OFFICIAL PUBLICATION OF THE MINNESOTA STATE BAR ASSOCIATION

VOLUME LXXVIII NUMBER VII
AUGUST 2021
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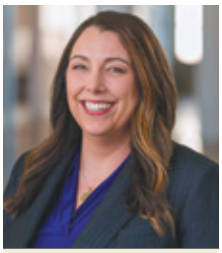
The voice of the profession

On my first day as president of the MSBA, I had the honor of signing a petition for the association to participate as *amicus curiae* in a case being considered for review by the Minnesota Supreme Court. In amicus petitions, the MSBA provides the Court information regarding why it is well-positioned to speak on a particular subject and on behalf of the profession. The petition I signed read: "The MSBA is the largest voluntary bar association representing the legal profession in Minnesota. Made up of approximately 13,000 members statewide, the MSBA represents nearly half of Minnesota's licensed attorneys." In short, the MSBA is suited to serve as friend of the court because its membership is vast, and it works to advance causes and positions important to the entire profession, not just a segment of the profession.

This articulation of the MSBA's role as the voice of the legal profession is significant in a couple of respects. First, what an enormous responsibility! To uphold professional values, to vet and shape those values, and to provide opportunities and space for all stakeholders to be a part of the process is a significant duty. Second, what an enormous privilege! To be charged with speaking for and leading the profession is a sacred right and undoubtedly provides the MSBA and its members with advantages and benefits that must be honored. How the MSBA exercises the privilege and responsibility of serving as the voice of the legal profession is important to MSBA members.



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

The association just completed its strategic planning for the next three years, and the voice of the MSBA is an important component of that plan. Significantly, surveys performed as part of the planning process identified the leadership role and the voice of the MSBA as being of critical importance to the overall work the association performs. It is valued by and valuable to MSBA members.

The MSBA uses its voice in multiple ways. For instance, every year the MSBA lobbies the Legislature to advance its legislative priorities, which have ranged from correcting errors in statutes, to providing law school loan forgiveness for attorneys who practice in Greater Minnesota, to securing a right to counsel in public housing eviction actions. MSBA leadership is regularly reminded by the MSBA lobbyist that the association has political capital and when issues that impact the justice system or other substantive areas of law arise, he is often asked, "What does the MSBA have to say about this?" The MSBA's voice matters at the Legislature.

The MSBA's voice also matters on statewide boards, committees, and task forces. The MSBA is charged with appointing attorneys to numerous Minnesota Supreme Court and legal services boards. The MSBA has also been called upon to appoint members to other committees and task forces. For instance, in the spring of 2019, the Minnesota Supreme Court issued an order establishing the Implementation Committee for Proposed Legal Paraprofessional Pilot Project. Not only did the order acknowledge the prior work of the MSBA's Alternative Legal Models Task Force in setting the foundation for the establishment of the committee, the order also appointed a MSBA representative to the committee. Notably, the MSBA representative was the only bar association representative on the committee. The committee's charge was to develop a pilot project that would permit legal paraprofessionals to perform certain legal work under the supervision of a licensed Minnesota attorney. The MSBA had a seat at the table for those discussions and the development of the pilot program.

The MSBA's voice matters within the courts and the judicial branch, as well. In addition to serving as *amicus curiae,* the bar also speaks through petitions and comments to bring important issues to the Supreme Court's attention and to seek change. Last bar year, for instance, the MSBA petitioned for an amendment to the Rules on Lawyer Registration that would require lawyers to report annually on the number of pro bono service hours they performed and the financial contributions they made to organizations that provide legal services to people of limited means. The MSBA's petition was granted and the amendment to the rules will be effective January 22, 2022.

This bar year, the MSBA will petition the Supreme Court for amendments to the Rules of General Practice, Rules of Civil Procedure, and Rules of Civil Appellate Procedure, to facilitate personal leave requests by attorneys for certain health conditions; the birth or adoption of a child; the need to care for a spouse, household member, dependent, or family member who has a serious health condition; or the death of a family or household member. In bringing this petition, the MSBA will be vocalizing a significant need for change in the profession. The MSBA's thousands of members are potentially impacted by these issues, and having convened a working group to thoroughly study the same, the MSBA is best equipped to speak for the change.

While the MSBA has a strong and respected voice, its continued role as a leader for the profession depends on the growth and diversification of its membership. A large and vibrant membership makes the MSBA's voice compelling. Ensuring broad-spectrum diversity in our membership—diversity of age and professional experience, race/ethnicity, sexuality and gender identity, physical and neuro-cognitive abilities, metro and Greater Minnesota perspectives—is critical to the MSBA's ability to speak with an inclusive and authoritative voice. Your membership is what makes the MSBA's voice strong, and it matters as we continue to lead the profession. ▲

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

Urgent pro bono needs across the state

The post-pandemic eviction moratorium "off-ramp" is now underway. Legal services organizations across the state have been planning for over a year for the flood of cases that have now started to enter the court system.

To help face this crisis, the Minnesota Judicial Branch, Minnesota State Bar Association, and legal aid programs created the "Lawyers Step Up for Minnesota" campaign to recruit volunteer attorneys to meet acute needs not only in housing matters, but also family safety and consumer protection. This effort led to the creation of a website to connect attorneys with local legal services agencies to make a difference through pro bono.

Please visit www.lawyersstepupmn.org to start the simple process of making a lasting impact in our state. Training opportunities are available, including on-demand resources.

Each organization and judicial district are facing unique challenges. Some are urgently looking for housing volunteers, while others have dedicated their entire staff to housing and need assistance in other areas of law. Regardless of your practice area, there is an important role for you in mitigating some of the fallout for low-income families and individuals in Minnesota communities. While the numbers for the metro area are staggering—up to 80 eviction cases per day in Hennepin County alone—outstate areas are in just as much need with fewer attorneys per capita than the metro area. Now is the time to start or renew your pro bono practice!

Did you know

Free, complete Bench & Bar archives

Most members are familiar with the online Bench & Bar homepage you can reach by visiting ***www.mnbar.org/bench-bar***. That site offers access to our library of recent PDF digital editions of the magazine and to a limited content archive dating back to the summer of 2018.

But did you know you can also access a fully searchable, free-to-members database of all Bench & Bar content dating back to the magazine's inception in the late 1930s? It's easy:

- Click on the *Archives* link featured on the right side of the Bench & Bar homepage.
- Sign in to the MSBA website when prompted.
- You'll be directed to an MSBA practicelaw page containing a pair of links to Hein. Click on the link labeled *Bench & Bar archives on HeinOnline*.
- Use the search engine to locate the article(s) you're after. (Note that you can search the entire database or narrow your search by volume/year.)

MSBA & THE COURTS UPDATES

- **Civil procedure:** The MSBA currently has a petition pending before the court to amend Minnesota Rule of Civil Procedure 30.02(f), which addresses subpoena notices to organizations and the "meet and confer" requirement. If adopted by the Court, the changes will put Minnesota in alignment with recent changes to the corresponding federal rule.

MSBA + 

- **Personal leave petition:** In late June, the MSBA Assembly passed a recommendation to amend court rules to facilitate personal leave upon certain triggering events such as the birth or adoption of a child, a health condition experienced by the attorney that renders them temporarily unable to work, the need to care for a family or household member experiencing a serious health condition, or the death of a family/household member. Members of the working group that formulated the recommendation are drafting the petition with an expected filing date by the end of the calendar year.

- **Lawyer advertising:** The MSBA and the Lawyers Professional Responsibility Board (LPRB) recently filed separate petitions requesting amendments to Rule 7 of the Rules of Professional Conduct related to attorney advertising. The changes align with those made to the ABA's Model Rules, with one exception contained in the MSBA petition. The MSBA Assembly voted to maintain the current language regarding certification, whereas the LPRB's petition follows the Model Rules.

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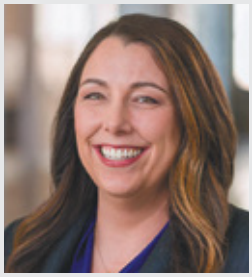

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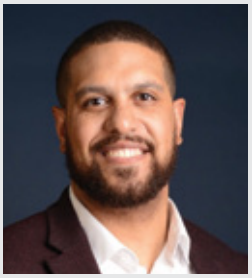

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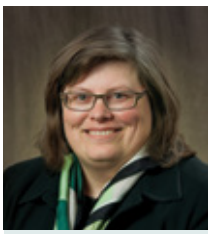
Supervising probation is a great way to volunteer

Probation, private or public, is an important form of discipline. Discipline in attorney misconduct cases is not to punish the lawyer; its purpose is to protect the public and the profession, and to deter misconduct by the lawyer and others. Probation fits well within this model.

There are three ways that lawyers are placed on probation. An attorney may agree to private probation generally in lieu of public discipline. This form of discipline requires the attorney's agreement and the Lawyers Board chair's approval, and is used for instances where an admonition is not appropriate because the misconduct is not isolated and non-serious, but a period of supervised practice is warranted. Public probation is ordered as part of public discipline, and lawyers are frequently placed on public probation following reinstatement to the practice of law after a period of suspension or disbarment. Probation terms are generally two years, but this can vary. They can be unsupervised or supervised.

In 2020, there were 88 open probations, most of them supervised. Recently a reader wrote me to suggest a column on probation supervisors. I thought this was a fantastic idea, because I know that many people are not aware of this part of the attorney discipline system, and we are always looking for volunteers to serve as probation supervisors. Let's cover what is involved in this process and why you might want to consider volunteering in this manner. I would also like to highlight the work of three probation supervisors, who share in their own words why you might want to consider volunteering.



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.

SUSAN.HUMISTON@COURTS.STATE.MN.US

Selection

In all cases, lawyers are asked to nominate their own probation supervisor, subject to approval by the Office. Because this is an important relationship, it helps if the supervising lawyer already knows or has otherwise worked with the probationer in some capacity. This is how attorney Jeff Jacobs came to be a probation supervisor. Mr. Jacobs has more than 40 years of experience as an attorney, and is with the law firm of Wilkerson, Hegna, Kavanaugh & Johnston in Edina. Mr. Jacobs was approached in 2020 by an attorney he knew from the community to serve as the attorney's probation supervisor.

Mr. Jacobs was unfamiliar with the process but was happy to try to help. After discussions with our Office about what probation entails, Mr. Jacobs agreed to serve as a probation supervisor for two years and is very glad he did. Mr. Jacobs reports that his supervisee has taken the Board's probation order and the requirements to heart, and this experience has been equally as rewarding for Mr. Jacobs, who has used this opportunity to improve his own practice. Communication deficiencies were the issue that troubled Mr. Jacobs' supervisee, and through regular quarterly meetings, Mr. Jacobs has seen improvement in his supervisee's practice.

Sometimes probationers are unable to find a volunteer, and in those cases the Office turns to a roster of volunteers who have previously served as volunteer supervisors. One such volunteer is Judith Rush, director of mentor externship programs at the University of St. Thomas School of Law. Ms. Rush, a former LPRB chair, has successfully supervised several probationers with an emphasis on lawyers who struggle with lawyer wellness issues that affect their ability to competently and ethically practice law. Ms. Rush, having worked as a solo practitioner for many years, understands the unique challenges, both professional and personal, that solo practitioners face.

Role of a supervisor

The role of a probation supervisor varies depending on the type of probation involved. Most probation supervisors focus on implementation of and compliance with office procedures and review of active case management procedures. All probations generally involve at least quarterly meetings with a supervisor, a quarterly report to our Office, and sometimes monthly reviews of active case files to ensure compliance with probation terms. Most probationers embrace the opportunity to refine client-related practices, and after initial meetings the time spent in active supervision is often minimal. Mr. Jacobs estimates that he spends three to five hours on a quarterly basis now that he and his supervisee have gotten into a groove and reports that it has not been an imposition on his time at all. Other probations can be more challenging.

For example, immigration attorney Leslie Karam, managing attorney at Karam Law in the south metro, was recruited to supervise another immigration attorney. Ms. Karam dedicated a lot of time to assist her supervisee in setting up good office practices that would help to assure an ethically compliant practice. Ms. Karam believes strongly that "we are all human and humans make mistakes. We do not have to be defined by our mistakes; rather we should be judged by our response when things go wrong." Ms. Karam approached her probation role as an observer, mentor, and ally, aiming to help her supervisee develop better approaches to lawyering. Despite receiving the gift of a lot of Ms. Karam's time and guidance, her supervisee was unable or unwilling to make the improvements that were needed; ultimately her supervisee continued to have issues and received additional discipline. Sometimes, as Ms. Karam notes, a career change may be best for all involved.

Why volunteer?

"Lawyers who agree to probation are not 'bad' lawyers—they are typically lawyers who haven't had mentoring or haven't been able to take the time from practice to institute and internalize best practices, or have encountered significant challenges in their lives that have impacted their ability to serve clients," according to Ms. Rush. "Supervising their probation gives me an opportunity to assist them in taking the time to focus on practice management, client service, and integration and internalization of the Rules of Professional Conduct." Ms. Karam agrees: "Probation supervisors introduce the opportunity to learn from past mistakes and grow professionally into stronger advocates and advisors to our clients." Each volunteer I spoke with for this column believed the investment of time was well worth it as a service to the profession and as a way to strengthen their own practices. It is also a concrete and meaningful way to strengthen the quality of service rendered by the legal profession as highlighted in the Preamble (para. 6) to the Rules of Professional Responsibility.

Most probations end successfully for both the supervisee and the supervisor. Only a few probationers have issues while on probation, and everyone is sorry to see this happen. Supervisors serve without compensation, but as noted by several volunteers, it is a rewarding form of service to the profession. Another statistic that is important to note—most discipline is received by experienced attorneys. In typical years, practitioners with between 11-30 years of experience receive the most discipline. I'm not sure we know all the reasons for this, but I will always be a strong believer in "there but for the grace of God go I."

Conclusion

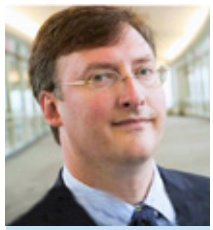
If you are looking for a way to invest in the profession, consider volunteering as a probation supervisor. Mistakes happen, life can be hard, and practicing law is a challenging career. Many of us have benefited greatly from mentors and advisors who have helped us course-correct when needed. Who among us does not need encouragement, support, and a helping hand at times? If you would like to learn more, please call our Office at 651-296-3952.

And if you are approached by a lawyer to serve as their supervisor, consider saying yes. Thank you to everyone who has answered the call to serve as a probation supervisor within the discipline system—the profession is stronger because of you. If being a probation supervisor is not your cup of tea, consider volunteering for a local district ethics committee. It is a fantastic way to learn the ethics rules as well as a great service to the profession. Please don't forget we are always looking for non-lawyers to volunteer. If you know a non-lawyer who is interested in the law and ethics, send them our way. Finally, thanks to Bob Beutel for recommending this topic. If you have suggestions for future columns, please let me know. ▲

Security is a team game

Last month I discussed the impact of President Biden's recent executive order on national cybersecurity. The order comes at a particularly critical time for the United States, in light of recent data breaches affecting several critical sectors. Apart from the federal government, it is evident that standardization, awareness, and investment in new technologies are key components of keeping up with the security demands of an ever-changing landscape.

In 2020, remote work environments and the cyber threats that proliferated throughout the pandemic greatly changed business operations for many organizations. Even as many businesses resume "normal" in-person work, many adjustments made during the past year may have lasting effects. Work-from-home policies and the challenges brought about by covid-19 required many organizations to review and improve their cybersecurity postures. Even so, according to a recent study, "Nearly 80 percent of senior IT and IT security leaders believe their organizations lack sufficient protection against cyberattacks despite increased IT security investments made in 2020 to deal with distributed IT and work-from-home challenges."[1] This discrepancy underscores the fact that increased financial investment does not necessarily correct already-existing problems in an organization's security culture. Nor does it automatically increase internal confidence in an organization's security posture.



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.

Despite the rise in cybercrime and an increasingly complex web of cyber risks, many organizations are delegating a job that rightfully belongs to dedicated security teams to technical support staff who are already busy with other work and less experienced with respect to security threats. Even though cybersecurity professionals are greatly in demand, positions are often filled for the sake of the title, and not for the successful planning, execution, and maintenance of strong cybersecurity plans. This practice often occurs in organizations that equate compliance with security—essentially it involves filling a position without providing the necessary support and resources for security initiatives. Or organizations may arbitrarily assign cybersecurity titles to existing employees within the IT department for the purpose of satisfying compliance requirements.

Dedicated security teams have several critical responsibilities, including: oversight of implementing best practices; management of projects affecting cybersecurity objectives; facilitating communication; minimizing siloes in the organization; conducting documentation; and establishing change control processes, among others. This is a mission distinct from many aspects of day-to-day operations. In the hustle and bustle of working to manage the "convenience" side of the technologies on which we rely, IT departments may not always have the resources required to manage the many demands of a healthy security posture.

A recently discovered breach illustrates the importance of oversight in maintaining strong cybersecurity. A large web host provider, DreamHost, "was left open online earlier this year, leaking names, usernames and email addresses… The data appeared to date back at least three years to 2018, though it's unclear how long the database was openly accessible."[2] Equipped with this kind of information, spear-phishing attacks or other social engineering campaigns are easy enough to execute. Using some of the stolen information, a cybercriminal can tailor a phishing email to gain access to more data.

Though DreamHost was quick to secure the database once it was alerted, it would seem that improving oversight and communication regarding cybersecurity practices would help to mitigate the possibility of future events. In addition to government entities, attacks on key sectors and critical infrastructure may also yield catastrophic results. For all organizations, cyber risks may have an immense negative impact on business operations and may cause long-term damage that includes reputational and financial harm.

Cybersecurity is often relegated to the IT department, though cyber threats and risks are cross-organizational concerns. Dedicated teams are often instrumental in managing incident response, but they are equally essential in providing critical leadership through proactive measures and securing top-down management support for cybersecurity initiatives. Depending on the size of the organization or firm, outsourcing this work may be a beneficial alternative. From helping to ensure proper database configurations to keeping key stakeholders informed of new IT projects, cybersecurity teams can help take an organization from a laissez-faire culture to a strong and actively supported security culture that better minimizes cyber risk. ▲

Notes

[1] *https://www.forbes.com/sites/chuckbrooks/2021/03/02/alarming-cybersecurity-stats-------what-you-need-to-know-for-2021/?sh=1ea696ba58d3*

[2] *https://www.forbes.com/sites/thomasbrewster/2021/06/24/one-of-the-biggest-hosting-companies-in-the-world-leaks-815-million-records-of-website-data/?sh=75dad660110d*

MSBA MEMBERSHIP

Adding value to your career and the profession

Members

15,037
MSBA members come together to learn, to share, to teach, and to advocate for the profession.

Online Communities

39,000
new discussions posted in MSBA online communities.

Sections

36 practice areas with hundreds of opportunities for professional development.

Legislation

100+ bills monitored or actively lobbied at the Minnesota State Legislature.

Pro Bono

86,000
hours of pro bono services by

757
MSBA North Star members =

$21.5 million
market value.

Publications

20,000+
attorneys and legal thought-leaders read *Bench & Bar of Minnesota* magazine each month.

Savings

$1,800+
estimated annual savings through MSBA membership.

Directory

10,000
searches per month for legal representation on MN Find a Lawyer directory.

Mock Trial

2,400
members and high school students participate in the MSBA Mock Trial program.

CLE

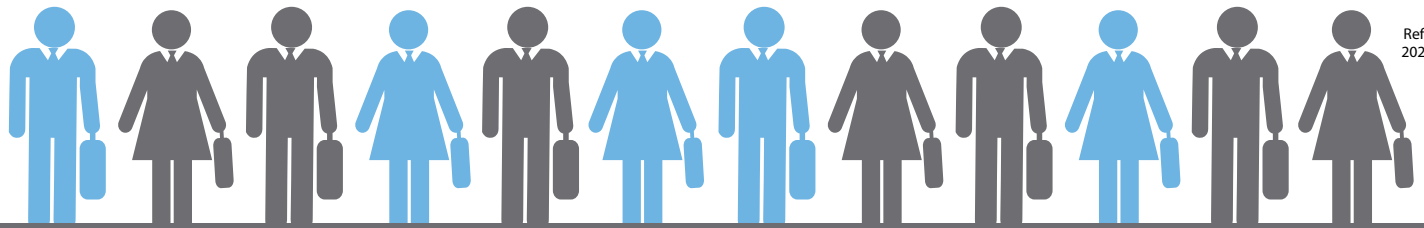
12,000+
participants at Section CLE, networking and social events.

425 CLE hours offered, including...

125 hours of On Demand CLE.

Certification

658
MSBA Board Certified Legal Specialists.



Reflects 2020-21 data

MSBA

Membership Value =
a number that can't be crunched

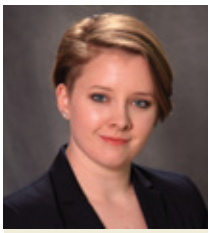
www.mnbar.org/guide

Client relationships are hard work.

My dad taught me they're worth it.

Before he retired, my dad had a decades-long career running his own construction business. My parents divorced when I was six, so I spent my dad's summer parenting time weekdays on job sites. As a result, I observed my dad's work ethic as he drove over an hour each way to jobs, his leadership skills as he directed his work crew, and his creative talent as he built or remodeled beautiful buildings. But the most valuable lessons I learned from working with him had nothing to do with his physical labor.

Nearly every customer my dad worked for came to have a personal relationship with him. More than one customer invited us to have home-cooked meals with them. A couple who owned a restaurant near our home hired my dad on multiple occasions to remodel their home as well as their restaurant. We were frequently invited to the restaurant after closing time to have special meals, and they even invited us to both of their children's weddings. As a child, my dad's close client connections seemed like the default model for professional relationships, but as a practicing attorney, I have realized that is not the case. Creating close, trusting relationships with clients requires hard work. When it's done right, the rewards are immense.



CARRIE OSOWSKI graduated from the University of St. Thomas School of Law in 2015. She is an associate attorney at Dittrich & Lamers, P.A., where she exclusively practices family law. CARRIE@DITTRICHLAMERS.COM

Be personable

The most obvious way to create a personal connection with a client is to be personable: People like to work with people they like. My dad worked hard during business hours, but when a client came home and he was showing them his progress, almost no topic was off the table, sometimes to my embarrassment. While I do not recommend taking his "anything goes" approach to non-work-related chats with clients, you should still be able to have non-case-related conversations with your clients.

As a family law attorney whose parents divorced when I was six and agreed to joint legal custody when I was nearly 18, I have plenty of my own experiences I discuss with clients. Sharing my stories helps demonstrate to clients that I really do understand what they are experiencing. But it's not necessary to share a client's personal circumstances to build personal connections. During client intakes, I love to connect with clients over shared hometowns or ask questions about interesting job titles. When I have clients who are celebrating sobriety milestones, I vocally celebrate their success with them. While waiting for hearings to start, I talk to clients about numerous subjects, from how the Minnesota Twins are doing to happier topics, such as their plans for the coming weekend. But as many of you may know from your own experiences as the customer, there is a line where friendly conversation becomes too much. That line is different for every attorney and every client, but if your client is starting to look bored or offended, you have crossed it.

