Puce*, a landowner sought various approvals from the City of Burnsville to develop a property for use as an automobile dealership and bakery. The city granted approvals subject to the payment of a $11,700 park dedication fee, with the amount based on a formula set forth in an ordinance, over the owner's objections. The landowner sought judicial review. The district court denied motions for summary judgment and then conducted a bench trial

based solely on the submission of exhibits and concluded that the imposition of the fee was lawful. The Minnesota Court of Appeals reversed, holding that the city violated subdivisions 2b(e) and 2c(a) of Minn. Stat. §462.358. ***Puce v. City of Burnsville***, No. A21-0895, ___N.W.2d ___, 2022 WL 351119 (Minn. App. 2/7/2022).

Mechanic's liens. A contractor entitled to a mechanic's lien cannot pursue an equitable remedy such as unjust enrichment if the contractor failed to timely record the lien. In *Craig Scherber*, a contractor performed grading and soil correction work in 2015 and the property owner did not pay for the work. In 2016, the contractor notified the owner of its intent to file a lien and the owner then allegedly convinced the contractor to submit false invoices to allow the contractor to preserve the lien and the owner to maintain a positive relationship with its lender. Another party provided secondary lending to the project in 2018, but the owner defaulted, and the two lenders and the owner in 2020 negotiated an agreement whereby the secondary lender would obtain title to the property. A title search on behalf of the secondary lender revealed that the contractor filed a lien in February 2020. The secondary lender proceeded to close on its acquisition of the property and then brought a declaratory judgment seeking a determination that the lien was invalid and alleged a claim for slander of title. The contractor counterclaimed for unjust enrichment and withdrew its lien. The district court granted cross-motions for dismissal. The court of appeals reversed, holding that the contractor was barred from pursing an unjust enrichment claim given that its lien rights constituted an adequate legal remedy even though the lien was not perfected. Further, the secondary lender was entitled to an award of attorney's fees if they were necessarily incurred and a direct result of an attempt to clear title of an invalid lien. ***Craig Scherber & Assocs., Inc. v. Matt Bullock Contracting Co., Inc.***, No. A21-0428, 2022 WL 433240 (Minn. App. 2/14/2022).

Julie N. Nagorski
DeWitt LLP
jnn@dewittllp.com

Tax Law
JUDICIAL LAW

Property tax: Clinics owned by hospital districts are property-tax exempt. Hospitals are exempt from property tax in Minnesota. In addition, Minnesota statutes exempt from taxation property owned by "hospital districts" so long as that property is used for purposes set out by the statute. Perham Hospital District owns and operates the hospital in Perham, as well as three clinics. Otter Tail County reasoned that the statutory tax exemption for hospital districts is available only to hospitals and not to clinics and therefore classified the three clinics as commercial property, and thus subject to tax. The hospital district challenged the county's determination in the Minnesota Tax Court. The tax court denied both parties' requests for summary judgment and following trial, the tax court held that the three at-issue clinics were statutorily exempt from property taxation because the hospital district used the property for a statutory purpose—in particular, the tax court held that to meet the statutory purpose, the property at issue must be used "to acquire, improve and run" the district's hospital, which, in this case, the tax

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court deemed satisfied.

The county appealed. The Minnesota Supreme Court noted that "the only issue we need to address is the tax court's conclusion that the District owns, uses, or occupies the Clinics... to improve and run the Hospital." Reviewing the tax court's conclusion for clear error, the Supreme Court affirmed. The Court concluded, "Because there is sufficient evidence in the record to support the tax court's findings and conclusions, and in light of our deferential standard of review, we conclude that the tax court did not clearly err in finding that the [Hospital] District used the Clinics to improve and run Perham Hospital." ***Perham Hosp. Dist. v. Otter Tail Co.***, 969 N.W.2d 366 (Minn. 2022).

