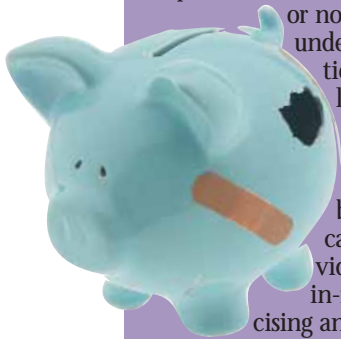


▲ Liability for Fees

If an attorney-in-fact enters into a contract on behalf of the principal and the contract requires that collection costs and attorneys fees be paid by the principal for failure to perform under the contract, the question arises whether or not the attorney-in fact is personally liable under the contract for the principal's collection costs, including attorneys fees, absent language that specially imposes liability on the attorney-in-fact. An attorney-in-fact is not typically personally liable for his actions on behalf of the principal because he is not acting in his personal capacity. However, the statute does provide for personal liability of the attorneys-in-fact in certain circumstances. In exercising any power conferred by a power of attorney, the attorney-in-fact shall exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs and shall have the interests of the principal utmost in mind. Therefore, an attorney-in-fact will not be held liable for the principal's collection costs, including attorney fees, under the power of attorney unless there is a showing of bad faith. This was the ruling in *Northfield Care Center, Inc. vs. David Anderson* A04-2491, (Minn. App. 01/17/06).

William Forsberg

Parsinen Kaplan Rosberg & Gottlieb
Minneapolis
wforsberg@parlaw.com



▼ Pensions & Divorce

Having trouble getting the opposing party in a divorce to either provide accurate pension information or sign an authorization releasing her pension information to you? No problem. You don't actually need her cooperation. All you need to do is read and follow Minn. Stat. §356.49. Section 356.49 requires public and private pension plan administrators to release private or confidential retirement plan data to the court, either party, their attorneys, and an actuary if you send the administrator a copy of the petition and a copy of the affidavit of service showing



the divorce has been started and the petition served on the other party. You must cite the statute in your requesting letter. The plan administrator must provide you with information necessary to calculate the present value of the participant's benefits or rights. The statute covers retirement plans in which the participant is currently and formerly enrolled. This statute is especially helpful in divorces where retirement benefits are the major or only asset.



Have a bit of sage advice for a newcomer to your area of practice? Send us your "tips & traps"! Your colleagues will be grateful. Email suggestions, cautions, and tales of woe to bb@mnbar.org

Jennifer L.J. Gilk
Estebo, Schnobrich, Frank & Gilk, Ltd
Redwood Falls
jgilk@rwflaw.com

▲ Zoning Law

Residents of a community opposed to a zoning proposal before a governmental body must present objective, empirical reasons, rather than subjective, unsubstantiated concerns. The principle has long been recognized in Minnesota jurisprudence. (See, e.g., *C.R. Investments, Inc. v. Village of Shoreview*, 304 N.W. 2d 320 (Minn. 1981); *Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee*, 303 Minn. 79, 226 N.W. 2d 306 (1975).) The principle was reiterated recently by the Minnesota Court of Appeals in *Eureka Township v. Krapu*, 2006 WL 1738039 (Minn. App. 2006) (unpublished). A municipality denied permission to operate a kennel to board up to 50 dogs on a property zoned "agricultural"

because of concerns neighbors expressed regarding excessive noise, traffic, degradation of the environment, poor esthetics, and diminution of property values. While the district court reversed that decision, the Court of Appeals affirmed, ruling that the concerns expressed by the neighbors were too general and lacked factual basis. The ruling is a reminder that challenges to zoning proposals need to be organized, well-prepared, and supported by presentation of concrete and

objective data. Moreover, because judicial review is limited to the record before the governing body, the evidence must be presented to the decision-making unit before the determination is made.

Marshall H. Tanick
Mansfield Tanick & Cohen, P.A.
Minneapolis
mtanick@mansfieldtanick.com



Do spell-checkers supplied by word processing programs automatically lead to spelling accuracy? Many fail, for example, to include important legal terms like "tortious" among their recognized words. If your program suffers from this same omission, beware: you draft complaints and other legal memoranda at the risk of alleging new and, heretofore unrecognized, causes of action. Such as "tortuous" interference with contract. Your client might think another party's contract interference was "tortuous," and so may your spell-checker (at least that's what mine uses as a replacement word for tortious), but no such claim is recognized under Minnesota law. Take it from me. Don't trust your spell-checker to know legal terminology, or you might be in for a tortuous experience.

Jonathan Hegre
Northwest Airlines
Minneapolis
jonathan.hegre@nwa.com