Set realistic expectations

Sometimes clients want outcomes that are impractical, if not impossible. The easy way to deal with this is to take their money, try for that outcome without warning them of the dim likelihood of success, and run for the hills the moment you get the court's order. This may be a good way to accrue billable hours if business is slow, but it's not a good way to create a lasting stream of business.

One of my favorite projects my dad completed was a tile inlay in an entrance hall. The client wanted nearly the entire floor space to consist of intricate tiles, so the floor would look like a rug. My dad was hesitant to approach the project as requested, as he was concerned that the pattern would overwhelm the small space. He explained his concerns to the client and proposed an alternate design. Ultimately the client chose the design proposed by my dad, and every day we worked there, they raved about how happy they were with his suggestion. Not all clients took my dad's suggestions, but my dad was able to complete each job knowing the client was presented with all available options, and they still ended up happy with his work.

In meeting with clients, I occasionally must tell one, "The judge won't order that." After I explain why, some clients will choose not to bring a motion, or at least modify their request. Of course, some clients cannot be swayed from what they want to ask for, and attorneys must abide by the client's decisions (at least when it isn't possible to withdraw from the representation). In cases where clients are asking for the improbable, I advise them as much in writing. If I am lucky, I will be wrong, and the judge will grant my client's request. Even if I am right, the client who knows what to expect will be less angry about their loss than the client who thinks their case is a slam dunk. I was reminded of the importance of setting realistic expectations recently, when a client told me I changed his opinion of attorneys because I walked him through how he would lose on the pending matter so he could reach a fully informed agreement instead of taking his money and going through with a hearing he was bound to lose.

Get the best outcome

While personal connections help in building a professional reputation, the outcome also matters. My dad often subcontracted for a company that did restoration work, and one day when we went to their office to get the details for a project we were fixing, we were greeted by the echoing shout "Superman is here!" I quickly found out my dad had been their go-to subcontractor to

fix subpar work by the company's own employees.

Unfortunately, attorneys do not have as much control over the outcome of a case as contractors have over their work, but we can still have impact on how a client perceives the outcome. If an attorney does not spend any time while waiting for hearings preparing the client, and only focuses on talking about personal matters, clients will automatically believe more could have been done in their case, even before the decision is out, because they did not see the work being done.

Once in the courtroom, how zealously you advocate for their case also affects clients' perception of outcomes. After I had to fill in for another attorney during a custody and parenting time trial, the client told me how much he appreciated that I was representing him because of how strongly I made objections and questioned the other party. He sent me several emails reiterating how much he appreciated me fighting for him and saying how he would be recommending me to anyone who needed a family law attorney.

Attorneys can also improve the likelihood of success by practicing oral argument and questioning techniques, putting in good research, and writing well. A couple of years ago I argued against a spousal maintenance modification in a crowded courtroom. When I left with my client and her parents, a woman followed us out of the courtroom and requested my business card because she was so impressed by my oral argument. As a bonus, my client won both that motion and the subsequent appeal.

While the lessons I learned from my dad work for me, I know they will not work for everyone. During a consultation with a potential client, I was asked if I would be joking around with opposing counsel at mediation. I was taken aback by this question, and ultimately the client did not retain me. This client was not wrong for wanting her case to be handled this way, and I am sure the attorney she did retain provided her with excellent representation with a demeanor she appreciated.

Some clients will make requests that you simply cannot accommodate. When that happens, withdrawal is usually an option. I have occasionally checked Minnesota Rules of Professional Conduct 1.16 to determine whether I may withdraw from a case. When I am not sure if the rules permit me to withdraw, I request an advisory opinion from the Lawyers Professional Responsibility Board. A five-minute phone call with the staff attorney was well worth the headache of listening to my former client's screaming voicemails disparaging me. Of course, there is no substitute for getting a client the best outcome. But when I know for certain I cannot help the client—whether it is because of the area of law, where jurisdiction lies, or simply because I lack the requisite knowledge—I am honest. I would rather my client get the right outcome with another attorney than the wrong one with me. ▲

THE GHOST OF WATER WARS FUTURE

The Great Lakes Compact and the coming freshwater crisis

By Jeremy P. Greenhouse

Water in the south is abundant, water in the north scarce. If possible, it would be fine to borrow a little.[1]

— Chairman Mao Zedong

Half a century after Chairman Mao reportedly made this comment in 1952, northern China's need for water had become more critical than ever. Water supplies in the Northern Plains—home to over 200 million people, including the megacities of Beijing and Tianjin—had reached dangerously unsustainable levels. With 60 percent of the north's water being pumped from groundwater, scientists estimated that the region's aquifers would dry up within 30 years. The water table around Beijing alone was dropping by five meters each year; new wells did not reach groundwater until they were half a mile deep.[2]

To address this looming crisis, China finally acted on Chairman Mao's words, undertaking an infrastructure project of jaw-dropping proportions to annually move 12 trillion gallons of water from the Yangtze River in the south to the Yellow River basin in the north. The project, known as the South-to-North Water Diversion Project, connects four of China's major rivers, includes three lines spanning 12 provinces; shuttles water through 1,900 miles of canals and tunnels; and bears a price tag of over $80 billion USD.[3] Two of the three planned lines have been completed, and as of 2018, Beijing was importing two-thirds of its tap water from southern China.[4]

In the United States, as in China, freshwater resources are unevenly distributed. Demand in many areas of the country, particularly in the Southwest, significantly outpaces available supply. Here in Minnesota, meanwhile, we not only have relatively abundant surface and groundwater resources—we are the Land of 10,000 Lakes, after all, and the headwaters of the Mississippi River—but also join with seven other states and two Canadian provinces in bordering the largest fresh surface-water system on Earth: the Great Lakes. As climate change and population growth place mounting strain on U.S. water supplies, it is not hard to imagine a scenario in which politicians from water-starved states, faced with struggling agricultural irrigation systems and angry, thirsty voters, propose a Mao-inspired water diversion project—north to south in this instance—to "borrow" water from the Great Lakes. Indeed, similar ideas have been proposed and seriously considered before, and there are several ongoing, large-scale diversions involving Great Lakes water.

But any new scheme to siphon water from the Great Lakes and divert it to other parts of the country would have to overcome a significant legal hurdle: the 2008 Great Lakes-St. Lawrence River Basin Water Resources Compact, a remarkable interstate agreement reached by the Great Lakes states for the precise purpose of preventing such diversions.

THE CENTURY OF WATER

We have left the century of oil and entered the century of water.
—Peter Anin, *The Great Lakes Water Wars*

Make no mistake about it: There are both current and looming freshwater crises internationally and in the U.S., and they are being exacerbated by population growth and climate change. According to the United Nations:

- Approximately 4 billion people, representing nearly two-thirds of the world's population, experience severe water scarcity during at least one month of the year.
- A third of the world's biggest groundwater systems are already in distress.
- By 2030, an estimated 700 million people worldwide could be displaced by intense water scarcity.
- By 2040, one in four of the world's children under 18—some 600 million in all—will be living in areas of extremely high water stress.[5]

The United States is also running out of fresh water. According to a 2019 federally funded report in the science journal *Earth's Future*, of the 204 water basins that supply renewable fresh water[6] to most of the country, over one-third may be unable to meet monthly demand within the next 25 years, a proportion that grows to almost half by 2071.[7] This projected shortage, which takes into account current trends toward lowering per-capita water usage, will be driven by two principal factors. The first is population growth: The number of people in the U.S. is expected to rise from 308 million people in 2010 to 514 million in 2100,[8] and this will naturally increase demand for fresh water.

The second factor driving water shortage is climate change. While the predicted impacts from climate change on water supply are complicated—for example, water losses in some areas from drought and increased temperature/evaporation must be balanced against water gains in other areas from greater precipitation—the *Earth's Future* report estimates that overall, there will be a decrease in the freshwater supply because of climate change. Changes in water supply will vary widely in different regions. For example, whereas some water basins in the Northwest, the Great Basin,[9] and California are expected to see increased water yield[10] over the next 50 years, a majority of basins will experience decreases, with particularly severe decreases in the Southwest, the middle to southern Great Plains, and Florida.[11] Within a few decades, as a result, many regions of the country may see their water supplies reduced by a third as the demand for those dwindling supplies continues to grow.[12]

Even this summer, the surging impacts of population growth and climate change have been on full display in the Western half of the U.S., which has been in the grips of a historically severe drought.[13] New Mexico farmers along the Rio Grande have been asked not to plant this year; North Dakota ranchers are trucking water and feed for livestock because their rangelands are so dry; low levels in the Lake Mead Reservoir on the Colorado River are likely to lead to cutbacks in Arizona, Nevada, and other states; and California freshwater reservoirs contain only half as much water as usual for this time of year. These impacts, scientists say, are made worse by climate change.

The *Earth's Future* report also evaluated potential avenues for mitigating this emerging water crisis. In most water basins, for instance, agricultural irrigation constitutes over 75 percent of annual consumption.[14] Reducing the water used for irrigation could free up water resources to ease critical impacts on higher-valued water users, such as those in the municipal, industrial, and energy sectors. While a 2 percent reduction in agricultural irrigation could make up the projected water shortfall in some basins, in other basins—such as the Southwest and the central and southern Great Plains—the reduction would need to be 30 percent.[15] Achieving such a reduction in the nation's "bread basket" without raising serious concerns about food security would be a daunting task indeed.

"Mining" groundwater is another method that has been and can be used in the U.S. and across the globe to alleviate shortages of renewable freshwater resources. A certain amount of rain and snow falling on the earth percolates to and recharges underground aquifers. In the U.S., groundwater is the source of drinking water for about half of our total population and nearly all our rural population, and it provides over 50 billion gallons per day for agricultural needs.[16]

When the amount of groundwater pumped out for these purposes is equal to or less than the amount of precipitation percolating into the groundwater, the use is sustainable; this amount of groundwater is generally included when calculating available renewable freshwater resources. But when groundwater is pumped at rates exceeding the natural precipitation recharge, it diminishes water levels that may have taken centuries to build up and will take centuries to recharge. Used in this manner, groundwater is essentially a nonrenewable resource, like oil or minerals—hence the term "groundwater mining."

The *Earth's Future* report noted that groundwater mining has been frequently used to supplement renewable freshwater resources in the past and could be used to help cover the anticipated freshwater shortfalls in the 21st century.[17] But the approach is fundamentally problematic, to say the least, given the already depleted state of many aquifers, and could "hasten[] the arrival of the day when groundwater mining is no longer economically viable."

Groundwater mining in the Ogallala Aquifer demonstrates the magnitude of the problem. The aquifer underlies approximately 175,000 square miles of land in parts of eight states, including Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming, and provides 30 percent of the nation's irrigation groundwater.[18] As of 1960—before the advent of large-scale groundwater-pumping agricultural irrigation systems in the region—only 3 percent of the aquifer's water had been tapped.[19] By 2010, an estimated 30 percent of the Ogallala aquifer had been depleted; based on existing trends, an additional 39 percent will be gone by 2060.[20] Once groundwater in the Ogallala aquifer is sucked dry, it would take between 500 and 1,300 years to refill.

Given these challenges to finding adequate supplies of fresh water, it is perhaps not surprising that the eyes of water-starved parts of the U.S. have occasionally turned north to the world's most magnificent repository of fresh water: the Great Lakes.

THE GREAT LAKES: VAST BUT FINITE

As the wind slips over your waters,
Sing to me sweetly Superior,
Sing me a Chippewa story,
Under the quarter moon
—Carla Sciaky, Under the Quarter Moon

The Great Lakes—Superior, Michigan, Huron, Erie, and Ontario—came into being during the last ice age, when the weight of the mile-thick Laurentide ice sheet carved giant depressions in the earth.[21] As the climate warmed approximately 20,000 years ago, the ice melted, filling these depressions and forming the Great Lakes. Because of this geologic history, Great Lakes water is essentially a non-renewable resource. Only 1 percent of the Great Lakes' water moves through the system each year; the remaining 99 percent is original glacial water.[22] Once that water is removed from the Great Lakes Basin—i.e., the lakes themselves plus adjacent land areas where surface water and groundwater flow back toward the lakes—it is basically gone for good.

The Great Lakes are enormous. Covering over 94,000 square miles and holding some 6 quadrillion gallons of water, the lakes and their connecting channels comprise 21 percent of the world's supply of fresh surface water, and no less than 84 percent of fresh surface water in North America.[23] They provide drinking water for more than 48 million people in the U.S. and Canada, directly generate more than 1.5 million jobs and $60 billion in annual wages, serve as the foundation for a $6 trillion regional economy, and generate more than $52 billion annually for the region from recreation on the lakes.[24]

For many residents of Minnesota and other Great Lakes states, tribes, First Nations, and Canadian provinces, however, the lakes represent more than just hydrogeologic and economic facts and figures. They are a fundamental part of who we are. For generations, those of us living in this part of the world have been moved by Lake Superior's transcendent waves crashing against the North Shore. We have found solace wrapping our fingers around one of its cold stones, smoothed by centuries of waves. We have been enchanted by the lake's changing moods, and have contemplated life sitting on its windswept rocks, staring out at the water. In short, for so many of us the Great Lakes are nothing short of sacred, which makes the prospect of someone taking large amounts of water from "our" Great Lakes to use elsewhere particularly galling. Yet this exact scenario has been discussed for decades.

Only 1 percent of the Great Lakes' water moves through the system each year; the remaining 99 percent is original glacial water. Once that water is removed from the Great Lakes Basin, it is basically gone for good.

Low level of Lake Mead (border of Arizona and Nevada).

Low levels in the Lake Mead Reservoir on the Colorado River are likely to lead to cutbacks in Arizona, Nevada, and other states; and California freshwater reservoirs contain only half as much water as usual for this time of year. These impacts, scientists say, are made worse by climate change.

WATER WARS

I'm from Texas and down there we understand that whiskey is for drinking and water is for fighting over. If we get [control of] it in Washington, we're not going to be buying it. We'll be stealing it. You are going to have to protect your Great Lakes.

—Former Republican congressman Dick Armey[25]

Chairman Mao is not the only head of state who thought large-scale water diversions could be a solution to the unequal distribution of a country's freshwater resources. Perhaps the most infamous large-scale diversion in modern history is the former Soviet Union's diversion of water from the Aral Sea—which, in the early 1900s, was the fourth largest inland lake in the world, larger than every Great Lake but Lake Superior.[26] At the end of World War I, policymakers in what would shortly become the Soviet Union decided to divert water from the Syr Darya and the Amu Darya rivers, the major inflows for the Aral Sea, to irrigate arid regions of Uzbekistan and Turkmenistan.[27]

The multi-decade project succeeded in creating almost 10 million new irrigated acres, leading to thriving cotton and rice production. But the impact on the Aral Sea was unimaginable. The lake started shrinking in the 1960s and has since lost 90 percent of its surface area and 96 percent of its volume. Water levels have dropped by 93 *vertical feet*.[28] Bustling lakeside fishing villages became ghost towns whose city docks now overlook sprawling deserts dotted with abandoned fishing boats; the coastline, long-since receded beyond the horizon, is often miles and miles away.[29]

The words and actions of U.S. political leaders through the years have caused significant concern among citizens and governors of Great Lakes states. According to a 2001 Associated Press article, for example, President George W. Bush said he wanted "to talk to Canadian Prime Minister Jean Chretien about piping [Great Lakes] water to parched states in the west and southwest." Seven years later, New Mexico Gov. Bill Richardson, then running for the Democratic presidential nomination against Barack Obama, told the *Las Vegas Sun* he favored a "national water policy," noting that "states like Wisconsin are awash in water."[30] But the abiding example of the Aral Sea has perhaps done as much as anything to galvanize protective sentiments among citizens and leaders in the Great Lakes region. As Peter Anin notes in his excellent book *The Great Lakes Water Wars*, "the Aral Sea disaster has been invoked repeatedly by Great Lakes environmentalists as an ecological rallying cry: an example of what not to become."

Nonetheless, there have been many attempted large-scale diversions of Great Lakes water over the years—some successful, others not. Perhaps the most prominent ongoing diversion from the Great Lakes is the Illinois diversion (also known as the Chicago River diversion), constructed in the late 19th century. As Chicago was transformed from a frontier town to a major city, the Chicago River, which flowed into Lake Michigan, became increasingly polluted with raw sewage and industrial wastewater that threatened to foul the city's freshwater intake from Lake Michigan. The city conceived a bold plan. By constructing a canal connecting the Chicago River to the Des Plaines River, they could reverse the flow of the Chicago River. Instead of the Chicago River flowing into Lake Michigan, Lake Michigan would flow into the Chicago River, merging with the river and diluting its pollution before flowing through the canal to the Des Plaines River and eventually entering the Mississippi River just north of St. Louis.[31]

A 1982 Supreme Court decision, *Sporhase v. Nebraska*, struck down a Nebraska law restricting the withdrawal of Nebraska groundwater for use in another state.

After lawsuits by the city of St. Louis—which, as you might imagine, was not happy about the diversion—and other Great Lake states (concerned about the potential lowering of lake levels by as much as six inches), and after several Supreme Court opinions, a couple of acts of Congress, and a consent decree, the diversion was approved and continues in place to this day.

Water flowing out of the Great Lakes Basin via the Chicago River diversion is more than offset by two diversions *into* the Great Lakes, from Long Lac and the Okogi River in northern Ontario. These diversions, completed in 1941 and 1943 respectively, both redirect water that would have flowed north to James Bay to south-flowing rivers that eventually reach Lake Superior east of Thunder Bay, Ontario.[32] The goal of these diversions was to increase the flow of water into and through the Great Lakes to increase Canadian hydro capacity to power the manufacture of critical materials for fighting World War II.

While the Chicago, Long Lake, and Okogi River diversions constituted impressive, large-scale engineering accomplishments, they would have been significantly overshadowed by several gargantuan water diversions involving the Great Lakes that were proposed, but never undertaken, in the 20th century. For sheer audacity, none tops the Great Recycling and Northern Development (GRAND) Canal of North America, the brainchild of a Newfoundland engineer named Thomas Kierans whose goal was nothing less than to ensure a reliable supply of fresh water for the entire continent. Kierans proposed constructing an enormous dike that would separate James Bay from Hudson Bay, eventually turning James Bay into a giant freshwater lake. Through a series of nuclear reactors and hydro dams, water in the newly desalinated James Bay would then be pumped to the Great Lakes and from there to the U.S. Midwest, South, Southwest, and even to Mexico.[33]

A less fantastical but more politically feasible threat of the diversion of Great Lakes water emerged in 1982 following the passage of Public Law 94-587, which directed the U.S. Secretary of Commerce to "examine the feasibility of various alternatives to provide adequate water supplies in the [High Plains] area including, but not limited to, *the transfer of water from adjacent areas*." The resulting 1982 study, commissioned and funded by the U.S. Department of Commerce, generated a lengthy report evaluating the feasibility of moving water from "adjacent areas" to six states reliant upon groundwater from the depleted Ogallala aquifer.[34] One of the six states, South Dakota, is adjacent to Minnesota, a Great Lakes state. Ultimately the study focused on diversions from rivers, not Lake Superior, and concluded that even these diversions would be prohibitively expensive. Yet the mere fact that the federal government had funded the study of large-scale interbasin diversions in reach of the Great Lakes elevated concern among governors of the eight Great Lake states, who had long harbored suspicions about federal schemes to export Great Lakes water.[35]

The governors' fear was compounded by a Supreme Court decision the same year, *Sporhase v. Nebraska*,[36] which struck down a Nebraska law restricting the withdrawal of Nebraska groundwater for use in another state. "States' interests in conserving and preserving scarce water resources in the arid Western States clearly have an interstate dimension," the Court held, concluding that Nebraska's law violated the Constitution's commerce clause by imposing an impermissible burden on interstate commerce. The Great Lakes governors, realizing that the Supreme Court's precedent in *Sporhase* meant state laws prohibiting the export of Great Lakes water could well be struck down if challenged, resolved to work together to find other means of stopping diversions from the Great Lakes.[37] This effort eventually resulted in the 2005 Great Lakes-St. Lawrence River Basin Water Resources Compact.

THE COMPACT IS BORN

> The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other…
>
> — Great Lakes-St. Lawrence River Basin Water Resources Compact, §1

The various steps undertaken between the early 1980s and the Great Lakes governors' eventual endorsement of the compact in 2005 have been well documented elsewhere.[38] But two key legal predecessors in the quest to protect the Great Lakes deserve mention here. The first is the 1909 Boundary Waters Treaty between the U.S. and Canada, designed to address "boundary waters" and prevent disputes between the two countries over their use. The treaty created the International Joint Commission (IJC) to manage issues arising under the treaty.[39] Important as the treaty is, it has limitations for regulating diversions from the Great Lakes. For one thing, although four of the five Great Lakes are boundary waters, Lake Michigan—located wholly in the U.S.—is not. In addition, the treaty requires the IJC's approval only for diversions "affecting the natural level or flow of boundary waters…"[40] Many large diversions, taken by themselves, are unlikely to change the level or flow of the Great Lakes. For most other boundary waters issues, the treaty only empowers the IJC to hear matters referred to it by a country, and the IJC is limited to providing recommendations, not enforceable orders.[41]

The second key legal predecessor to the compact was section 1109 of the Water Resources Development Act (WRDA), which Congress adopted in 1986. It provides: "No water shall be diverted or exported from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion or export is approved by the Governor of each of the Great Lake States."[42] Although this law provided a robust federal bulwark against the threatened diversions that kept Great Lakes governors up at night in the early 1980s, it provided no standards or process to be used to determine when a diversion should or should not be granted. This led to governors wielding what is effectively a veto power—section 1109 requires the governors' unanimous consent—that could be used for reasons more political than ecological.[43]

Moreover, the WRDA, as a U.S. statute, has no effect in Canada, a fact that was made clear in infamous fashion in 1998 when John Febbraro, the owner of a small Sault Ste. Marie, Ontario consulting firm called the Nova Group, quietly obtained a permit from a local government office to annually export 158 million gallons of Lake Superior water to Asia by ship.[44] Although Mr. Febbraro eventually retreated from his plan, the fact that he was able to so easily obtain a permit to export water without triggering further review or even consultation with the other Great Lakes governors and premiers caused further alarm throughout the region. The need to finalize consistent, enforceable, and international regulation of diversions never seemed more urgent.

Finally, in 2005, the Great Lakes governors endorsed the Great Lakes-St. Lawrence River Basin Resources Compact. The compact is an interstate contract among Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin detailing how the states manage the use of the Great Lakes Basin's water supply. All states have enacted the compact as state law, and the compact was approved by Congress and signed by President George W. Bush in October 2008. In Minnesota, the compact is codified in section 103G.801 of the Minnesota Statutes.