Property tax: Tax court affirmed in unequal assessment challenge. Without oral argument, the Minnesota Supreme Court considered and rejected four issues raised by the taxpayer, a self-storage facility in Oakdale. First, the Court held that that tax court did not abuse its discretion when it denied the taxpayer's motion to compel detailed discovery regarding other self-storage facilities in the county. The Court similarly held that the lower court did not abuse its discretion in denying the taxpayer leave to amend its pleadings to add constitutional claims and did not err in declining to compel disclosure of the county assessor's home address. Finally, the Court held that the taxpayer had not met its burden of proof to establish its claim of unequal assessment. ***Chambers Self-Storage Oakdale, LLC v. Washington Co.***, No. A21-0825, 2022 WL 697698, ___ NW2d ___ (Minn. 3/9/2022).

County's departure from appraiser's report does not warrant exclusion from trial. This dispute arises from inconsistencies between the county's appraisal report and its pretrial brief. In its appraisal report, the county's appraiser asserts that petitioner is not considered a special purpose property, and therefore used both the cost and sales comparison approach to valuation, giving more weight to the cost approach. Petitioner Marvin Lumber and Cedar Co.'s appraiser used the same approaches but relied more on the sales comparison. In the county's pretrial brief, it states that several aspects of Marvin's facility make it a special purpose property and the cost approach should be the sole or principal method of valuing the property.

When a property is used for special purposes, "appraisal commonly proceeds using only the cost approach to value, based on the conclusion that the income capitalization and sales comparison approaches are either inapplicable or insufficiently supported to warrant reliance." The county's ask values the facility "at an aggregate amount well above that proposed by its own appraiser."

Marvin filed a motion *in limine* asking the court to exclude evidence and argument that the facility is a special purpose property, arguing that any testimony that the facility is considered a special purpose property would constitute "improperly undisclosed expert opinion evidence" and directly contradict the opinion of the county's own appraiser. The county opposed the motion, asserting that it properly responded to petitioner's discovery requests, that trial evidence outside of any expert's opinion supports the special purpose property valuation, and that a motion *in limine* is not a vehicle to exclude arguments, only evidence.

The court concluded that "much properly disclosed anticipated trial evidence... could be relevant to determining whether the [facility] qualifies as a special purpose property under Minnesota law," and neither the county appraiser's report nor its pretrial brief warrants exclusion, and therefore denied petitioner's motion. ***Marvin Lumber and Cedar Co., v Roseau Cty***, 2022 WL 69109 (MN Tax Court 1/4/2022).

Attention counties: Session Law 74 extends to the tax court! Petitioners Ira Azhakh and Bassam K. Abu Samrah both filed property tax petitions on 4/15/2021 for property located in Minneapolis and Medina, respectively. In both cases, Hennepin County filed a motion to dismiss on the grounds that the petitions were 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." Petitioners opposed the motion and joint hearing was held.

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 addressed the effect that Session Law 74 had on chapter 278 property tax petitions and held that the plain meaning of Session Law 74 extended the deadlines in all district court proceedings, including chapter 278 petitions filed in the district court," but did not address whether Sessions Law 74 included deadline extensions for chapter 278 petitions filed in the tax court. However, in a subsequent ruling that the was not released at the time Hennepin County briefed its motion, the court held that "the suspension of deadlines provided in Session Law 74 applies not only to chapter 278 petitions invoking the jurisdiction of the district court but to those invoking the jurisdiction of the tax court." *See Timber New Ulm Props. LP v. Brown Cnty.*, No. 08-CV-20-1048, 2021 WL 5856123 (Minn. T.C. 12/7/2021).

The court reiterated that it could not "find no plausible—or rational—reason why the legislature would create an implicitly bifurcated scheme in which a case involving the same claims and the same property would be subject to

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one deadline if filed in the district court, and an entirely different deadline if filed in the tax court." Thus, the court denied the county's motions to dismiss. ***Azhakh v. Hennepin Co.***, 2022 WL 150847 (MN Tax Court 1/12/2022).

Incorrect email address leads to improper service of process. In response to the pandemic, Hennepin County created an email inbox accepting service of property tax petitions. When the petitioner emailed a petition to a designated email address, the petitioner would receive in return a reply from that email address bearing proof of service.

Petitioners 2200 Gateway LLC and Milwaukee Avenue Townhome Associates filed petitions challenging their property valuations for taxes payable in 2020, using Hennepin County's email filing procedure. "Around the time of the petition, 2200 and the County were engaged in settlement negotiations involving several years of assessments as to several parcels of real estate, including the subject property." 2200 received a stipulated settlement from the County and executed it on 4/24/2020.

