

▼ **Discrimination Claims**

Occasionally, an employment discrimination claimant will die while his or her claim (whether via administrative charge of discrimination or in a lawsuit) is still pending. Counsel should know that depending upon the circumstance, such a death may act to entirely abate the discrimination claim and justify its dismissal with prejudice. Courts have specifically held that Minnesota Human Rights Act claims are for “injuries to the person” and therefore expire upon the claimant’s death, by operation of statute. See Minn. Stat. §573.01; *Lipka v. Minnesota Sch. Employees Ass’n.*, 537 N.W.2d 624, 630 (Minn. App. 1995); *Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287, 1304 (8th Cir. 1997). The lone exception is where special damages are pled pur-

suant to the statute, in which case those claims will not abate upon death. This abatement defense can be extremely effective and important if the only discrimination claims pending are under Minnesota state law. By contrast, the federal courts have rather different views of whether federal statutory discrimination claims abate upon death, and likely will not support dismissal of the claim in the event of death.

Jonathan J. Hegre  
Taylor Corporation  
North Mankato  
jhegre@taylorcorp.com



▼ **Overzealous Advocacy**

The following court order, issued by a judge of the United States District Court for the Western District of Texas, Austin Division, offers an object lesson in the “traps” that await counsel whose zealous advocacy outstrips the patience of the judge:

**ORDER**

Be It Remembered on the 25th day of April 2007 the court reviewed the file in [this] cause, and specifically the defendant[s] Motion for Protection filed April 23, 2001, and after reading it a second time to make sure it was not a practical joke, the court enters the following:

Stallions can drink water from a creek without a ripple;  
The lawyers in this case must have a bottle with a nipple.  
Babies learn to walk by scooting and falling;  
These lawyers practice by simply mauling  
Each other and the judge, but this must end soon  
(Maybe facing off with six-shooters at noon?)  
Surely lawyers who practice in federal court can take  
A deposition without a judge’s order, for goodness sake.  
First, the arguments about taking the deposition at all,  
And now this – establishing their experience to be small.  
So, let me tell you both and be abundantly clear:  
If you can’t work this without me, I will be near.  
There will be a hearing with pablum to eat  
And a very cool cell where you can meet  
And Work Out Your Infantile Problem With the Deposition.

It Is Ordered that the Motion to Dismiss is Dismissed.

Sam Sparks  
United States District Judge

Philip A. Cole  
Lommen Abdo Cole King & Stageberg P.A.  
Minneapolis  
phil@lommen.com

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](mailto:bb@mnbar.org)

▲ **Unemployment Compensation**

An employee may be in jail but nevertheless be entitled to unemployment compensation benefits despite the incarceration. In *Jenkins v. American Express Financial Corp.*, 721 N.W.2d 286 (Minn. 2006), the Minnesota Supreme Court upheld the claim for benefits of a discharged employee who was fired for absenteeism when she did not show up for work due to her incarceration on a non-work-related assault charge. The employee pointed out that she was eligible for release during the day under the *Huber* law, Minn. Stat. §631.425, which allows incarcerated individuals to work during the day and return to jail at night. The employer had agreed to cooperate in the *Huber* arrangement, but the employee’s boss failed to fill out the necessary paperwork, which left her in jail, unable to show up for work, and ultimately, led to her firing. Reversing the Court of Appeals, the Supreme Court held that under the circumstances of this case, the employee was entitled to unemployment compensation benefits because she “made diligent efforts to report to work,” which made

her eligible for benefits.

Employees who are incarcerated can preserve their jobs—and their rights to unemployment benefits if they lose their jobs—by ascertaining if they are eligible for work release under the *Huber* law and, if so, arranging with their employer to activate the measure. If the employer promises to help, but fails to do so, the employee may be eligible for unemployment compensation benefits if discharged due to incarceration. But employers, as the Court was careful to point out in the *Jenkins* case, are not obligated to comply with a *Huber* law request. They may choose not to allow the employee to participate in the program and then fire the employee, whose absence from work would constitute “disqualifying misconduct” under the unemployment law.

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