The choice by the states to enter a compact (under Article I, Section 10, Clause 3 of the U.S. Constitution) rather than a simple agreement is important because it sidestepped the dormant commerce clause issues in *Sporhase v. Nebraska*. Whereas states are prohibited from imposing unreasonable restrictions on interstate commerce (such as Nebraska's out-of-state groundwater restrictions, at issue in *Sporhase*), Congress has constitutional authority to regulate interstate commerce, which would include commerce involving the Great Lakes. Because interstate compacts must obtain Congressional consent, the resulting federal stamp of approval eliminates concerns that diversion-limiting state laws adopted pursuant to the compact will run afoul of the commerce clause.[45]

At the same time as the governors endorsed the compact, they also signed a companion international agreement with the Canadian provinces of Ontario and Québec known as the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement. As the title implies, this document is simply an agreement, not a compact or treaty, but it mirrors the provisions of the compact. The provinces of Ontario and Québec, like the Great Lakes states, have adopted provisions necessary to implement the agreement as enforceable provincial law, ensuring that all state and provincial governments in the basin are working toward the same goals and implementing the same procedures and requirements.

KEY PROVISIONS

Among the key aspects of the compact are the following:

Findings and purpose

The compact proclaims that the waters of the Great Lakes Basin are "precious public natural resources shared and held in trust by the States."[46] This finding echoes the ancient public trust doctrine, which provides that states own lake and river beds within their borders and the water they contain, including in the Great Lakes, and hold the title in trust for the public.[47] The compact, which applies to both surface and groundwater in the basin, also declares that future diversions and consumptive uses of Great Lakes water have the potential to "significantly impact the environment, economy and welfare" of the region, and that the parties have a "shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come." As for the purposes of the compact, they include facilitating "consistent approaches to Water management across the Basin" and preventing "significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and watersheds."[48]

General diversion prohibition and exceptions

At the heart of the compact is a prohibition on any new or increased "diversion," which is defined as "a transfer of water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer…"[49] The "Basin" refers to "the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec within the jurisdiction of the parties." Three types of diversions are excepted from the compact's general prohibition as long as certain relevant standards are met and procedures followed. These include:

1. Intra-basin transfers. The transfer of water from the watershed of one Great Lake to the watershed of another Great Lake, which would still be within the greater basin, is permissible under certain circumstances. For example, if an intra-basin diversion results in a "consumptive use" (water that is withdrawn from the basin but not returned to it) of greater than 5 million gallons per day, it would require prior approval of all the Great Lakes governors—who together comprise the compact's managing body, the Great Lakes-St. Lawrence River Basin Water Resources Council—and would be subject to regional review by the council and by the "Regional Body," which includes both the governors and the premiers of Ontario and Quebec.[50] Note that the compact does not prohibit water transfers that occur fully within the watershed of one of the Great Lakes, such as within the Lake Superior watershed.

2. Straddling communities. The compact also allows certain diversions of Great Lakes water to "straddling communities," those that have land both within and outside of the Great Lakes Basin watershed.[51] To qualify for this exception, diversions must be used for water supply or a wastewater treatment system within the straddling community, and the water used must be returned naturally or after use to the source watershed, less an allowance for consumptive use.[52] If a diversion to a straddling community results in a consumptive use of greater than 5 million gallons per day, the proposed diversion is subject to regional review, but it would not require approval by the council.

WATER DIVERSION OUTSIDE THE GREAT LAKES BASIN

It is worth emphasizing that because the compact only applies to diversions of water from the Great Lakes Basin, it provides no protection against diversions of water located outside the basin. The demand for this type of diversion in water-rich states such as Minnesota, the majority of which is located outside the Great Lakes Basin, seems likely to grow as freshwater resources in other parts of the country become increasingly scarce.

A potential foreshadowing of things to come arose in a controversial 2019 proposal from a Lakeville, Minnesota company called Empire Builder Investments. Empire Builder proposed installing two wells in Randolph, Minnesota, pumping 500 million gallons of groundwater per year and shipping it out of Minnesota and across the country to drought-affected states.[66] DNR Commissioner Sarah Strommen quickly issued a statement indicating there was "virtually no scenario" in which DNR would approve the proposal, and the story soon faded away.

But a big factor in DNR's reckoning that the proposal could not move forward was that Empire's proposed wells would tap the Mt. Simon-Hinckley aquifer, which enjoys unique statutory protections.[67] What if Empire's proposal involved drilling into a different, less-protected aquifer? Minnesota does have rules and statutes regulating groundwater withdrawals (such as prioritizing types of water use) and protecting the sustainability of aquifers.[68] But if a proposal such as Empire's met these requirements, could the DNR prohibit the proposal simply because the water would be shipped to a southern state? Wouldn't that risk running afoul of the U.S. Supreme Court's dormant commerce clause holding, discussed above, in *Sporhase v. Nebraska?*[69] The DNR seems to believe there are ways to make it work. During the Minnesota Legislature's 2021 session, the DNR advanced a bill to prohibit the appropriation of "water in excess of one million gallons per year for bulk transport or sale of water for consumptive use to a location more than 50 miles from the point of the proposed appropriation."[70] According to the DNR's General Counsel Sherry Enzler, this limited prohibition, which will apply to equally to all permit applicants, was specifically drafted to be consistent with *Sporhase*. Minnesota Gov. Tim Walz signed the bill into law on June 29, 2021.[71]

3. Straddling counties. The third exception from the compact's prohibition on diversions has proven the most contentious. It allows the transfer of Great Lakes water to a community that is outside of the basin but within a county that straddles the basin boundary. Like the exception for straddling communities, the straddling county exception requires that the water be used solely for public water supply purposes. But this exception is subject to more stringent review by other states, requiring not only mandatory regional review but also unanimous approval by the council. The straddling community exception and indeed the compact itself was put to the test after the city of Waukesha, Wisconsin—which is located outside of the basin but within a county that straddles the basin boundary—submitted a 2010 application for a controversial diversion of up to 10.1 million gallons per day of Lake Michigan water.[53] The council ultimately approved the diversion (with conditions) but only after six years of bitter local and regional political battles, with opinions divided upon whether Waukesha's request was motivated more by a genuine shortage of potable water or by an interest in fostering urban growth.[54]

Proposed diversions under these exceptions may also need to meet the compact's "exception standard," which requires showing, among other things, that the diversion (a) cannot be reasonably avoided through the efficient use and conservation of existing water supplies; (b) will be limited to quantities that are considered reasonable for the diversion's purposes; (c) can be implemented in a manner so as to ensure no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water-dependent natural resources of the Basin; and (d) will incorporate environmentally sound and economically feasible water conservation measures.

Small-container "loophole"

One frequently criticized provision of the compact relates to removing water in containers. Although section 4.12(10) provides that proposals to withdraw water in any container greater than 5.7 gallons must be treated as a diversion, the compact does not prohibit removals of water in containers smaller than 5.7 gallons—such as, for example, 8-ounce plastic containers for bottled water. Regulation of such small-container withdrawals is left to the discretion of individual states. Critics worry that this "loophole" will allow bottled-water companies to freely remove significant amounts of water from the basin for sale in far-flung destinations, so long as they use small containers. And several high-profile disputes have brought public attention to the issue, including a decade-long litigation over the Nestle Company's withdrawal of groundwater in Stanwood, Michigan for use as bottled water.[55] Nonetheless, it is worth noting the finding of a IJC report, which estimated the amount of bottled water imported into the basin exceeds the amount leaving by a factor of 14.[56]

State management of in-basin uses

To implement the compact's provisions, each Great Lakes state was required, within five years, to create a program for the management and regulation of new or increased withdrawals and consumptive uses of basin water by adopting and implementing laws, regulations, or other requirements consistent with the compact's "decision-making standard."[57]

The decision-making standard sets forth mandatory criteria for approval of proposed withdrawals above thresholds set by each of the states, including the "exception standard" requirements listed above, as well as a requirement that a proposed use be "reasonable." Reasonableness is determined on the basis of factors such as the supply potential of the source water and the balance between economic development, social development,

and environmental protection.[58] Minnesota has complied with the compact's state management program requirements by enacting the compact itself into state law, as noted previously, and by demonstrating that existing state rules and programs—mostly the Minnesota Department of Natural Resources (DNR) water appropriations permit program—meet the compact's requirements. The council approved Minnesota's water management program in 2015.[59]

Enforcement

The compact also provides mechanisms to enforce its provisions, a significant difference from the 1909 Boundary Waters Treaty. In addition to the management provisions in each Great Lake state's own laws, the compact empowers the council to conduct special investigations and bring court actions to enforce the compact's provisions.[60] Moreover, the compact authorizes any aggrieved person or state to bring a civil action in the appropriate state court to compel any person to comply with the compact; provided, however, that no action is allowed (a) if the relevant state has already approved the use or diversion at issue, or (b) before the plaintiff has given 60 days prior notice to the state, council, and the person alleged to be in noncompliance.[61]

LIMITATIONS OF THE COMPACT

By any measure, the adoption of the Great Lakes–St. Lawrence River Basin Water Resources Compact and the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement represents a remarkable political and environmental achievement, and the compact and agreement have served the Great Lakes region well. Since their adoption in 2005, the two accords have quickly squelched any new dreams of large-scale diversions of Great Lakes water to other parts of the country. Any future proposals like Thomas Kieran's GRAND canal, or the use of Great Lakes water to replenish the Ogallala aquifer, for example, would be prohibited by section 4.8 of the compact, because they would both involve the transfer of Great Lakes water out of the Great Lakes basin.

That said, the compact's prohibitions are not immutable. Section 8.5 of the compact provides that it can be amended following the same steps by which it was initially approved. In addition, there is some case law suggesting that Congress may be able to take measures to render a compact practically ineffective (although the issue has yet to be considered by the U.S. Supreme Court).[62] The optics of doing so for a popular multistate agreement like the compact suggest that it would be politically unrealistic, at least currently, for Congress to scuttle the compact.

The prospect of getting all the Great Lakes states to agree to terminate or significantly amend the compact seems similarly remote. But imagine, if you will, how the calculus might evolve if, as expected, the freshwater crisis in the United States becomes critical in the coming decades, and the political winds shift toward federal control of national water resources. Would it really be surprising to find the topic of large-scale diversions from the Great Lakes back on the table? Should we be concerned about the compact's ability to survive the coming water crisis?

I ran these questions by two experts who were kind enough to take my calls. Sherry Enzler, general counsel for the Minnesota DNR, did not mince words: Yes, we should be concerned. If water-starved states gain control in Congress, Enzler said, "All bets are off." By contrast, Peter Johnson—deputy director of the Conference of Great Lakes and St. Lawrence Governors and Premiers and principal author of the compact—professes little concern. For various legal, logistical, and political reasons, he said, he believes we are unlikely to see any long-distance diversions of Great Lakes water in the decades ahead. Because a compact is a binding contract between the participating states, Johnson explained, there is reason to believe that the Supreme Court would not allow Congress to unilaterally change the terms of that contract.

From a logistical standpoint, the engineering challenges of moving large amounts of water to, say, Arizona, would be extremely difficult to overcome, he noted, and the enormous cost of building the necessary pipes and channels combined with the operating costs would be economically infeasible under all but the most dire circumstances.[63] From a political standpoint, while Congress may have legal authority to pass laws that undercut the purposes of the compact without changing the terms of the compact itself, Mr. Johnson emphasized that almost every state in the union is a member of at least one interstate compact; many of those compacts, especially in the West, involve water. "Attacking the regime of compacts between states regarding water," Mr. Johnson warned, "is fraught with not just setting up legal challenges, but would also have political significance. If somebody starts passing laws that undermine the purposes of the Great Lakes Compact, that could in turn become a justification for reciprocity, and I think it's safe to say nobody wants that.

"And this is all without even bringing in the international component, where Canada and the Canadian Provinces that share the Great Lakes-St. Lawrence Basin may also have some objections, both political and legal, that could be raised."

I find Mr. Johnson's response reassuring, but I do share Ms. Enzler's concern. It's hard to shake the sense that if the impacts of climate change and population growth upon freshwater resources are as predicted (or greater) in the coming decades, there will be renewed pressure to overcome the political, legal, and logistical hurdles, daunting as they may be, and divert Great Lakes water outside the basin. Moreover, if the water crisis in other states becomes severe enough, the question may change from whether we *can* prohibit the diversion of Great Lakes water outside the basin to whether we *should* prohibit it, when our fellow citizens are in need.

Fortunately, it has yet to be determined whether these potential outcomes are, as Ebenezer Scrooge famously asked, "shadows of the things that *will* be" or only "shadows of things that *may* be."[64] The *Earth's Future* report outlines not only the projected shortages in the U.S. freshwater supply but also the steps that might be taken to preserve freshwater resources for future generations. Many of these steps, as noted previously, are deeply problematic, such as extensive groundwater mining. Some, however, show promise. For example, the report indicates that improvements in agricultural irrigation efficiency should be a "high priority" and that shifting some water use from agricultural to other sectors, where possible, will likely be necessary as well.[65]

Taking these and other steps now will be critical to the ultimate protection of the Great Lakes. They, along with the existing protections provided by the compact, can help ensure that a Chairman Mao-inspired north-to-south diversion of Great Lakes water will not be happening anytime soon. ▲

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The author wishes to extend sincere thanks to Sherry Enzler and Peter Johnson for agreeing to be interviewed for this article, with special thanks to Mr. Johnson for providing helpful comments on the development of the compact and agreement as well as his critical role in that process.

Notes

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[5] *https://www.unwater.org/water-facts/scarcity*, citations omitted. According to the United Nations, an area is experiencing "water stress" when annual water supplies drop below 1,700 m^3 per person. When annual water supplies drop below 1,000 m^3 per person, the population faces "water scarcity." *See https://www.un.org/waterforlifedecade/scarcity.shtml*.

[6] Renewable freshwater resources refer to surface waters and groundwaters that are replenished by precipitation (less evapotranspiration) that ends up as runoff to rivers and recharge to aquifers.

[7] Thomas C. Brown, Vinod Mahat, and Jorge A. Ramirez, "Adaptation to Future Water Shortages in the United States Caused by Population Growth and Climate Change," Earth's Future Volume 7, Issue 3 p. 219-234, §3.2 (2/28/2019), *available at https://agupubs.onlinelibrary.wiley.com/doi/ 10.1029/2018EF001091.* The study evaluated Water supply and demand, and thus water shortages, for each of the 204 "basins" in the US. "Basin" in the report refers to a four-digit hydrologic units (HUC-4s), also known as subregions. The basins are subdivisions of the 18 water resource regions of the U.S. *See id.* §2.2. *https://www.reuters.com/article/us-usa-climatechange-water/u-s-faces-fresh-water-shortages-due-to-climate-change-research-says-idUSKCN1QI36L.* A water basin is a portion of land where water from rainfall flows downhill toward a river and its tributaries. *Id.*

[8] Brown et al. 223.

[9] The Great Basin is a 200,000-square-mile area that drains internally; it includes most of Nevada, half of Utah, and sections of Idaho, Wyoming, Oregon, and California. *See* National Park Service, "Great Basin," *at https://www.nps.gov/grba/planyourvisit/the-great-basin.htm*.

[10] *See id.* at 225 ("Water yield in this study is the contribution to renewable water supply resulting from recent precipitation, whether that contribution becomes available as surface or ground water, equal to the sum of surface runoff and base flow estimated using the VIC model.").

[11] *Id.* at 226.

[12] *Id.* at 225.

[13] Henry Fountain, *The Western Drought Is Bad. Here's What You Should Know About It*, New York Times, 6/24/2021.

[14] *Supra note* 9 at 227.

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[24] Great Lakes Commission, *About the Lakes*, *at https://www.glc.org/lakes/*.

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[26] Reuters, Factbox—Key Facts About the Disappearing ARAL Sea (6/23/2008), *available at https://www.reuters.com/article/idUSL23248577*.

[27] Karen Bennett, "Disappearance of the Aral Sea" (World Resources Institute, 5/23/2008), *available at https://www.wri.org/blog/2008/05/disappearance-aral-sea*.

[28] Peter Anin, "The Great Lakes Water Wars" (Island Press 2018) 21–22.

[29] *Id.* at 24.

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[31] *See generally* Chris A. Shafer, *Great Lakes Diversions Revisited: Legal Constraints and Opportunities for State Regulation*, 17 T.M. Cooley L. Rev. 461, 472 (2000).

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[36] 458 U.S. 941 (1982).

[37] Anin, 74.

[38] *See, e.g.,* See Noah D. Hall, Toward a New Horizontal Federalism: Interstate Water Management in the Great Lakes Region, 77 U. Colo. L. Rev. 405 (2006).

[39] BWT art. VII.

[40] *Id.* art. III.

[41] *Id.* art. IX.

[42] 42 U.S.C. §1962d-20.

[43] *See* Hall 430 (discussion of the WRDA shortcomings).

[44] *See* Anin at 203–206.

[45] For an excellent discussion of this issue, *see* Hall 448–455.

[46] Compact §1.3.

[47] *White Bear Lake Restoration Ass'n ex rel. State v. Minnesota Dep't of Nat. Res.*, 946 N.W.2d 373, 385 (Minn. 2020)."

[48] *Id.*

[49] Compact, §§4.8, 1.2.

[50] *Id.* §4.9.

[51] *Id.* §1.2.

[52] *Id.* §4.9.

[53] *See* Great Lakes Council, *In re Application by the City of Waukesha, Wisconsin for a Diversion of Great Lakes Water from Lake Michigan and an Exception to Allow the Diversion*, No. 2016-1 (6/21/2016).

[54] *See generally* Anin 273–298.

[55] *See, e.g.*, Mitch Barrows, A Great Lakes Water War: Nestlé, the Great Lakes Compact, and the Future of Freshwater (Freshwater Future, 9/18/2017), *available at https://freshwaterfuture.org/policy-memo/a-great-lakes-water-war-nestle-the-great-lakes-compact-and-the-future-of-freshwater/*.

[56] *See* International Joint Commission. *Protection of the Waters of the Great Lakes* (2/22/2000) at 44.

[57] *Id.* §4.10.

[58] *Id.* § 411.

[59] *See* Great Lakes-St. Lawrence River Water Resources Regional Body and Great Lakes-St. Lawrence River Basin Water Resources Council, Resolution No. 2015-4 (April 2015), *available at https://www.glslcompactcouncil.org/media/20nju3ih/resolution-2015-4-minnesota-declaration-of-finding.pdf*.

[60] Compact §3.2.

[61] *Id.* §7.3.

[62] *Tobin v. United States*, 306 F.2d 270, 273 (D.C. Cir. 1962).

[63] *See* International Joint Commission. *Protection of the Waters of the Great Lakes* (2/22/2000) at 16. The report noted, for example, a conclusion by the province of Quebec that the cost of desalinization would be about half that of transporting fresh water long distances by ship. *Id.* at 18.

[64] Charles Dickens, A Christmas Carol (1843) (emphases added).

[65] Brown et al. 232.

[66] *See* Kirsti Marohn, "DNR: Plan to ship Minnesota groundwater to the southwest won't float" (MPR News, 11/1/2019) at *https://www.mprnews.org/story/2019/11/01/dnr-plan-to-ship-minnesota-groundwater-to-the-southwest-wont-float*.

[67] *Id. See also* Minn. Stat. §103G.271, subd. 4a.

[68] *See, e.g.*, Minn. Stat. §§103G.255–103G.287.

[69] Note, too, that the Public Trust Doctrine could not be invoked to prohibit groundwater diversions; the Minnesota Supreme Court determined last year that the Public Trust Doctrine only applies to surface waters, not groundwater. *White Bear Lake Restoration Ass'n ex rel. State v. Minnesota Dep't of Nat. Res.*, 946 N.W.2d 373 (Minn. 2020).

[70] S.F. 20, State of Minn. 92d Sess. 2021, 1st Special Session (2021), §82 (amending Minn. Stat. §103G.271 by adding a new subdivision 4b).

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2021 legislative session recap

A long and winding road

By Bryan Lake

When the 2021 Minnesota legislative session began in January, the DFL-majority House and GOP-controlled Senate shared a common goal: overcoming a projected $1.3 billion deficit and assembling a state budget. They were sharply divided on how to achieve that goal, however, with Democrats calling for tax increases and Republicans opposing them. A classic legislative standoff seemed likely until the state's fiscal fortunes suddenly changed from deficit to surplus, flipping the script on the 2021 session. In the end, overtime was required to narrowly avert a state government shutdown, but along the way the MSBA had success in several areas.

Twists and turns

The tone of budget talks shifted in late February when an updated economic forecast showed, somewhat surprisingly, that the anticipated budget deficit had become a $1.6 billion surplus—a projection that did *not* include billions of dollars in federal aid that soon flowed into the state's coffers. The additional money dramatically changed the parameters of budget negotiations. Even so, a stalemate nonetheless resulted from differing fiscal philosophies compounded by disagreements on multiple policy issues, including a number of police reform proposals.

Finally, on May 17, the constitutionally mandated last day of the legislative session, the governor and legislative leaders announced the framework for a budget deal. But all the details still needed to be filled in, and many hotly debated policy proposals remained in play. Consequently, after legislators were called back to St. Paul for a special session on June 14, it took them until June 30—the day before the state's new fiscal biennium began—to complete their budget work.

The MSBA agenda

The budget agreement contained funding increases for courts, public defenders, and civil legal services, a priority that topped the MSBA's wish list for the 2021 session. Next on the agenda were a pair of bills that addressed temporary laws scheduled to sunset in February. The first was **Chapter 3**, which clarified a temporary court deadline suspension law that was enacted in the early days of the covid-19 pandemic. The legislation was successfully maneuvered through the House and Senate by lawyer-legislators Rep. Kelly Moller (DFL-Shoreview) and Sen. Mark Johnson (R-East Grand Forks).

Sen. Johnson and fellow lawyer-legislator Rep. Jamie Long (DFL-Minneapolis) were the lead authors of **HF279/SF258,** which ended up being included in **Spec. Sess. Ch. 11,** the special session judiciary and public safety bill. The MSBA-sponsored language permanently extends another pandemic-era temporary law that allowed courts to apply the harmless error rule from the Uniform Probate Code. The temporary law expired in February, but the new law is retroactively effective to March 13, 2020.

The MSBA's third major initiative was **HF450/SF1290**, a proposal to provide court-appointed counsel to public housing tenants in breach-of-lease cases. The legislation was carried by lawyer-legislator Rep. Ruth Richardson (DFL-Mendota Heights) and Sen. Kari Dziedzic (DFL-Minneapolis). The House file, which had strong support, was included in the chamber's omnibus housing bill, but the Senate companion failed to gain traction and the proposal ultimately did not survive in conference committee.