Subsequently, counsel for 2200 filed in the district court an affidavit of service claiming that personal service was made on the county by email to CA.PetitionService@hennepin.us on April 10. "Counsel for 2200 also forwarded the County an email evidencing that on April 10, 2020, he sent a PDF document titled '2200 Gateway Tax Petition 4-10-20' to CA.PetitionServiCA.PetitionService@hennepin.us." Counsel for 2200 never received proof of service from the county's email and did no follow-up as to why, instead assuming that it went to junk mail without further investigation.

In April 2020, the county sent counsel for 2200 a notice of deficient proof of service. 2200 attempted to serve the county at the designated email address but failed because it inadvertently sent the petition to *CA.PetitionServiCAPetitionService@hennepin.us*, instead of *CA.PetitionService@hennepin.us*, the former of which does not exist.

The court concluded that 2200 "did not follow the specified procedure for serving the County, as it attempted service on the wrong email address and never received return proof of service from the County." As such, the court dismissed both petitions on the grounds that petitioners failed to effectuate proper service of process. ***2200 Gateway LLC v. Hennepin Co.***, WL 2022 433118 (MN Tax Court 2/9/2022).

Limited nonacquiescence in 5th Circuit decision. James Quezada works as a stone mason and owns Quezada Masonry. For several years, he hired subcontractors to perform the labor, and, like all business owners, was required to file a Form 1099 when threshold payments to subcontractors were met. A Form 1099 shows the name and address of the payee and how much she was paid. Each payee for whom a payor files a Form 1099 must provide a "Taxpayer Identification Number" (TIN). Because several of Mr. Quezada's subcontractors failed to supply him a TIN, Mr. Quezada was required to withhold a flat rate for all payments to the payee and send the withholdings to the IRS. This is called "backup withholding." Mr. Quezada failed to comply with backup withholding requirements. The dispute did not center on Quezada's compliance with the withholding requirements. Instead, the "appeal raises one overarching question: whether the IRS's assessment of Quezada is barred by the Internal Revenue Code's three-year limitations period." The 5th Circuit, disagreeing with the lower court, held that the three-year limitations period applied, and that the assessment was therefore barred. The dispute centered on the meaning of "the return" in 26 U.S.C. §6501(a). The taxpayer argued, and the Circuit agreed, that the Forms 1040 and 1099 that he filed were sufficient to constitute "the return." The court rejected the IRS's contention that only the form that is prescribed by treasury regulations for the specific tax liability at issue—here, the Form 945—can be "the return" that starts the running of the limitations period. ***Quezada v. IRS***, 982 F.3d 931 (5th Cir. 2020).

ADMINISTRATIVE ACTION

Limited nonacquiescence. The IRS recognized the precedential effect of *Quezada* to cases appealable to the circuit and indicated it will follow the ruling in cases within the 5th Circuit in instances where the opinion cannot be meaningfully distinguished. The IRS is not acquiescing to the opinion and will continue to litigate its position in other circuits. AOD 2022-1 appears in Internal Revenue Bulletin 2022-6 (2/7/2022).

Morgan Holcomb
Mitchell Hamline School of Law
morgan.holcomb@mitchellhamline.edu

Sheena Denny
Mitchell Hamline School of Law
sheena.denny@mitchellhamline.edu

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MEMBER NEWS

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


Melchert Hubert Sjodin PLLP announced that **Jason R. Lee** was added to the partnership and **Timothy S. Anderson** has joined the firm in its Waconia office. Lee represents clients in family law and civil litigation matters. Anderson joins as an associate attorney, working in a variety of practice areas.


Kyle S. Willems and **Aram V. Desteian** have been elected shareholders at Bassford Remele. Willems is a litigator primarily practicing in business and tort litigation. Desteian represents businesses in complex commercial litigation, and also counsels and defends other lawyers against professional liability claims.


Gov. Walz appointed **Amber Brennan** and **Keala Ede** as district court judges in Minnesota's 4th Judicial District. These seats will be chambered in Minneapolis in Hennepin County. Brennan is chief of the Firearms and Violent Crime section of the U.S. Attorney's Office, District of Minnesota. She will be replacing Hon. Elizabeth V. Cutter. Ede is an assistant federal defender in the Office of the Federal Defender in Minneapolis. He will be replacing Hon. Martha A. Holton Dimick.


Gov. Walz appointed **Timothy Carey** and **Jacob Kraus** as district court judges in Minnesota's 2nd Judicial District. These seats will be chambered in St. Paul in Ramsey County. Carey is an assistant Ramsey County attorney in the Civil Commitments Division in the Ramsey County Attorney's Office. He will be replacing Hon. George T. Stephenson. Kraus is a senior assistant Hennepin County attorney and supervises a trial team in the Child Protection Division. He will be replacing Hon. Teresa R. Warner.

Soobin Kim has been chosen as a 2022 fellow by the Leadership Council on Legal Diversity. Kim is an attorney at Fredrikson & Byron and advises strategic investors and private equity clients on cross-border corporate and M&A transactions.







Moss & Barnett announced that **Bradley R. Armstrong, Lindsay L. Case, Maggie H. Garborg, John P. Kennedy,** and **Erik L. Romsaas** have become shareholders in the firm. Also, **Sara E. Filo** and **Katherine J. Marshall** have joined the firm.

Moss & Barnett announced that **John P. Boyle** and **Jana Aune Deach** were re-elected to three-year terms as members of the firm's board of directors.

Stellpflug Law PLLC announced that the firm has received national certification as a women's business enterprise by the Women's Business Development Center-Midwest.

Katherian D. Roe was reappointed for a four-year term as the federal public defender for the District of Minnesota. Roe has served in the role since 2006.

Kevin Sieben was elected as a fellow of the American Bar Foundation (ABF). Membership is limited to just 1 percent of lawyers licensed to practice in each jurisdiction. Sieben is a partner at Sieben Edmunds Miller, a law firm working exclusively in the areas of criminal defense and personal injury. All three of the firm's partners are ABF fellows.

Rachel Brygger has re-joined Winthrop & Weinstine, PA, in the employment counseling practice.

In memoriam

CURTIS C. GILMORE
age 94, of Minneapolis, passed away on February 15, 2022. He graduated from the University of Minnesota Law School in 1951 and began a two-person law firm, McLeod & Gilmore, specializing in workers' compensation litigation. In 1968, he merged his law practice with another firm that later became Gilmore, Aafedt, Forde, Anderson & Gray, PA, where he continued his practice until he retired in 1992.

GRAHAM HEIKES
age 83, passed away last winter. Heikes was a trial lawyer who spent most of his career with Jardine, Logan & O'Brien.

THOMAS RAY KING
died on February 18, 2022 after battling Alzheimer's Disease. He graduated from the U of M Law School and became a recognized securities and finance lawyer. He spent much of his career at Fredrikson & Byron, where he became chair of the board.

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Flaherty & Hood, PA, St. Paul, Minnesota, is seeking an associate attorney with zero to five years of experience to join its growing environmental regulatory practice representing and advising local government clients. This practice includes representation of clients in administrative and civil litigation, administrative rulemaking, and environmental permitting matters. Strong research and writing skills are required. Education and a demonstrated interest in environmental law as well as some administrative hearings and/or litigation experience is preferred. Flaherty & Hood, P.A. provides competitive salaries and benefits, such as medical, dental, long-term disability, and life insurance; 401(k) plan; health club, and data plan reimbursement; and paid holidays and paid time off. Please submit your cover letter and resume by email to Chris Hood, Shareholder Attorney, at cmhood@flaherty-hood.com. More information about the firm is available at: http://www.flaherty-hood.com.

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Cousineau, Waldhauser & Kieselbach, a Tier I, AV rated workers' compensation and insurance defense firm located in Mendota Heights, Minnesota is seeking bright, hard-working, and team-oriented candidates for an associate attorney position. Our firm offers a collegial, supportive work environment, including professional development, and a competitive pay structure with full benefits and a hybrid work option. Legal experience or judicial clerkship experience is preferred but not required. We will consider recent graduates, and law clerk experience in workers' compensation, personal injury, or a similar practice area. Excellent organizational, communication, and time management skills are preferred. Please send cover letter and resume to: dana.klem@cwk-law.com.