In addition to those initiatives, the MSBA played a supportive role in two other proposals that were signed into law. The first, which prohibits drivers' licenses from being suspended solely for unpaid fines and surcharges, was included in the transportation budget bill, **Spec. Sess. Ch. 5.** *(Effective 1/1/22.)* The second, which regulates the crime certification process for U-Visa applicants, was included in the omnibus public safety bill, **Spec. Sess. Ch. 11.** *(Effective 7/1/21.)*

Finally, the MSBA was, as always, involved in a wide variety of other issues, often providing technical expertise to ensure that bill language functioned as intended and did not inadvertently cause problems. Many thanks are due to the MSBA members who volunteered their time for this important duty.

Other action of interest to attorneys

The 2021 session was notable for a record-low number of bills passed, but lawmakers still managed to enact numerous new laws of interest to the legal community, including:

Criminal sexual conduct

Spec. Sess. Ch. 11, Art. 2, Sec. 16 and 37 requires the BCA to investigate sexual assault allegations involving members of the Minnesota National Guard. *(Effective 8/1/21.)*

Spec. Sess. Ch. 11, Art. 2, Sec. 28 provides immunity from drug and alcohol charges for victims and reporters of sexual assault. *(Effective 8/1/21.)*

Spec. Sess. Ch. 11, Art. 2, Sec. 33, 34, and 38 increase penalties for sex trafficking, hiring a prostitute, and soliciting children to engage in sexual conduct. *(Effective 9/15/21.)*

Spec. Sess. Ch. 11, Art. 4 adopts a number of recommendations from the Criminal Sexual Conduct Statutory Reform Working Group, including a provision that addresses the "intoxication loophole" brought to light by the Minnesota Supreme Court's recent *Khalil* decision.

DWI

Spec. Sess. Ch. 11, Art. 2, Sec. 2, 3, and 7 alter driver's license reinstatement provisions for DWI offenders. *(Effective 8/1/21.)*

Spec. Sess. Ch. 11, Art. 2, Sec. 8, 9, and 10 modify ignition interlock provisions. *(Effective 8/1/21.)*

Spec. Sess. Ch. 6, Art. 3 addresses the impaired operation of boats and off-road vehicles. *(Effective 7/1/21.)*

Family law

Ch. 30, Art. 10, Sec. 60 requires parties without an agreed-upon parenting time arrangement to complete a parenting education class before the initial case management conference. *(Effective 8/1/21.)*

Ch. 30, Art. 10, Sec. 61-78 modify child support provisions. *(Various effective dates.)*

Spec. Sess. Ch. 7, Art. 9, Sec. 5 provides for appointed counsel for parents, guardians, and custodians when a child could be removed from their care in child protection proceedings. *(Effective 1/1/23.)*

Landlord-tenant

The omnibus housing bill **(Spec. Sess. Ch. 8)** contained a handful of provisions that modify landlord-tenant laws:

Art. 10, Sec. 10 makes it illegal for a tenant to misrepresent that an animal is a service or support animal; permits landlords to request documentation for service and support animals; and prohibits landlords from charging additional fees or deposits for service or support animals. *(Effective 7/1/21.)*

Art. 10, Sec. 11 limits rent to a prorated amount when leases require tenants to move out before the last day of the month. *(Effective for leases entered into on or after 9/1/21.)*

Art. 5 provides for a phase-out of the eviction moratorium. *(Effective 7/1/21 with various timelines.)*

Misc. criminal law

Spec. Sess. Ch. 11, Art. 2, Sec. 31 establishes new crimes for assaulting peace officers, prosecutors, judges, and correctional employees. *(Effective 9/15/21.)*

Spec. Sess. Ch. 11, Art. 2, Sec. 39 creates the crime of child torture. *(Effective 9/15/21.)*

Spec. Sess. Ch. 11, Art. 2, 40 establishes a crime for disseminating information about a law enforcement official's home address. *(Effective 9/15/21.)*

Spec. Sess. Ch. 11, Art. 2, Sec. 41 makes it a crime to trespass on the grounds of emergency shelters for sex trafficking victims and their children. *(Effective 9/15/21.)*

Spec. Sess. Ch. 11, Art. 2, Sec. 42 clarifies that the drive-by shooting law applies to shots fired toward a person and not just toward a building or vehicle. *(Effective 9/15/21.)*

Spec. Sess. Ch. 11, Art. 2, Sec 52 directs the Sentencing Guidelines Commission to increase the severity rankings for certain child pornography crimes. *(Effective 9/15/21.)*

Spec. Sess. Ch. 11, Art. 3, Sec. 11 allows courts to reduce, waive, or require community service in lieu of surcharges on indigent criminal and traffic offenders. *(Effective 7/1/22.)*

Spec. Sess. Ch. 11, Art. 3, Sec. 28 allows court-appointed counsel to request interpreters for meetings held outside of court. *(Effective 8/1/21.)*

Spec. Sess. Ch. 11, Art. 3, Sec. 35 establishes data and disclosure requirements related to jailhouse witnesses. *(Effective 8/1/21.)*

Spec. Sess. Ch. 11, Art. 5 reforms Minnesota's forfeiture laws. *(Effective 1/1/22.)*

Spec. Sess. Ch. 11, Art. 6 clarifies and modifies crime victim notification rights. *(Effective 7/1/21.)*

Spec. Sess. Ch. 11, Art. 9, Sec. 23 regulates the use of no-knock search warrants. *(Effective 9/1/21.)*

Spec. Sess. Ch. 11, Art. 9, Sec. 29 requires the POST Board to develop a confidential informant model policy, which must be adopted in identical or similar form by law enforcement agencies. *(Effective 7/1/21.)*

Spec. Sess. Ch. 11, Art. 9, Sec. 30 creates "sign and release warrants" that would prevent the arrest of individuals who miss court dates for certain misdemeanor and gross misdemeanor offenses. *(Effective 7/1/21 and applies to warrants issued on or after 1/1/24.)*

Spec. Sess. Ch. 12, Art. 3, Sec. 13 creates a diversion program for active-duty military members or veterans who commit an offense as a result of service-related sexual trauma, traumatic brain injury, PTSD, substance abuse, or mental health conditions. *(Effective 8/1/21.)*

Predatory offenders

Ch. 20 gives hospice providers notice of the presence of predatory offenders. *(Effective 8/1/21.)*

Spec. Sess. Ch. 11, Art. 2, Sec. 11 requires predatory offender registration for offenders who commit offenses in other states that are similar to Minnesota offenses that require registration. *(Effective 7/1/21.)*

Spec. Sess. Ch. 11, Art. 4, Sec. 30 creates a working group "to comprehensively assess the predatory offender statutory framework" with a report due by January 15, 2022.

Real property

Ch. 7 addresses equity stripping and extends foreclosure protections to tax forfeitures and contracts for deed. *(Effective 7/1/21.)*

Ch. 9 modifies default notice provisions for reverse mortgages. *(Effective 8/1/21.)*

Ch. 28, Sec. 24 extends the Farmer-Lender Mediation Act until June 30, 2027.

Spec. Sess. Ch. 8, Art. 3, Sec. 1 allows manufactured homes to be affixed when the home park is owned by a cooperative. *(Effective 7/1/21.)*

Spec. Sess. Ch. 8, Art. 3, Sec. 2 modifies the process for affixing manufactured homes to real property. *(Effective 7/1/21.)*

Miscellaneous

Ch. 6 allows protection orders issued in Canada to be enforceable in Minnesota. *(Effective 8/1/21.)*

Ch. 12 adopts the recommendations of the Workers' Compensation Advisory Council. *(Various effective dates.)*

Spec. Sess. Ch. 11, Art. 3, Sec. 12-25 amends various provisions of the Minnesota Human Rights Act. *(Effective 7/1/21.)*

Spec. Sess. Ch. 11, Art. 7 modifies background check information provided to hiring entities that serve minors, the elderly, and disabled individuals. *(Effective 7/1/21.)*

Spec. Sess. Ch. 11, Art. 9, Sec. 20 prohibits, in most circumstances, the use of restraints on children appearing in court. *(Effective April 15, 2022.)*

BRYAN LAKE is the MSBA's lobbyist. He has worked with members and staff to promote and protect the MSBA's interests at the state Capitol since 2009.

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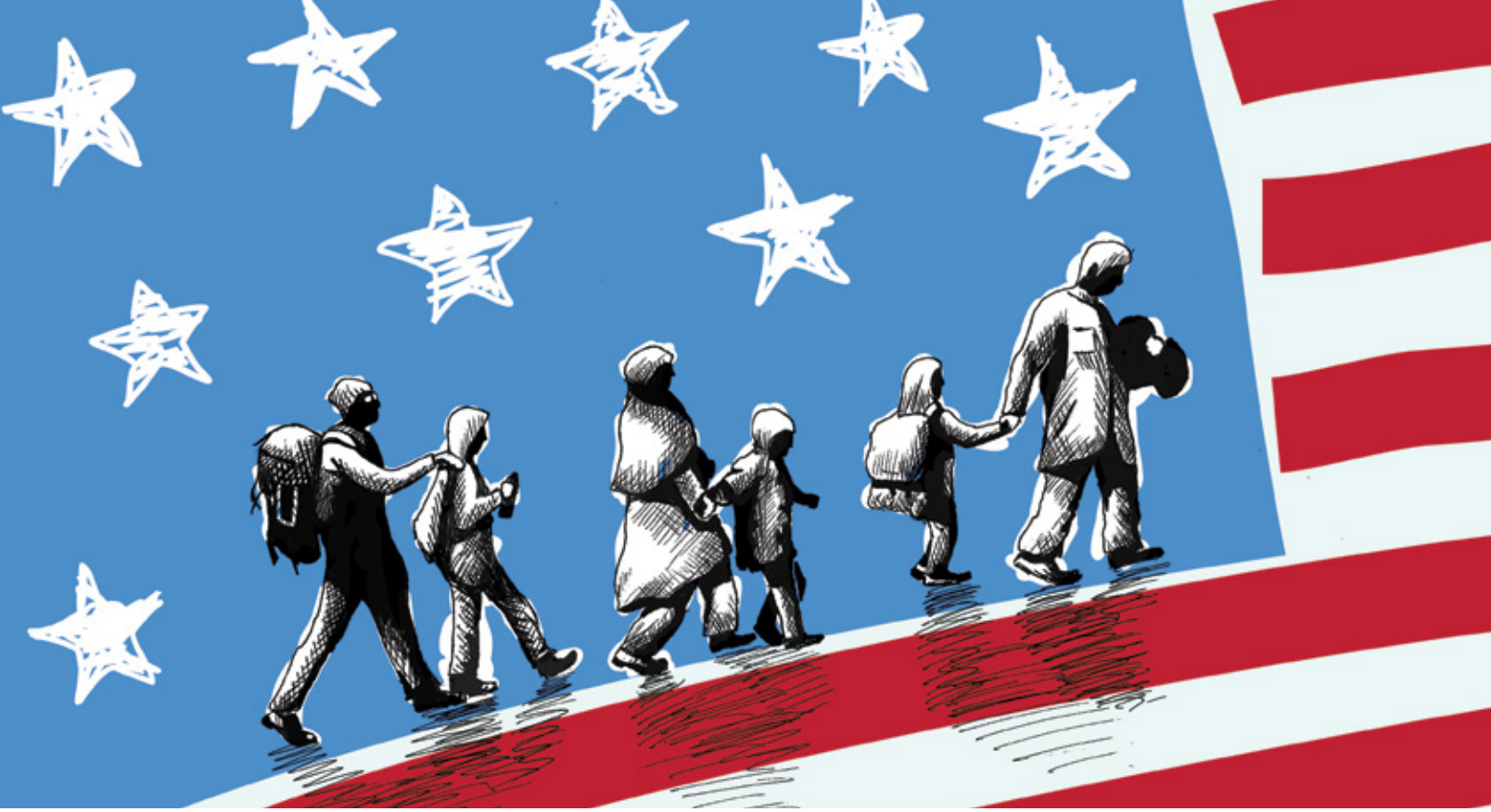

A discussion moderated by R. Mark Frey with Paschal O. Nwokocha, Gloria Contreras Edin, and Robert P. Webber

IMMIGRATION ROUNDTABLE

The Biden administration so far

Following four years of upheaval under the Trump administration, President Joe Biden took office in January promising stabilization and reform of the U.S. immigration system. Bench & Bar contributor R. Mark Frey—who writes the bimonthly immigration law updates for our Notes & Trends section—recently assembled a panel of his fellow Minnesota immigration attorneys to discuss in writing the legacy of the Trump years and the early moves of the Biden administration. What follows is an edited version of their exchange.

To date, what have been the biggest changes you've personally witnessed in your own immigration practice since President Biden's inauguration? Consider these changes in relation to the administrations of both Presidents Trump and Obama.

PASCHAL O. NWOKOCHA: The biggest change is the sense of relief. Under Trump, it seemed as if everything about immigration was under siege. While Trump was hostile to immigrants and immigration, that sense of hostility is now gone under President Biden. Though immigration laws have not substantively changed under Biden, there is a sense of optimism. Attorneys and members of the immigrant community have confidence that things are going to get better.

For instance, the Biden administration introduced its immigration legislation, and immediately started dismantling the Trump administration's regressive immigration policies and practices. At the same time, we have witnessed a surge in pressure from pro-immigrant groups to ensure that the Biden administration lives up to its promises. Witness the instant pressure on Biden to increase the 2021 refugee numbers to 62,500 after he initially announced his intention to keep admission levels the same as the Trump administration's 15,000.

So far, the Biden Administration appears to focus on the Citizenship and Immigration Service (CIS), which is the "service" part of the Department of Homeland Security. This change in emphasis resonates in how immigration is perceived by both immigration attorneys and immigrants.

— PASCHAL O. NWOKOCHA

We have also witnessed a change in priority for immigration enforcement. Soon after his inauguration, Trump issued an executive order (EO 13768, 1/25/2017) that extensively expanded the class of noncitizens who are priorities for removal to include "all removal aliens," which the Pew Research Center estimates to be about 10 million. This was in sharp contrast with Obama removal priorities that focused on criminal aliens, those who recently crossed the border illegally, and those with recent removal orders. Immediately following his inauguration, Biden reversed the Trump order, refocusing ICE on the Obama-era removal priorities. We expect this change to result in reduction in ICE enforcement actions and removal cases.

The Immigration Court is under the Justice Department, and the Attorney General of the United States is required to craft a functioning immigration court system run by impartial judges who apply existing law to the evidence on the record, following a full and fair hearing. The Trump administration sought to align the immigration courts with the administration's enforcement goals. To this end, the attorneys general issued several decisions that were binding on the immigration courts, resulting in denials of applications for immigration benefits.

The U.S. State Department directed embassies to employ "extreme vetting" as a measure to disqualify some people from entering the U.S. The USCIS implemented "public charge" rules that targeted a segment of the population from coming or staying in the U.S.; under Trump the minimal amount required of investors seeking to get Permanent Residency in the U.S went from $500,000 to $900,000. Trump proposed dramatic increases in USCIS filing fees, including an 83 percent hike in the cost of application for U.S. citizenship. Foreign nationals who were granted Temporary Protected Status in the U.S. because of natural disasters or armed conflict in their home countries were told to get ready to return home. In general, the Trump administration was the most immigrant-hostile administration we have witnessed in generations.

So far, the Biden Administration appears to focus on the Citizenship and Immigration Service (CIS), which is the "service" part of the Department of Homeland Security. This change in emphasis resonates in how immigration is perceived by both immigration attorneys and immigrants. Biden and his team have gone to great lengths to show they do not view immigrants as the enemies of the country, or that deportation is the sole role of DHS. This change in focus also aligns with the DHS focus seen in the latter part of Obama's administration.

At a practical level for immigration attorneys, it is a relief to work with government immigration prosecutors who are once again able to exercise discretion and resolve or dismiss deportation cases that did not belong in immigration court. It has been refreshing to get a call from a USCIS officer seeking for an efficient way to resolve a matter, or to get a call from U.S. consulate officers seeking to facilitate visa interviews for immigrants stranded overseas.

GLORIA CONTRERAS EDIN: The biggest change I have personally witnessed since the president's inauguration has been a community-wide exhalation and new sense of hope for immigration reform. Many of my clients are relieved and feel more confident coming forward to file applications for citizenship and naturalization, or family-based visas for their relatives back home.

At the same time, many are frustrated with the backlogs and delays that occurred as a result of the Trump administration's efforts to prevent people from seeking a visa or immigration relief in the United States. For example, we have seen a significant backlog of U-Visas (those available to victims of crime) with increased wait times of up to five years, as well as a backlog for citizenship applications.

R. MARK FREY: The new Biden administration has swiftly and resoundingly rolled back many of the policies imposed by its predecessor. Just a few that come to mind: rescinding the so-called Muslim Ban and refugee ban; implementing a different and evolving approach to the southern border; ending the previous administration's proclamations banning immigrants and nonimmigrants; extending or redesignating certain countries for temporary protected status; endeavoring to restore asylum law and protections in place before being eviscerated by the preceding administration; and establishing a new set of ICE enforcement priorities.

Notwithstanding these significant revisions, the primary change has to do with attitude. And by that I mean attitude toward immigrants. The preceding administration, quite frankly, vilified immigrants as outsiders, interlopers, and criminals, all the while sowing division and hostility—ironic given our origins as a nation of immigrants. This change has affected clients and potential clients I've recently encountered who believe the Biden administration perceives immigrants more positively.

In fact, President Biden's February 2021 Executive Order 14012, "Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans," explicitly affirmed our nation's character as one of opportunity and welcome, calling for the federal government to develop welcoming strategies promoting integration, inclusion, and citizenship. While the Biden administration's rollbacks of the previous administration's policies and actions are laudable and harken back to the Obama era, there seems to be a recognition that lessons were learned from some mistakes made by that administration and the times call for a more energized and active approach—comprehensive immigration reform. President Biden's introduction of a major immigration reform bill on his first day in office makes that abundantly clear. It remains to be seen if Congress has the will to pursue those sorely needed changes.

ROBERT P. WEBBER: The Biden administration has obviously positioned itself as more pro-immigrant than the Trump administration. In our practice at Dorsey, our clients have benefited from the elimination of the I-944 public charge form (and related questions on the I-129). The removal of some of the travel bans has not created as much benefit as we had hoped, as U.S. consulates remain relatively hard to reach for appointments, and Europe and now India are subject to travel limitations. Also, processing times for EB immigration benefits are incredibly slow, both for receipts and actual adjudications (apart from premium processing). The lack of intensity in clearing the backlogs has been disappointing.

President Biden signed multiple executive orders related to immigration in February.

President Biden believes our country is safer, stronger, and more prosperous when we welcome immigrants. This afternoon, he'll build on previous actions and take steps to rebuild and strengthen our immigration system.

The White House
February 2, 2021

In retrospect, what impact has the Trump administration's immigration policies had on the U.S. business community? Under the Biden administration, what major changes have occurred to date and what do you foresee on the horizon for immigration policy and the U.S. business community?

ROBERT P. WEBBER: The Trump administration clearly had a point of view on immigration, namely that foreign workers competed with U.S. workers and by limiting foreign workers, you protected the wages and working conditions of U.S. workers. It was "zero sum"—the feeling was that each foreign worker potentially displaces a U.S. worker. From the perspective of people who support that position, the Trump administration was very active (arguably aggressive) in making policy changes toward limiting foreign workers.

The challenge for the Biden administration is making pro-immigration policies as actively as the Trump administration made 'restrictionist' policies. In a way it is a boon to the Trump administration that the Biden administration is just trying to roll back Trump policy changes. This means that immigration will 'go back' to 2015-2016; but those of us who were involved in immigration at that time know it was not very good back then. So rather than move the ball truly forward, we are just trying to get back to par.

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R. MARK FREY: In general terms, I can say that I've seen, over the past four years, actions reflecting a general animosity toward foreign nationals who by all accounts have made and are making significant contributions to the U.S. economy. The previous administration's policies effectively created chaos and unpredictability, a condition typically spurned by the business community. The Biden administration, after only a few months, has sought to assuage the business community's fears of that chaos by injecting more order into the process and creating more predictability. I think the Biden administration, through its ongoing immigration reform proposals, is seeking to implement a more orderly system reliant upon a temporary worker visa system that responds to the fluid needs of the economy and attracts top-flight talent from around the world.

GLORIA CONTRERAS EDIN: The Trump administration's immigration policies decreased available skilled and unskilled workers, which led to a labor shortage that was then exacerbated by covid. Trump made it difficult to obtain employment documents for a variety of populations (e.g., forcing asylum seekers to wait 365 days instead of 180 before they are eligible to receive work authorization), which in turn prevented hundreds of thousands of individuals presently in the United States from being able to lawfully contribute and help businesses find the employees or contractors they need to operate their businesses.

Even before he was elected, President Biden made it clear that he would make immigration a priority, making it easier to reunite families and to secure more employment-based work visas. One of the biggest changes that has occurred since Biden took office has been the reunification of families and children at the border, reducing the amount of time that women and children are detained. Another significant change has been modernizing the immigration system through the development of a new electronic case filing system for immigration courts across the country. The goal is that by the end of 2021, all immigration courts will have implemented the system.

PASCHAL O. NWOKOCHA: Former President Trump and his administration created a perception around the world that the U.S. and its leaders are xenophobes. This is an impression that will take a while to erase. The former administration did all it could to show that the only type of immigrants welcome to the U.S. were the wealthy and Europeans.

The Trump administration demonstrated the extent to which the executive branch can go with executive orders and actions. He showed that immigration policies can be changed immediately, with extensive consequences for businesses, educational institutions, tourism, and families. The various Trump travel bans affected many businesses. U.S. universities saw a 43 percent decline in enrollment of international students, and not just because of the pandemic. Hospitals and tourism industries were also significantly affected by the travel bans. During the same time, other countries, including Canada, saw a spike in foreign student enrollment and professionals relocating to those countries.

Deferred Action for Childhood Arrivals (DACA) is an Obama-era policy meant to protect individuals who were brought into the U.S. before their 16th birthday and have been physically present in the U.S. since 2012, from deportation. For most DREAMers, the United States is the only country they have known. Businesses and DREAMers believe that under Biden, they will not be deported; a lasting solution will be found for their situations.

The Trump administration all but ended temporary protected status (TPS) for nationals from El Salvador, Haiti, Honduras, Nicaragua, Nepal, and Sudan, affecting more than 300,000 people and their authorization to work in the United States. Litigation in federal court enjoined the termination of their status until Biden was inaugurated. Since then, Biden has announced his intention to renew TPS for these countries. In May 2021, he announced the grant of TPS for Haitians, reversing the Trump decision. This, along with other executive actions and policies, are what businesses and immigration advocates expect of Biden.