ATTORNEY — SIOUX FALLS, SD

Job Description: Woods, Fuller, Shultz & Smith PC seeks to hire a full-time attorney, with at least three years of experience in corporate and transactional work, for its Sioux Falls, South Dakota office. The attorney will be assigned to one or more practice groups, including our corporate / mergers and acquisitions practice group. Responsibilities include meeting with clients, negotiating and drafting documents, forming business entities, resolving disputes, completing filings, and addressing a wide variety of issues. Salary to be determined. Firm Profile: With more than 40 attorneys, Woods, Fuller, Shultz & Smith PC is a full-service law firm with several well-established practice groups. The firm has been providing legal services since 1887. With offices in Sioux Falls, South Dakota, and Sioux Center and Sheldon, Iowa, our clients are located in the upper Midwest, and many operate on a national and international basis. Our attorneys are experienced, knowledgeable, and committed to providing high-quality legal representation. We are proud of our culture of collaboration. We proudly offer legal services rooted in the integrity and dedication that launched the firm 135 years ago, and look forward to continuing to serve the thriving business climate of Sioux Falls and the surrounding region. Equal Opportunity Employer. Woods, Fuller, Shultz & Smith PC provides equal employment opportunities (EEO) to all employees and applicants for employment without regard to age, race, color, creed, disability, religion, sex, gender identity, sexual orientation, ancestry, national origin, protected veteran status, or genetic information. Resumes can be sent to: HR@WoodsFuller.com.

BUSINESS LITIGATION ATTORNEY

Anthony Ostlund Louwagie Dressen & Boylan P.A. 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.

COMMERCIAL LENDING ATTORNEY

Winthrop & Weinstine, an entrepreneurial, full-service law firm in downtown Minneapolis, has an excellent opportunity for an associate attorney with three to five years of experience on its well-recognized lending team. Our lending practice is fast paced, very collaborative, devoted to excellent client service, and involves sophisticated high-end matters for a wide range of businesses. Qualified candidates will be highly motivated, have excellent academic credentials, strong analytical abilities, excellent oral and written skills and will be a self-starter. It is highly preferred that the candidate have three to five years of lending experience, with a strong preference for candidates who have backgrounds in real estate financing. Winthrop & Weinstine offers competitive salary and benefits and a team approach to providing our clients with top quality service. EOE. Please apply at: https://recruiting.myapps.paychex.com/appone/MainInfoReq.asp?R_ID=4408995

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.

ATTORNEY WANTED

Gislason & Hunter LLP's mission for more than 80 years has been to deliver the very best in service and results. We enjoy a reputation as one of the premier civil litigation and corporate transaction firms in the upper Midwest, with offices in New Ulm and Mankato. Gislason & Hunter LLP is expanding in all of our practice areas, we and are looking for high quality attorneys with experience in areas including civil litigation, estate planning, real estate, corporate law, banking and finance, and environmental and agricultural law. Our openings provide a motivated attorney with the opportunity to take on substantial responsibility and ownership over individual client matters, while also working with a team on complex issues. Mankato and New Ulm are part of one of Minnesota's fastest-growing regions and provide an unmatched quality of life. We seek an attorney who shares the firm's values of honesty, candor, the pursuit of excellence, fairness, communication, teamwork and innovation. Join Gislason & Hunter's collaborative, hard-working and fun team of attorneys. Gislason & Hunter LLP is an equal opportunity employer. We offer a competitive compensation package and comprehensive benefits. For consideration, please send cover letter and resume to: careers@gislason.com www.gislason.com

LATERAL ASSOCIATE ATTORNEY

Sjoberg & Tebelius, PA, a boutique law firm in Woodbury, Minnesota, is seeking a lateral associate with at least five years' experience in an area that would enhance the firm's already well-established estate planning, business planning, tax, real estate, family law, probate, and employment practice. The ideal candidate will have a strong academic/professional background and a demonstrated ability to network and originate clients. Send resume to theresa@stlawfirm.com.