The biggest change that has occurred is the sense that America is open again. While we do not have the statistics and the pandemic has slowed global movement, it is inevitable that those institutions affected by Trump policies will rebound, albeit slowly. The Biden administration has now reversed all the Trump immigration executive orders. Now, there is a palpable sense of relief that things will eventually return to normal, and positive immigration changes are possible. At the same time, there is also the reality that comprehensive immigration reform may not happen soon. Instead, reform will come in pieces, and through executive policies.

The United States Mexico International Border Wall between Sunland Park New Mexico and Puerto Anapra, Chihuahua Mexico

How does the Biden administration differ from the Trump administration in its approach to those seeking asylum at our southern border?

GLORIA CONTRERAS EDIN: The greatest impact that I have personally witnessed since President Biden's inauguration has been trying to meet the needs of our local immigrant and refugee families who have relatives and children detained at the border, seeking to be reunited with their families in the United States. Detention facilities are still saturated with hundreds of individuals waiting to be processed through the labyrinth of our immigration system. As a result, our firm has seen a significant increase in consultations for new asylees, and refugees coming to the United States. Since January 2021 we've seen an uptick in consultation requests to assist families with locating and representing relatives who are detained and waiting for hearings along the southern border.

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— GLORIA CONTRERAS EDIN

PASCHAL O. NWOKOCHA: The Trump administration set out to destroy and undermine institutions and systems that had been in place for many years. The U.S. asylum laws were greatly informed by the experience of World War II, and the commitment by the nation to never turn its back on those fleeing persecution. Whether it was the instability in Southeast Asia in the 1960s, the political upheavals in South America in the 1970s, the fallout after the collapse of the Soviet Union, or the civil wars in Liberia and in the horn of Africa—through each of these periods, the U.S. asylum system withstood the pressure.

Trump saw the asylum problems as political opportunities. We cannot forget the constant drumbeats of migrant caravans invading the U.S. just before the 2018 midterm elections. Under Trump, few areas of immigration law experienced as many changes as the U.S. asylum laws. All the changes were aimed at discouraging applicants from seeking asylum. Trump had a policy of separating children from their parents; it was supposed to be a deterrent. Starting in January 2019, the Trump administration implemented the Migration Protection Protocol (MPP) that required those seeking asylum at the southern border to remain in Mexico for the duration of their immigration court proceedings.

Biden inherited a major problem, exacerbated by the Trump's punitive asylum polices and the covid-19 pandemic. These problems did not develop overnight and will take time to resolve. His administration has put some semblance of order to a very complex situation. For instance, there has been a remarkable change in the way our government is dealing with the problem of children seeking asylum at the border. Children are no longer detained for an extended period; instead, they are allowed to enter and remain in the U.S. with their family members while their cases are resolved.

ROBERT P. WEBBER: Because I practice employment-based immigration, I do not follow the issues at the southern border closely. But there is clearly an uptick in the number of people trying to cross and it is widely known how problematic the situation is. Tough choices will need to be made. But there will hopefully be a way to be tough and practical without being cruel and rhetorically ugly.

R. MARK FREY: There are admittedly large numbers of people, including unaccompanied young children, seeking asylum at the southern border. This is not a simple story of mere economic migrants seeking a better livelihood for themselves. It's more complex. The situation in the Northern Triangle (Guatemala, Honduras, and El Salvador) is one encompassing several reasons for their flight: dangerous situations involving gang violence, crime, government corruption, climate change, and, yes, even economic calamities.

The previous administration simply denounced them for coming to the southern border and did nothing to address the root causes. It ignored existing U.S. law and international agreements for the processing of people so situated. It's not a long-term solution to separate children from their parents, placing them in cages, all without keeping sufficient records to ensure they'd be reunited with their families. It's not a long-term solution to turn people away, telling them to wait in Mexico.

Once in office, the Biden administration immediately commenced efforts to impose more order on the chaos left it by the previous administration. I suspect their efforts will continue to evolve as they take different approaches to the southern border. I understand the Biden administration commenced working in February with those Central American countries to develop a regional strategy seeking solutions to the migration of peoples to the southern border. And, in March, the administration restarted the valuable Central American Minors Program. Admittedly, this all is a work in progress, but I think it can safely be said that now there are efforts to place some order on the chaos and start tackling the root causes for the surge in peoples at the southern border.

I think the Biden administration, through its ongoing immigration reform proposals, is seeking to implement a more orderly system reliant upon a temporary worker visa system that responds to the fluid needs of the economy and attracts top-flight talent from around the world.

— R. MARK FREY

What long-term impact do you see resulting from the Trump administration's approach to immigration?

R. MARK FREY: The Biden administration and the courts can and will ameliorate many of the egregious short-term effects of policies and actions from the previous administration, but it will take years to repair the damage done to international relations. Can countries trust the United States in its agreements? Do international students wish to come to the United States to study? Do workers with special skills and talents look to the United States as the first country of choice? Does the United States still adhere to a Constitution affording protections to all peoples?

At the same time, one finds a heightened level of division and hostility between groups and a distrust of government in general. The ensuing chaos has created a sense that the United States is a dangerous place for those from other lands or backgrounds different from the majority population. By the same token, the Biden administration clearly understands the risks and has already begun to address these concerns and fears. It seems the lessons learned during the Obama era have formed an integral part of this administration's nuanced approach to immigration as it seeks to develop a system for the 21st century that is cognizant of the interlocking pieces (climate change, migration, global economics, alliances, regionalism, international conflicts, and empathy) and how they work.

ROBERT P. WEBBER: As I noted earlier, in some ways the legacy of the Trump administration was to be so active on immigration than the Biden administration must spend a huge amount of energy just to 'return to par,' and there is really little energy to move the ball truly forward. It seems extremely unlikely some kind of big immigration reform bill will pass Congress. And even regulatory policy changes by the Biden executive branch are focused on getting back to where things were in 2015-2016. The Trump administration policy changes and the pandemic have created unprecedented backlogs, and clearing up the backlogs should be a very high priority—but the backlog clean-up has been slow, and frustrating to clients.

PASCHAL O. NWOKOCHA: Trump exposed the level and extent of changes one administration could bring to bear on U.S. immigration. He also revealed the vulnerabilities of the U.S. immigration system. Educational institutions will continue to see a reduction of enrollment of foreign students as those students and their families explore other countries. Employers with options of locating skilled workers either to the U.S or to other developed countries now have additional reasons to avoid the U.S. The skilled workers and their families will likely prefer a more welcoming country.

Trump showed that a large portion of the American public share his sentiments about immigration, or worse, do not care about immigrants. These anti-immigrant sentiments did not disappear when Biden took office, and they will continue to be exploited by politicians and other entities who could profit from such attitudes. The question, then, is whether leaders will come together to make sure a lasting solution is agreed to, or whether this lacuna in our system will remain for the next president to exploit.

American society is now conscious of the discriminatory treatment of people of color, which happens to encompass a large proportion of the immigrant population. We have seen the violent attacks on Asians, Hispanics, and other minorities solely because of their physical features. The current discussions of how these social maladies are to be resolved must include the immigration problem—and therein lies one of the legacies of Trump. He specifically demonized immigrants so that they became targets of unprecedented hate and violence.

From the moment he announced his presidential campaign, Trump was clear that he would run his campaign on xenophobia. This decision did not come from nowhere. Anti-immigrant policies breathed life into his administration, sustained it, and continued through his re-election campaign. One of the lasting legacies of his administration is the emboldening of a segment of our electorate to embrace anti-immigration as a philosophy. Some politicians—on both sides—see no benefit in comprehensively resolving the immigration system, and would prefer to leave it as a perennial, divisive issue which they can continually benefit from.

GLORIA CONTRERAS EDIN: Trump's administration exacerbated the fear and lack of trust in our already broken immigration system. As an immigration lawyer I've met with thousands of individuals who have lived in the United States for 20-plus years and still don't have permanent status (such as those with DACA or temporary protected status) who pay taxes, own businesses, employ people, own their own homes, and give back to their communities. While President Trump was in office, many of them hid in the shadows, fearing that he would take their employment authorization documents away and send them back to a county where many had not been in over 20 years. President Biden inspired a new sense of hope, but trust takes time to build and he may not be able to work fast enough to move the mountain of mistrust that was magnified by a president who implemented harsh and racist initiatives against immigrants and refugees. As we wait for change, I continue to work really hard to encourage my clients to maintain hope for a better tomorrow. ▲

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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

MIERA: District court has discretion to deny eligibility even if the petitioner was exonerated. The district court concluded that respondent was eligible for compensation based on exoneration under the Minnesota Imprisonment and Exoneration Remedies Act (MIERA). She was originally convicted of second-degree culpable negligence manslaughter, but the conviction was reversed when the Minnesota Supreme Court found insufficient evidence that she was culpably negligent.

The MIERA requires a district court to determine 1) whether a petitioner was exonerated; 2) whether a petitioner has established their innocence; 3) whether the petitioner meets additional elements for eligibility listed in Minn. Stat. §590.11, subd. 5; and 4) whether, after a hearing at which additional evidence may be presented and considered, the court exercises its discretion and determines the petitioner is eligible for compensation.

The Minnesota Court of Appeals finds the district court properly concluded steps 1 through 3, but did not properly exercise its discretion as required in step 4. The district court held an evidentiary hearing and received additional evidence. After the hearing, the district court made factual findings suggesting respondent was not eligible, as it found that respondent had a significant role in the victim's death. But the district court improperly interpreted the MIERA as requiring a finding of eligibility based solely on respondent's exoneration status. Remanded to the district court to exercise its statutory discretion. ***Back v. State***, A20-1098, 2021 WL 2306726 (Minn. Ct. App. 6/7/2021).

Motor vehicle theft: Tampering with a motor vehicle is a lesser included offense. Police responded to a Dodge Avenger crashed in a ditch, where they found appellant and his girlfriend, who had the registered owner's permission to use the vehicle. Before the Avenger was towed, an officer took photographs of the scene and items in the vehicle with his cell phone. After appellant left the scene, the officer discovered his cell phone missing and it was found in appellant's backpack. During this time, officers also responded to a stolen Chevrolet Silverado found less than two miles away from the Avenger crash. Appellant's DNA was found on the Silverado's steering wheel. Appellant was convicted of theft of a motor vehicle, theft, and tampering with a motor vehicle.

On appeal, among other arguments the court of appeals rejects, appellant argues that the tampering with a motor vehicle conviction must be vacated because it is a lesser-included offense of motor vehicle theft. The court of appeals agrees. A defendant may be convicted of either the crime charged or an included offense, but not both. An included offense may be a lesser degree of the same crime or a crime necessarily proved if the crime charged is proved. The court asks "whether any element of tampering with a motor vehicle—tampering or entering into or on a motor vehicle—is true for each element of theft of a motor vehicle—taking or driving." The court finds "driving" a motor vehicle always entails either entering into or on the vehicle or tampering with it. In addition, a person cannot take a motor vehicle without tampering with it. Thus, the court concludes that the elements of tampering with a motor vehicle are necessarily proven when the elements of theft of a motor vehicle are proven. As such, tampering is a lesser-included offense of theft. Appellant's tampering conviction is reversed, but his theft convictions are affirmed. ***State v. Kimmes***, A20-0793, 2021 WL 2407857 (Minn. Ct. App. 6/14/2021).

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EMPLOYMENT & LABOR LAW

JUDICIAL LAW

Whistleblower claim; retaliation rejected. An employee's claim for violation of the Minnesota Whistleblower Act did not succeed because the claimant failed to show there was any direct evidence that he was retaliated against for raising concerns about a supervisor's faulty expense reporting activities. The 8th Circuit affirmed a ruling of U.S. District Court Judge Donovan Frank in Minnesota dismissing the case on grounds that the former employee did not show that the employer retaliated against him for blowing the whistle. ***Scarborough v. Federated Mutual Insurance Company***, 996 F.3d 499 (8th Cir. 04/29/2021).

ADA, FMLA claims rejected; regular attendance required. An employee who suffered from chronic auto-immune disease was not entitled to sue for wrongful termination for violation of the Americans with Disabilities Act (ADA) or for violation of Family Medical Leave Act (FMLA), on grounds that she was unable to regularly attend her job, which was deemed an "essential function" under the law. A decision of the 8th Circuit Court of Appeals, written by Judge James Loken of Minnesota and affirming a decision of U.S. District Court Judge Ann D. Montgomery of Minnesota, held that the employee was unable to perform the essential function of her job and that the employer did not fail to accommodate her disability, and the FMLA claim failed because there was no "causal connection" between her request for FMLA leave and the termination. ***Evans v. Cooperative Response Center, Inc.***, 996 F.3d 539 (8th Cir. 05/04/202).

FMLA claim upheld; no failure to accommodate. An assembly line worker who sued his former employer for adverse employment action based upon his asthma and scoliosis was entitled to pursue a claim under the Family Medical Leave Act (FMLA), although a failure-to-accommodate claim under the ADA was dismissed on grounds of failure to exhaust administrative remedies before the Equal Employment Opportunity Commission (EEOC), although a parallel state law claim was allowed to proceed. The 8th Circuit affirmed in part and reversed in part a lower court ruling and allowed the FMLA and state disability discrimination claims to proceed. ***Weatherly v. Ford Motor Company***, 994 F.3d 940 (8th Cir. 04/19/2021).

FLSA; overtime pay claims denied. Claims for unpaid overtime wages under the Fair Labor Standards Act (FLSA) were rejected by the 8th Circuit on behalf of paramedics and emergency medical technicians (EMTs). The 8th Circuit held that the lower court did not err in holding that the defendant city properly paid overtime wages to static, "single-job paramedics" under a complex formula, and that the "dual job paramedics," who were cross-trained to do firefighting and emergency services work, were partially exempt from overtime pay under the fire suppression provision of the statute, 29 U.S.C. §203(y). ***Zimmerli v. The City of Kansas City***, 996 F.3d 857 (8th Cir. 05/06/2021).

"Rare" case exception not justiciable; cannot be raised initially on appeal. A workers compensation claimant could not raise a "rare" exception to the treatment parameters promulgated by the Department of Labor & Industry for the first time on an appeal. Overturning a decision of the workers compensation court of appeals, the Supreme Court held that the exception to and the treatment parameters was not justiciably raised if not properly raised in the lower tribunal proceeding and could not be raised initially on appeal, while also holding that the record upheld the compensation judge's determination that the employee's medical treatment exceeded the promulgated standards. ***Leuthard v. Independent School District 912 – Milaca***, 958 N.W.2d 640 (Minn. 04/28/2021).

Indemnification; county attorney, sheriff not entitled. A county attorney and sheriff were not entitled to indemnification from the state under the state tort claims act, Minn. Stat. §3736, in connection with a federal lawsuit brought against them by a tribe for interference with the band's law enforcement jurisdiction. Upholding a lower court decision, the Minnesota Court of Appeals held that the county attorney and county sheriff performing routine prosecutorial and law enforcement duties are not considered to be "employees of the state" in order to be entitled to statutory indemnification. ***Walsh v. State***, 2021 WL 1847739 (8th Cir. 05/10/2021) (unpublished).

Unpaid wages; untimely payment may warrant penalty. An employee who claimed untimely payment of earned wages and commissions was entitled to pursue his claim for a penalty under

Minn. Stat. §181.13, due to the untimely payment of amounts that were actually earned as well as the claimant's entitlement to commissions for work done on various other accounts. Reversing a decision of the lower court, the Minnesota Court of Appeals held that the claim was actionable and could proceed, although the trial court's refusal to allow the claimant to amend its complaint to include a claim of age discrimination was proper. ***Lacek v. Evolutionary Systems Corp.***, 2021 WL 1604668 (Minn. Ct. App. 04/26/2021) (unpublished).

■ **Interest on retirement account; returning employee not entitled.** An employee who left her job in the public sector and then later returned to work there was not entitled to interest that had accrued on her combined service annuity. Affirming an administrative agency decision, the court of appeals held that the interest was not required under Minn. Stat. §356.30, subd. 1 (c) in the circumstances. ***In re MSRS General Employees Retirement Plan Retirement Benefit of Johnson***, 2021 WL 1605112 (Minn. Ct. App. 04/26/2021) (unpublished).

■ **Pension payment; ineligible for unemployment benefits.** The amount of a pension contributed to by an employer prior to, but not during, the base period, should be included in the calculations of unemployment compensation benefits. The court of appeals held that the "plain language" of the unemployment statute supported a determination by an unemployment law judge (ULJ) to offset unemployment benefits by the amount of the pension that was actually contributed to by the base-period employer. ***Jacobson v. County of Dakota***, 2021 WL 1525203 (Minn. Ct. App. 04/196/2021) (unpublished).

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ENVIRONMENTAL LAW

JUDICIAL LAW

■ **U.S. Supreme Court rules in favor of small refinery exemptions from renewable fuel standards.** On 6/25/2021, the U.S. Supreme Court issued its opinion for *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, which addressed the issue of whether small refineries that had received exemptions from renewable fuel mandates may request, and receive, an extension of the exemption, even if the refineries' original exemption had lapsed.

In 2005 and 2007, Congress created the Renewable Fuel Standard (RFS) program, which requires fuel refineries to blend a certain volume of renewable fuels into the petroleum-based transportation fuel they produce. 42 U.S.C. §7545 et seq. When Congress created the program, it also added exemptions from RFS mandates for small refineries through the year 2011. Id. §7545(o)(9)(A)(i). Further, Congress directed the Environmental Protection Agency (EPA) to extend the exemption for small refineries for an additional two years if those small refineries "would be subject to a disproportionate economic hardship if required to comply" with the RFS mandates. Id. §7545(o)(9)(A)(ii)(II). Finally, Congress left open the possibility of an extension of the exemption for small refineries by stating that "[a] small refinery may at any time petition the [EPA] for an extension of the exemption under [the previous section] for the reason of disproportionate economic hardship." Id. §7545(o)(9)(B)(i).

At issue in this case was EPA's granting of exemptions to three small refineries, HollyFrontier Woods Crossing, Wynnewood Refining, and HollyFrontier Cheyenne, which stopped receiving extensions through 2010, 2012, and 2015, respectively. In 2017 and 2018, all three refineries requested economic hardship exemptions, and all three exemptions were granted. A group of renewable fuel producers objected, and the 10th Circuit Court of Appeals vacated EPA's decision, concluding that the refineries were ineligible for an "extension" of their exemptions because all three had allowed their exemptions to lapse at some point in the past.

In reversing the 10th Circuit on a 6-3 vote, the Supreme Court held that small refineries may receive an "extension" of the economic hardship exemption, even if there was a lapse in coverage. The Court agreed with the renewable fuel producers that the key word "extension" was used in its temporal sense—referring to an increase in time. However, the Court disagreed that an "extension" implicitly imposes a requirement of continuity.

Justice Gorsuch, who authored the opinion, reasoned the small refinery exemptions were consistent with "ordinary usage" of seeking an extension of time after a lapse by stating, "Think of the forgetful student who asks for an 'extension' for a term paper after the deadline has passed, the tenant who does the same after overstaying his lease, or parties who negotiate an 'extension' of a contract after its expiration."

The Court also cited and contrasted other Congressional statutes that require "extensions" to be "consecutive" or "successive," and concluded that the absence of any modifying language within the RFS statute shows that continuity is not required.

Furthermore, the Court pointed to the language within subparagraph (B)(i) authorizing small refineries to seek hardship exemptions "at any time." 42 U.S.C. §7545(o)(9)(B)(i). The Court noted that "'[a]t any time' does not connote a demand for some rigid continuity so much as its opposite—including the possibility that small refineries might apply for exemptions in different years in light of market fluctuations and changing hardship conditions, whether consecutively or otherwise." Gorsuch continues, "Instead, more naturally, it means exactly what it says: [a] small refinery can apply for (if not always receive) a hardship extension 'at any time.'"

Finally, the Court granted that both parties offered sound arguments behind the possible legislative purpose, but that neither the statute's text, structure, nor history provides sufficient guidance to choose with confidence between the parties' competing narratives and metaphors; and that therefore, the Court's "analysis can be guided only by the statute's text—and that nowhere commands a continuity requirement." ***HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n***, (2021 U.S. LEXIS 3399; 2021 WL 2599433; No. 20-472).

■ **Minnesota Court of Appeals affirms PUC's Enbridge Line 3 certificate of need.** In June the Minnesota Court of Appeals of Minnesota issued an opinion affirming the Minnesota Public Utilities Commission's (PUC) determinations to (i) approve the revised final environmental-impact statement (FEIS); (ii) grant a certificate of need to Enbridge for the Line 3 Project; and (iii) grant a routing permit for Enbridge's Line 3 project.

To first address the issue of the adequacy of the FEIS, the court agreed with the PUC's finding that the revised FEIS was adequate in that it addressed the deficiencies previously put forth by the court when it reversed the PUC's previous FEIS adequacy determination. *See In re Application of Enbridge Energy, Ltd. P'ship for Certificate of Need*, 930 N.W.2d 12 (Minn. Ap. 2019). Specifically, the court concluded that the PUC sufficiently explained how the revised FEIS adequately addressed the potential impacts of leaking oil into the Lake Superior watershed, which the court found to be

one of the key deficiencies in the original FEIS approved by the PUC. Further, the court found that the additional analysis in the revised FEIS determined that an oil spill in the eastern-most watercourse crossing in Minnesota would impact resources in the Lake Superior watershed, but likely wouldn't reach the lake itself. This finding helped the court conclude that the revised FEIS was adequate and reasonable on the basis of the record.

In addressing the issue of granting a certificate of need for the Line 3 project, the court found that the PUC was correct in granting a certificate of need, that the PUC sufficiently explained its decision, and that its decision was reasonably supported by the record. The court found that the PUC appropriately applied and satisfied the need-criteria rule provided for under Minnesota Rule 7853.0130. Under the need-criteria rule, the PUC shall grant a certificate of need if it determines that the four criteria provided for are met. Specifically, the PUC must determine whether: (i) denial of the certificate would adversely affect the adequacy, reliability, or efficiency of future energy supply; (ii) there is a more reasonable and prudent alternative to the proposed facility; (iii) the societal consequences favor allowing the proposed facility; and (iv) the proposed facility will comply with applicable policies, rules, and regulations.

In applying the need-criteria rule, the court determined that it could not interfere with PUC's decision to grant a certificate of need because (i) the court could not conclude that either the PUC's findings on the energy-demand forecasts provided by Enbridge, nor PUC's ultimate conclusion that replacement Line 3 is necessary to ensure the adequate, reliable, and efficient supply of energy resources, were unreasonable or lacking support in the record; (ii) a more reasonable and prudent alternative to the proposed Line 3 has not been demonstrated by a preponderance of evidence on the record; (iii) although the court states reasonable minds may differ regarding the balancing of societal harms, the question before the court was whether the PUC's assessment of the societal consequences of Line 3 was reasonable, and the court concluded it was; and (iv) it has not been demonstrated on the record that the design, construction, or operation of the proposed Line 3 will fail to comply with the relevant policies, rules, and regulations of other state and federal agencies and local governments.

Finally, in addressing the granting of a routing permit for Line 3, the court reviewed whether the PUC's rejection of in-trench replacement and its ultimate approval of the routing permit was appropriate using the substantial evidence test—specifically, whether the PUC adequately explained its decision, and whether that explanation was reasonable on the basis of the record.

The court found that the PUC's rejection of in-trench replacement was appropriate and adequately explained because the existing in-trench replacement routes crossed multiple Native American Reservations and required appropriate easements to do so. The existing easements in place are set to expire in 2029, and the Leech Lake Band of Ojibwe, grantors of one of the easements, has refused to grant any extension of the easement. Therefore, the court found that the PUC adequately explained its decision not to order in-trench replacement of Line 3, and that such decision was reasonable on the basis of the record. Finally, the court held that the PUC, in granting the routing permit, adequately explained its choice of which route to grant a permit for, and that such choice was reasonable on the basis of the record. ***In re Enbridge Energy***, Nos. A20-1071, A20-1072, A20-1074, A20-1075, A20-1077, 2021 Minn. App. LEXIS 232 *; 2021 WL 2407855 (6/14/2021).

■ **Minnesota Court of Appeals affirms MPCA denial of contested case and variance for Minntac mine.** On 6/28/2021, the Minnesota Court of Appeals affirmed an order of the Minnesota Pollution Control Agency (MPCA) denying the requests of United States Steel Corporation for a contested case hearing (CCH) and a variance from groundwater quality standards. The case involved the MPCA's 2018 reissuance of the National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) permit for the tailings basin at U. S. Steel's Minntac taconite processing facility on the Iron Range. U. S. Steel, the environmental advocacy group WaterLegacy, and the Fond du Lac Band of Lake Superior Chippewa each appealed the permit, and the court of appeals consolidated the three appeals. In its first decision (Minntac I), the court of appeals agreed with U. S. Steel that the Class 1 water quality standards upon which the permit's groundwater limits

were based did not apply to groundwater. As a result, the court remanded the permit and did not reach U. S. Steel's other two appeal issues: MPCA's denial of the CCH and variance requests. The court in Minntac I also agreed with WaterLegacy and the Fond du Lac Band that MPCA's decision that there were no surface water discharges from the Minntac basin was not supported by substantial evidence in the record and so remanded that issue as well. Finally, the court of appeals in Minntac I upheld MPCA's decision that the groundwater discharges from the Minntac tailings basin were not subject to regulation under the federal Clean Water Act (CWA), even if pollutants from the discharges subsequently entered nearby surface waters.

WaterLegacy, the Band, and MPCA appealed the court of appeals' decision to the Minnesota Supreme Court. All three appealed the court's decision that the Class 1 standards do not apply to groundwater; WaterLegacy and the Band also appealed the issue of whether groundwater discharges can be subject to the CWA. After the Minnesota Supreme Court granted *certiorari*, but before it issued its decision, the U.S. Supreme Court issued its decision in *County of Maui v. Haw. Wildlife Fund*, 140 S. Ct. 1462 (2020), holding that a point-source discharge to groundwater *can* be subject to regulation under the CWA if the discharge is the "functional equivalent of a direct discharge from the point source into navigable waters."

The Minnesota Supreme Court held in Minntac II that the *County of Maui* decision resolved the CWA-applicability issue: Contrary to MPCA's original position, discharges to groundwater can be subject to the CWA if they meet the "functional equivalent" test. The Court thus remanded to the MPCA to evaluate whether any discharges from the Minntac basin are subject to CWA permitting requirements as "functional equivalent" point-source discharges. The Minnesota Supreme Court also reversed the court of appeals on the Class 1 issue, holding that MPCA correctly applied the Class 1 standards to groundwater at the Minntac Basin and in associated permit conditions. Because of this holding on the Class 1 issue, the Supreme Court directed the court of appeals to take up the remaining issues (that is, U. S. Steel's appeals of MPCA's denial of its CCH and variance requests, which the court did not decide in Minntac I).

The court of appeals' 6/28/2021 decision (Minntac III) affirmed MPCA's denial of U.S. Steel's CCH and variance requests. Regarding the CCH denial, the court determined it should defer to MPCA's determination of whether a CCH would "aid" the agency, so long as MPCA's determination was supported by substantial evidence. *See* Minn. R. 7000.1900, subp. 1 (MPCA standard for granting a CCH). The court rejected U.S. Steel's arguments that ongoing studies of sulfate reactivity and reduction created a disputed factual issue on whether MPCA set a permit sulfate limitation at the correct level. Evidence in the record demonstrated that MPCA was aware of and considered the reactivity studies, the court held; plus, the permit sulfate limit at issue was based on studies commissioned by U.S. Steel, and U.S. Steel had provided no alternate basis for calculating the limit. Regarding the variance issue, the court stated that it undertook its review with deference to MPCA's expertise. Applying this standard, the court found that MPCA reasonably determined that U.S. Steel did not demonstrate unreasonable economic hardship, that elevated natural background levels do not justify allowing exceedances of the Class 1 sulfate standard, and that the permit's compliance schedule allows time for U.S. Steel to comply or seek a permit amendment or variance at a later time if it determines it is unable to meet the permit timelines. ***In re Reissuance of an NPDES/SD Permit to United States Steel Corp.***, 2021 Minn. App. Unpub. LEXIS 583, 2021 WL 2645505.


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FAMILY LAW

JUDICIAL LAW

When modifying maintenance, a court may consider requiring the recipient to spend after-acquired assets for their own self-support. Husband and wife divorced after more than 20 years of marriage, and wife received permanent spousal maintenance. Following the divorce, wife received two "legacy gifts" from her parents totaling $500,000, in addition to annual cash gifts. Husband later sought to modify maintenance based on a change in his job situation as well as wife's receipt of gifts. Before the district court, husband argued wife should spend these gifts down for her self-support. Wife objected that the court should consider only income from the gifts, not the corpus of the gifts themselves. The district court agreed with wife and husband appealed. The Minnesota Court of Appeals affirmed, holding Minnesota law was unclear on this point and thus the lower court did not abuse its discretion.

On review, the Minnesota Supreme Court reversed. While recognizing that a maintenance recipient may not be required to spend the principal of her marital property, the Court found no similar prohibition applied to post-marital assets. Instead, the Court held that such assets are clearly "financial resources" based on the dictionary definition of that term. That, however, did not end the inquiry. The Supreme Court held that while district courts may consider the corpus of after-acquired assets as a source of self-support, they are not required to. Instead, these assets may be accounted for as a relevant factor based on the facts and circumstances of each case. (Note:

The author of this case summary served as counsel in this case.) ***Honke v. Honke***, 960 N.W.2d 261 (Minn. 2021).

■ **Court must determine a maintenance recipient's need based on net or after-tax income and considering historic retirement savings.** Following their 20-year marriage, the parties divorced in 2019 following a trial on the issue of spousal maintenance. The district court denied wife's request for maintenance, finding that her gross monthly income exceeded her expenses. In determining wife's income and expenses, the court failed to account for income taxes, health insurance, or retirement savings. Wife appealed, challenging the court's use of her gross (rather than net) income and failure to account for the cost of health insurance and retirement savings.

The court of appeals reversed. While recognizing that neither statute nor case law mandate that maintenance be based on the recipient's net income, the court held that because income taxes are unavoidable, the district court must consider them in determining a party's need for maintenance so long as there is sufficient evidence in the record. Similarly, the district court should have accounted for the cost of health insurance and retirement savings where wife offered evidence of these expenses and they were regularly incurred throughout the marriage. ***Schmidt v. Schmidt***, ___ N.W.2d ___, No. A20-0884, 2021 WL 2521138 (Minn. Ct. App. 6/21/2021).

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FEDERAL PRACTICE

JUDICIAL LAW

■ **Standing; statutory claim; "concrete" injury.** In a 5-4 decision, the Supreme Court held that persons whose credit files were impacted by FCRA violations had not suffered the "concrete" injuries necessary to confer standing where the disputed credit files were not disseminated to third parties.

A vigorous dissent by Justice Thomas noted that similar claims could conceivably be brought in state courts that are not bound by Article III's case or controversy rules. ***TransUnion LLC v. Ramirez***, ___ S. Ct. ___ (2021).

■ **Appeal dismissed due to exceedingly defective notice of appeal.** Where the plaintiff filed notices of appeal that purported to appeal from the "United States District Court for the Southern District of Missouri" to the "United States Court of Appeals for the Southern District of Missouri," from an order issued on "the 27th day of September, 2019," the 8th Circuit found that the notices of appeal were "entirely deficient" because they appealed from an order entered on "a day when no order issued, from a district court that does not exist, to a court of appeals that does not exist." Accordingly, the appeals were dismissed for lack of jurisdiction. ***Newcomb v. Wyndham Vacation Ownership, Inc.***, 999 F.3d 1134 (8th Cir. 2021).

■ **Plaintiff's attempt to "recharacterize" claim rejected.** Affirming Judge Magnuson's award of summary judgment to the defendants, the 8th Circuit rejected the plaintiff's attempt to recharacterize the basis for one of her claims in her briefs and at oral argument in the district court rather than moving to amend that claim. ***Uradnik v. Inter Faculty Org.***, ___ F.4th ___ (8th Cir. 2021).

■ ***Forum non conveniens* argument waived.** Where the defendant argued for the first time on appeal that the action should have been dismissed based on *forum non conveniens*, the 8th Circuit declined to consider that argument because it was not raised in the district court. ***Kaliannan v. Liang***, ___ F.4th ___ (8th Cir. 2021).

■ **Request to amend jurisdictional allegations on appeal denied.** Where the plaintiffs filed an action alleging only federal question jurisdiction, their federal claims were dismissed pursuant to Fed. R. Civ. P. 12, the district court declined to the exercise supplemental jurisdiction over the plaintiffs' state law claims, the plaintiffs then moved to amend their claims under federal law but failed to comply with the applicable local rules, the district court denied the motion to amend and again declined to exercise supplemental jurisdiction, plaintiffs appealed, and for the first time on appeal sought to amend the jurisdictional basis for their action to assert diversity jurisdiction, the 8th Circuit "declined to exercise its discretion" to permit the amendment, finding that the plaintiffs had "years" to allege diversity jurisdiction in the district court, and that permitting amendment "this late in the game would be unfair to the defendants." ***Nuevos Destinos, LLC v. Peck***, 999 F.3d 641 (8th Cir. 2021).

■ **No personal jurisdiction against manufacturer of component part.** Judge Doty dismissed claims and cross-claims against the manufacturer of a component in a ceiling fan that was the source of an apartment fire, finding that the defendant did not have offices or manufacturing facilities in Minnesota, and that its website, which marketed products other than the disputed component, was insufficient to create a "substantial connection" with Minnesota. ***Country Mut. Ins. Co. v. Broan-Nutone, LLC***, 2021 WL 2719407 (D. Minn. 7/1/2021).

■ **Fed. R. Civ. P. 39(b); late motion for jury trial denied.** Where defendants brought an admittedly untimely motion for jury trial pursuant to Fed. R. Civ. P. 39(b) citing a "change in trial strategy," Judge Frank acknowledged a lack of clarity regarding the relevant standards applicable to the motion, but ultimately denied the motion, finding that neither party would be prejudiced by a bench trial, and that the plaintiff would be prejudiced because a shift to the court's jury trial calendar would "significantly postpone" the case. ***Peterson v. Washington Cty.***, 2021 WL 2686119 (D. Minn. 6/30/2021).

■ **Fed. R. Civ. P. 12(f); motion to strike affirmative defenses granted in part.** Where the plaintiff was granted leave to file a supplemental complaint, the defendant then filed an answer asserting two new affirmative defenses, and the plaintiff moved to strike both of the new affirmative defenses pursuant to Fed. R. Civ. P. 12(f), Judge Wright applied the so-called "moderate approach" when considering the permissible scope of an answer to an amended pleading, which in turn allowed the defendant to amend its answer in response to the plaintiff's "expanded" complaint to assert one new affirmative defense. ***Target Corp. v. Seaman Corp.***, 2021 WL 2526550 (D. Minn. 6/21/2021).

■ **Action dismissed as a sanction for litigation conduct.** Where the plaintiff and counterclaim-defendant "withheld relevant discovery; ignored orders to provide that discovery and to pay related attorneys' fees; declined to appear for hearings or respond to motions; and participated only sporadically in the litigation," Judge Tostrud dismissed its claim with prejudice. ***Oxbow Solar Profs., Inc. v. Borrego Solar Sys., Inc.***, 2021 WL 2228112 (D. Minn. 6/2/2021).

■ **Challenge to award of costs following successful summary judgment motions rejected.** Where the defendants were awarded roughly $7,600 in costs in related actions following their successful motion for summary judgment, and the plaintiffs objected to the costs, arguing that the defendants had acted in bad faith by failing to seek to resolve the cases under Fed. R. Civ. P. 12 rather than Rule 56, Judge Nelson noted that the plaintiffs cited no authority in support of their argument, and finding no bad faith, affirmed the cost judgments in their entirety. ***Hockman v. Education Minn.***, 2021 WL 2621840 (D. Minn. 6/25/2021).

■ ***Pro se* litigants sanctioned in multiple cases.** Magistrate Judge Leung imposed modest economic sanctions against *pro se* plaintiffs in two recent cases. Where the plaintiff had refused to answer certain questions during her deposition, Magistrate Judge Leung granted the defendant's motion to re-depose the plaintiff and awarded the defendant $75 pursuant to Fed. R. Civ. P. 30(d)(2). ***Thomas v. Wells Fargo Bank, N.A.***, 2021 WL 2374863 (D. Minn. 6/10/2021).

Magistrate Judge Leung ordered a plaintiff to pay the defendant $75, which was said to represent "reasonable expenses caused by her failure to timely serve discovery responses." ***Breedlove v. Consol. Vision Grp., Inc.***, 2021 WL 2350048 (D. Minn. 6/9/2021).

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IMMIGRATION LAW

JUDICIAL LAW

■ **No bond hearings for those with reinstated orders of removal while seeking withholding of removal.** The U.S. Supreme Court held that INA §241 [8 U.S.C. §1231], not INA §236 [8 U.S.C. §1226], is the controlling authority for the detention of noncitizens subject to reinstated orders of removal, following unauthorized reentry after removal. Such individuals are consequently not entitled to a bond hearing while pursuing withholding of removal relief before an immigration judge. ***Johnson, et al. v. Guzman Chavez, et al.***, 594 U.S. ___, No. 19-897, *slip op.* (2021). *https://www.supremecourt.gov/opinions/20pdf/19-897_c07d.pdf*

■ **Crime with a *mens rea* of "recklessness" is not a "violent felony."** The Supreme Court held that a crime with a *mens rea* of "recklessness" does not qualify as a "violent felony" under the Armed Career Criminal Act (ACCA) [18 U.S.C. §924]. ***Borden v. U.S.,*** 593 U.S. ___, No. 19-5410, *slip op.* (2021). *https://www.supremecourt.gov/opinions/20pdf/19-5410_8nj9.pdf*

■ **TPS is not an admission for permanent residence (adjustment of status) purposes.** The Supreme Court issued a unanimous decision finding the recipient of temporary protected status (TPS), who unlawfully entered the United States, ineligible for lawful permanent residence (adjustment of status) under INA §245 [8 U.S.C. §1255], notwithstanding the fact that he now holds TPS, a form of legal status in the United States. ***Sanchez et ux. v. Mayorkas***, 593 U.S. ___, No. 20-315, *slip op.* (2021). *https://www.supremecourt.gov/opinions/20pdf/20-315_q713.pdf*

■ **Credibility rule deemed incompatible with INA §242(b)(4)(B).** The U.S. Supreme Court held that the 9th Circuit Court Appeals' rule on treatment of noncitizens' testimony as credible—namely, that in the absence of an explicit adverse credibility determination by an immigration judge or the BIA, a reviewing court should treat a noncitizen's testimony as credible and true—cannot be reconciled with the terms of the Immigration and Nationality Act. Instead, according to the Court, reviewing courts should accept the agency's findings of fact as "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary," pursuant to INA §242(b)(4)(B) [8 U.S.C. §1252(b)(4)(B)]. ***Garland v. Dai***, 593 U.S. ___, No. 19-1155, *slip op.* (2021). *https://www.supremecourt.gov/opinions/20pdf/19-1155_1a7d.pdf*

■ **All three of INA §276(d)'s requirements are mandatory in collateral attacks on prior removal orders.** The U.S. Supreme Court held that each of the three statutory requirements under INA §276(d) [8 U.S.C. §1326(d)] for bringing a collateral attack on a prior removal order is mandatory and the respondent may not be excused from proving the first two requirements set forth in that provision. According to the Court, INA §276(d) is clear that defendants "may not" bring collateral attacks "unless" they "demonstrat[e]" that (1) they "exhausted any administrative remedies that may have been available to seek relief against the [removal] order," (2) the removal proceedings "improperly deprived [them] of the opportunity for judicial review," and (3) "entry of the order was fundamentally unfair." ***United States v. Palomar-Santiago***, 593 U.S. ___, No. 20-437, *slip op.* (2021). *https://www.supremecourt.gov/opinions/20pdf/20-437_bqmc.pdf*

■ **Withholding of removal relief denied; no particular social group membership and relocation within Guatemala is viable option.** Upholding the denial of withholding of removal, the 8th Circuit Court of Appeals found the petitioner failed to establish membership in a particular social group ("tattooed Guatemalan youths" or "people who promised to remove their tattoos years ago but did not"). Furthermore, the Board of Immigration Appeals (BIA) did not err when it determined he could reasonably relocate within Guatemala to avoid a vigilante group. ***Bautista-Bautista v. Garland***, No. 20-1534, *slip op.* (8th Circuit, 7/6/2021). *https://ecf.ca8.uscourts.gov/opndir/21/07/201534P.pdf*

■ **Particular social group family membership is not a central reason for threats.** The 8th Circuit Court of Appeals held the Honduran petitioner did not face past persecution based on her membership in a particular social group (PSG) consisting of her family. Rather,

the court found she was targeted because she owned land that once belonged to her father, who was killed during a robbery in Guatemala. "The record shows that Pinto targeted Padilla-Franco because he assumed she owned the land that once belonged to her father—not because she was related to him." ***Padilla-Franco v. Garland***, No. 20-2415, *slip op.* (8th Circuit, 6/2/2021). *https://ecf.ca8.uscourts.gov/opndir/21/06/202415P.pdf*

■ **"Reason to believe" standard requires finding of probable cause.** Applying the "reason to believe" standard under INA §212(a)(2)(C) [8 U.S.C. §1182(a)(2)(C)], the 8th Circuit Court of Appeals held the language requires a finding of probable cause. Furthermore, substantial evidence in the record supported the Board of Immigration Appeals' conclusion there was probable cause to believe the petitioner was involved in illicit drug trafficking and thus inadmissible. ***Rojas v. Garland***, No. 19-1944, *slip op.* (8th Circuit, 5/27/2021). *https://ecf.ca8.uscourts.gov/opndir/21/05/191944P.pdf*

ADMINISTRATIVE ACTION

■ **TPS extension and redesignation for Yemen.** On 7/9/2021, U.S. Citizenship and Immigration Services (USCIS) published notice extending the designation of Yemen, while also redesignating it, for temporary protected status (TPS) for 18 months, 9/4/2021 - 3/3/2023. The extension applies to those who currently hold TPS and continue to meet the eligibility requirements. The redesignation allows those individuals continuously residing in the United States since 7/5/2021 to file an initial application, provided they meet the eligibility criteria outlined in the notice. **86 Fed. Register, 36295-302** (7/9/2021). *https://www.govinfo.gov/content/pkg/FR-2021-07-09/pdf/2021-14670.pdf*

■ **Social groups and domestic violence: AG Garland vacates *Matter of A-B-* and *Matter of A-B-II*.** On 6/16/2021, U.S. Attorney General Merrick Garland vacated *Matter of A-B-* and *Matter of A-B-II* (having to do with social groups and domestic violence), ordering immigration judges and the Board of Immigration Appeals (BIA) to cease following the decisions when adjudicating pending or future cases. In view of imminent rulemaking, Garland directed immigration judges and the BIA to follow pre-*A-B- I* precedent, including *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). ***Matter of A-B-,*** 28 I&N Dec. 307 (A.G. 2021). *https://www.justice.gov/eoir/page/file/1404796/download*

■ **Social groups and family memberships: A.G. Garland vacates *Matter of L-E-A II*.** On 6/16/2021, U.S. Attorney General Merrick Garland vacated *Matter of L-E-A- II* (having to do with social groups and family memberships), ordering both immigration judges and the Board of Immigration Appeals (BIA) to cease following *Matter of L-E-A- II* when adjudicating pending or future cases. Both should follow preexisting precedent until the ongoing rulemaking process is completed and a final rule addressing the definition of "particular social group" is issued. ***Matter of L-E-A-,*** 28 I&N Dec. 304 (A.G. 2021). *https://www.justice.gov/eoir/page/file/1404791/download*

■ **Temporary increase in H-2B nonimmigrant visas for FY 2021.** The Department of Homeland Security (DHS) and Department of Labor (DOL) jointly published a temporary final rule increasing the cap on H-2B nonimmigrant visas by up to 22,000 additional visas through the end of the second half of fiscal year 2021. According to DHS, these supplemental visas are available only to those U.S. businesses "likely to suffer irreparable harm, as attested by the employer on a new attestation form." **86 Fed. Register, 28198-234** (5/25/2021). *https://www.govinfo.gov/content/pkg/FR-2021-05-25/pdf/2021-11048.pdf*

■ **TPS designation for Haiti.** In May Department of Homeland Secretary Alejandro N. Mayorkas announced a new 18-month designation of Haiti for temporary protected status (TPS), in view of that nation's "serious security concerns, social unrest, an increase in human rights abuses, crippling poverty, and lack of basic resources, which are exacerbated by the covid-19 pandemic." Individuals able to demonstrate continuous residence in the United States as of 5/21/2021 will be considered eligible for TPS under the designation. Additional eligibility criteria will be outlined in a forthcoming Federal Register notice. U.S. Department of Homeland Security, ***News Release*** (5/22/2021). *https://www.dhs.gov/news/2021/05/22/secretary-mayorkas-designates-haiti-temporary-protected-status-18-months*

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INTELLECTUAL PROPERTY

JUDICIAL LAW

■ **Patents: PTAB decisions must be reviewable by the director.** The Supreme Court recently held that decisions issued by administrative patent judges (APJs) of the Patent Trial and Appeal Board (PTAB) must be reviewable by the director of the Patent and Trademark Office (PTO) to avoid a violation of the appointments clause of the Constitution. Arthrex, Inc. sued Smith & Nephew, Inc. and ArthroCare Corp. for infringement of its surgical device patent. Smith & Nephew filed an *inter partes* review, and the PTAB found Arthrex's patent unpatentable. On appeal to the Federal Circuit, Arthrex argued APJs were principal officers (requiring presidential appointment) and therefore that their appointment by the Secretary of Commerce was unconstitutional. The Federal Circuit agreed that, under the statute as written, the PTAB's APJs were principal officers. In an effort to preserve the constitutionality of the statute, the Federal Circuit judicially modified the statute to provide that "APJs [were] removable

at will by the Secretary." The Supreme Court granted *certiorari* to consider the constitutionality of the PTAB's structure. The Court agreed with the Federal Circuit that, under the statute as written, the PTAB APJs lacked the required supervision to satisfy the appointments clause. The Court held that to satisfy the appointments clause, the PTO director must have authority to review final PTAB decisions. ***United States v. Arthrex, Inc.***, No. 19-1434 (6/21/2021).