LATERAL ASSOCIATE ATTORNEY

Tewksbury & Kerfeld, a small, progressive, Minneapolis litigation law firm is seeking a lateral associate with at least five plus years of experience in civil litigation that would enhance the firm's already well-established practice. The ideal candidate will have a strong academic/professional background, strong writing skills and a demonstrated ability to network and originate clients. Position offers pay commensurate with experience and opportunities for partnership. Send resume to: lkerfeld@tkz.com

LITIGATION ASSOCIATE

Nilles Law Firm is seeking a full-time attorney in the practice area of litigation to add to our team of legal professionals. The successful candidate will be responsible for all aspects of litigation work and support, including legal research, motion practice, drafting pleadings, discovery practice, deposition practice, and assisting with and eventually handling civil jury and court trials and/or administrative hearings. Nilles Law Firm offers a competitive salary, paid time off, paid employee health and dental benefits, short-term disability benefits, life insurance, and retirement plan with percentage match. License to practice law in North Dakota, or ability to obtain such license prior to start date is required. License to practice in Minnesota or South Dakota also encouraged, but not required. Please submit resume, law school transcript and writing sample to janderson@nilleslaw.com.

LITIGATION ATTORNEY

Small, growing litigation firm with national personal injury defense practice seeking a lawyer with 5 to 15 years' experience in personal injury and/or trial work. Strong writing, researching and interpersonal skills are necessary. Licensure in other states is a plus. Please send resume and/or direct inquires to: jgernes@donnalaw.com.

ASSOCIATE ATTORNEY

Located in the heart of Minnesota Lakes Country, the Swenson Lervick Law Firm is looking for a dynamic associate attorney to work in its established and growing areas of practice. If you are looking for the next step in your career, or a new place to live, work, and play, please send or email a cover letter along with your resume to: Swenson Lervick Law Firm, Attn: Beth, 710 Broadway, Alexandria, MN 56308 or email bak@alexandriamnlaw.com.

MINNEAPOLIS, MN - REAL ESTATE FINANCE ASSOCIATE

Fox Rothschild LLP has an opening in the Minneapolis office for an associate in the Real Estate Department. Join a collaborative and supportive team that has been devising complex and alternative finance strategies for its local and national lending, financial institution and investment clients for over 30 years. The ideal candidate will have four to six years of experience with transactional real estate and/or finance experience and will enjoy solving problems, will thrive in a fast-paced environment, and will make good client relationships a priority. Strong academic record and excellent writing skills required. Large law firm experience preferred. Must be licensed to practice in the State of Minnesota. Equal Opportunity Employer – vets, disability. We are not currently accepting resumes from search firms for this position. https://www.foxrothschild.com/careers-for-attorneys/open-positions

PART-TIME LITIGATION ASSOCIATE

Construction Law/Cannabis Law. Veteran litigator seeks full-time associate for assistance with construction, real estate and business litigation. Work will also include cannabis law in MN, WI, SD and MI; minnesotacannabislaw.com. Flexible hours. Remote work allowed. Generous salary and benefits commensurate with experience. Please send cover letter and resume to: jason@taraseklaw.com.

REAL ESTATE ASSOCIATE

Maslon LLP is seeking an associate attorney with two plys years of experience to join the firm as an associate in its real estate transactions group. This practice includes all aspects of the real estate life cycle, including acquisitions and dispositions, real estate related finance, property development, commercial leasing, title and survey review, land use, and other real estate related matters. Candidates must have at least two years of relevant experience, a firm commitment to a real estate transactions practice, strong motivation and work ethic, along with excellent communication skills. For more information, please con-

tact Angie Roell, Legal Talent Manager, at: angie.roell@maslon.com or 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.

REAL ESTATE CORPORATE COUNSEL- IN HOUSE

Schafer Richardson is looking to hire an energetic, motivated individual for our in-house Legal team. The ideal candidate is a critical thinker who wants to be part of a growing company with 5+ years of sophisticated law firm and/or in-house experience. Compensation and benefits are competitive, including a generous bonus structure and hybrid remote work environment. Areas of practice include: Commercial Leasing, general real estate, financing, general corporate and partnership law. Please send your cover letter, resume, and salary requirements to: Tami Haight, Human Resources, thaight@sr-re.com.