■ **Patents: Assignor estoppel exists in certain circumstances.** The Supreme Court recently affirmed the existence of the judicially created assignor estoppel doctrine but identified limitations to its application. In the late 1990s, Csaba Truckai invented a device to treat abnormal uterine bleeding. Truckai received a patent for the invention claiming a device with a moisture-*permeable* head. The patent and rights to continuation applications were ultimately assigned to Hologic, Inc. through a series of assignments. In 2008, Truckai founded Minerva Surgical and developed a new, moisture-*impermeable* device to treat abnormal uterine bleeding. Hologic filed a continuation application to add claims to cover all applicator heads, regardless of whether they are moisture permeable or not. Hologic sued Minerva for patent infringement.

In defense, Minerva asserted that the continuation patent was invalid for lack of written description. The district court found that assignor estoppel barred Minerva from challenging the validity of the patent. Assignor estoppel acts to prevent those who assign their patent rights from later contesting the validity of said patents because, based on the principles of fair dealing, it would be unfair to allow the assignor to receive benefit for assigning the patents but then to later challenge the patent's validity. The Supreme Court granted *certiorari* to consider the applicability of the assignor estoppel doctrine. The Court affirmed the viability of the assignor estoppel doctrine but held that there are limits to its application. The Court explained that "when the assignor has made neither explicit nor implicit representations in conflict with an invalidity defense, then there is no unfairness in its assertion" and assignor estoppel does not apply. The Court identified three examples where application of assignor estoppel would be unfair: (1) where the assignment occurs before an inventor can represent that specific patent claims are valid, (2) where there is a change in the law after assignment, or (3) where the patent claims are materially broadened as compared to the claims that were assigned. ***Minerva Surgical, Inc. v. Hologic, Inc.***, No. 20-440 (6/29/2021).

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REAL PROPERTY

JUDICIAL LAW

■ **Intentional ouster.** A tenant seeking to recover damages under Minn. Stat. §504B.231 for ouster from residential premises must prove that the landlord acted both unlawfully and in bad faith, the latter of which means that "the landlord acted in a dubious or dishonest fashion—in a way that suggests the landlord was acting with ulterior motive or purpose beyond just a desire to oust the tenant." In *Reimringer*, the plaintiff entered a written lease agreement with defendant pursuant to which plaintiff was to pay $7,500 before moving into the home. The plaintiff and his family moved into the home while it was unlocked without making that payment. The defendant learned that the plaintiff moved in without making the payment and requested the payment. The plaintiff did not make the payment and the defendant requested multiple times that he leave. Ultimately the plaintiff did leave and moved into a hotel room. The defendant paid for three nights at the hotel and placed the plaintiff's personal property in a rented storage container until the plaintiff was able to pick it up.

The plaintiff filed a lockout petition under Minn. Stat. §504B.375 and sought treble damages for ouster under Minn. Stat. §504B.231. The district court held an evidentiary hearing and then dismissed the lockout petition, concluding that the plaintiff was not a residential tenant, and denied the claim for treble damages, finding that the defendant did not act in bad faith. The Minnesota Court of Appeals affirmed the denial of the treble damages claim. The Supreme Court noted that the Legislature used the term "unlawfully and in bad faith" to describe the circumstances in which a tenant is entitled to recover treble damages and intended that both words apply, and that the words have different meanings. Thus, self-help removal of a tenant is insufficient in and of itself to prove that the removal was also in bad faith. The definition of bad faith requires a showing of dubious or dishonest action beyond just the ouster; the tenant must show that the landlord harmed or intended to harm the plaintiff "in a way that goes beyond merely depriving the tenant of access to his or her residence." The district court should examine the totality of circumstances when deciding whether bad faith existed. The court may consider the landlord's conduct after the ouster. The court should not consider, in deciding the existence of bad faith, a landlord's mistaken belief about the legal right of the tenant to reside in the home; ignorance of the law is not a defense to conduct undertaken with bad faith. ***Reimringer v. Anderson***, No. A19-2045, ___N.W.2d ___, 2021 WL 2447268 (Minn. 6/16/2021).

■ **Cartway petition.** A party challenging a township's oral denial of an oral request for the establishment of a cartway does not satisfy the requirements to obtain mandamus relief. In *Scheffler*, the petitioner owned two adjacent parcels. Open water or a marsh creates a separation between the northern portion of the second parcel and the southern portion of that parcel. The second parcel lacks connection to a public road. The petitioner attended a town board meeting and asked that the town board establish a cartway. The board offered to discuss the issue with its attorney. At another meeting, the petitioner asked about the cartway, the board discussed the issue, and ultimately the petitioner asked if the board was denying the request and a board member responded in the affirmative. The petitioner then sought a writ of mandamus. The district court denied the request, deciding that the petitioner failed to show that the town board had a clear and present duty to perform and that he had no other legal remedy. The court of appeals affirmed, holding that the oral request for a cartway was insufficient to impose a duty on the board because it did not constitute a "petition" for a cartway as required by Minn. Stat. §164.08, subd. 2(a). ***Scheffler v. Lake Edward Township***, No. A20-1472, 2021 WL 2530635 (Minn. App. 6/21/2021).

■ **Docks and zoning ordinances.** The Minnesota Supreme Court identified a test for determining when an ordinance is a zoning regulation such that a city must follow the procedural requirements of Minn. Stat. §462.357 when adopting it. A city must follow the statutory requirements for adopting zoning regulations when an ordinance (1) governs subjects identified in Minn. Stat. §462.357, subd. 1, including but not limited to the location, height, and width of buildings and structures, and (2) serves a zoning

purpose such as controlling land use and development. Although Minn. Stat. §412.221 permits cities to regulate the location, construction, and use of docks, that statute cannot be used to bypass the protections of Minn. Stat. §462.357 to adopt ordinances subject to its terms. Because the City of Waconia adopted a dock ordinance under 412.221 and failed to comply with the procedural requirements of Minn. Stat. §462.357, the dock ordinance is void and an injunction granted to the city to restrain further construction of a dock in violation of its terms is also void. ***City of Waconia v. Dock***, No. A19-1099, ___N.W.2d ___, 2021 WL 2447267 (Minn. 6/16/2021).

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TAX LAW

JUDICIAL LAW

■ **Anti-Injunction Act does not bar suit seeking to set aside information-reporting requirement.** The Anti-Injunction Act, 26 U.S.C. §7421(a), bars any "suit for the purpose of restraining the assessment or collection of any tax." In effect, the Act requires taxpayers seeking to challenge a tax to first pay the tax, then sue for a refund. The petitioner in this dispute is a material advisor to taxpayers engaged in micro-captive transactions. As the Court notes in its opinion in *CIC Servs., LLC v. Internal Revenue Serv.*, a "micro-captive transaction is typically an insurance agreement between a parent company and a 'captive' insurer under its control." Micro-captive transactions are "reportable transactions" (in other words, transactions the Service deems potentially abusive). The Service, acting under its authority delegated from Congress, issues Notice 2016–66. The notice requires taxpayers and material advisors associated with such an agreement to (among other things) "describe the transaction in sufficient detail for the IRS to be able to understand [its] tax structure."

CIC sought to challenge the notice as a violation of the requirements for notice-and-comment rulemaking under the Administrative Procedure Act. CIC did not fail to comply with the reporting requirements, and it did not owe a tax (or a penalty) for noncompliance. Instead, CIC wanted to bring a challenge to the notice before any enforcement action. The question presented in *CIC Services v. IRS*, therefore, was whether the Act prohibits a suit seeking to set aside this information-reporting requirement. For three reasons, the Court held that the Act does not preclude the suit. Fist, CIC Services sought in this lawsuit not to restrain the assessment of a tax, but to avoid the regulatory burdens imposed by the notice, which imposes substantial compliance costs that are unconnected to CIC Services' potential tax liability. Second, the causal chain connecting the notice›s reporting requirement to any tax is attenuated. And finally, the notice is enforced by criminal as well as tax penalties.

The Court's opinion was 9-0. Justice Sotomayor filed a concurring opinion in which she emphasized that "the answer might be different if CIC Services were a taxpayer instead of a tax advisor." Justice Kavanaugh also filed a concurring opinion so that he could "underscore what remains (and does not remain) of *Alexander v. 'Americans United' Inc.*, 416 U.S. 752 (1974), and *Bob Jones Univ. v. Simon*, 416 U.S. 725 (1974)." ***CIC Servs., LLC v. Internal Revenue Serv.***, 141 S. Ct. 1582 (2021).

■ **Income tax not limited to individuals who perform "the functions of a public office."** In two cases, the court summarily rejected identical frivolous arguments. "This is a time-worn tax-protestor argument that no court has ever accepted. Section 3401(c) provides that the term 'employee' 'includes' Federal officers and employees; it does not say that the term 'employee' 'consists exclusively' of Federal officers and employees." ***Muhammad v. Comm'r***, T.C.M. (RIA) 2021-077 (T.C. 2021). *See also* ***Delgado v. Comm'r***, T.C.M. (RIA) 2021-084 (T.C. 2021) (rejecting the same argument).

■ **Tax court has jurisdiction to dismiss unopposed motion to voluntarily dismiss fee/costs petition.** Taxpayers Robert and Elaine Stein filed a petition for fees/costs. The commissioner filed an answer, after which the taxpayers moved to voluntarily dismiss their petition. The commissioner did not oppose the voluntary dismissal. The uncontested motion warranted a discussion, however, because in the "bulk" of tax court cases—deficiency cases—"a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary." IRC §7459(d). This section prevents a taxpayer from avoiding entry of a decision in a deficiency case by moving to withdraw the petition. In a non-deficiency case, though, such as was before the court here, that underlying concern is absent. The court explained, in accord with prior cases in similar, non-deficiency contexts, that since its jurisdiction over fee and costs petitions was distinct from its deficiency jurisdiction, IRC §7459(d)'s decision-entry mandate for deficiency petitions was not implicated. The court instead turned to the Federal Rules of Civil Procedure to guide its analysis and concluded that the court has broad discretion to grant voluntary dismissals under F.R.Civ.P. 41(a)(2), bounded only by considerations of prejudice to opposing party. Since the commissioner did not oppose the motion, and since prejudice to the opposing party was not a concern here, the court granted the motion. ***Stein v. Comm'r***, No. 22695-18, 2021 WL 2483031 (T.C. 6/17/2021).

■ **Court grants substitution of expert witness despite petitioner's failure to request leave from the court.** The court filed a scheduling order in this matter on 6/1/2020. The order required the parties to notify each other in writing of the identity of its expert appraiser within 10 days of retention, but no later than 45 days before the close of discovery. On

3/12/2021, Menard sent notice to the county that Andy Donahue had been retained just one day prior. Because the county continually expressed doubt regarding Mr. Donahue's retention, the court directed confirmation. On May 7, Menard provided the county with an Amended Notice of Testifying Expert stating that Mr. Donahue was no longer retained and was replaced by Wade Landreville. Three days later, the county filed and served a motion *in limine* and for sanctions upon Menard, contending that Menard violated the scheduling order by not moving to amend it.

"Motions *in limine* are intended to prevent the 'injection into trial matters which are irrelevant, inadmissible and prejudicial." *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 418 (Minn. App. 2003). A motion *in limine* that is similar to a motion for summary judgment and "effectively seeks to deprive its opponent of an essential element of its case as a matter of law" is subject to the procedural rules governing dispositive motions. *Id.* at 418, 419.

Scheduling orders "control the subsequent course of the action and shall be modified only to prevent manifest injustice." Minn. R. Civ. P. 16.05. Failure to obey a scheduling order may result in sanctions or prohibiting the introduction of evidence. Further, "a scheduling order shall not be modified except by leave of court upon a showing of good cause." Minn. R. Civ. P. 16.02. However, a district court has discretion over whether to enforce its own scheduling order. *See Maudsley v. Pederson*, 676 N.W.2d 8, 12 (Minn. App. 2004).

At a hearing on its motion *in limine*, the county moved to exclude from evidence the appraisal or testimony from Mr. Landreville. Menard asserts that it properly notified the county of the substitution of Mr. Landreville upon determining that Mr. Donahue's workload would not permit an appraisal before the deadline. Further, Menard noted that Mr. Landreville's retention and notice was completed before the appraisal deadline.

The court agreed with Menard that the notice and retention was done before the deadline but agrees with the county that Menard should have sought leave to amend the scheduling order to permit late disclosure of an expert witness. *See* Minn. R. Civ. P. 16.02.

The court stated that had Menard requested leave from the court, it would have been granted. Further, if the court were to grant the county's motion *in limine*, the prejudice to Menard would outweigh any possible prejudice to the county resulting from delayed notice of substitution. Because the court has the authority to enforce or modify its own scheduling order, and because the record did not support prejudice to the county, the court denied the county's motion *in limine*. ***Menard, Inc. v. Dakota Co.***, 2021 WL 2446297 (MN T.C. 6/11/2021).

A question of subject matter jurisdiction is analytically distinct from a cause-of-action dispute. Petitioner Harlan Anderson filed a property tax action concerning 15 parcels, contesting the assessed property values for January 2019. The 15 parcels make up an integrated, fully functioning family farm. The county filed a motion to partially dismiss, arguing that "Mr. Anderson did not have the required 'estate, right, title, or interest in or lien upon' nine of the fifteen parcels." The court denied the county's motion and filed an order giving Mr. Anderson 30 days to show cause why the matter should not be dismissed "for lack of the statutorily required estate, right, title, interest, or lien upon [nine of the 15 parcels]." Mr. Anderson subsequently brought a motion to amend the pleadings to include three additional petitioners.

Minn. Stat. §278.01, subd. 1(a) states that "only a person with 'any estate, right, title, or interest in or lien upon any parcel of land' has statutory standing to bring a petition." Mr. Anderson and his additional three petitioners (Mary Anderson, Richard Anderson, and Mark Anderson) "assert that they individually, jointly, or collectively... have an estate, right, title, interest or lien on all of the parcels referenced in this case." The county, however, produced property records of the parcels at issue to show that Mr. Anderson does not retain the required estate, right, title, interest, or lien, and maintains that because Mr. Anderson's motion was brought after the statutory deadline for filing the property tax petition, the court lost jurisdiction to grant Mr. Anderson's motion to amend his petition.

The court disagreed with the county and offered two examples. First, in *Jim Bern Company v. Ramsey Co.*, No. 62-CV-17-2723, 2018 WL 911206 (Minn. T.C. 1/9/2018), the court "denied a motion to amend a property tax petition when the movant asked the court to add claims for 34 additional parcels of land after the statutory deadline had passed." Second, in *Smith v. Washington Co.*, No. 82-CV-20-1952, 2020 WL 5887224 (Minn. T.C. 9/30/2020), "the court refused to grant leave to amend the taxes-payable year on a petition when that request was made after the expiration of the statutory deadline." The cases of Bern and Smith involved the tax court's subject matter jurisdiction and the court held that claims "asserted for the first time after the expiration of the petition deadline" are permanently time-barred. *See* Minn. Stat. §278.01, subd.1c. However, in the present case, Mr. Anderson identified the parcels at issue in his original and timely petition.

The court stated that instead of implicating its subject matter jurisdiction, the county argued whether Mr. Anderson had standing to bring claims on the land parcels for which he is not the title holder. Chapter 278 of Minnesota Statutes "does not limit statutory standing to title holders." A property tax petition may be brought by anyone with an "interest in the subject property." *See* Minn. Stat. §278.01, subd. 1(a). The family members of the subject property retained the integrity of the land to operate as an "integrated, fully-functioning farm." Because the 15 parcels, taken together, constitute a single farm, Mr. Anderson has a clear interest in the parcels as a unit, regardless of whether he holds title to each parcel. As a result, and because the county has not shown that it would be prejudiced by the amendment, the court granted Mr. Anderson's motion for leave to amend on the merits. ***Anderson v. Wright Co.***, 2021 WL 2557313, (MN T.C. 6/18/21).

Court denies motion for reconsideration after respondent gained access to petitioners' proprietary information. The court previously consolidated these matters for judicial efficiency in solving discovery disputes. The present cases involve the market value of two downtown Minneapolis properties and one North Loop property for taxes payable in 2019. During discovery, petitioners indicated that they possessed responsive materials, but requested a protective order limiting the use of sensitive information to the "this-case only." The county objected to the request, arguing that such protection was unwarranted and legally improper pursuant to Minn. Stat. §§273.061, .12 and 278.05. Additionally, the county filed a motion to compel discovery. The court subsequently granted in part and denied in part the county's motions to compel and granted the petitioners' motions for protective orders. The court resolved the scope-of-protection issue by limiting the use of information to each individual case. The assessors were allowed access "to proprietary information in their capacity as expert appraisers for the City of Minneapolis or the County," but were not granted access to that "same infor-

mation in their capacity as assessors."

After receiving discovery information from petitioners, the county requested and was granted leave to file a motion for reconsideration of the protective orders. Supported by affidavits, the county argued that Hennepin County and Minneapolis assessors use information obtained through discovery for non-litigation purposes. Petitioners filed a memo opposing the motion.

Motions for reconsideration are intended for limited circumstances and are not to be used to reargue what was argued before, nor to express disagreement with the court's prior decisions. Here, the court declined to exercise its discretion to reconsider because the county sought leave to request reconsideration only after having downloaded the petitioners' proprietary information. As such, the court agreed that absent compelling circumstances or previously unavailable facts, "it would be inequitable to allow the County" to pursue diminished protection. ***LPF North Loop Investors LLP v. Hennepin Co.***, 2021 WL 2098945 (MN T.C. 5/19/21).

ADMINISTRATIVE ACTION

■ **All cybercurrency is not created equal.** In Chief Counsel Advice 2021-24008, the Service determined that a pre-Tax Cuts and Jobs Act (TCJA) exchange of Bitcoin for Ether, or Bitcoin or Ether for Litecoin, did not qualify as a like-kind exchange. Section 1031 permits taxpayers to exchange, tax-free, property used in trade or business or for investment purposes for property that is "like-kind." (Section 1031 was amended by the Tax Cuts and Jobs Act and this tax-free exchange treatment is now permitted only for real property.) The memo reasoned that although Bitcoin, Ether, and Litecoin are all forms of cryptocurrency, Bitcoin and Ether held a special position in the cryptocurrency market because they acted as an on- and off-ramp for investments in other cryptocurrencies. Thus, Bitcoin and Ether differed in both nature and character from Litecoin. Therefore, neither Bitcoin nor Ether qualified as like-kind property to Litecoin. Turning to exchanges of Bitcoin for Ether, the memo discussed fundamental differences between the two cryptocurrencies, including difference in their overall design, intended use, and actual use. While Ether and Bitcoin both may be used to make payments, Ether's additional functionality differentiates Ether from Bitcoin in both nature and character. Therefore, Bitcoin and Ether did not qualify as like-kind property for purposes of pre-TCJA Code Sec. 1031.

■ **Child tax credit changes could cut childhood poverty in half.** As part of the last covid relief package, Congress temporarily expanded the child tax credit and changed how the credit is paid out. Previously, the child tax credit was available once a year, after taxpayers filed their returns. With the change, families have access to half of the credit each month. Other critical changes include eliminating the parental income requirement and increasing the per-child amount for the credit. The credit is subject to a phase-out for higher income taxpayers. According to researchers at Columbia University's Center on Poverty and Social Policy, these changes will reduce child poverty from nearly 14% to 7.5%. Unless Congress acts to make them permanent, key changes to the Child Tax Credit will expire at the end of 2021. Taxpayers who filed returns in 2019 and 2020 do not have to do anything to receive the monthly payments. Taxpayer who did not file returns in 2019 or 2020 may sign up through the IRS Website (*https://www.irs.gov/credits-deductions/child-tax-credit-non-filer-sign-up-tool*). Similarly, families who prefer to opt out of this monthly payment can do so through the Service's web portal.

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THON

Ashley Steinberg Thon joined Patton, Hoversten & Berg. Thon practices in the areas of estate planning, probate, real estate, and criminal defense.


VESSEY

Jonathan B. Vessey joined Fredrikson & Byron as a shareholder in the private equity and mergers & acquisitions groups. Robert Day rejoined the firm as an officer in the patents, intellectual property, intellectual property litigation, IP due diligence, and trade secrets groups.


HOROWITZ


GIBBONS

Baillon Thome Jozwiak & Wanta LLP announced that Charles A. Horowitz and Michelle M. Gibbons joined the firm as attorneys in the employment litigation practice group. Horowitz has practiced law for nearly three decades and has successfully litigated dozens of cases in federal and state court. Gibbons joined the firm in 2019 as a law clerk and was admitted to the bar in the fall of 2020 after graduating magna cum laude from Mitchell Hamline School of Law.


BROMAN


SIMPSON

Meagher + Geer announced that Stacy Broman was appointed as the firm's managing partner and Gregory Simpson was elected to its management committee. Broman is the first woman to serve as managing partner in the firm's 92-year history. Simpson has been with the firm since 2009, and will serve on the management committee for a five-year term.


SEABROOKS

Gov. Tim Walz appointed Jesse Seabrooks as district court judge in Minnesota's 10th Judicial District. Seabrooks is an assistant county attorney in Washington County, where he prosecutes a variety of felony and gross misdemeanor offenses. He will be replacing Hon. Kathleen A. Mottl and will be chambered in Center City in Chisago County.


CHOSY

James L. Chosy received the 2021 Exemplar Award from the National Legal Aid & Defender Association, the nation's oldest non-profit devoted to excellence in the delivery of legal services to those unable to afford them. Each year, the NLADA honors one or more members of the private bar or corporate community across the country who have demonstrated outstanding leadership in promoting and supporting equal justice. Chosy is senior executive vice president and general counsel at U.S. Bancorp.


OLSON

Ashley Olson joined Maslon LLP an associate in in the corporate & securities group.

Eric Friske, an attorney at Henson Efron, was reappointed by Gov. Walz to another term on the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design, effective June 23, 2021 through January 6, 2025. Friske presently serves as chair of the board's complaint committee.

Sam Calvert was appointed as examiner of titles for Benton County and as deputy examiner of titles for Stearns County. Calvert has over 42 years of experience as a lawyer and title examiner. He is an MSBA-Certified Real Property Law Specialist.


SCHMISEK

Ryan Schmisek joined Krueger & Juelich, PLLC. The firm, now Krueger, Juelich & Schmisek PLLC, focuses on family law and also provides estate planning services.

Cottrell Green PA and Halpern Law Firm PLLC have combined law firms to become Halpern Cottrell Green & Filipski PA. Bill Cottrell will be president of the firm and John Halpern executive vice-president. The law firm will have two offices, located in St. Paul and Minneapolis. An emphasis on consumer and commercial collections will remain. Halpern's original law firm was founded in 1933 by his father, Maurice Halpern.

Caitlin Deal joined Meagher + Geer as an associate in the family law practice group.

Cathryn Reher joined Barna, Guzy & Steffen as a shareholder with more than 30 years of experience. She focuses her practice on elder law/elder care and special needs planning.

Mitchell D. Sullivan joined the Minneapolis office of DeWitt, with a focus on the business, mergers & acquisitions, and real estate practice areas.

Larkin Hoffman shareholders Daniel J. Ballintine and Timothy A. Rye were elected to the law firm's board of directors. Tamara O'Neill Moreland was re-elected to the board and Paul R. Smith was re-elected as president of the firm. Other members of the firm's governing board are Paul B. Plunkett, Joseph J. Fittante, and Susan E. Tegt.

We gladly accept press releases and announcements regarding current members of the MSBA for publication, without charge.
Email: bb@mnbars.org

In Memoriam

Richard E. "Dick" Brink, age 98, of White Bear Lake passed away peacefully on July 4, 2021. He served in the Navy during WWII. He graduated from William Mitchell College of Law in 1952. Brink worked for 3M for 44 years, first as a chemical engineer and then as a patent attorney.

Alfred Lucas "Fred" Hoedeman, age 91 and a long-time resident of Edina, died July 4, 2021. In 1948 he sailed to Ellis Island from Holland and boarded a train to Minnesota to become the first foreign exchange student at the University of St. Thomas. Hoedeman was a practicing attorney for more than 40 years, specializing in corporate law.

Virginia A. Dwyer, age 65, died on May 5, 2021. She was a cum laude graduate of the University of Minnesota Law School and practiced at Briggs and Morgan and Grannis and Hauge, where she was a shareholder over the last 27 years. She married her husband, Michael Dwyer, the week they both received their bar exam results in 1980, and the two later practiced together at Grannis and Hauge until shortly before her death.

Richard H. 'Sarge' Kyle passed away peacefully on June 22, 2021 at age 84. Kyle joined the St. Paul law firm of Briggs and Morgan where, except for a two-year stint as Minnesota solicitor general, he practiced continuously until 1992, when he was nominated by President George H.W. Bush and confirmed as Minnesota's 27th United States district judge. He assumed senior status in 2005 and continued to carry a full caseload until he retired from active service in 2017. His son Richard H. Kyle, Jr., also an attorney, is a past president of the MSBA (2014-15).

David Swenson, age 53, of St. Louis Park, MN, passed away peacefully on June 28, 2021. He thrived in his chosen field of intellectual property law, handling complex trials and appeals for companies of all sizes and across many industries, especially the technology sector. He became a partner at major law firms, including Kirkland & Ellis, in Washington DC; Robins, Kaplan, Miller & Ciresi in Minneapolis; and most recently Patterson Thuente IP, also in Minneapolis.

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ATTORNEY WANTED

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ATTORNEY WANTED. Maslon LLP is seeking attorney candidates with at least two years of experience to join the firm as associates in our Corporate & Securities Practice Group. Associates in this group practice primarily in the areas of mergers and acquisitions, private and public securities offerings and compliance, entity formation and governance, commercial contracting, drafting technology agreements and general business counseling. Candidates must be highly motivated and mature with a minimum of two years of relevant law firm experience, a commitment to transactional practice, proven superior academic performance, and excellent communication skills. Candidates with interest and/or experience in intellectual property related commercial contracting (e.g., technology, software, ad-tech, licensing, etc.) will be given special consideration. For more information, visit us at: www.maslon.com.

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BLETHEN BERENS, a mid-sized, full-service law firm, is seeking an attorney with at least five years of business and commercial law experience. This position will be located in our Mankato office. Our business and commercial law attorneys represent small to mid-market businesses in a wide variety of industries across Minnesota. Qualified candidates must have significant experience not only in business and commercial law, but in counseling clients, relationship building and business development, will have a strong commitment to legal excellence, and will possess the ability and desire to work efficiently within the firm's team based approach to confidently serve our clients. Blethen Berens provides unparalleled legal services to meet a full range of business and individual needs. Smart, experienced and responsive, we serve clients throughout Minnesota with dedication, energy and a track record of success. Based in Mankato and New Ulm, we invest in our community and are committed to supporting the region's health and vibrancy. All applicants should send a resume and cover letter to Lisa Jasperson, Director of Office Administration, at: ljasperson@blethenberens.com. To learn more about our firm please visit our website at: www.blethenberens.com.

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CORPORATE ATTORNEY wanted. Moss & Barnett has positions available for shareholder-track associates to join its growing Business Law team. Associate positions will have a transactional focus, including mergers and acquisitions and corporate finance. Background in accounting, tax, securities, or real estate considered plus factors. Preferred candidates will have exceptional interpersonal, analytical and writing skills. Interested candidates should email a cover letter, resume, writing sample and law school transcript to: Carin Del Fiacco, HR Manager, carin.delfiacco@lawmoss.com. Moss & Barnett is an affirmative action/EEO employer. No agencies please.

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ESTATE PLANNING /Probate Attorney. Eckberg Lammers seeks to hire a motivated attorney in our Stillwater, MN office to join our Estate Planning /Probate department. Qualified applicants must have a minimum of three years of experience in these areas of law and be licensed to practice in Minnesota and/or Wisconsin. Interested parties should forward resume, references, and salary requirements to kpepera@eckberglammers.com. All inquiries will be held in strict confidence. To view the entire job

description, please follow the link to our website: https://eckberglammers.com/careers/estate-planning-and-probate-attorney

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FALSANI, BALMER, Peterson & Balmer seeks associate attorney with zero to five years' experience for our people-intensive practice of representing individuals in personal injury, workers compensation, Social Security disability, and general litigation in MN and WI. Applicants should be efficient, caring, hard-working, able to handle litigation stress, and in possession of a sense of humor. Applicants who are interested in living and working in the most "climate-proof city" in America should send a cover letter, resume, transcript, references, and writing sample to: lawfirm@falsani-balmer.com.

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INTERESTED IN transactional work that includes direct client contact? Tired of Big Law? In need of some work flexibility? Commercial real estate boutique law firm is looking to expand its five-lawyer team with someone who has commercial real estate experience – leasing, acquisition, disposition, easements, title review, etc. Prefer at least two to three years transactional real estate experience, and experience in forming business entities would be a plus. Very collaborative practice with attractive workspace just outside of downtown Minneapolis with resources to work remotely. No headhunter solicitations. If interested, confidentially contact Joe Nuñez at: 612-743-7313.

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JOHNSON/TURNER is ready to again add to their attorney team. We are hiring community connected applicants in Rochester, Duluth and the metro area: We are interested in a candidate that has one to three plus years of experience in civil litigation. Experience or interest in municipal, family law, estate planning, probate, and real estate is an advantage. We only consider candidates who will be a team player, will have a positive attitude, compassion for clients, a strong work ethic, great communication, and an enthusiasm for innovation. If you enjoy a traditional firm environment, the sound of your own voice, or complaining about your co-workers, please do not apply. We are a growing law firm that values our culture, strives for excellence, dreams big and has a lot of fun along the way. Attorneys at Johnson/Turner Legal enjoy the following benefits: Better compensation plan — High achievers are rewarded. Base salary, plus a formulaic monthly incentive plan that transparently shows you what you'll make based on your performance metrics. Your clients will be provided to you. You have no sales and marketing responsibilities – just focus on serving clients and practicing law well. No hourly billing – our cases are handled with fixed prices per packages. You are part of a Team that is second to none. Highly skilled specialists including, paralegals, sales, accounting, and IT work seamlessly together to help you and to optimize the client experience. You are supported by industry-leading training, systems, workflows, software and automation — all making you a better lawyer. To apply, visit: https://www.mnbar.org/resources/publications/bench-bar/classified-ads/2021/07/08/attorney-wanted2

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JOHNSON/TURNER is ready to again add to their attorney team. We are hiring community connected applicants in Rochester, Duluth and the metro area: We are interested in a candidate that has two to five years of experience in family law. Experience or interest in civil litigation, estate planning, probate, and real estate is an advantage. We only consider candidates who will be a team player, will have a positive attitude, compassion for clients, a strong work ethic, great communication, and an enthusiasm for innovation. If you enjoy a traditional firm environment, billing by the hour, the sound of your own voice, or complaining about your co-workers, please do not apply. We are a growing law firm that values our culture, strives for excellence, dreams big and has a lot of fun along the way. Attorneys at Johnson/Turner Legal enjoy the following benefits: Better compensation plan — High achievers are rewarded. Base salary, plus a formulaic monthly incentive plan that transparently shows you what you'll make based on your performance metrics. Your clients will be provided to you. You have no sales and marketing responsibilities – just focus on serving clients and practicing law well. No hourly billing – our cases are handled with fixed prices per packages. You are part of a Team that is second to none. Highly skilled specialists including, paralegals, sales, accounting, and IT work seamlessly together to help you and to optimize the client experience. You are supported by industry-leading training, systems, workflows, software and automation — all making you a better lawyer. To apply, visit: https://www.mnbar.org/resources/publications/bench-bar/classified-ads/2021/07/08/attorney-wanted

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STAFF COUNSEL – Home Office Claims. As a staff counsel in Home Office Claims, you will provide legal advice, direction, and strategy on property and casualty claims, including lawsuits against policyholders and against Federated Insurance. This role requires an individual with strong communication and relationship-building skills, serving as a consultant offering strategies and recommendations in a fast-paced, customer-focused environment. Additional job duties include: Provide direction and support to outside counsel and Claims personnel, who are evaluating, litigating and resolving property and casualty claims and lawsuits. Serve as a resource to all Federated Claims personnel on a wide variety of claims-related issues. Manage responses to subpoenas and litigation discovery directed to Federated. Evaluate new legislation, case law and legal issues regarding Claims, and to use this knowledge to update and recommend procedural changes. Provide guidance, counsel, and training for Claims personnel to develop and/or maintain technical competence and skills regarding claims litigation. Provide legal review of and assist in preparing training materials, manuals, interpretations, bulletins, policy forms and endorsements, and various other documents for Claims and other functions within the Company.Qualifications Required: Juris Doctorate. Minimum of five years' work experience demonstrating the ability to successfully defend claims against policyholders and insurance companies in coverage-related litigation. Private practice experience strongly preferred. About us: At Federated Insurance, we do life-changing work, focused on our clients' success. For our employees, we provide tremendous opportunities for growth. Over 95% of them believe our company has an outstanding future. We make lives better, and we're looking for employees who want to make a difference in others' lives, all while enhancing their own. You will have opportunities to grow in your career. Our employees are

encouraged to ask questions and learn on the job, and we are committed to promoting from within. We recognize your contributions with an exceptional rewards package that includes competitive pay and bonus programs, incredibly affordable health insurance, generous pension and 401(k) benefits, and gift matching and paid volunteer time to support your involvement in the community. Learn more about our Benefits. If California Resident, please review Federated's enhanced Privacy Policy. Apply at: www.Federatedinsurance.com/careers!

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WAGE THEFT Litigation Associate: Nichols Kaster, PLLP, an employee, consumer, and civil rights firm, seeks an associate attorney for its wage theft team in Minneapolis, MN or San Francisco, CA office. Nichols Kaster, PLLP has dedicated over 45 years to fighting for the little guy in individual and class action matters. With offices in Minneapolis, Minnesota and San Francisco, California, the firm is perfectly situated for the work it does representing plaintiffs in cases across the country. Nichols Kaster is a proven powerhouse for taking on complex cases and securing significant recoveries for plaintiffs.In addition to its practice of representing individuals in workplace discrimination, harassment, and retaliation cases, the firm represents employees in class and collective actions for unpaid wages, and in class actions for retirement plan participants to protect their 401(k) investments. It also represents consumers who corporate American has treated unfairly. The firm has made a practice of taking on cases where civil rights and human dignities have been violated. The wage theft team holds responsible companies that refuse to pay workers the compensation they are due, misclassify them as independent contractors, force them to work off the clock, and skim from their pay. Our team has litigated class and collective wage theft actions involving positions such as home health aides, flight attendants, nurses, loan officers, retail salespersons, oil and gas workers, assistant managers, field service engineers, call center representatives, delivery drivers, casino workers, construction workers, exotic dancers, inside sales representatives, restaurant workers, insurance adjusters, property specialists, property managers, installers, service technicians, road construction laborers, and more. Associates in our wage theft group take an active role in managing their own cases, writing, responding to, and arguing motions, taking and defending depositions, and participating in arbitration and trial of class and collective actions. Team collaboration and strategizing is a fun and critical aspect of the position as well. Unlike many other firms, our associates are on the front lines of active litigation and will find the practice of fighting for the little guy in class and collective action cases both challenging and rewarding. At Nichols Kaster, we believe that diversity in all forms improves every workplace and makes every organization better. Nichols Kaster is committed to creating an equitable and inclusive work environment for our employees and to bringing a diversity, equity, and inclusion lens to our work. We encourage members of diverse communities to apply. Roles and responsibilities: Litigate wage and hour collective and class actions in federal court. Conduct legal research and write legal memoranda. Draft pleadings and briefs, argue motions in court. Maintain client relationships. Take and defend depositions. Work with experts. Develop new cases and conduct pre-suit investigations. Develop relationships with other attorneys in the plaintiffs' bar. Engage in public speaking, including at conferences, CLEs, and on panels. Work closely with and supervise paralegals, assistants, and clerks. Travel as required for litigation and conferences. Experience and qualifications: Two to four years of litigation experience preferred. Admission to the MN bar, or eligibility for admission within six months. Superior analytical skills and excellent research and writing skills. Excellent oral communication and advocacy skills. Ability to juggle multiple responsibilities, work independently, and meet strict deadlines under pressure. Self-motivated, entrepreneurial, collaborative, and diligent, with a commitment to plaintiffs' side litigation. Benefits. Full time, flexible schedule. Participation in medical and dental benefits, 401(k) and profit-sharing plan. Group life insurance. Fitness Center membership. Participation in discretionary year-end bonus plan. If interested, please apply online at: https://www.nka.com/careers.html

SEEKING LATERAL-HIRE attorney with seven plus years' experience in civil litigation / business and employment law. More information at https://www.spoelawyers.com/careers

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MILLER & STEVENS Law is hiring an attorney with experience in transactional law/estate planning. Position will begin after January 1, 2022 and residing near the Forest Lake area is required. Please submit your resume and cover letter describing your experience and reason for applying. For more information, visit: www.millerstevens.com.

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MILLER LEGAL Strategic Planning Centers, PA seeks an experienced attorney in estate planning, farm succession, probate, trust administration, medical assistance and related tax areas, to work in our team-oriented Southwest Minnesota Corporate Office. The successful candidate must have strong communication and relationship building skills in a fast-paced, client-focused environment. We are looking for a hard-working, motivated individual who seeks opportunity to grow as an attorney. Direct inquiries to: Carrie Birath, Office Administrator, 100 County Road 8, PO Box 738, Tyler, MN 56178 or carrie@millerlegal.com.

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STAFF ATTORNEY. Judicare of Anoka Co. Inc seeks full time, short term attorney; housing and poverty law. Licensed in MN. Housing clinic, legal aid office experience preferred. Salary $51,000.00 To apply, send letter and resume to: reception@AnokaJudicare.org. Deadline 07/23/2021 or until filled. EOE

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WANTED: STAFF Attorney to assist low-income clients in northwest Minnesota. Full-time, flexibility offered. For more information about the firm and the position see our website: www.lsnmlaw.org. Requirements and Qualifications: Law degree and a license to practice law in Minnesota or candidate for admission. Provisional hiring contingent upon taking and passing the Minnesota bar examination is possible. Application deadline: August 6, 2021 or until filled. Please send your cover letter, resume and three references to: ahoefgen@lsnmlaw.org.

FAMILY LAW/CIVIL Litigation Lawyer Minneapolis law firm (mid-sized & AV rated) seeking one or more lawyers to make a lateral move to assist with Family Law and Civil Litigation matters. The ideal candidates will possess excellent written and oral communication skills, initiative, writing ability, and trial experience. The Firm is looking for candidates who will continue to build their practice while acting in a support role for existing clients of the firm. Portable business is welcomed and preferred. The Firm offers a collegial atmosphere, competitive compensation, and an excellent benefits program. Compensation and Shareholder status 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. Equal Employment/Affirmative Action Employer

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BUSINESS LITIGATION attorney. Anthony Ostlund Baer & Louwagie 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.

FOR SALE

PRACTICE FOR SALE: The partners in a general practice with an emphasis in family law and estate planning are retiring after a combined 70 plus years of practice. Anyone interested in stepping into the existing operation and office space with equipment and furnishings in a north suburban area is invited to: call 763-780-8262. Serious inquiries only please.

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MINNETONKA SUITES and Individual Offices for Rent. Professional office buildings by Highways 7 & 101. Conference rooms and secretarial support. Furnishings also available. Perfect for a law firm or a solo practitioner. Office with 10 independent attorneys. Call 952-474-4406. minnetonkaoffices.com

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DOWNTOWN MINNEAPOLIS law firm offers furnished office (approximately 145 square feet) for lease. Amenities include conference room, lunchroom, in-building fitness center, and skyway access. Underground parking available. Email: info@skolnickjoyce.com for more information.

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NORTH METRO suburban law firm at 694 and Lexington Avenue offers attractively furnished office space including windowed offices and cubicles in a Class A office building. Amenities include workroom, conference rooms and lunch/break room. Underground parking available. Please email: cghimenti@hansendordell.com for more information.

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WHITE BEAR Lake Offices – All Inclusive. Office space located at 4525 Allendale Drive. Rent ($700 – $950/month) includes telephone system, 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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SHARED OFFICE available with four solo attorneys in great Edina location. Includes phone, internet, and access to copier/fax/conference room. Additional building amenities included. Call: 952-345-8266.

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OFFICE AVAILABLE: $650/month. Western Midway in St. Paul, on light rail, equal distance between courthouses. Furnished office, conference room. Copy service, fax, telephone (including long distance), utilities, storage space, on-site parking all provided. Call 651-645-0511

POSITION AVAILABLE

MID-MINNESOTA Legal Aid (MMLA) is seeking a full-time Executive Director to lead the organization in achieving its mission of improving lives through legal representation. For details, go to: https://mylegalaid.org/news/in-the-news.

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ATTORNEY COACH / consultant Roy S. Ginsburg provides marketing, practice management and strategic / succession planning services to individual lawyers and firms. www.royginsburg.com, roy@royginsburg.com, 612-812-4500.

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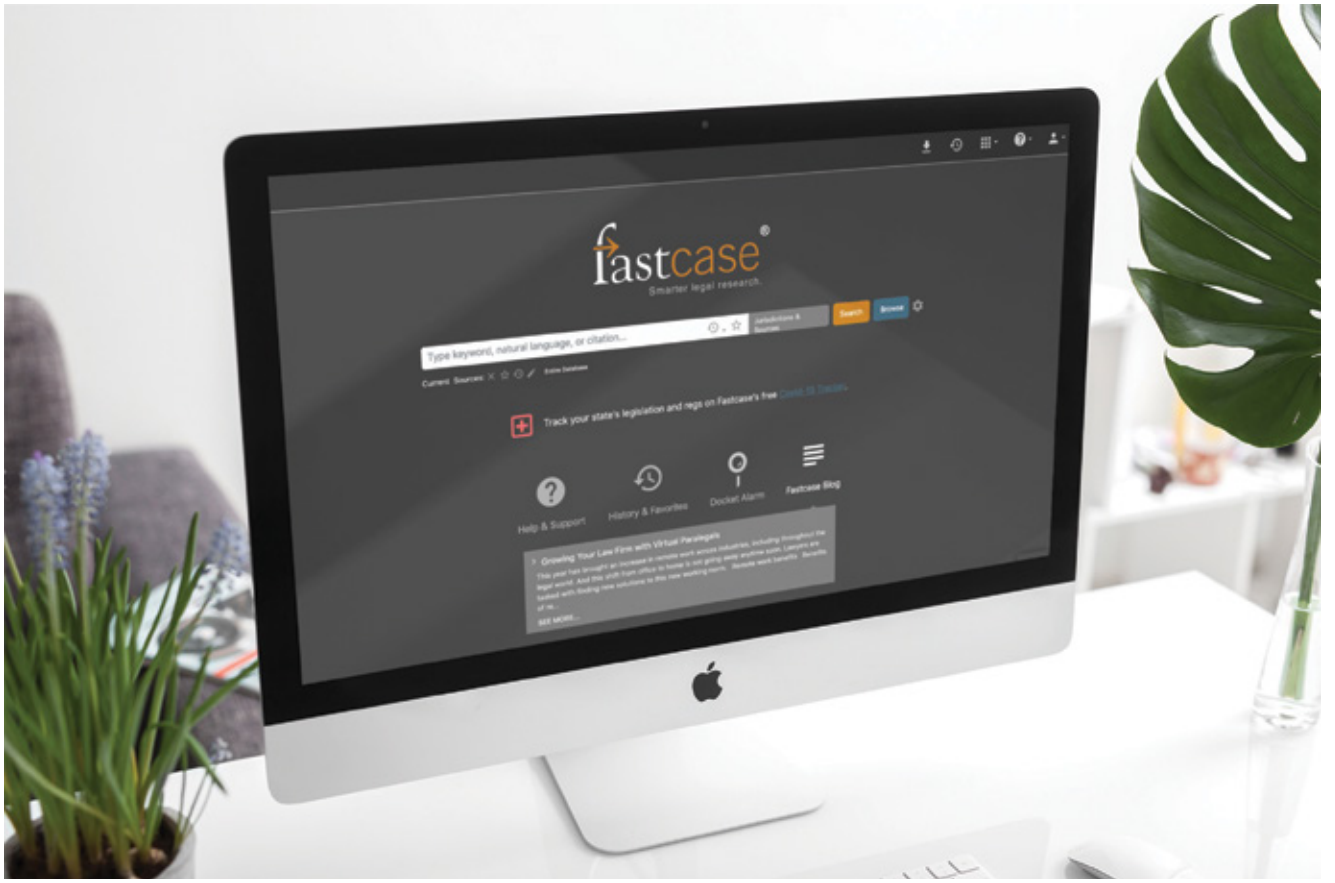

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