REAL ESTATE FINANCE ASSOCIATE ATTORNEY

Multifamily and Commercial Real Estate Finance Associate Attorney Wanted - Moss & Barnett, A Professional Association, seeks a licensed attorney to join its real estate practice group. This position will have an emphasis in multifamily and commercial real estate finance. Preferred candidates will have zero to six years of real estate experience, superior academic qualifications, and a distinguished work record. Salary commensurate with experience and qualifications; position is eligible for participation in associate bonus program. Interested candidates should email a cover letter, resume, law school transcript and writing sample to carin.delfiacco@lawmoss.com. Moss & Barnett is an affirmative action/EEO employer. No agencies please.

REAL ESTATE/ TRANSACTIONAL ATTORNEY

AV-rated mid-sized Minneapolis law firm is seeking a highly motivated attorney with three to six years or more of experience in the areas of real estate and commercial transactions, corporate, municipal finance and/or business law. Ideal candidates will possess

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excellent written and oral communication skills, initiative, and drafting ability. We seek candidates who wish to expand an existing practice while acting in a support role for existing clients of the firm. The firm was established over 30 years ago and provides a full range of legal services found in much larger firms, with the personal attention and adaptability that are the hallmarks of smaller firms. We offer a collegial atmosphere, competitive compensation and an excellent benefits program. Compensation is negotiable based upon qualifications, experience, and portable business. Please send resume and cover letter to Office Manager, McGrann Shea Carnival Straughn & Lamb, Chartered, 800 Nicollet Mall, Ste 2600, Minneapolis, MN 55402 or employment@mcgrannshea.com.

TRUSTS & ESTATE ATTORNEY
Maslon LLP is seeking attorney candidates with two plus years of experience to work in our Estate Planning Practice Group. Candidates will focus on serving individuals and families, closely held business owners and executives, as well as corporate and individual fiduciaries in all areas of estate and tax planning, business succession planning, and trust and estate administration. Qualified candidates will have strong drafting skills, good communication skills, client-facing experience, solid academic credentials, and the ability to work both independently and as a team while maintaining a high level of professionalism. For more information, please contact Angie Roell, Legal Talent Manager, at angie.roell@maslon.com or visit www.maslon.com/careers.

ATTORNEY – INSURANCE DEFENSE
Twin Cities insurance defense firm seeks attorney with full/partial book of business to join our practice. Please send replies to bb85lex@gmail.com.

ASSOCIATE ATTORNEY WANTED — ALEXANDRIA
Seeking full-time associate with interest in fast track to partnership/ownership. Requirements: three to five years' experience preferably in workers compensation and personal injury. Firm open to introducing other practice areas to fit candidate's background. Competitive salary with small firm advantages such as flexible hours/work from home options and retirement/health insurance benefits. Send resume and writing sample to: dmmlaw@mccashinlawfirm.com.

CLAIM ATTORNEY — PROFESSIONAL LIABILITY
Minnesota Lawyers Mutual seeks to hire a seasoned claims professional. The Claim Attorney will evaluate coverage, investigate allegations, assess liability, and evaluate damages. They will manage litigation and attend mediations as appropriate. The Claim Attorney also will provide risk management advice and present ethics-based CLE. Qualifications: Minimum five years of successful legal and/or insurance experience. Knowledge of professional liability insurance and caselaw. Excellent analytical and communication skills. Superior writing ability. Juris Doctorate and license to practice law. To apply, please contact Patty at pritchie@mlmins.com.

OFFICE SPACE

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

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All-inclusive office space located at 4525 Allendale Drive. Rent includes telephones, internet, color copier, scanner, fax, conference room, receptionist, kitchen, utilities and parking. Contact Nichole at: 651-426-9980 or nichole@espelaw.com.

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Exchange Building in suite with six other lawyers. Looking for one attorney, or two/three to share. Rent negotiable. On skyway with Internet, copier, fax, conference room, and kitchen. Good referrals. Contact Rod Hale, roderickhale@gmail.com.

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IMPROVE YOUR WELLNESS
I'm Mike. I've been training in mindfulness and coaching for the past five years. As an Army Vet and trial lawyer, I spent too many years stressed out and not taking care of myself. Reach out if you're looking to improve your mental, physical, and spiritual wellness. We can navigate your intentions together. I offer confidential one-on-one sessions and group sessions for firms/organizations. milliosmw.com - mike@millioslaw.com

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